

March 1, 2018

The regular monthly meeting of the Oxford Board of Port Wardens was called to order by the chairman, Thomas Campbell, on Thursday, March 1, 2018, at 6:00 p.m., in the meeting room of the Oxford Community Services Building.

Other board members in attendance were Larry Murray and new member, Bob Hyberg, who was warmly welcomed to the group. Also in attendance were applicant Megan Hauck, Ms. Hauck's contractor Chris Moore with Weems Brothers, Inc., Attorney Ryan Showalter, Administrator Cheryl Lewis, and Ms. Hauck's neighbors Rebecca Keegan, Jim Jackson, and Willard and Adelheid Andrews.

The minutes of the last meeting on December 7, 2017 were approved and accepted as distributed.

The following permit was reviewed by the board:

Permit #18-01 – Megan Hauck, 704 S. Morris Street, construct a 104' long by 6' wide pier, including a 20' x 10' end section platform, and install one four-pile boat lift, not to exceed approximately 79' channel ward of the mean high water line. Mr. Moore presented the application stating that from his last consultation meeting with the Board of Port Wardens in December, a boundary survey and lateral line survey had been done for Ms. Hauck, as well as plat indicating the property's setbacks. A slight shift had been made in the latest drawings from the previous drawings that had been presented to the board (under consultation) which was reflected in the drawings submitted with this night's application. The property boundaries, the lateral lines, and property line extensions, reflected on the survey plat, were shown to be the same as those on the submitted plans. Dr. Andrews spoke stating that he had not been given any notice of the project prior to this night's meeting. Mr. Campbell explained to Dr. Andrews that the prior meetings with Mr. Moore were all concept meetings. Attorney Showalter concurred by adding that there had not been an active application until now. Mr. Campbell noted that the application submitted showed two dock concepts and asked if Mr. Moore was waiting for the board to make the decision as to which one should be approved. Mr. Moore responded that was correct and that he had narrowed the options down from 3 to 2. Mr. Campbell explained that the option using the property lines extended was in keeping with what had historically been done since the establishment of the harbor management line. He added that his issue with the "L" head, which was shown on the plans as coming across the setback line.

Mr. Campbell gave a brief history about the area in which Ms. Hauck was looking to build her dock. He noted that the Harbor Management Plan had been developed in 1982. The docks on either side of Ms. Hauck were built in the early 1980's. They were both built with the concept of the property lines extended. The Harbor Management Plan was written as a guideline only and not attached to an ordinance. In 2013, the town attached the Harbor Management Plan to an ordinance. Historically, what had been done, to the discretion of the Board of Port Wardens, was to use the property lines extended with the lateral lines being used in cases of hardship and that it had been done this way for at least 20 years. The guidelines read differently from the Oxford Town Code, Section 11.12 – Waterfront Development Requirements, which speaks of the Board of Port Wardens having the authority to issue a municipal permit for waterfront development structures based upon, but not limited to the criteria based on the use of lateral lines. The ordinance also states that the Port Wardens have the authority to allow for a variation of the provisions of this section "upon a finding that the application has been approved by any applicable state and/or federal jurisdiction having authority over the same, and that the

alteration does not have an adverse impact upon surrounding properties or riparian right of others, or navigable waterways.” At this time, however, Mr. Campbell explained that the state and federal jurisdictions are waiting for the board’s approval and that they have not denied the application but only waiting for the board’s decision. Mr. Campbell again explained that the board has always based their guidelines on property line setbacks, as they apply within the Oxford Zoning Ordinance, without exception and that the board is working to establish a decision that would be most functional for all parties involved. He added that the objective of the board was to make sure maneuverability is possible around all the docks in this area. Using that, along with his experience with what has been practiced historically and what has been practiced on this entire shoreline, Mr. Campbell stated that he felt that the property lines extended, less the “L” head shown on the plan which infringes on the property line setback, would be the most logical approach to the situation. Board member Larry Murray read aloud a statement he prepared (added to these minutes as “Attachment A”) echoing Mr. Campbell’s choice of approval of this application based on the property lines extended along with the board’s approval being based on the applicant receiving permits as needed from the Corps and MDE and that a town permit will not be issued until State and Federal approval have been received by the town office.

