



Town of Ogunquit
Planning Board
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**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
MINUTES**

**DUNAWAY CENTER MAIN AUDITORIUM
JULY 23, 2018**

REGULAR BUSINESS MEETING

A. ROLL CALL – 6:00 P.M.

Members Present: Steve Wilkos (Chair)
Rusty Hayes (Vice Chair)
Muriel Freedman
Mark MacLeod
Jackie Bevins
Priscilla Botsford (1st Alternate)

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

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – July 9, 2018 Public Hearing and Regular Business Meeting.

**Mr. Hayes Moved to Approve the Minutes of the July 9, 2018 Meeting as Amended.
HAYES/BEVINS 5:0 UNANIMOUS**

E. PUBLIC INPUT – For any matter NOT already on this Agenda.

Helen Horn – 62 Juniper Lane - addressed the Board and expressed her concern that the increase in the numbers of weekly home rentals and Air B&B, etc rentals negatively effects the quality of life for residents.

She asked the Board to consider three questions:

How do the Ordinances protect the residents from the intrusion of these weekly home rentals?

Does the Planning Board or the Code Enforcement Officer recognize Air B&B as a “hotel chain”? If so how is it allowed to operate in a town where chain businesses are prohibited.

Ms. Horn noted that people living in the Residential District expect to be protected from commercial interests, and Air B&B was designated by Google as “the largest hotel chain”.

Mr. Heyland responded that the current Ordinance prohibits formula restaurants; however it does not apply to hotels and other businesses.

Ms. Bevins added that this prohibition came about as a result of a Citizens Petition to prohibit formula restaurants, and she agreed that it does not include other forms of businesses.

Mr. MacLeod stated that the recent Comprehensive Plan Public Survey clearly showed, by something like 60% of respondents, that the town did not want to regulate weekly home rentals.

Mr. Wilkos added that the survey results are available on the Town of Ogunquit’s Website. He also reminded everyone that the Planning Board held two workshops on weekly home rentals and would be happy to hold more if the public feels they are needed.

Mr. Feldman added that South Portland had put some restrictive performance standards for weekly home rentals. They received negative push back and they have recently withdrawn those ordinances.

Mr. Heyland pointed out that the current Ordinances already have regulations in place to address problems with on-street parking, noise, lighting, etc and if people have problems they should reach out to the police.

F. UNFINISHED BUSINESS –

- 1. NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) LBD. Site Plan and Design Review for a pre1930 structure. Application to convert from a Type 1 Restaurant to a Type 2 Restaurant, the addition of a gas fire pit and patio area, the reconfiguration of parking areas, and request for parking waivers.**

Mr. Wilkos confirmed that notations 7 & 8 on the Boundary Survey had been amended as the Planning Board requested. Mr. Feldman and Mr. Heyland both agreed that they were satisfied with the new notation language.

The Board reviewed the Findings of Fact and found no required changes.

**Mr. Hayes Moved to Approve the Findings of Fact for NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) LBD.
HAYES/BEVINS 5:0 UNANIMOUS**

G. NEW BUSINESS –

- 1. 10 Beach Plum Lane Realty Trust – 10 Beach Plum Lane – Map 9 Block 66-B – SLR – Building permit to demolish existing four bedroom post 1930 structure and construct a new three bedroom single family home in the Shoreland District.**

Len Pierce, the Applicant, addressed the Board and summarized the proposed project to demolish and reconstruct a single family home in the Shoreland District. He noted that the Town Zoning Ordinance permits this with a Building Permit issued by the Code Enforcement Officer and a Finding by the Planning Board that the new structure will be set back from the wetlands to the greatest practical extent.

Mr. Heyland reviewed his July 15, 2018 Memo to the Board (*a copy of which will be maintained in the Applicant's Planning Board File*). He noted that the replacement structure will be located in the existing building's footprint because there is no room on the lot to push the new structure further back from the Highest Annual Tide (HAT) Line without violating front and / or side setbacks.

Mr. Heyland confirmed that this is a non-conforming structure because it does not comply with the setback to the HAT. He noted that Article 3.3.H Reconstruction or Replacement states that:

- a. "Any non-conforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or is damaged or destroyed, regardless of the cause, by more than 50% of its market value of the structure before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within 18 months of the date of said damage..."

Mr. Heyland added that the Board should consider the following standards of Article 3.3.H.3 when reviewing the application:

- b. In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, and (if not served by public sewer service) the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

Mr. Heyland also suggested the Board consider the following:

- The replacement structure is proposed to be no closer to the upland edge of a wetland than the existing structure.
- The lot area is 5,888 SF not including land below the Highest Annual Tide (HAT).
- The lot is relatively flat. Erosion control measures will be required before any ground disturbance.
- There are no other structures on this lot.
- The property is served by Public Sewer.
- The only vegetation proposed to be removed is lawn area which will be replaced upon completion of the project.
- The foundation currently consists of concrete masonry units. There is no confirmation that the footing depth meets the current Building code for frost protection.

