

OGUNQUIT PLANNING BOARD MINUTES

JUNE 23, 2014

PUBLIC HEARING

1. NORTHERN SEA LLC/HOOKS LLC – 688 Main Street – Map 10 Block 6.

Perry Cayton (43 Bayview Ave.) asked the Board to Deny the Application for a fire pit until some ongoing problems have been resolved, particularly the noise level.

Mr. Simpson noted that the complaints regarding existing businesses can be made to the Police Department or the Select Board when the business comes up for its liquor license/amusement license renewal. He did agree that it was appropriate for Mr. Cayton to come before the Planning Board, at this meeting, in response to this particular application.

Mr. Yurko asked if the woods between Mr. Cayton's house and Hooks don't buffer the noise, and he asked how far Mr. Cayton's deck is from Hooks.

Mr. Cayton responded that the trees do not buffer the noise, and his deck is about 100' from the Hooks property line.

Mr. Simpson referred everyone to Section 8.9 (Noise Abatement) of the Zoning Ordinance, he noted that the Code Enforcement Officer can go out with a sound meter to measure decibel levels.

Mr. Heyland confirmed that he can do this, and he is willing to do so anytime.

Mr. Yurko confirmed that neighbors may call the police when the problem is occurring and the police will go out and speak to the business owner.

Ms. Bevins asked if Mr. Cayton had spoken to the Hooks owner.

Mr. Cayton responded that he has spoken to Shannon twice and has not had any relief.

Mark Macleod (57 Bayview Ave.) informed the Board that he can't sleep until the Hooks music stops at night. He purchased his own sound meter and he has been over to Hooks several times. He admitted that he has not heard any amplified music however he can clearly hear voices from his upstairs bedroom window and he knows that a 6' fence will not help with this. He has recorded the sound from Hooks at 50 decibels. The added seats at the fire pits will be even closer to his house than the existing bar area. He asked the Board to consider the application very carefully and place conditions upon the application if it is granted. He noted that if the application is approved and the noise is not reduced the police department and the Code Enforcement Officer will be getting complaints every weekend.

Mr. Simpson asked if the primary source of noise was music or conversation.

Mr. Macleod responded that the primary source is the music however he can clearly hear conversations.

Ms. Bevins asked if Mr. Macleod wants to see things shut down by 11:00 p.m.

Mr. Macleod responded that the Zoning Ordinance requires that things should be shut down by 10:00 p.m. He noted that sometimes the noise goes until 10:30 or 11:00 and he occasionally has to get up at 5:00 a.m.

Dan Grigus (702 Main St.) asked the Board to deny this application. He reviewed a letter he sent to the Board wherein he noted the noise level problems and the nearby Shoreland Zone and the potential negative effect upon this fragile area as well as the negative effect on nearby property values. Mr. Grigus stated that he has spoken to Mr. Baker several times regarding the noise levels at night.

John Bourne (Ocean Acres Motel) expressed his concern about increased noise levels. He has had guests say that they will not be coming back because of the noise. He asked for limits as to the times when the area can be used. He asked about a fence along the south side of the property, which abuts his motel. He noted that the noise primarily comes from the amplification of the music.

John Titus (718 Main St.) is the co-president of the Sunrise Terrace Condominiums and he asked the Board to deny any extension of the Hooks Restaurant into the residential zone. He referred to the letter he sent to the Board wherein he noted the nearby location of the Shoreland Zone and he suggested that in the coming years Hooks will want to expand even further. He noted that the proposed location of the fire pits is within the 250' setback from the riverbank and he asked if the pits couldn't be moved further back – closer to the parking area. He noted that this is an environmentally precious area and needs to be protected from the creeping commercialism that will be difficult to control once it gains a foothold.

Richard Desmarais (48 Bayview Ave.) also asked the Board to deny this application because of the noise levels.

Fran Tortolano (61 Bayview Ave.) echoed the other speakers' concerns about increased noise levels. He noted ordinances in Boston, where he lives, which prohibit outside restaurant "waiting areas" where drinking occurs, from abutting residences.

Ray Wiggins (26 Bayview Ave.) expressed his fear that if firepits are allowed their use will spread all over town.

Paul Ersing (former owner of the Town Lyne Motel) echoed the other speakers by expressing his problems with the noise levels. He asked the Board to fix this problem before they allow the applicants to exacerbate it by expanding.

