



MUNICIPAL OFFICES

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Thomas A. Fortier
Town Manager

OGUNQUIT PLANNING BOARD MINUTES OCTOBER 14, 2013

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
Lee Jay Feldman, Town Planner SMRPC

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – September 23, 2013

Mr. Yurko Moved to Approve the Minutes of the September 23, 2013 Meeting as Amended.

YURKO/BEVINS 4:0 UNANIMOUS

E. PUBLIC INPUT – None

F. UNFINISHED BUSINESS –

1. FINDINGS OF FACT FOR:

- a. AMI-O – 125 Shore Road – Map 6 Block 74.
Approved on September 23, 2013.**

Mr. Yurko Moved to Approve the Findings of Fact, as amended, for AMI-O – 125 Shore Road (Map 6 Block 74) for the Site Plan Application Approved on September 23, 2013.

YURKO/BEVINS 4:0 UNANIMOUS

- b. **Town of Ogunquit / Public Works Building – 30 Salt Shed Road – Map 19 Block 5-A. Approved on September 23, 2013.**

**Mr. Yurko Moved to Approve the Findings of Fact, as amended, for Town of Ogunquit / Public Works Building – 30 Salt Shed Road – Map 19 Block 5-A for the Site Plan Application Approved on September 23, 2013.
YURKO/BEVINS 4:0 UNANIMOUS**

G. NEW BUSINESS –

1. **RACHEL DAVENPORT – 41 Eastwind Lane – Map 13 Block 1-10 – Design Review Application for a post 1930 structure. Application to reconstruct a 25’x22’ single family dwelling damaged by fire.**

Todd Wallace (Dube Plus Construction) addressed the Board on behalf of Ms. Davenport. He noted that this application involves the replacement of a cottage which was destroyed in a fire. The replacement will be in like, kind, and quality and it will be constructed on the existing footprint.

Mr. Yurko asked if the new cottage will resemble the original.

Mr. Wallace responded that it will look very much the same, the only change will be a relocation of the entry a few feet to the side. It will be consistent with the other cottages in the condominium complex.

Mr. Simpson asked if the new building will be on the existing footprint and if there is a foundation.

Mr. Wallace responded that the new building will sit on the existing footprint. The current building is on piers and the new one will be as well. If frost protection is required the new building will include it.

Mr. Simpson asked if the Code Enforcement Officer had any issues.

Mr. Heyland responded that he did not.

It was confirmed that no Public Hearing was required, or needed, for this application.

**Mr. Yurko Moved to Approve the Application for RACHEL DAVENPORT – 41 Eastwind Lane – Map 13 Block 1-10 – Design Review for a post 1930 structure. Application to reconstruct a 25’x22’ single family dwelling damaged by fire. Said Approval includes all matters as set forth in Article 11.7.C.1-10 of the Ogunquit Zoning Ordinance (Items B, D, and E of the Design Review Checklist).
YURKO/BEVINS 4:0 UNANIMOUS**

2. **JACQUELINE BEVINS / JACKIE’S TOO – 91 Perkins Cove Road – Map 3 Block 67-1 – Site Plan Review Application for a post 1930 structure. Application to add upstairs seating inside and outdoors.**

Ms. Bevins recused herself due to a conflict of interest and she left the auditorium.

Jerry DeHart (Coastal General Construction) addressed the Board as the Applicant's representative. Mr. Dehart summarized that the application involves the addition of indoor and outdoor seating on the second floor.

Mr. Yurko asked Mr. Feldman to discuss his memo to the Board dated 10/3/13.

Mr. Feldman responded that he noted four items in his memo which he suggested the Board look at as it reviews this application:

1. Definition Section to determine if this applicant meets a Restaurant Type 1 or 2;
2. Non-Conforming Structures in the Shoreland Zone Section 3.3.H;
3. Off Street Parking and Loading Section 8.10.A.;
4. Traffic Impact Standards Section 8.13.

