

**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
JULY 9, 2012**

REGULAR BUSINESS MEETING

A. ROLL CALL –

The Roll was called with the following results:

Members Present: Don Simpson (Chair)
Jackie Bevins
Rich Yurko

Members Excused: Craig Capone

Also Present: J.T. Lockman, Town Planner, SMRPC

Mr. Simpson welcomed Mr. Yurko to the Board.

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – The Mission Statement was read by Mr. Simpson.

D. MINUTES – June 25, 2012 Regular Business Meeting.

The Minutes from the June 25, 2012 Meeting were accepted as submitted.

E. PUBLIC INPUT – None

F. UNFINISHED BUSINESS –

1. R. W. SCANLON, LLC Discussion regarding the division of Beach Street property (13, 25, and 27 Beach Street - Tax Map 7 Block 72).

Mr. Simpson summarized that this matter came to the Planning Board as a discussion item on May 10, 2012. At that time the Board requested input from the Town Attorney. Attorney Natalie Burns responded by letter, dated June 29, 2012, wherein she stated, in part, that: "... it is my opinion that the Planning Board should not approve the lot split as requested because it has already been determined that the property does not meet the 75-foot frontage requirement."

Mr. Simpson introduced Attorney Durward Parkinson as the representative for R.W. Scanlon, LLC.

Attorney Parkinson suggested to the Board that he disagrees with Attorney Burns' conclusions and that the Board may have other options. He reminded everyone that this case involved ¼ of an inch of street frontage and that the Applicant's new survey has shown that the property in question has sufficient frontage to allow the split of the property.

Attorney Parkinson suggested the Board might vote to confirm that the Board's approval is unnecessary for the single division of this parcel and that a split will have no impact on the Site Plan Approval for Spoiled Rotten.

Mr. Simpson confirmed that no "application" has been submitted in this case and that this matter has been a Discussion Item only.

J.T. Lockman reminded the Board that, at his suggestion, Attorney Parkinson prepared and submitted an affidavit summarizing the case and his position. This affidavit serves as a historical record of this property. However given Attorney Burns' opinion it is probable that if the Board does nothing Attorney Parkinson and Mr. Scanlon can proceed with the splitting of the property and any disagreements with abutters can be handled as a civil action in court.

Mr. Lockman noted that several years ago the Planning Board reviewed an application for Spoiled Rotten which was, at the time, on an independent lot.

Mr. Yurko summarized that these two properties were the subject of extensive litigation, which ended up in the Maine Supreme Court in the late 1990's. The Court observed that the lots had slightly less than 75 feet of street frontage and in those types of cases only the Zoning Board of Appeals could grant a variance. The Court then overturned the waiver which had been granted by the Planning Board. At that time the two lots were combined, giving the new single lot more than the required 75 feet of street frontage, which resolved the frontage problem and allowed the activities on the property to legally continue. Now the Applicant is intending to split the property back into two lots. The applicant has submitted a new survey which indicates that both parcels would have slightly more than the required 75 feet of frontage. This conflicts with previous surveys which indicated that there would be slightly less than 75 feet.

Mr. Yurko again noted that this matter has been referred to the Town Attorney who stated in her June 29, 2012 letter that under the legal principal of *res judicata* and *collateral estoppel* (when a court decides an issue the parties are "forever bound" by that decision), Attorney Burns' has taken the position that the Applicant is bound to the determination that there was less than 75 feet and thus would not be legal lots if the current single lot is now divided. The Applicant now suggests that they are not "bound" because in order for that legal doctrine to apply the matter had to be actually litigated and it was not, it was only stipulated. This is because, at the time, both sides believed that the parcel frontage was under 75 feet.

Mr. Yurko noted that the applicant is not actually asking the Planning Board for permission to do anything, he is asking the Board to confirm, with a vote, that its approval is not required. Mr. Yurko suggested that the Applicant may simply withdraw, which leaves the Applicant free to pursue whatever action he chooses. Mr. Yurko suggested that it would be improper for the Board to take a vote saying that they are not required to take action.

Mr. Simpson confirmed that this matter has been a "discussion item" and that no official application has been filed in this case.

Attorney Parkinson responded that he agrees with Mr. Yurko's summary.

Robert Scanlon (The Applicant) addressed the Board and stated that the second case to be heard by the Law Court only addressed the question of whether or not the parcel complied with the

Ogunquit Zoning Laws. The Court did not address any other questions. The Court determined that if the two parcels were combined the newly created parcel would be in compliance with all of Ogunquit's Zoning Regulations.

Mr. Yurko responded that he was on the Planning Board when Spoiled Rotten submitted its application to add a second floor for retail space. At that time the primary concern was satisfying the parking requirements. He asked the Applicant to consider that if the current single lot is now split he will have to be sure that each lot can independently support the parking requirements for the activities on that lot.

