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OGUNQUIT PLANNING BOARD MINUTES JULY 14, 2014

PUBLIC HEARINGS – 6:00 p.m.

1. ROBERT AND BARBARA KINSMAN – Bittersweet Lane - Map 21 Block 7-5-632.

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application.

Nick Strater, Attorney for abutter Joseph Lindsey addressed the Board. Mr. Strater expressed concern regarding the “vacating” of the 1977 Manomet Subdivision instead of “amending” it. He suggested that the Kinsman’s are seeking to amend the lot lines for Lot 2, as shown on the original plan, and that they may sell off Lot 2 to a third party and keep the existing barn without violating the setback restrictions.

Mr. Strater stated that Mr. Kinsman maintains an automobile junkyard on the property and that oil is running off the property. In addition, he asserted, that there is other “trash” and “debris on the property. Mr. Strater referred to State Statute, Title 17 Section 2802, which says that two or more abandoned vehicles on the property constitutes a “junk yard” . This constitutes a “public nuisance” which the Town has an obligation to abate.

Mr. Strater stated that in 2011 the former Code Enforcement Officer (Paul Lempicki) inspected the property and wrote a letter to Mr. Kinsman ordering him to abate the nuisance. Mr. Lempicki later told Mr. Lindsey that the Town Manager would not allow him to go to court. Mr. Strater suggested that this is because Mrs. Kinsman works in the Town Hall.

Mr. Strater went on to say that the current Code Enforcement Officer (Scott Heyland) informed Mr. Lindsey that the defense to the “junkyard” issue is that “it’s a hobby”. Mr. Strater stated that Mr. Kinsman “plays at being a lobsterman and has for years, and he (Mr. Strater) has never seen junk automobiles used to haul lobster traps or on the stern of a lobster boat, he’s never seen broken down smashed up refrigerators and freezers used to freeze lobster bait, and he’s never seen broken glass, or twisted and broken metal used to bait lobster traps ... no way can this be classified as a hobby”.

Mr. Strater stated that no one wants to do anything because one of the parties involved works for Town government. He suggested that once the Board allows the lot line to shift there will be no

further control of the nuisance and the junk yard will stay forever. He asked that this application be tabled until the public nuisance has been abated.

Mr. Simpson asked if the issue described, cleaning up the mess, is the abutter's primary concern.

Mr. Strater responded that it is - the junkyard.

Mr. Yurko asked Mr. Strater if there is any practical difference between vacating the subdivision and moving the lot line to remove the Kinsman property from the 1977 plan.

Mr. Strater responded that he can't see how the Planning Board can vacate a subdivision plan that has been recorded.

Mr. Heyland stated that he has reviewed the Town files and was unable to locate any 2011 letter from Mr. Lempicki to the Kinsman's, and he asked if Mr. Lindsey has a copy of it.

Mr. Strater responded that they do not have the letter. He stated that throughout the dealings between Mr. Lindsey, the prior owner Charles Maddox, and the Town, many documents have gone missing, and that Mr. Lempicki told Mr. Lindsey that he sent a letter.

Mr. Heyland responded that without a copy of the letter he cannot assume that there was a letter. He noted that there is an exception to the "junkyard law" that allows a person to store and maintain unused vehicles for hobby purposes.

Mr. Strater responded that in this case that concept is a "bunch of foolishness".

Mr. Heyland agreed that there may be some items on the Applicants' property that might fall within the junkyard restrictions. However, he noted that this is the first time, since he has been Code Officer, that Mr. Lindsey has made this complaint. He stated for the record that he has at no time ignored any complaints.

Mr. Simpson asked if there was anyone else who wished to be heard. There being no one the Public Hearing was closed at 6:10 p.m.

2. KATHRYN AND JOHN SEWELL – 14 Bridge Street – Map 7 Block 93.

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application.

Mr. Simpson reviewed a letter sent to the Planning Board from the abutter at 58 Beach Street dated 7 July 2014 (*a copy of which is maintained in the Applicant's Planning Board file*). This abutter expressed concern over the manner in which the new house's flow through foundation pilings and footings would be anchored into the ground, as well as the manner in which the heating system exhaust will be vented.

