



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

**DUNAWAY CENTER MAIN AUDITORIUM
JANUARY 22, 2018**

REGULAR BUSINESS MEETING

A. ROLL CALL –

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

Also Present: Scott Heyland, Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – The Mission Statement was read by Ms. Freedman.

D. MINUTES –

1 November 27, 2017 Regular Business Meeting

**Mr. Hayes Moved to Accept the Minutes of the November 27, 2017 Meeting as Submitted.
HAYES/BEVINS 5:0 UNANIMOUS**

2. December 11, 2017 Regular Business Meeting.

**Mr. Hayes Moved to Accept the Minutes of the December 11, 2017 Meeting as Submitted
HAYES/BEVINS 5:0 UNANIMOUS (Mr. Wilkos did not vote on this motion due to his
excused absence from the December 11, 2017 Meeting. Ms. Botsford voted as a full voting
member for that meeting.**

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

Mr. Wilkos asked if there was anyone in the audience who wished to be heard on any matter not on this meeting's agenda.

Newell Perkins (20 Fieldstone Lane – Map 8 Block 56-55) addressed the Board. Mr. Perkins asked the Planning Board members to educate themselves and research the question of whether or not the Town of Ogunquit should consider making the change from Traditional Zoning to a Form Based Code. He suggested the Town Planner (SMPDC) has encouraged this change and Mr. Perkins expressed his belief that this would not be a good thing for Ogunquit. He agreed that Form Based Code might work in areas such as Perkins Cove and parts of the Downtown Area, however it seems to be based on uniformity of architectural style/design and Ogunquit does not meet that model.

Mr. Wilkos thanked Mr. Perkins and noted for the record that Mr. Perkins is a member of the Ogunquit Comprehensive Plan Committee, of which he (Mr. Wilkos) is Chair.

Mr. Wilkos expressed his congratulations and thanks to the Ogunquit Planning Board members, the Land Use Office, Attorney Natalie Burns, Ogunquit Harbor Master Fred Mayo, Conservation Commission Chair Bill Baker, and Clam Warden Everett Leach for the work done on the recent application regarding:

“10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4’x190’ fixed walkway and 5’x30’ pier connected to a 3’x26’ seasonal ramp and 10’x20’ float for access to the Ogunquit River; to serve both residences.”

Mr. Wilkos noted that the Applicant appealed the case to the Maine Superior Court which upheld the Planning Board's Decision. He also noted, for the record, that the Applicant has since appealed the Superior Court's Decision to the Maine Supreme Court/Law Court.

F. UNFINISHED BUSINESS – None

G. NEW BUSINESS –

1. RIVERSIDE MOTEL AND HOTEL / GEOFFREY SCIMONE – 50 Riverside Lane – Map 3 Block 100-G – SGD2. Design and Site Plan Review for a post 1930 structure. Application to construct a family room over existing deck, a bathroom over existing porch, and exchange an existing deck for grade level patio with minor expansion.

Jerry DeHart from Coastal General Construction addressed the Board as the Applicant's representative. Mr. DeHart provided a summary of the proposed project. He noted that a surveyor has confirmed that the project is well above the high water mark. Mr. DeHart provided elevations and plans for the Board and the public to see.

Mr. Wilkos asked Mr. Heyland to explain why this application is before the Planning Board. He (Mr. Wilkos) noted that this will be the procedure for all new applications going forward.

Mr. Heyland responded that per Article 6.6 of the Ogunquit Zoning Ordinance “No changes of any kind shall be made in any previously approved Site Plan without approval of such changes
Planning Board Meeting – December 11, 2017

by the Planning Board.” He noted that the Planning Board Approved the original expansion of the second floor of this structure under Site Plan Review on December 13, 2010.

Mr. Heyland added that this application is before the Planning Board for Design Review per Article 11.3.C of the Ogunquit Zoning Ordinance which states that “any material change in the exterior appearance of existing buildings, driveways or parking areas within the District by additions, reconstruction or other alteration, only if it is visible from a public street or public right-of-way.”

Mr. Heyland reviewed his January 12, 2018 Memo to the Planning Board (*a copy of which will be maintained in the Applicant’s Planning Board file*).

Regarding Site Plan Review Submission Requirements as outlined in Article 6.6.C.3 of the Ogunquit Zoning Ordinance. Mr. Wilkos noted that Code Enforcement Officer Scott Heyland had submitted a memo to the Planning Board (dated January 12, 2018) wherein he listed those submission requirements he determined to be not applicable to this application; and the basis for each determination.