Mr. Feldman suggested the Board will need to know how many additional seats there will be in order to determine the number of vehicle trips which will be generated, and whether or not a Traffic Study will be required.

Mr. Heyland noted that Perkins Cove Limited Business District does not require off street parking and loading. Mr. Heyland also added that this is a Type 2 restaurant which is a conforming use in the PCLBD.

Mr. Feldman pointed out that this property is within 75 feet of the Shoreland however the Zoning Ordinance does not have any setback requirements in that area. He also noted that the lot coverage for this parcel exceeds that 30% allowed in the Shoreland Zone however the Zoning Ordinance does not have any maximum lot coverage in that area.

Mr. Feldman confirmed that there had been some confusion regarding the zoning for this property. It was unclear whether it was in the Shoreland Limited Business (SLB) or an SG2 Zone.

Mr. Yurko summarized that this application involves:
A Type 2 restaurant which has both inside and outdoor seating;
A type 2 restaurant is a permitted use in this zone;
Off street parking is not required in this Zone.

The primary issue for the Board to consider is the traffic impact standards in Section 8.13 of the Zoning Ordinance which has two triggers: the addition of ten parking spaces or the generation of 50 vehicle trips per day.

Mr. Yurko asked if the Board needs an answer to the traffic impact question before it can find the application complete. He asked Mr. Dehart if he had any information regarding the number of trips which will be generated by the additional seating.

Mr. DeHart asked for confirmation that Items 1,2, and 3 are satisfied and the only remaining thing the Board is concerned with is the Traffic Impact.

Mr. Feldman confirmed this

Mr. Yurko noted that the requirement for a traffic impact study is determined by calculating the square footage of the seating area and the number of additional seats and these numbers determine the probable number of vehicle trips per day, and if the vehicle trips is more than 50 then a study is required. Mr. Yurko also pointed out that the Board has the ability to waive this requirement if it sees fit.

Mr. Feldman suggested that the Board could find this application complete and the Applicant can provide the required information prior to the next meeting. He suggested that he (Mr. Feldman) could see if the number of additional seats will trip the ADT requirement.

Mr. Simpson asked if the submitted plans include 20 new tables for 66 new seats.

Mr. DeHart responded that the seating plans are conceptual and are not exact counts of seats. He noted that the Fire Department will set the occupancy load and the Fire Chief has not submitted his recommendations yet.

Mr. Simpson asked Mr. Feldman if the Board finds the application complete, what is the action item regarding the Traffic Impact Study?

Mr. Heyland responded that since he determined that there was no parking requirement, then he assumed there would be no need for the trips per day calculation either.

Mr. Yurko noted that Section 8.13 says "or" which means that traffic needs to be looked at even if parking is not required. He suggested that the Action Item is that someone needs to tell the Board if the additional seating will generate 50 vehicle trips per day and if so the applicant needs to submit either the traffic study or a waiver request.

Mr. Feldman noted that there is no information at this time that indicates that a full Traffic Impact Study needs to be done. There are traffic/transportation engineers who can take a quick look at this project and do the calculations which will indicate whether or not it will generate 50 or more vehicle trips per day. He noted that it might be as simple as a one page letter. Along with this the Applicant can submit a waiver request which includes an explanation as to why the waiver is justified.

Mr. DeHart asked if he could be allowed to submit this at the next meeting or if he can submit the waiver request alone.

It was agreed that he can submit his engineers' report or a waiver request at the next meeting. However the Board would appreciate the submittals one week prior to the meeting if possible.

Mr. Yurko asked for a description of the project.

Mr. DeHart responded that there will be a new staircase where the bar is currently located and that the roofline will be cut back a little. There will be indoor and outdoor seating on the ocean side of the building, closer to MC Perkins. There will also be a bar on the second floor.

Mr. Yurko asked if the second floor seating will be over the first floor seating.