Mr. Simpson asked if there was anyone else who wished to be heard. There being no one the Public Hearing was closed at 6:35 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
Jackie Bevins
Mark Renaud

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer
Lee Jay Feldman, SMPDC, Town Planner

Excused: Maryann Stacy, Recording Secretary

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – the mission statement was read by Mr. Simpson.

D. MINUTES – May 19, 2014

**Mr. Yurko Moved to Approve the Minutes of the May 19, 2014 Meeting as Amended.
YURKO/BEVINS 3:0 UNANIMOUS (Mr. Simpson was excused from the May 19, 2014 Meeting)**

E. PUBLIC INPUT –

Mr. Simpson asked if there was anyone who wished to be heard on any matter which was not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

- 1. NORTHERN SEA LLC/HOOKS LLC – 688 Main Street – Map 10 Block 6 – Site Plan Review for Change of Use from residential to commercial. Work to include fencing property boundaries, additional landscaping, and construction of two fire pits with twenty (20) outdoor seats.**

Shannon Baker, owner of Hooks and Rachel Anastis, owner of Northern Sea LLC addressed the Board.

Mr. Baker stated that he agrees that some of the concerns expressed by the neighbors are valid. He responded to them by saying that since he has opened the restaurant they have been on a “learning curve”. They learned early on that they cannot have live bands because of the noise levels. He acknowledged that there was one instance where they had a live band during the day

for a cancer benefit. When one of the neighbors complained about the noise they stopped the music at 4:00 p.m.

Mr. Baker stated that he wants to be a good neighbor and work with the neighbors, he will do whatever he needs to do to be agreeable to the neighborhood. He noted that he has met with several of the neighbors to discuss the noise levels. He has agreed to put up fencing and vegetative buffers if that will help.

Mr. Yurko asked if Hooks is a year round restaurant, and if not what months they are in operation.

Mr. Baker responded that they are seasonal. They open part time in the spring and open full time at the end of June and will close mid October. They are open seven days a week during the season from noon until about 11:00 p.m. The kitchen closes at 9:30 p.m. and the bar calls last call about 10:30 p.m. so that everyone is gone by about 11:00 p.m.

Mr. Yurko asked for clarification that Hooks is primarily open air with a roof and no walls.

Mr. Baker agreed that most of the seating is outside and that they have plastic roll downs which can be pulled down during inclement weather.

Mr. Simpson asked if they have applied to the Select Board to amend their liquor license.

Mr. Baker responded that they have and will go before the Select Board as soon as they receive the Planning Board's decision.

Mr. Yurko summarized that the neighbors who spoke at the Public Hearing were calm and respectful and believable. Mr. Yurko's concern was that this application involves an open air restaurant and that the introduction of the fire pits will be an "attractive nuisance". He noted that one of the Planning Board's responsibilities is to look at potential nuisances.

Mr. Baker responded that if the restaurant is code compliant, and the decibel levels don't exceed the Town's maximum levels, he doesn't see it as a nuisance.

Mr. Yurko responded that he does not believe that they can be easily made to be compliant. He noted that once approval is granted enforcement becomes difficult.

Mr. Simpson asked why the applicants are not requesting "outside service" given that they are zoned for it.

Mr. Baker responded that only drinks will be allowed around the fire pits, no food will be allowed. He added that the tables between the chairs around the firepits will be for drinks only. He offered to have wait service to the fire pit area to help monitor the noise levels and activities.

Ms. Bevins asked for confirmation that by 9:30 the fire pit area will be cleared of people.

Mr. Baker agreed that as soon as the kitchen closes, at 9:30, the fire pit area will be cleared.

Ms. Bevins asked about the neighbor's request that the noise problem be fixed before the Board approves any expansion.

Mr. Baker responded that he is trying to do just that. He has walked the property with one of the neighbors and discussed the planting of vegetative buffers and the building of fences.

Mr. Yurko asked about the neighbor's statement that promises had already been made to plant trees and put up fencing and that has not been done.

Mr. Baker responded that he spoke with that neighbor and explained that they had just purchased the property in January and it had not been possible to put in the buffering. They did put up fencing directly behind the restaurant. When they purchased the back parcel in January of 2014 they began making plans to put up additional fencing and trees.

Mr. Yurko suggested the Board should make a site visit.

