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Thomas A. Fortier
Town Manager

OGUNQUIT PLANNING BOARD MINUTES SEPTEMBER 23, 2013

PUBLIC HEARINGS

1. AMI-O – 125 Shore Road – Map 6 Block 74.

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application. There was no one and the Public Hearing was closed at 6:03 p.m.

2. Town of Ogunquit / Public Works Building – 30 Salt Shed Road – Map 19 Block 5-A.

Mike Horn, Chairman of the Ogunquit Conservation Commission addressed the Board and expressed the Commission's strong belief that a storm water management plan is essential to this project. He introduced fellow Commission member Doug Mayer.

Mr. Mayer reiterated that the Commission recommends that the Planning Board request a storm water management plan for the new Public Works Building. He reminded the Board of the contamination issues at the old Public Works Building particularly contaminated area wells and soils, and runoff of cleaning solvents and petrochemicals. He noted that the proposed structure is less than 300 yards from the Ogunquit River and the site is in close proximity to sensitive wetlands and a major tributary to the Ogunquit River. He cited the Woodard and Currin Comparison Report which states that US Fish and Wildlife have mapped wetland areas associated with this tributary and since these wetlands are located within the floodplain the Maine Department of Environmental Protection will classify these wetlands as wetlands of special significance.

Mr. Mayer went on to cite other passages from the Woodard and Currin Report. He noted that during public hearings for this project it was stated that a detention pond would be created to contain any runoff of contamination that might threaten the Ogunquit River. Due to the close proximity to the wetlands and the Ogunquit River, and ultimately Ogunquit Beach, the Commission believes that this application deserves very careful consideration. While the Commission understands the need to keep costs low, a storm water management plans seems to be a justifiable expense. He noted that there have already been several very heavy rain events this past summer and Best Management Practices should be in place.

Mr. Mayer reiterated the Commission's request for a Storm Water Management Plan for this project.

Stillman Bradish responded that this question has already been looked at. The DEP has been in to look at the site. He also noted that there is already a storm water management system in place. He referred to the manmade wetland on the left as you enter the property and the culvert which empties into the ditch on the side of the road. The DEP stated that this area could be used as a retention pond and that reports would not be needed. He noted that the Code Enforcement Officer has a letter from the DEP confirming this.

Mr. Bradish went on to say that the Town had a soil scientist come in and flag all of the wetlands. These scientists also reassured the Town that the site has the best filtration system already in place. He doesn't believe that there is anything that will happen up there that will effect the Ogunquit River.

Doug Mayer responded that the Conservation Commission would be happy to know that sufficient storm water management is in place. However he asked to see the DEP and soil scientist documentation.

Mr. Bradish stated that the Code Enforcement Officer has a copy of the letter from the DEP stating that more storm water management was unnecessary.

Mr. Heyland responded that when this application first came to him he contacted Chris Coppi at the DEP. He reviewed this project as a separate project not as part of the other development that had already occurred at the site. Because it was under the one acre disturbed area threshold it didn't rise to the level of requiring a storm water management plan. He (Mr. Heyland) had no knowledge of any storm water management put in place when the salt shed or other areas of the site were developed in the past.

Mr. Heyland confirmed that some of the "wetlands" are manmade and act as a filter for water before it reaches critical streams or tributaries.

Mr. Heyland also confirmed that the proposed project is under the one acre disturbance threshold and as far as the State is concerned the Town does not need to do anything further.

Mr. Mayer agreed that this specific project involves less than one acre and State requirements do not apply, however the Commission looked at the site and all its uses: the impervious roadways, the salt shed, and the Fire Department controlled burn area. He noted that all of these activities build up the impervious area enough to make this a sensitive area.

Mr. Yurko suggested that Mr. Bradish seems to be saying that the Town has already complied with all of the rules, it is unnecessary to develop a storm water management plan because the disturbance is under one acre, and he is asking the Board to not make them do something they are not required to do, and, in addition, the man made "wetlands" will serve as a buffer. The Conservation Commission seems to be saying that this one project may impact less than one acre, however there have been other disturbances at this site already and the Town should take a more liberal approach than the State requirements.