Mr. Scanlon responded that he has always approached this parcel as two separate properties. The activities at the Betty Doon Motel and the other businesses on the property can all be supported on separate lots.

The Board members all agreed that no action is required by the Board for this matter.

Mr. Scanlon and Attorney Parkinson agreed.

G. NEW BUSINESS –

1. OGUNQUIT MUSEUM OF AMERICAN ART – 543 Shore Road – Map 1 Block 3-A. Site Plan Review for a post 1930 structure - Application for Extension of Use for indoor/outdoor functions.

Mr. Simpson summarized that this matter originally came before the Select Board on June 5, 2012 when a Public Hearing was held. At the end of the Public Hearing there was a motion to table the amusement license application to the June 19th Select Board meeting. At the June 19th meeting the Select Board referred this matter to the Planning Board.

Mr. Simpson reminded everyone that this meeting is not a Public Hearing, the Board will only consider the question of the application's completeness and, if appropriate, schedule a Public Hearing for a later date.

Mr. Simpson also pointed out that there are only three Board members present and for a motion to carry the vote must be unanimous.

Mr. Simpson noted that applications of this type are typically heard by the Select Board and not the Planning Board and he called for comments from the Board.

Mr. Yurko responded that he questions why this matter is before the Planning Board. He noted that this application was triggered when the Museum submitted an Ogunquit Amusement License Application. He suggested that this is the first such application the Museum ever filed, and that there is a reason for this. According to the Ogunquit Ordinance the museum does not require an amusement license. The Ogunquit Amusement License Ordinance only applies to "for profit" entities, as a not-for-profit entity the Museum is exempt.

Mr. Yurko also asked everyone to consider the question of "what is a museum". He suggested that a museum is not only a place to store and show objects of art. A museum is a venue to expose art to as many people as possible and if anyone researches the activities of other

museums around the country they will see that almost all of them have gift shops and host events. Mr. Yurko suggested that the hosting of events (exhibit openings, weddings, parties, fund raisers, etc) is a customarily accessory use to museums.

Mr. Yurko pointed out that the Museum could have said “we are not required to have a license or permit” and gone ahead and done what they wanted to do without anyone’s approval. In this case the Museum is bending over backwards to be a good neighbor and member of the community and Mr. Yurko commended them for this attitude.

Mr. Simpson agreed with Mr. Yurko’s sentiments, and asked if the Museum’s representative would like to respond.

Ron Crusan, Director of the Museum addressed the Board. Mr. Crusan stated that in the beginning they assumed that they had the same rights and privileges as every museum across the country. In order to raise funds for the museum they have been holding events for several years because they thought it was an allowed practice. They want to do what is right by their neighbors and the Town and he asked for the Board’s support.

Mr. Yurko asked for confirmation that the museum is a not for profit entity.

Mr. Crusan confirmed this to be the case.

Mr. Simpson agreed with Mr. Yurko’s statements, however he noted that there is clearly a great deal of public interest in this matter and he is reluctant to send it back to the Select Board.

Carole Aaron, Vice President of the Museum Board, responded that the Museum Board has scheduled a meeting with the neighbors which will take place on Sunday July 15th. The Museum Board has prepared a list of event guidelines (*a copy of which was provided to the Planning Board members*). The Museum Board members truly want to work with the neighbors and the Town.

Mr. Crusan informed the Board that many of the events they host are weddings where the people want to be married outside by the ocean and that this necessitates a portion of the event taking place outside. Not all of the events are restricted to the interior of the museum.

Ms. Aaron added that they have a wedding ceremony scheduled for the upcoming weekend and she asked what will happen if the Museum holds the wedding.

Mr. Simpson asked how many events the museum has hosted.

Mr. Crusan responded that they began last year and they hosted three events: three weddings one of which included a reception.

Mr. Yurko responded that since it appears as if the Museum does not require permission to host events he would be surprised if any action was taken by the Town if the museum hosted an outdoor wedding. However he made it clear that the Planning Board is not in a position to advise the Applicant to go ahead, or to cancel, or give the Applicant legal advice.

Mr. Simpson stated that there are two actions the Board could take: 1) determine that this is not a matter which the Planning Board has jurisdiction over and refer it back to the Select Board, or 2) Continue with the Site Plan Review Application, which is before it, and schedule a Public Hearing.

Mr. Yurko responded that his preference is to find the application complete and schedule a Public Hearing. He noted that an application has been submitted and it is the Planning Board's duty to act upon it.

Mr. Simpson agreed and added that he hopes the meeting between the Museum and the neighbors will result in a resolution to the matter.

Ms. Bevins asked if this is the first meeting between the Museum and its neighbors.