Mr. Simpson agreed, he noted that in the original application the Applicant requested a number of waivers, one of which was a traffic study waiver. In the waiver request the Applicant categorized the fire pit area as a "waiting area" however based upon what he has heard at this meeting Mr. Simpson now views the fire pit area as a "bar" and he is now concerned that a traffic study may be needed.

Mr. Feldman responded that in preparation for this meeting he looked at some of the numbers from the Trip Generation Manual. He noted that the threshold for requiring a traffic study is 50 trips per day. The Trip Generation Manual calculates that: for a high turnover sit-down restaurant, which this probably is not, the additional seats would generate 124 average vehicle trips per day, a drinking place with the same twenty seats would generate 23 average daily vehicle trips per day, and a quality restaurant, which has about a one hour dining table turnover, would generate an average of 56 vehicle trips per day. Mr. Feldman noted that there is a wide variation and whether or not a traffic study is required will depend on how the Board categorizes the applied for seating area.

Mr. Simpson noted that there is no layout showing where the tables and chairs will be located in relationship to the property boundaries, also the Board has still not received the letters from the water and sewer departments. He pointed out that the Applicant was also asked to provide lot calculations which have not been submitted.

Mr. Baker responded that the lot coverage calculations, including the fire pits are noted on the survey done by Frank Emery.

Mr. Simpson stated that they do not have that particular survey, he agreed that the Board should hold a site visit. He suggested that the Applicant meet with the Code Enforcement Officer before the Site Visit, and that they develop a very specific plan to address the neighbors' concerns about noise, including a time table for what will be done and when. Mr. Simpson expressed his feeling that there is too much ambiguity with the current status of this application. He stressed to the Applicant that if approval is granted he will be held to any plans which are submitted. They will be part of the public record and will be made a part of the Findings of Fact, and he (the Applicant) will be responsible for holding to them.

Mr. Feldman reminded the Board that they really need to determine whether or not a traffic study is needed or may be waived. He suggested that he and the Code Enforcement Officer can put together a recommendation for the Board.

Ms. Bevins agreed that the noise problem needs to be fixed before any permission for expansion is granted. She suggested that a fence may not alleviate the noise problems.

Ms. Anastis asked for input from the neighbors as to what conditions have been like over the last three weeks. She noted that changes have been made: the amplifiers have been taken out, the base has been reduced, and any live music is now a single person without amplification. The Stereo has been turned to the minimum. She noted that if staff turn up the music she speaks to them and the music is immediately turned down. She walked over to Bay View Ave one afternoon and acknowledged that she could hear the music but it was very faint. She asked the Code Enforcement Officer to come over with a decibel meter and check the noise levels.

Mr. Baker reiterated that he wants to work with the neighbors and the Town to make everyone happy and he asked for input.

**Mr. Yurko Moved to table this application, then schedule a Site Visit.
YURKO/RENAUD 4:0 UNANIMOUS**

G. NEW BUSINESS –

**1. ROBERT AND BARBARA KINSMAN – Bittersweet Lane - Map 21 Block 7-5-632
– Application for Subdivision Amendment. Request to vacate 1977 subdivision plan
and adjust an existing lot line.**

***Planning Board Action: Determination of Application completeness and scheduling of
a Public Hearing.***

Mr. Feldman noted that he did not have the opportunity to write memos to the Board for this and the next application, however he has reviewed both projects and is ready to make verbal recommendations.

Mr. Simpson asked why vacating the old subdivision has to come before the Planning Board and is not taken directly to the Registry of Deeds.

Attorney Durward Parkinson responded on behalf of the Applicants. Attorney Parkinson noted that nothing happens at the Registry of Deeds until it comes from a source. The Registry only receives documents and records them, and property owners do not have the ability to modify approved plans. There is a 1977 Subdivision Plan still on the books even though it doesn't conform to existing conditions. This inconsistency needs to be cleared up, and he (Attorney Parkinson) thought the Planning Board is the best place to accomplish this. He noted that the Kinsmans only want to "clean this up" for the next generation. The goal is to get this original subdivision off the books, or modified, so that it can reflect the reality which is a five acre parcel which came out of Lot Three and was added to the Kinsman's lot.

Mr. Simpson asked for confirmation that that there will be no change to the total amount of the land the Kinsman's own. That there is only a moving of the lot lines.

Attorney Parkinson responded that this proposal is a zero sum game working within the existing line and the changing of one lot line. He noted that the gentleman who purchased Lot Three has done an extensive development which has already come before the Planning Board. The Kinsman portion isn't shown to be a part of that subdivision, it is still noted as "Kinsman Property" but it is still a part of the 1977 Manomet Woods Plan. There is no note that eliminates that 1977 plan.