Mr. Mayer again noted that the Woodard and Currin Report stated that DEP would classify the wetlands as “wetlands of special significance”. He suggested that even if the wetlands were man made it doesn’t diminish their significance. He also noted that they are upslope of what may drain off of the site and the normal activity of trucks and maintenance at the new garage requires some form of containment before it runs off of the site and into the streams, river, and ultimately the beach.

Mr. Yurko pointed out that this plan is not being submitted by a private entity, it is being submitted by the Town and he asked if the Conservation Commission has gone to the Select Board and asked for the funds for a storm water management plan review.

Mr. Mayer responded that they did not. They were waiting to see how the Planning Board would rule; he agreed that this is a good suggestion however he asked the Board to do whatever it can to protect the natural resources.

Ms. Bevins asked why this is being brought up at the last minute.

Mr. Simpson agreed that if the applicant in this case had been a private individual they would be responsible for a storm water management plan, however the Planning Board can’t approve funding, that has to come from the Select Board. The Planning Board can make a recommendation but it is ultimately up to the Select Board.

Mr. Yurko responded that if there was a clear requirement that said something “has to be done” the Planning Board could require it be done. However even the Conservation Commission seems to agree that the State is not saying this has to be done. Given that it isn’t a requirement it is the people who control the purse strings who have to make the call.

Mr. Bradish reminded everyone that the Woodard and Currin Report was produced to make a site location recommendation between the Salt Shed and the Transfer Station not to look at these other issues. He also noted that most of what is being discussed is already in place.

Mr. Mayer noted that the Woodard and Currin Report is only eight pages long. He also reminded everyone that the Commission did bring up these concerns at the earlier public hearings and at the last Planning Board meeting they were told to discuss it at this public hearing.

Mike Horn asked the Board to consider the future and he reminded everyone that it still hasn’t been made clear whether or not the fuel tanks will also be moved to the new site. He also suggested that the Planning Board does have the authority to require a storm water management plan review. Mr. Horn also stated that the Commission has not seen any report from the soil scientists or the DEP.

Mr. Simpson asked if there were any additional comments. There were none and the Public Hearing was closed at 6:25 p.m.

REGULAR BUSINESS MEETING

A. ROLL CALL –

The Roll was called with the following results:

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

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – September 9, 2013

Mr. Yurko Moved to Accept the Minutes of the September 9, 2013 Meeting as Submitted.

YURKO/BEVINS 4:0 UNANIMOUS

E. PUBLIC INPUT –

Mr. Simpson asked if there was anyone who wished to address the Board on any matter not on this evening's agenda. There was no one.

F. UNFINISHED BUSINESS –

Mr. Simpson suggested that Item Number 2 may require less discussion and he asked both applicants if there would be any objection to switching the order of hearings. There being no objection the Town of Ogunquit / Public Works Building Application was heard first.

2. Town of Ogunquit / Public Works Building – 30 Salt Shed Road – Map 19 Block 5-A – Site Plan Review to construct an 80'x120' prefabricated steel building to house Public Works Department and associated equipment.

Mr. Simpson noted that a storm water management plan is not a requirement and the issue before the Board at this time is to approve, or deny, the Site Plan Review as presented.

Mr. Yurko expressed his inclination to approve the application without prejudice. However he does not want the Planning Board's approval taken to the Select Board with the assertion that the Planning Board doesn't think a storm water management plan is needed. He noted that an applicant can always go beyond what is required by law, and given that the Town is the applicant, the Conservation Commission could make the argument to the Select Board that the Town should do so.

Mr. Simpson agreed.

Mr. Heyland responded that the Board could also make a storm water management plan a condition of approval.

**Mr. Yurko Moved to Approve the Site Plan for Town of Ogunquit / Public Works Building – 30 Salt Shed Road – Map 19 Block 5-A.
YURKO/BEVINS 4:0 UNANIMOUS**

Mr. Yurko asked to have the record reflect that if he were in a position to spend the Town's money he would want a storm water management plan. However that is not the Planning Board's job in this case.