Mr. MacLeod asked what the setbacks are on the other three sides of the structure.

Mr. Pierce responded that that west wall is 15' which makes it conforming. The north is about 6' within the setback and the south is about 4' within the setback, both nonconforming. Mr. Pierce reminded the Board that the Board's only consideration for purposes of this application is to determine the setback from the wetlands.

Mr. MacLeod confirmed that the proposal meets the setbacks to the greatest practical extent.

Mr. Pierce agreed and added that his intention is to put the new structure exactly where the existing structure's foundation is located. The new house will be slightly smaller than the existing house, however it will be elevated; and with the stairs it will be 0.2% larger than the existing house and stairs.

Mr. Heyland reiterated that the Board's review is restricted to the location of the replacement structure; and that the new structure not be any more non-conforming.

Ms. Botsford asked for the height of the existing house.

Mr. Heyland responded that it is just under 35'. He also confirmed that the new house will be up to all current building codes.

Ms. Botsford asked if the Town Attorney had reviewed Mr. Heyland's conclusions.

Mr. Heyland responded that he received a verbal opinion from the Town Attorney that Article E of the Ordinance, which is the general provision for non-conforming structures, is not the applicable Ordinance Article in this case. This particular project falls under Article H which covers additional requirements in the Shoreland Zone. The question he asked was "does he apply Article E and stop there, or should he continue on to Article H because this property is in the Shoreland; and apply Shoreland reconstruction standards?" The Town Attorney told him that because the ordinance language is very specific as to why this is a non-conforming structure it may be replaced regardless of the cause of the original structure's removal; and Mr. Heyland should apply Article H.

Ms. Botsford argued that Article E is the stricter of the two Ordinance Articles; and that this is the one that should be applied.

Mr. MacLeod responded that Article E refers to damage caused by "an act of God" and "not by any action of the owner"; and Article H covers expansions in Shoreland Zones and is an entirely separate Article which is not subservient to Article E.

Ms. Botsford expressed her opinion that E is the stricter of the two Articles and that Article 1.5 says that the stricter of the two shall apply. She suggested that the Board should have the Town Attorney's opinion in writing. She suggested that the analysis of the Ordinance doesn't get to Article H if they stop at Article E.

Mr. MacLeod responded that he doesn't believe the Ordinance requires the Board to take each Article in order. Each Article deals with separate topics.

Mr. Pierce disagreed with Ms. Botsford. He stated that the reviewing authority for issuing a Building Permit is the Code Enforcement Officer. The only authority the Planning Board has with respect to this particular project is under Article 3.3.H.4 and the Board is to make a finding that the setback is to the greatest practical extent.

Mr. Pierce stated that regarding Article E, Mr. Macleod was correct in that it refers to destruction due to a natural disaster. In a normal situation the Code Enforcement Officer would issue the Building Permit which is what he will do here only after the Board makes a determination that the new structure is set back to the greatest practical extent; and any aggrieved party may appeal the decision within 30 days.

Mr. Heyland agreed and added that Zoning Ordinance Article 3.3.H.4.a states that: “Any non-conforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or is damaged or destroyed, regardless of the cause, by more than 50% of its market value of the structure before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within 18 months of the date of said damage, destruction or removal, and provided *that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board...*”

Mr. Wilkos invited Doug Mayer the Chairman of the Ogunquit Conservation Commission (CONCOM) to review his comments as noted in his July 18, 2018 e-mail to the Board.

Mr. Mayer summarized that it is the opinion of the CONCOM that there will be no additional environmental impact resulting from this project. However he did express concern that Article H says “additional requirements...” His interpretation is that if the requirements in Article E are met then H’s “additional requirements” apply. He did confirm that from a conservation viewpoint he is satisfied that there will be no additional environmental impact; however he asked about the height of foundation.

Mr. Pierce responded that the ordinance did allow for the foundation to be elevated three feet measured by the sill which is what he proposes to do. He reiterated that this is not an issue for the Planning Board; this is an issue for the Code Enforcement Officer to deal with during the building permitting process. However, the reason he is elevating the new structure is to allow for a flow through foundation for storm water. He reiterated that Article E is not applicable and that the Planning Board’s authority in this case falls within Article H.

Mr. Heyland agreed with Mr. Pierce’s interpretation.

Ms. Botsford stated that the Planning Board does have the authority to ask for additional information such as a written opinion from the Town Attorney.

Mr. Heyland reiterated that the town Attorney confirmed that he (Mr. Heyland) should apply the language under Article H of the Ordinance because this structure is located in the Shoreland Zone and because the house is non-conforming to the waterbody setback. Article E does not refer to waterbody setbacks, it refers to property line setbacks. Article H is what is applied to replacement structures which do not meet the setback to the water.

Mr. Wilkos agreed that the Board does have that authority to request additional information; and he asked the other Board members if they wanted to require a written opinion from the Town Attorney.

The majority of the Board members agreed that the Town Attorney's verbal confirmation, that the Code Enforcement Officer's interpretation of the Ordinance being correct, is sufficient.