Mr. DeHart confirmed this. The deck structure already exists and the 2nd floor indoor seating will be where the office space is currently located. He noted that the roofline will be cut back on the ocean side however this change will not be visible from the street.

Mr. Yurko asked about the awning as indicated on the plans.

Mr. DeHart responded that the awning already exists.

Mr. Simpson asked if there will be any change to the footprint of the building.

Mr. DeHart responded that there will not.

Mr. Simpson asked if there were any plans showing the impact to the first floor.

Mr. DeHart responded that he did not have any. He asked if this is required.

Mr. Simpson agreed that it is not required. He asked if the stairway indicated on the plans was an existing stairway.

Mr. DeHart responded that the plans will be reviewed by the State Fire Marshall as well as an engineer.

Mr. Simpson stated that he wants to see something from the Fire Chief regarding egress. He asked if the back stairway is interior or exterior?

Mr. Dehart responded that it is an exterior stairway.

Mr. Simpson asked if there are two bathrooms on the first floor and one bathroom on the second floor.

Mr. DeHart responded that this will be part of the review process by the Fire Chief at the State level to ensure that they will have an adequate number of bathrooms and ADA access.

Mr. Heyland asked if the proposed second floor deck area on the plans is accurate regarding the 30%.

Mr. DeHart responded that the site plan matches up with the floor plan.

Mr. Simpson asked if the structure which was built last year is sufficient to hold what the applicant now proposes doing on the second floor.

Mr. DeHart responded that he did not do that work. He has been told that it is sufficient however he will ensure that this is true. It will be reviewed by a structural engineer.

Mr. Simpson noted that the Board may not have answers to the rest room question before the next meeting.

Mr. Heyland responded that he can not issue a Building Permit without the State Fire Marshall Permit. He believes that the Applicant is attempting to get the Town's approval before he submits the plans for expensive and extensive review by outside sources.

**Mr. Yurko Moved to Find the Application Complete.
YURKO/RENAUD 3:0 (Ms. Bevins recused herself)**

Mr. Yurko asked Mr. Dehart to make every effort to have all paperwork in to the Land Use Office at least one week before the October 28th Public Hearing.

Mr. Dehart responded that he would.

At this time Ms. Bevins returned to the Board table.

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Simpson noted that the Board has been having discussions regarding Zoning Ordinance violations. The Select Board and the Planning Board have had discussions regarding giving the Code Enforcement Officer additional authority to enforce the Zoning Requirements and bring repeat violators into compliance. He noted that there has recently been a development involving a business owner who has repeatedly refused to comply.

Mr. Heyland responded that there has been a reoccurring violation of the Zoning Ordinance and that this situation has been ongoing for some time. He, along with the Police Chief issued a summons and the violator will now have to appear in court where a fine amount will be determined. If the violation continues, despite the summons, the fine can be imposed every time the event occurs. Mr. Heyland wanted the business community to know that they can, and should, contact the Land Use Office if they have questions about what they can and can not do. It is better to ask the questions beforehand rather than having to deal with problems after the fact.

Mr. Yurko asked who the summons was issued too and what the violation was.

Mr. Heyland responded that the violation was of Table 702.1, Notation 1 outside solicitation. Business employees are not allowed to approach people on the street and hand out flyers or merchandise.

Mr. Simpson noted that the majority of businesses and residents in Town comply with the Ordinance and when they are notified of a violation they correct it immediately, however there are a few individuals who repeatedly violate the rules. This is unfair to those business owners who do follow the rules and take pride in Ogunquit. He asked when the court date is.

Mr. Heyland responded that it will be on January 19th.

Mr. Simpson noted that while Ogunquit wants to be business friendly, there have been ongoing discussions about giving the Code Officer more authority. He asked if this can be done through the Municipal Charter or if it has to be changed in the Zoning Ordinance and go before the voters.

Mr. Heyland responded that the model which Mr. Feldman suggested will go into the Municipal Code as Code Officer's Abilities. He noted that the recent issue involves "handbilling" which the Municipal Code prohibits. It involves approaching people and handing things out.