Mr. Yurko asked how the Kinsmans purchased property that was part of, but not an entire lot, and why the designation was created to show on the plan.

Attorney Parkinson responded that it happened a long time ago, it was an irregularity and was overlooked at the time.

Mr. Yurko asked how much acreage is owned by the Kinsmans in this location.

Attorney Parkinson responded that they own 6.64 acres.

Mr. Yurko asked if it will all become one lot if the Board approves it.

Attorney Parkinson displayed the proposed site plan which was included as part of the Application. He noted that it shows that the applicants will add the five acre parcel back into Lot Two, and then change the interior lot line so that there will be a 3.83 acre lot on one side and a 2.85 acre lot on the other side.

Mr. Yurko asked if the 2.85 acres will be landlocked.

Attorney Parkinson responded that it will not. There will be a twenty-five foot (25') right-of-way coming in from Bittersweet Lane and another twenty-five foot (25') right-of-way across the 3.83 acres in the front.

Mr. Yurko asked if the two lots can be subdivided.

Attorney Parkinson responded that there is that possibility however they are not asking for that at this time and any changes would have to be in accordance with normal subdivision laws, which basically allow for the creation of one lot every five years.

Mr. Heyland agreed that a future division can be made if it meets all the standards and has the appropriate amount of street frontage, but that is not a part of the current application. He also noted that the creation of one lot could be accomplished with a deed.

Mr. Yurko asked if that could still be done even if the Board doesn't approve the application.

Attorney Parkinson responded that if the Board declines to act, or doesn't approve the application, it will leave the future question of "what happened to the balance of the Manomet Woods Subdivision?", and any future Title Searcher would likely recommend that the owner go

back to the Planning Board to amend it. The Kinsmans are trying to clean this up and create a clear record for estate planning purposes and future generations.

Mr. Yurko asked if the Board will schedule a Public Hearing.

Mr. Simpson responded that it appears that there is an abutter wanting to be heard and he (Mr. Simpson) would like to find this application complete and schedule a Public Hearing.

Attorney Parkinson suggested that any abutters who have concerns or questions should feel free to contact him.

Mr. Yurko Moved to Find the application complete and schedule a Public Hearing for July 14, 2014.

YURKO/BEVINS 4:0 UNANIMOUS

2. KATHRYN AND JOHN SEWELL – 14 Bridge Street – Map 7 Block 93 – Site Plan and Design Review for a pre 1930 structure. Application to demolish existing house and construct a new dwelling.

Planning Board Action: Determination of Application Completeness and schedule Public Hearing.

Roger Rossignol, Salmon Falls Architecture addressed the Board on behalf of the Applicants. He has been retained by the Applicants to design a new home at the location of the current home on Bridge Street. The existing building is an 825 square foot house, part of which sits within the 75 foot Shoreland setback. Because of the condition of the existing house the plan is to take it down and construct a new residence. The current house sits within the side and front setbacks of the property. The proposed plan is to take the building down and construct a new house which will sit totally outside the lot setbacks. The portion of the building which sits within the 75' setback will expand about 13% in area and about 29.9% in volume, the maximum allowable expansion is 30%. The portion of the house that sits outside the 75' setback, where they are not technically limited, will be expanded a bit as well. The current lot area coverage is 19.9% of the lot and that will not be touched. The existing house is 875 square feet and the proposed new house, because of the vertical expansion, will be 1178 square feet. The total square footage of the house within the 75' shoreline setback will be 798 square feet which is a 13% expansion in area.

The porches within the 75' setback will be 352 square feet which is a 13% expansion. The walkways and stairs will be decreased, and the total volume, which is what controls the property, will be approximately 99.9% which is almost the maximum allowed for the parcel.

The proposal is to keep a similar style to the building while keeping outside the setbacks.

Mr. Yurko asked how long the owners have owned the property.

Mr. Rossignol responded that to the best of his knowledge the family has owned it since the 1940's.

It was confirmed that the Historic Preservation Commission has received a copy of the application packet and someone has spoken with the Code Enforcement Officer about it, however the Board has not received anything from them.

The Applicants confirmed that they have not heard from the Historic Preservation Commission either.

Mr. Simpson agreed to speak to them and get their comments prior to the Public Hearing.