Applicant Megan Hauck spoke stating that she was willing to consider either option and that she just wanted a dock like everyone else had in the cove and that she was willing to comply with every regulation. She added that she just wanted a decision at this night’s meeting on how to build on her property.

Mr. Campbell stated that the board had received a letter from neighboring property owner Willard Andrews with regards to the application and offered Dr. Andrews the floor to personally address his own letter. Dr. Andrews stated that he had not wanted to get involved in this application initially as his own dock was built in the late 1990’s and that the former owners of Ms. Hauck’s home were opposed to his dock. He noted that when his dock was built, he tried to follow the rules, but his contractor had built his dock 6” too close to the property at 704 S. Morris Street. Dr. Andrews stated he was not opposed to Ms. Hauck having a dock as long as it was like the other docks in that it followed the rules and didn’t go over the setbacks. He added that one thing he thought everyone should be made aware of was that was that in the cove there was about 3’ of new land coming in every year and that the land lines were going out 3’ a year. With that happening, it is changing the setback of the line and that was something that everyone was going to have to think about in the future. He again stressed that anything Ms. Hauck wanted to build was fine with him, as long as she just followed the rules.

Neighbor Jim Jackson at 109 W. Pier Street spoke about looking at the history of the docks in this area and that the uses of lateral lines, in general, are the rule around the country. He spoke about the past owners of 109 W. Pier Street, the Spears, who, he indicated, never agreed to the use of property lines extended and that the Andrews were the only ones to use that approach. Ms. Keegan added that she and Mr. Jackson have a commitment to their property and that their view was beautiful. She wanted it understood that it was important to both her and Mr. Jackson that this permit was resolved in a way that was fair to everyone. Mr. Moore, Ms. Hauck’s contractor, spoke summarizing the conversations that had taken place thus far...that Ms. Hauck wanted a pier with a small platform, that Dr. Andrews wanted something that conformed to the code without a variance or deviations, and that the neighbors to the north wanted to see the lateral line approach. Mr. Moore recognized that the code under Section 11.2 does have a provision which cites that the board can allow for variations but he added that his client didn’t want a variation from the code. He pointed out that the alternative plan that was attached to the Hauck application, which was labeled as 2B, was the plan that was part of the revision discussed on December 15, 2017 which uses the use of lateral lines as defined by the town code. It proposes a pier

that conforms entirely to the code, with no encroachments, and is consistent with the law. Mrs. Andrews spoke stating there was a reason for the doing different things in this area. Dr. Andrews concurred stating that when he applied for his dock there was never any mention of lateral lines, only property lines extended. He also noted that he had been called by both the builder and the employer in the past 2 weeks and told if he were not to sign a variance that allowed the property line to infringe on the setbacks, they would push their preferred way of doing the dock, which would be the lateral lines and that he had felt threatened. Ms. Hauck responded that she was sorry he felt threatened.