Mr. Simpson also reviewed a memo from the Ogunquit Historic Preservation Commission which expressed three concerns:

"The front elevation is detrimental to aesthetic vision of the neighborhood;

Front elevation of 7 feet 6 inches for the sill exceeds the 2 feet 6 inches at the rear of dwelling. In our opinion, the first floor sill elevation should be at the FEMA required height at the 75 foot set back from "high water" line per Town of Ogunquit zoning regulations;

The photo in the application of the neighborhood from the beach parking lot showing a manual rendition of the new dwelling clearly makes the point the elevation is out of scale to the neighborhood."

Mr. Simpson asked if there was anyone else who wished to be heard. There being no one the Public Hearing was closed at 6:20 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

Members Excused: Muriel Freedman

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

Mr. Simpson expressed thanks to Board Member Mark Renaud for his service on the Board. Mr. Renaud has served a one year term on the Board and has decided not to seek reappointment.

Mr. Simpson noted that Muriel Freedman will be returning to the Board on July 28th and he expressed appreciation to her for doing so.

Mr. Yurko noted that because the Planning Board is a five member board, and there are only three members in attendance, any action will require a unanimous 3:0 vote to pass.

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – Mr. Simpson read the Mission Statement into the Record.

D. MINUTES – June 23, 2014

**Mr. Yurko Moved to Approve the Minutes of the June 23, 2014 Meeting as Amended.
YURKO/BEVINS 3:0 UNANIMOUS**

E. PUBLIC INPUT – Mark Macleod (57 Bayview Rd) asked if the Hooks Application has been tabled or pulled.

Mr. Simpson responded that as of this night the application has been tabled.

Mr. Macleod informed the Board that at the last Select Board meeting there was talk about Hooks adding volleyball courts and/or bocce courts. He stated that other than the noise problems he has no issues with Hooks and wants them to succeed. He just wants the noise to be controlled.

Mr. Simpson noted that at an earlier Planning Board action, when the previous owner owned that property, there was a commitment made to add vegetative buffering. He asked the Code Enforcement Officer to follow up and see if that has been done.

Mr. Macleod acknowledged that the noise levels have been lower lately than they have been in a long time.

F. UNFINISHED 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.

Mr. Simpson asked if the Applicants would like to respond to comments made during the Public Hearing.

Durward Parkinson, Attorney for the Kinsman's responded that anything having to do with any land use violation is a matter for the Code Enforcement Officer. He suggested that any approval the Planning Board makes could be conditioned on the Code Enforcement Officer providing a letter that the property is in compliance.

Attorney Parkinson stated that it is still his position that it is cleaner to vacate than to amend.

Mr. Yurko responded that in his opinion it is a better idea to amend the plan, because vacating the plan makes it as if the plan never existed. He summarized that there was a 1977 Manomet Plan, that included two lots which the Kinsmans purchased a portion of. Some years later the rest of the property in the original 1977 subdivision was developed in a manner different from the original plan and the Kinsman's lots were effectively ignored. So there was a time when the prior plan (Manomet) was completely valid, then it was subsumed by a later subdivision plan (Sonoma Woods) which ignored the first one. Mr. Yurko suggested it would be better to amend the plan and redraw the lot lines so that from this time forward the Kinsman's can act as if their property is a new and separate lot.

Attorney Parkinson disagreed that "vacating" is as if the 1977 plan never existed. The plan has existed since 1977 but no longer has any practical value. He questioned why the Kinsmans and the other property owner (David Chaves – 48 Bittersweet Lane- Map 21 Block 6-3-1) should be required to come back before the Planning Board to "amend" a subdivision plan every time they want to change something.

Mr. Yurko responded that they won't have to keep coming back. Once the subdivision is amended to exclude them, the result will be the same and they will not be part of the subdivision

anymore. If the Board amends the subdivision to exclude their property, the Kinsmans won't be a part of the subdivision anymore.

Attorney Parkinson agreed that this would work if it is worded that way in the motion. As long as it is amended so that the Kinsmans' property is completely removed from any subdivision.

Mr. Yurko stated that there were some allegations made during the Public Hearing. He noted that it was suggested that the Kinsman's have received special treatment because Mrs. Kinsman is an employee of the Town.