Mr. Heyland responded that during the building permitting process he will be getting a written opinion from the Town Attorney for the file.

Mr. Heyland added that in determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider and make a determination of the following findings of fact:

The size of the lot – The Board unanimously determined that this is a small lot, nonconforming to all setbacks except for the rear setback and the new structure cannot be relocated to make it less nonconforming.

The slope of the land – The Board unanimously determined that the parcel has a 2% slope and is relatively flat; and erosion control measures will be required before any ground disturbance.

The potential for soil erosion - The Board unanimously determined that erosion control measures will be required before any ground disturbance.

The location of other structures on the property and on adjacent properties – The Board unanimously determined that there are no other structures on this parcel; and this section does not apply.

The location of the septic system and other on-site soils suitable for septic systems – The Board unanimously determined that this lot is served by public sewer and that this section does not apply.

The type and amount of vegetation to be removed to accomplish the relocation – The Board unanimously determined that this lot contains primarily scrub and grass type vegetation there is no proposed removal of trees. Any lawn removed will be replaced post construction.

The proposed foundation is sufficient to support the proposed structure – The Board unanimously determined that the existing foundation is inadequate; and that the proposed new foundation location will be in the existing building's footprint.

Adjacent properties – The Board unanimously determined that the homes to the north and south are both closer to the upland wetlands than the Applicant's existing and proposed structure.

The Board unanimously determined that the replacement structure is proposed to be no closer to the upland edge of a wetland than the existing structure.

**Mr. MacLeod Moved to Approve the proposed location of the structure for 10 Beach Plum Lane Realty Trust – 10 Beach Plum Lane – Map 9 Block 66-B – SLR and Finds that it meets the setbacks to the greatest practical extent.
MACLEOD/HAYES 5:0 UNANIMOUS**

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

1. Discussion of Contract Zoning Workshop.

Mr. Wilkos noted that the Board held a Workshop earlier in the evening. The Board requested additional changes to the proposed language which Mr. Feldman agreed to make.

**Mr. Hayes Moved to Schedule a Public Hearing regarding an *Ordinance to amend the Ogunquit Zoning Ordinance Article1 Article 1.9.F Contract Zoning - To allow Multi-Family Development as a Contract zone in the Residential, Rural Residential 1, Rural Residential 2, General Business 1, General Business 2 and Farm District.*
HAYES/BEVINS 5:0 UNANIMOUS**

Mr. Wilkos noted that this Public Hearing would take place on August 13, 2018 at 6:00 p.m.

2. Discussion –Zoning Amendments to:

- a) Article 2 Definitions - Expansion of a Structure;
- b) Article 9.15.P.6 – Shoreland Zoning Standards.

**Mr. Hayes Moved to Schedule a Public Hearing regarding an *Ordinance to amend the Ogunquit Zoning Ordinance Article2 Definitions and Article 9.15.P.6 – Shoreland Zoning Standards..*
HAYES/BEVINS 5:0 UNANIMOUS**

Mr. Wilkos noted that this Public Hearing would take place on August 13, 2018 at 6:00 p.m.

3. Discussion Regarding the Timeframe between an application’s denial and the date when an Applicant may reapply to the Planning Board without significant change to the original application.

The Board proposed using the Zoning Board of Appeals model which states that if the Board denies an application another application of a similar nature may not be brought back before the Board within one year of the date of denial unless, in the opinion of the majority of the Board substantial new evidence shall be brought forward or unless the Board finds than an error or mistake of law, or misunderstanding of the facts has been made.

Mr. Hayes added that an applicant may withdraw an application without prejudice before it is denied and may come back before the one year timeframe.

Mr. MacLeod Moved to Schedule a Public Hearing regarding an Ordinance to amend the Ogunquit Zoning Ordinance regarding the timeframe between an applications denial and when that applicant may reapply to the Board without significant changes to the original

application.

MACLEOD/HAYES 5:0 UNANIMOUS

Mr. Wilkos noted that this Public Hearing would take place on August 13, 2018 at 6:00 p.m.

4. Discussion Regarding the timeframe between the tabling of an application and when the applicant must come back before the Board.

The Board agreed upon a timeframe of 60 days unless the Board and Applicant agree otherwise

Mr. MacLeod Moved to Schedule a Public Hearing regarding an Ordinance to amend the Ogunquit Zoning Ordinance regarding the timeframe between the tabling of an application and when the applicant must come back before the Board being 60 days unless the Applicant and Board agree otherwise.

MACLEOD/HAYES 5:0 UNANIMOUS

Mr. Wilkos noted that this Public Hearing would take place on August 13, 2018 at 6:00 p.m.

The Board agreed to reschedule the currently scheduled August 13, 2018 Workshop to discuss Restaurant Type Definitions to September 10, 2018 at 4:30 p.m.

J. ADJOURNMENT –

Mr. Macleod Moved to Adjourn at 7:45 p.m.

MACLEOD/HAYES 5:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Approved on August 13, 2018