Mr. Wilkos asked if there were any questions regarding Mr. Heyland’s determinations. There were no questions.

Ms. Bevins confirmed that this Applicant did come before the Planning Board in 2010 and that they did receive approval for the 2nd floor manager’s/owner’s residence.

Mr. Heyland reminded the Board that they need to review the submitted material and confirm that each item is sufficient to make a determination. He noted that in the past items such as Site Plans have been submitted by an applicant; and the Board subsequently determined that the submitted plan was insufficient and the applicant was required to submit a revised plan. When this is the case; that the Board is not satisfied with a submission, the Board should not move forward until the Applicant submits the requested additional information.

Using the Board Site Plan Review Submissions Checklist (*a copy of which will be maintained in the Applicant’s Planning Board file*) the Board reviewed those items which were submitted by the Applicant as required under Site Plan Review Submission Requirements Article 6.6.C.3 of the Ogunquit Zoning Ordinance.

Regarding Item 6.6.C.3.D Mr. Heyland noted that the owner of record was recorded on the survey and that it did reference a Book and Page for a recorded deed.

Mr. Wilkos noted that the Site Plan references the Riverside Condominiums. He asked if the subject property is part of a condominium association.

Mr. DeHart responded that it is.

Mr. Heyland noted that typically if a project is part of a condominium association the Board would request some form of notification, authorization, or approval confirming that the proposed project is in conformance with the condominium documents.

Mr. Wilkos asked if the Board had that.

Mr. DeHart responded that it did not, and it would not have it. He stated that this has not been the Board's process every time. The owner of the Riverside Hotel admits that he does not get along with his neighbors. This does involve a condominium and he (the Applicant) has every right to do his project and if anyone disagrees it isn't the Planning Board's place to discuss what the condominium documents say.

Mr. DeHart stated that nowhere in Article 6.6.C.3 is the Planning Board given authorization to make that decision. Mr. DeHart also pointed out that not all condominium associations give authorization for work to be done in the condominiums. Mr. DeHart asked the Board to show him where, in the Ordinance, it requires condominium approval.

Mr. Wilkos responded that it is his recollection that any condominium association project that has been before the Board has had an authorization letter.

Mr. Heyland suggested that under "right, title, and interest this project could move forward; however he would have to get input from the Town's legal counsel regarding the Planning Board's position when they are made aware that a proposed project is part of a condominium association; and the question comes up as to whether or not a proposed project conforms to that association's rules. He agreed that it may be outside the scope of the Board, however he expressed unease moving forward until that question has been resolved.

Mr. DeHart expressed his frustration that any member of a condominium association can make a phone call to the Land Use Office and use the Planning Board to do the association's work. He stated that this is not correct. Mr. DeHart stated that this has not been an issue with other applications, and that the Board should do things the same way, every time, for every applicant and that in this instance the Board is overreaching.

Mr. Heyland reviewed Article 6.6.C.3.D of the Ogunquit Zoning Ordinance which states that:

"Right, Title or Interest. Verification that the applicant has sufficient right, title or interest in the property by deed, purchase and sales agreement, option to purchase, or some other proof of interest. A copy of the most recently recorded deed shall be provided with a copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently effecting the property."

Mr. Heyland suggested that "other encumbrances" on a property might be linked to condominium restrictions; and neither he nor the Board knows if that applies to this property. He asked if it would be difficult to get a letter from the Condominium Association stating that there is no problem with this proposal. Mr. Heyland also stated that every condominium document he has ever looked at had some level of restrictions; and he isn't comfortable suggesting the Board should pass by this question.

Mr. DeHart responded that the submitted survey shows the encumbrances. He also asked how the applicant can get a letter of approval which shows 50% and 50%. He (Mr. DeHart) has submitted the encumbrances via the plan; and it is not the Planning Board's job to settle this dispute.

Mr. DeHart argued that he had a meeting with the Code Officer, and after that meeting the telephone calls came in sparking discussion. He added that authorization from the Condominium Association is not on the Site Plan Review Submission Checklist.

Mr. MacLeod stated that the Zoning Ordinance Article 6.6.C.3.D refers to “right, title, and interest”. He added that many condominium associations have restrictions on external changes to a building. Mr. MacLeod agreed that the Board does not know if this specific association has such restrictions.

Mr. DeHart challenged that it is not the Planning Board’s place to find out.