Attorney Parkinson responded that he does not want to dignify those allegations with a response. He reminded the Board that at the last meeting he extended an invitation for anyone to contact him to talk about this application and no one reached out. He also pointed out that the letter from Mr. Lindsey, regarding the "junkyard" just came in this past Friday afternoon and that was the first he heard of it. With regard to the Kinsman's receiving special treatment, that is without merit and he won't dignify it with a response.

Mr. Simpson asked if Mr. Feldman had any comments with regard to the question of vacating vs. amending the subdivision plan.

Mr. Feldman responded that he has never heard of "vacating" an approved subdivision plan. Regarding amending a subdivision, his concern is that the original 1977 Manomet Subdivision has been intertwined with the Sonoma Woods Subdivision which never showed the Kinsman or Chaves parcels as being included. It is his opinion that there may not even be a process that needs to occur. There is a lot line between two parcels owned by the Kinsmans and they are only moving that line. It only involves a lot line adjustment which will make those properties more conforming with regard to the setbacks and the existing barn. This action really only requires a filing of a deed at the registry. This is similar to a sale of land to an abutter.

Mr. Feldman suggested that this application may not even need to be in front of the Planning Board.

Regarding the allegations of a junk yard, Mr. Feldman agreed that those questions fall within the Code Enforcement Officer's jurisdiction.

Mr. Heyland responded that he hasn't been on the property yet, and he isn't sure the problems rise to the level of a junkyard, however he will make a site visit and if there is a violation it will be treated it like any other property owner with a violation.

Mr. Yurko asked: if there are "junkyard" violations, would they be related to the proposed action currently before the Board? Mr. Yurko referred to past Planning Board cases which included violations which were made to be brought into compliance before approval was granted. Mr. Yurko did not believe that a "junkyard" is related to the pending lot line relocation application, and he pointed out that the Applicants have volunteered to accept conditions of approval contingent upon the Board's receiving a letter from the Code Enforcement Officer confirming that there are no outstanding violations on the property.

Attorney Parkinson restated Mr. Yurko's suggestion that the 1977 Manomet Subdivision could be "amended" to exclude the Kinsman's property. He noted that this scenario is reflected in the James Bacon Site Plan, and he agreed that this would be a very clean way to resolve the matter.

He noted that there is a Planning Board signature block on that plan which, once signed, could be filed with the Registry. He also confirmed that deeds would be filed along with the plan. Attorney Parkinson also added that this would provide a documented trail for anyone in the future looking to understand the history of these properties.

Mr. Feldman agreed that this is a solution.

Mr. Simpson asked for confirmation that the Applicants would be agreeable to a motion that approves an amendment to the 1977 subdivision plan allowing them to move the lot line.

Attorney Parkinson responded that they would be, as long as it is clear that under the “amendment” the Kinsmans are no longer operating under the rules of a recorded subdivision and any further division or change in lot line, will not require them to come back before the Board. It must be clear that the Kinsman’s parcel is cut off and allowed to live independently of any subdivision.

Mr. Yurko agreed.

Mr. Heyland asked if it would be recorded that way, or would it be contained in the Findings of Fact.

It was agreed that it would be noted in the findings of fact.

Mr. Yurko suggested that the Board should have a letter from the Code Enforcement Officer confirming that the property is in compliance before the members sign on an amended plan.

Ms. Bevins agreed that the property should be in compliance before the Board takes any action. She wants the Code Enforcement Officer to confirm before they approve the application.

Mr. Simpson stated that he doesn’t believe that the conditions of the property have any bearing on the application currently before the Board.

Mr. Feldman suggested the Board could approve the application tonight and give the applicants 30 days to get confirmation that the property is in compliance, or the Board could table the application to the next meeting and ask the Code Enforcement Officer to take any necessary action before then.

Mr. Heyland agreed.

Mr. Parkinson agreed to table it to the next meeting, however he noted that if the abutter had contacted him directly this issue could have been resolved before this meeting. He reminded the Board that the abutter’s concerns about the “junkyard” were only raised three days ago.

**Mr. Yurko Moved to Table the Application to August 11, 2014.
YURKO/BEVINS 3:0 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.

Mr. Simpson asked Mr. Heyland if there are any issues raised by the abutter that are in potential violation of the ordinances.