Mr. Campbell explained that on December 7, 2017, the board had a discussion with some of the individuals in the audience in which they tried to come up with a plan that would please everyone. One neighbor to the north was not willing to sign any kind of waiver that would allow for a solution that would meet the needs of both parties. Mr. Campbell noted that if the board could not get that cooperation, it was up to the board to decide and make the decision. Mr. Jackson interjected and began speaking about the Andrews' dock and how it was built 15' too long. Mr. Murray interrupted him stating that the board was not there to talk about problems that were created long ago. The 2 existing piers, on either side of the Hauck property, were built based on property lines extended. Mr. Jackson argued that was not the case and that he had found a long conversation written back in 1984 about the lateral line approach whereby the board promised a prompt decision. He added that the reason he brought the matter up was that he took umbrage that the board was not helping to solve a problem that, from what he could tell from the history he found, they had created. Chairman Campbell asked that the conversation remain focused on the permit at hand. He noted that the intersection of property lines had a lot to do with the way in which things were handled in the past. In particular, one parcel would not have been permitted any dock at all had the neighboring property not made an agreement to share a pier. He added that the Haucks should be able to put in a dock and that if one were to look at a satellite view of Oxford one would find that 80% of the docks in town fit the property line extended criteria. However, if one were to go with lateral lines, a vast number of docks in town would be non-conforming today. Mr. Campbell stressed that lateral lines have always been used as a solution to problem areas and adjusted by cooperating neighbors who also wanted their rights to use the water. He again stated that he felt property lines extended were the best way to deal with the issue. Mr. Jackson and Ms. Keegan complained that the board would be ruining their view and creating a problem in allowing them access to deep water. Mr. Jackson asked what would be the problem with Ms. Hauck using Option B. Mr. Campbell responded that it would restrict the water between Ms. Hauck's and Dr. Andrews docks. Mr. Jackson argued that was because the Andrews' dock was built 15' too long in the 1990s and never corrected. Mr. Moore spoke explaining that if one were to look at the area in question from an aerial view, one would find that the docks in the area are more or less parallel. If one were to look at the Hauck's shoreline, one would not see the same perspective and the docks would look like they are constructed out to the north at an angle. He noted that the Board of Port Wardens doesn't regulate aesthetics or views and that there is no view easement or a view that is free of a pier. Mr. Moore stated that Ms. Hauck would be happy to have a pier and happy for the board to solve the situation in allowing her one. He added that if the board wanted to grant a permit that was conditional upon delivery of a state permit or the board's direction or decision until he and the applicant come back with a state permit, they would welcome that decision and that they would be willing to take either approach. He added that there hadn't been any strong arguments against Option B and that it followed the lateral lines in the cove. In submitting Option 2B, one could see the piers rotating as one goes around the piers at slightly different angles and though the proposal is slightly closer to the Andrews' pier, it does not impede the navigation to that pier. Mr. Campbell responded that the docks would be within 10' of each other and that he understood what Mr. Moore was explaining. He also noted that there was a happy medium but no one chose to take that as was discussed in the consultation of December 2017 involving

a letter of consent whereby the proposed dock could be put somewhere in the middle which would help. However, Mr. Campbell pointed out that the discussion fell on deaf ears and that the board was now forced to make a decision based on the history of Oxford. Mr. Campbell again stated it was his feeling that the use of the property lines extended was the way in which docks had been handled in the past and that there may be alternatives but nothing could be reached. Attorney Showalter suggested another alternative involving flipping the lift and platform. By moving the platform further away from the Andrews' pier, one would have open water with basically the lift adjacent to pier with the platform on the north side. Mr. Jackson responded that would be acceptable to both he and Ms. Keegan. Attorney Showalter offered another alternative of removing the 10' platform and placing a small platform on the north side of the pier which would not require a waiver. Mr. Campbell responded that was Attorney Showalter proposed would be tricky as this was a very crowded area.

Mr. Murray made a motion to accept the application as it had been presented showing Option A, which is based on the property lines extended, which has been used in the past in that area. The only exception would be that in the drawing a platform is shown at the end of that pier which is 10' wide which intrudes into the setback and therefore cannot be part of this application. However, if the applicant were to remove that, the board would accept this application less the 10' platform at the end. Mr. Moore asked that with that motion would it also be the case that it would be the board's approval contingent/conditioned upon the town's receipt of a state permit for the pier as modified. Mr. Murray responded that was correct. Mr. Campbell added that it would include approval of both the state and federal permits as well. Mr. Moore thought the board should also make findings about whether what they were approving would have an adverse impact upon the surrounding properties or riparian rights of others in navigable waters. Mr. Murray stated that his motion was based on the comments he had previously made at the beginning of the meeting. Mr. Hyberg seconded the motion. Mr. Campbell stated he appreciated everyone's opinion on the application and that he agreed with the motion. The motion was therefore unanimously carried with all in favor.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Lisa Willoughby
Assistant Clerk