Mr. Feldman added that the Charter will not have to be changed however the Ordinance will have to be changed to adopt the citation system.

Mr. Yurko summarized that presently the Code Enforcement Officer currently only has the authority to: 1) do nothing 2) speak to the offender and 3) take the offender to court. What is being considered is giving the Code Enforcement Officer the ability to impose moderate fines.

Mr. Simpson asked if there will be any language involving business licenses.

Mr. Heyland responded that after the 4th violation the Select Board will have the ability to determine whether or not a violating business is detrimental to the community.

Mr. Yurko summarized that there will be a fine imposed for the first four violations and then the person's business license becomes jeopardized.

Mr. Heyland agreed and pointed out that the concern was that the business owner might attempt to "buy" his/her way out of the violation if the activity is deemed to be worth the price of the fines.

Mr. Simpson suggested the Select Board may look favorably on the changes to the Ordinance.

Mr. Yurko added that the Chamber of Commerce may as well, particularly given that most of the members are responsible business owners who play by the rules.

I. OTHER BUSINESS –

Mr. Simpson reminded everyone that Mr. Yurko had suggested the Board review previously approved projects to see if the Board can do anything to improve the process. He asked the Board members to think about approved projects they might look at. He referred to the Subdivision Amendment on Bittersweet Lane where the roadway was paved. He noted the work has been done and it is beautiful.

Mr. Simpson noted that the Town has been involved in a legal issue recently and he asked Mr. Feldman to summarize.

Mr. Feldman noted that the Court has made a decision (dated 10-3-13) regarding JAMES and PATRICIA HARTWELL v. TOWN OF OGUNQUIT and WAYNE C. PERKINS: AP-12-023. Basically the Court has remanded it back to the Planning Board. They found that the Board did not follow process regarding receiving and acting upon written request for waivers. The Applicant must now submit written waiver requests for items which

were not submitted in the original application and this Board can act on those waiver requests.

Mr. Simpson asked if this would be an amendment to the original approval.

Mr. Feldman responded that it would not, it is still an active application.

Mr. Yurko agreed and noted that the Board will apply the standards under which the application was submitted.

Mr. Simpson asked if it is clear exactly what it is the Applicant has to request waivers for.

Mr. Feldman responded that it is not clear. They will have to review the file to see what items were not submitted.

Mr. Yurko noted that there is no provision to waive Design Review submittals.

Mr. Heyland agreed and pointed out that there are only five required submissions and these are easily obtained.

Mr. Feldman noted that there are only two current Board members who were on the Board when this application was decided.

Mr. Yurko responded that it is his understanding that when the Court remanded it back to the Board it was remanded to the Board as it is currently constituted.

Mr. Feldman agreed and suggested the new Board members should review the record and state for the record that they have done so.

Mr. Simpson asked what is now required.

Mr. Feldman responded that it is now up to Mr. Perkins to submit something to the Board. He noted that the Town Attorney has been in contact with Mr. Perkins' attorney. He suggested an amendment to the Site Plan Review section of the Zoning Ordinance which would allow the applicant to submit a written waiver request to the Code Enforcement Officer.

Mr. Yurko agreed that what Mr. Feldman is suggesting, by way of amending the Ordinance, is that the Code Enforcement Officer will have the first opportunity to waive submission requirements, which is what has been done in the past. He agreed that the Ordinance could be amended to conform to what has been the practice in the past.

Mr. Feldman agreed and added that the Planning Board can always request items even if the Code Enforcement Officer has waived them.

Mr. Simpson asked if there is any action the Board needs to take with regard to the Court Decision.

Mr. Feldman responded that there is not. The next step must come from Mr. Perkins.

J. ADJOURNMENT -

**Mr. Yurko Moved to Adjourn at 7:04 p.m.
YURKO/BEVINS 4:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Town of Ogunquit
Recording Secretary

Approved on October 28, 2013