1. AMI-O – 125 Shore Road – Map 6 Block 74 – Requested Amendment to Previously Granted Design and Site Plan (Original Approval Granted on February 27, 2012).

Mitch Ramsey addressed the Board. He referred to the memo he submitted to the Board on September 17, 2013 wherein he broke down the seating and square footage of the existing, previous approval, and proposed new plan.

Mr. Ramsey stated that the existing dining area consists of 817 square feet for a seating capacity of 105. This includes the building and under the awning. It does not include anything outside on the perimeter. There are 13 tables with 5 seats per table totaling 65 seats out there.

Mr. Yurko asked if there were an additional 13 tables outside which have no awning over them.

Mr. Ramsey confirmed that there is a total seating of 170 including inside the building, under the awning, and outside tables. He stated that the square footage of the building and deck footprint is 2828 square feet. This is the existing condition and what he was approved for in 2012. Mr. Ramsey noted that the square footage of seating area, not including the kitchen, restrooms, hallways, storage etc is the number which will determine the parking and possibly the traffic study requirements.

Mr. Yurko summarized that the previously approved plan had 1,507 square feet of dining/seating area which then becomes 183 seats plus the 65 seats (13 tables) outside on the patio.

Mr. Yurko went on to say that the modified plan has less square footage for seating (1471 square feet), but more seats (190 seats + 65 seats outside).

Adam Schoenhardt noted that the previously approved plan was completely enclosed in glass; the new plan is also completely enclosed however the space is now enclosed with awnings.

Mr. Yurko noted that when the 2012 approval was obtained everything seemed fine, now Mr. Ramsey is coming before a new Board with a new Planner, and a new Code Officer, and the issue of whether or not this is an accessory use, or not, has come up.

Mr. Yurko noted that in 2012 the question was asked, and that Board appears to have determined that, while the public is allowed to dine at the restaurant, its primary use is for the guests of the resort, and that it is an accessory use to that resort. Mr. Yurko has two issues with this: the previous Board seemed to stop its analysis when it determined that the restaurant was an accessory use. However the Ordinance has a provision that deals with this exact situation. He referred to Section 3.5 which discusses non conforming transient accommodations which allows for the additions of certain accessory uses designed just for the guests of the resort. Mr. Yurko also referred to Section 3.5.5 which states that expansion of restaurant, retail, or office uses located on a property with an existing nonconforming TA-4 use shall not be consider an expansion of the TA-4 use and shall be allowable in those districts indicated on table 702.1 with Site Plan Review.

Mr. Yurko then turned to Table 702.1 which states that Type 2 restaurants (outside dining) are not allowed, and he noted that the operation Mr. Ramsey has described is a Type 2 restaurant. Furthermore Mr. Ramsey is now asking for an expansion of that Type 2 restaurant.

Mr. Yurko acknowledged that Mr. Ramsey has a beautiful, well run, resort and that professional good business owners ought to get the benefit of the doubt, however it is not within the Board's discretion to approve applications which fall outside what is allowable under the Ordinance. He asked Mr. Ramsey if he could help the Board find a way to approve what he (Mr. Ramsey) is seeking to do.

Mr. Ramsey responded that the proposal does not seek to expand that portion of the property which is non-conforming, i.e. the outdoor dining. The outdoor dining has been a part of the operation for many years. He understands Mr. Yurko's interpretation of the business as a Type 2 restaurant because there is already outdoor dining. What he is seeking to change is the entirely enclosed dining area. He noted that prior to six years ago when the awing system was installed, all of the seating, with the exception of 18 seats, was exterior. He is slowly decreasing the outdoor seating and thus the nonconformity. His goal is to make the operation more three to four seasonal, for his guests.

Mr. Yurko reiterated that an accessory use is designed to support the primary use, and he asked Mr. Ramsey if he advertises the restaurant separately from the hotel.

Mr. Ramsey responded that he does, however it is minimal.

Mr. Yurko asked if Mr. Ramsey would agree to a condition that says he would not have any advertising to the general public and he will not post signage inviting the general public in.