Mr. MacLeod hypothesized that if the Planning Board approves this application; and the condominium association then comes forward and says “you can’t make these changes without the association’s approval”, the association could file a law suit against the Town challenging the Planning Board’s Decision.

Mr. DeHart responded that if the Board denies the application based on this issue the Applicant could file a law suit against the Town. He reiterated that it is not within the Planning Board’s authority to make this decision.

Mr. Heyland added that he will be asking for the same information at the Building Permit Application stage; and even if the Planning Board approved the project he (Mr. Heyland) might not be able to issue a building permit without the association’s approval.

Mr. Wilkos reminded everyone that this meeting is only to find the application complete and any discussion regarding approval at this point is premature.

Mr. Wilkos also reminded everyone that the Planning Board depends on the Code Enforcement Officer to help interpret the Ordinance.

Mr. MacLeod added that without a deed the Board can’t really determine if there are any “*deed restrictions, easements, rights-of-way, or other encumbrances currently effecting the property*” as required under Article 6.6.C.3.D.

Mr. DeHart responded that he was assured that the deed reference on the survey was sufficient.

Mr. Heyland responded that when he meets with an applicant to review the submission checklist; and he finds required material has been submitted he knows that the Board may ask for additional information. Also; when an application is submitted abutter notification letters are sent out; and abutters often contact his office and provide information he was unaware of at the time the application was submitted. Additional information comes to light throughout the review process. Mr. Heyland suggested the Board has to look at additional information from abutters. He is required to forward newly submitted information to the Planning Board; it would be a disservice to the Town to do otherwise.

Mr. DeHart asked for the proof that some abutter provided additional information.

Mr. Heyland asked Mr. DeHart if he was willing to say for the record that he has reviewed all the condominium documents and everything is ok.

Mr. DeHart responded that the applicant absolutely can expand within the footprint of the building.

Mr. Heyland suggested that if the Planning Board is comfortable with the Applicant's statement that the proposal complies with the condominium association rules, they can move forward. It is up to the Board.

Ms. Freedman asked why the Board didn't know about this problem before now.

Mr. Heyland responded that this issue came to light after he checked the "submitted" box on the checklist and after he prepared his memo to the Board. This information came in as the result of abutter notifications.

Mr. DeHart stated that this should happen at the Public Hearing.

Mr. Wilkos asked if there was a deed Mr. DeHart could submit.

Mr. DeHart responded that the deed reference is on the plan.

Mr. MacLeod read from Article 6.6.C.3.D which states that "*A copy of the most recently recorded deed shall be provided with a copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently effecting the property*".

Mr. MacLeod stated that the Board doesn't have this item.

Mr. DeHart responded that the Code Enforcement Officer checked off the box on the Submission Checklist which states that the deed reference on the plan was OK.

Mr. Wilkos noted that the Ordinance states that a deed is required.

Mr. Heyland asked if there is something missing in the documents, can the Board still ask for it, even though he (Mr. Heyland) checked the box saying what was submitted is enough for the Board to review. He noted that the Board constantly asks for additional information.

Mr. DeHart responded that he could have printed out the deed; and he agreed to provide it the next day. He expressed his frustration that the application will have to be tabled and lose two weeks.

Mr. Heyland responded that the deed reference on the plan does confirm "right, title, and interest" and that the applicant is the owner of the subject property. However the issue of condominium restrictions still remains.

Mr. DeHart asked where in Article 6.6 it says that the applicant has to provide condominium documents or confirmation that the proposed project falls within the condominium rules. He stated that he would provide the condominium documents; not a letter from the association.

Mr. Heyland stated that prior to issuing a building permit he will ask for a letter from the condominium association granting approval for the project. For five years this has been his policy for every application involving a condominium association. He assumes Mr. DeHart will be asking where in the ordinance it says he (Mr. Heyland) can ask for this.

Mr. Wilkos summarized that the Board needs to have a deed and Mr. DeHart has agreed to provide it along with the condominium documents.

Mr. Heyland added that the Board will need to review the condominium documents and make a determination as to whether or not the proposed project violates them and where the Board will go from there.

Ms. Bevins suggested the applicant submitted condominium approval the last time he was before the Board

Mr. DeHart disagreed.

Ms. Bevins noted that there was a gentleman in the audience who says he has a copy of the condominium documents.

Mr. Wilkos responded that the Board doesn't have them and there isn't time to review them at this meeting. He suggested the public is welcome to submit material for the next meeting.