Mr. Heyland responded that he isn't sure what guideline or FEMA requirements are in play in this case.

Roger Rossignol, Salmon Falls Architecture responded that the only FEMA requirement he is aware of is the minimum elevation, there is no maximum elevation requirement. The Town's maximum building elevation is 35 feet above the lowest ground point, which they are under.

Mr. Heyland noted that most of this lot is within the 75 foot Shoreland setback. He noted that State Shoreland Zoning Laws require the placement of the building must meet the most practical extent as determined by the Board. He noted that this is a very limited site.

Mr. Rossignol responded to the abutter's concerns about the venting of the heating system. He stated that the intention is to run a high efficiency propane system which will be vented through the roof. He agreed that they do make some noise but it isn't as noisy as an oil burning system.

Mr. Yurko asked about the comments made by the Historic Preservation Commission in their 4 July 2014 Memo to the Board.

Paul Gosselin responded that they have done their best to conform to the character of the neighborhood given the limited design options they had. He noted that there is limited square footage available to him because of the unique characteristics of the property. In order to meet the client's needs he had to make a staggered staircase with a split level house. There was no room anywhere for a straight line staircase and there are no hallways in the house. He also pointed out that this will be one of the smallest houses in Ogunquit. The design, as presented, also gives the owner a little bit of ground level yard storage.

Mr. Gosselin noted that there is a small stone wall in front of the property and there will be tall plantings put in place. They can do this because the porch will be a bit higher than it is now. He also noted that the plans submitted with the application contain several renderings, the rendering as taken long view from the parking lot is not exactly to scale, which makes the rendering look out of scale and isn't exactly representative. This may make the house look taller than it will really be.

Mr. Yurko pointed out that while it may be higher than the existing house it will not be higher than the house behind it.

Mr. Gosselin added that the house in the rear will actually have a better side view because the new house will be more centrally located on the lot. Mr. Gosselin added that anyone wanting to do renovations in the Shoreland will have to be at this elevation at some point. The Sewell's are just the first of many.

Mr. Simpson asked about the abutter's concern about the footings.

Mr. Rossignol responded that the bedrock in that area is very shallow and there are no plans to blast or take any ledge out. What they do in a pier foundation is to put in normal strip footings below frost or on ledge and grow the piers out of that footing so that there is lateral bracing of the piers at the base. No blasting or hammering involved.

Mr. Simpson asked if there is an ordinance that protects structures within so many feet of new construction, and requires videotaping to assess any damage.

Mr. Heyland responded that there is but it only applies to blasting.

Ms. Bevins asked when the house will be demolished.

Mr. Gosselin responded that they hope to start sometime after Labor Day.

Ms. Bevins asked where the abutter who wrote the letter is located.

It was agreed that the abutter is on the corner of Beach Street and Bridge Street and the applicant's house is the next one in on Bridge Street.

Mr. Yurko noted that this is a house which is older and in need of work. He went on to say that he is a strong supporter of historic preservation in the Town, however in this case the Historic Preservation Commission has not recommended that the house not be torn down, they are only suggesting that it would be better if it was not going to be so tall. However, in this case he believes that the Historic Preservation Commission has exceeded its mandate. The proposed house is a beautiful plan, it has been designed under numerous restrictions, it is creative without being so creative that it doesn't belong in the neighborhood. Mr. Yurko expressed his belief that it will be a beautiful little house.

Mr. Simpson agreed with Mr. Yurko's comments.

Mr. Feldman agreed and added that most towns will need to take a look at, and consider, what is done on the waterfront. He does a lot of work with sea level rise and storm surge in several communities. While this applicant has designed this house to capture other things such as a view, they have also achieved a preservation of the property to future sea level rise and storm surge impacts, and more communities are starting to take a hard look at these types of issues.

At this time the Board reviewed the Design Review Certification Checklist and found all standards to be satisfied.

**Mr. Yurko Moved to Approve the Application as Submitted.
YURKO/BEVINS 3:0 UNANIMOUS**

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS - None

I. OTHER BUSINESS – None

J. ADJOURNMENT -

**Mr. Yurko Moved to Adjourn at 7:05 p.m.
YURKO/BEVINS 3:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Recording Secretary

Approved: August 11, 2014