Mr. Ramsey responded that he could possibly do this.

Mr. Yurko responded that, while it would be absurd, the Board could say that service could not be offered to anyone not staying at the hotel. He noted that Mr. Ramsey seems to be saying that he is not increasing the nonconformity, that he is making the complying part of the restaurant larger. Mr. Yurko's response is that if the interior seating area is enlarged there could be greater use of the outdoor seats as well.

Mr. Yurko noted that, with regard to requiring a traffic impact study, it doesn't appear as if the amended application adds anything more to what was already approved in 2012, thus there is no requirement for the traffic impact study. He also confirmed that Mr. Ramsey has an extra 38 parking spaces and he would have to have 3800 square feet of restaurant before he ran out of parking space, and he doesn't have that. The parking requirement is met.

Mr. Yurko's concern is whether or not this is a permitted use of the property. He asserted that it fits the definition of a Type 2 Restaurant not the definition of a Type 1 Restaurant, and the Ordinance says a Type 2 Restaurant can not be expanded in this district. He (Mr. Yurko) expressed concern that the Board needs to adhere to the letter of the Ordinance and not allow these types of applications to become a popularity contest.

Mr. Heyland responded that the definition of Accessory Use as noted in the Zoning Ordinance is "A use customarily incidental and subordinate to the principal use and located on the same lot with such principal use. Accessory uses, when aggregated, shall not subordinate the principal use of the lot." When reviewing this application he applied this standard and did not look at the restaurant as a stand-alone use, and the portion of the restaurant that is non-conforming is not being increased.

Mr. Yurko responded that normally if something is an accessory use the Ordinance does not regulate it and the applicant can go ahead and do it without review, however in this case there is a special provision which was designed for the hotels along Shore Road, and it governs accessory uses. Mr. Yurko referred to Section 3.5.2 which says it shall be an accessory use; it also says that restaurants are permitted as long as they conform to Table 702.1 which says that Type 2 Restaurants are not allowed.

Mr. Heyland responded that as long as the majority of the restaurant guests are also resort guests and the restaurant does not subordinate the primary use of the resort then it is no different than a parking lot or other resort accessory.

Mr. Simpson noted that the Ordinance was amended on June 12, 2012 and the original approval for this project was granted prior to that.

After a review of the 2012 Ordinance and the current Ordinance it was determined that there was no significant change to the relevant sections.

Ms. Bevins asked if the addition of the new roof would lessen the nonconformity.

Mr. Yurko responded that it would not, the nonconformity is the 13 outside tables which are used for outside dining.

Mr. Schoenhardt asked if the outside 13 tables were covered, would it make it a Type 1 Restaurant.

Mr. Yurko confirmed that it would.

Ms. Bevins suggested that the approval of the current plan makes the situation at the resort /restaurant more conforming.

Mr. Simpson agreed and noted that this activity has been ongoing for some time in an area that currently does not allow it, and it may in effect be grandfathered.

Mr. Yurko again asked if Mr. Ramsey would consider a condition to not advertise the restaurant to the general public.

Mr. Ramsey responded that he would consider it, and he reiterated that the advertising is minimal.

Mr. Simpson again asked for the breakdown of the square footage of the seating area.

Mr. Schoenberg responded that the new plans are as close, in square footage, to the previously approved plan as they could get.

**Mr. Yurko Moved to Approve the Plan based upon the submitted plans, and the fact that the Applicant already has a prior approval for a similar development, and that the Applicant is not going to promote the restaurant to the general public.
YURKO/BEVINS 4:0 UNANIMOUS**

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS –

I. OTHER BUSINESS –

1. Board Discussion regarding possible Zoning Ordinance Amendment for Code Enforcement Officer Powers to Enforce.

This item was tabled to the next Board Meeting.

J. ADJOURNMENT -

Mr. Yurko Moved to Adjourn at 7:10 p.m.

YURKO/BEVINS 4:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy
Town of Ogunquit
Recording Secretary

Approved on October 14, 2013