Ms. Aaron responded that it is.

Roger Tackeff (35 Juniper Lane) informed the Board that he spoke with the Code Enforcement Officer who advised him to come to this meeting and to tell his neighbors to come and be heard tonight.

Mr. Simpson apologized for the misinformation. He noted that this Board is very careful to follow protocol and the procedure is for a finding of completeness at this meeting and the scheduling of a future Public Hearing.

Mr. Lockman referred to his 2 July 2012 Memo to the Board which agreed with Mr. Yurko's interpretation that functions are an accessory use to museums and are customarily incidental to the primary use. Mr. Lockman noted that this application does not involve any structural additions or changes to the museum's building. The only items which are reviewable by the Board are things like hours of events, maximum guest numbers, outside music, use of tents, etc. These might be listed as conditions of approval, however due to the fact that these issues are not covered in the Town's Zoning Ordinance the conditions must be voluntary and agreed to by the applicant. If the Board agrees that this is an accessory use to the museum, the Board might take the application as an application of the placement of conditions on the existing Site Plan. At the Public Hearing the Applicant might present a list of conditions which have been agreed upon by the Museum and its neighbors and the Board might take that list as conditions which would be applied to the Museum's Site Plan. The alternative is for the Board to determine that it does not have jurisdiction over this matter and to allow the Museum and the neighbors to work it out on their own. Mr. Lockman noted that the Town's Business Ordinance, Title 9 Chapter 3, clearly states that Amusement Permits are required by businesses only, thus he recommended the Planning Board not send this matter back to the Select Board.

Mr. Simpson asked if the Museum would still abide by the list of "guidelines" which it submitted via a July 7, 2012 e-mail.

Ms. Aaron confirmed that they would. She also submitted an updated "Guidelines for Rental Events at OMAA" to the Board (*a copy of which will be retained in the Applicant's file*).

Mr. Simpson confirmed that if the Board determines that functions are an accessory use to the Museum it will schedule a Public Hearing. At that time the Board might approve these “guidelines” as conditions.

Mr. Lockman clarified the language as “an amendment to the Site Plan Approval to add conditions agreed to by the Board and the Applicant Regarding Events”.

Mr. Yurko stressed that no determination should be made until the public has had the opportunity to be heard. He noted that the Museum might reach an agreement with its neighbors at the July 15th meeting.

Ms. Bevins stated that she does not feel the Planning Board should be involved at all, the Museum and the neighbors should reach a consensus on their own and not come back before the Board.

Mr. Simpson responded that he disagrees. He would hope the July 15 meeting could resolve the issues however he felt the Board should provide a forum for the public to express concerns or suggestions.

Margaret Weeks (540 Shore Road) asked the Board if this activity is allowable in the Single Family Residential District.

Mr. Yurko responded that museums are permitted in that zone, and any customarily incidental use is permitted by extension.

Mr. Lockman agreed.

Mr. Yurko summarized that the Board now needs to determine whether 1) it will take no action or 2) determine that the application is complete and schedule a Public Hearing. He also reminded everyone that any vote must be unanimous for it to pass.

Mr. Yurko Moved to find the Application Complete and schedule it for a Public Hearing, noting that this does not prejudice any action or inaction the Board might take after a Public Hearing.
YURKO/SIMPSON

Ms. Bevins noted that she listened to the Select Board meeting and she heard the neighbors’ complaints. It is her opinion that the Planning Board is not a proper judge to settle their disputes.

Mr. Yurko responded that if the Board does nothing this matter may not be resolved. He suggested the Board might help reach a resolution by holding a Public Hearing. He reiterated that the Board might still determine, after a Public Hearing, to take no action after all.

Ms. Bevins noted that if the Board does nothing the Museum could continue to do what they have always done, and any problems would be handled by the Code Enforcement Officer or the Police.

Mr. Yurko responded that the Planning Board has the opportunity to bring the matter to a resolution and he would like to provide the opportunity for the public to be heard.

Mr. Simpson agreed and restated Mr. Yurko's motion:

Mr. Yurko Moved to find the Application Complete and schedule it for a Public Hearing, noting that this does not prejudice any action or inaction the Board might take after a Public Hearing.

YURKO/SIMPSON 3/0 UNANIMOUS

Mr. Simpson informed the Applicant and the public that the Public Hearing would take place on July 23rd at 6:00 p.m.

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Mr. Simpson noted that the Board would hold election of officers at the July 23, 2012 meeting.

J. ADJOURNMENT -

Mr. Yurko Moved to Adjourn at 6:57 p.m.

YURKO/SIMPSON 3/0 UNANIMOUS

Respectfully Submitted

Maryann Stacy
Town of Ogunquit
Planning Board Recording Secretary

Approved on August 13, 2012