Mr. Yurko confirmed that the design change is dramatic. He asked if cars will be parked in the area under the house.

Mr. Rossignol responded that they will not, it will be lattice enclosed and have a door for small storage. The ground under the house slopes in such a way that parking under the building would not be possible. When the house is relocated and pulled back from the neighbors' house, the owners will park alongside the house. There will be a grass parking area with no paved parking or walkways. He noted that due to the unique conditions of the property this has been one of the most difficult houses to design. The small tower in back is a triangle which made it difficult to design the pitched roof. He pointed out that the whole house is up on piers to create a flow-through foundation.

Mr. Simpson asked if the current building is non-conforming.

Mr. Heyland confirmed that it is.

Mr. Simpson asked if the proposed new house would be totally conforming.

Mr. Heyland responded that it will not. A small portion of the structure will still be under the setback however according to the Ordinance the Board has to relocate it to the greatest practical extent. In this case it is limited by the size and location of the lot. A 30% expansion is allowed which has been utilized in this case. The proposed plan does significantly improve the setback non-conformities.

Mr. Simpson noted that the new structure will be significantly higher and he asked if this poses any problems.

Mr. Heyland responded that it does not. The height of the new building will be under the maximum allowed 35'. It will be 34'.4" at its highest level.

Mr. Yurko asked if the water view will be blocked for the house on the west.

Mr. Rossignol responded that this is part of the Norseman Property and while the vertical view may be blocked a bit, the new house will be shifted to the right which will give them a better view in that location.

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.G because there will be no change to sewer and water services, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.J because water and sewer are existing and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.N.i because the sewer is an existing connection, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.N.ii because the sewer is an existing connection, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.O.i because the water is an existing connection and it is not applicable, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive site Plan Submission Standard 6.6.C.3.O.ii because the hydrant locations are existing and will not change, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.O.iii because it is not applicable because the water is an existing connection, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.R because it is not applicable because there will be no open spaces, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.S because it is not applicable, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.T because it is not applicable because traffic patterns will not be altered, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.U because it is not applicable because traffic patterns will not be altered, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.V because it is not applicable because the site does not contain any wildlife habitat according to the Maine Dept. of Inland Fisheries and Wildlife, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko noted that the Applicant has requested a waiver of Section 6.6.C.3.W and he Moved to Deny that request, and to require the Applicant to provide the information prior to the Public Hearing.

YURKO/BEVINS 4:0 UNANIMOUS

Mr. Yurko Moved to Waive Site Plan Submission Standard 6.6.C.3.Y – Storm Water Management Plan - as it is not applicable to this project and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved Deny the Waiver Request for Standard 6.6.C.3.Z – Erosion and Sedimentation Control Plan - and to require the submission of an Erosion and Sedimentation Control Plan.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Heyland noted that even if the Board granted the waiver of the submission of the Erosion and Sedimentation Control Plan, the applicant would still be required to provide erosion control measures as part of the Building Permitting process.

Mr. Yurko agreed, however he pointed out that the proposed project is located so close to the water that the Board should see the Erosion and Sedimentation Control Plan.

Mr. Rossignol agreed to provide the plan before the Public Hearing.

Mr. Yurko Moved Waive Standard 6.6.C.3.BB because it is not applicable, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved Waive Standard 6.6.C.3.CC because it is not applicable at this time and will be submitted to the Code Enforcement Officer prior to construction, and this requirement would be burdensome to the Applicant at this time.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved Waive Standard 6.6.C.3.DD because it is not applicable and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Yurko Moved Waive Standard 6.6.C.3.EE because no State or Federal Permits are required for this project, and this requirement would be burdensome to the Applicant.

YURKO/RENAUD 4:0 UNANIMOUS

Mr. Simpson noted that the Public Hearing would be on July 14, 2014 and any submissions must be turned into the Land Use Office one week prior to that .

Mr. Yurko Moved to Find the Application Complete and schedule a Public Hearing for July 14, 2014.

YURKO/RENAUD 4:0 UNANIMOUS

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland reminded the business community that the Annual Business Registrations are due by June 30th, and that this is with a 30 day grace period. The penalty for late submittals is \$25 per day.

The Annual Business Registrations are due by May 31st each year.

I. OTHER BUSINESS – None

J. ADJOURNMENT -

Mr. Yurko Moved to Adjourn at 7:53 p.m.

YURKO/RENAUD 4:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Recording Secretary