Mr. Heyland stated that if the Board asks for a deed and the condominium documents; it will be up to the Board to review the documents and determine whether or not they meet the Board's standards. It is not up him (Mr. Heyland) make that determination.

Mr. Wilkos asked why the Board can't get a letter from the condominium association. He stated that it isn't the responsibility of the Planning Board to review condominium documents.

Mr. DeHart responded that they don't have the authority to write a letter. He asked how the Board will decide if the condominium association president or the Applicant is correct. He suggested that if a condominium association member writes a letter saying 50% of the association is against the project, and the Applicant writes a letter saying that 50% of the association is for it, it would be impossible for the Planning Board to make a decision.

Mr. Heyland noted that he had asked for just such a letter from Mr. DeHart over a week earlier. He (Mr. Heyland) suggested that if the condominium documents really are 50% 50% and the Applicant provides a letter to the Board stating that, then the Board can move forward.

Mr. DeHart responded that he would give the Board a letter that says that; along with the language which states the applicant can expand, within the building footprint, anytime and without approval.

Mr. Wilkos summarized that Mr. DeHart would provide a letter from the Applicant and a letter from the condominium association, as well as a copy of the deed.

Mr. DeHart agreed.

Mr. Heyland also asked for a copy of the condominium documents and something which states that the Applicant has authority to write a letter in the association's name. He noted that most condominium documents give authorization to the president, vice president, secretary, etc.

Mr. DeHart again expressed his frustration that the Applicant is being asked for something, at a meeting, which he should have been asked to provide two weeks ago.

Mr. Wilkos stated that the Board needs the deed, this is required by the Ordinance. He suggested the Board should ask the Town Attorney if the Board should have a letter from the condominium association stating that the proposed work may be done.

Mr. Heyland agreed to contact the Town Attorney and ask her that question.

Mr. DeHart agreed, and added that this will set the precedent for all future applications.

At this time the Board continued its review of the Site Plan Review Submissions Checklist and found all other submissions, with the exception of Item 6.6.C.3.D, submitted.

Mr. DeHart agreed to submit a copy of the deed.

At this time the Board reviewed the Design Review Submissions Checklist and found all items submitted.

Mr. DeHart noted, on the elevations, which portions of the building will be visible from Shore Road.

Mr. Wilkos reviewed memos to the Planning Board from the Ogunquit: Police Chief, Public Works Supervisor, and Conservation Commission Chairman, none of whom expressed any questions or concerns regarding this application. The Town of Ogunquit Fire Chief stated that per NFPA 1 and NFPA 101 Life Safety Code the addition shall have an approved fire alarm system to include CO Carbon Monoxide detection; continuation of fire alarm system into new construction family room porch area.

Mr. DeHart agreed to the Fire Chief's requirements.

Mr. DeHart noted that there is a very short building window in Ogunquit so that construction noise doesn't offend people during the summer months. He noted that in other towns applicants meet with the planning office earlier in the process and get more input so that the person presenting at the meeting comes with as much information as they need. He acknowledged that it may expand the process timeframe.

Mr. DeHart agreed to provide the applicants deed prior to the next meeting.

It was noted that Mr. Heyland would contact the Town's attorney regarding the need for a letter from the condominium association.

Ms. Freedman Moved to Table the Application for RIVERSIDE MOTEL AND HOTEL / GEOFFREY SCIMONE – 50 Riverside Lane – Map 3 Block 100-G – SGD2. Design and Site Plan Review for a post 1930 structure. Application to construct a family room over existing deck, a bathroom over existing porch, and exchange an existing deck for grade level patio with minor expansion, pending submission, by the Applicant, of a deed; and the Code Enforcement officer obtaining a letter from the Town Attorney regarding the need for an authorization letter from the applicant’s condominium association.

FREEDMAN/HAYES

Mr. Wilkos called for discussion on Ms. Freedman’s motion. There being none he called for a vote:

Ms. Freedman Moved to Table the Application for RIVERSIDE MOTEL AND HOTEL / GEOFFREY SCIMONE – 50 Riverside Lane – Map 3 Block 100-G – SGD2. Design and Site Plan Review for a post 1930 structure. Application to construct a family room over existing deck, a bathroom over existing porch, and exchange an existing deck for grade level patio with minor expansion, pending submission, by the Applicant, of a deed; and the Code Enforcement officer obtaining a letter from the Town Attorney regarding the need for an authorization letter from the applicant’s condominium association.

FREEDMAN/HAYES 5:0 UNANIMOUS

Mr. Wilkos asked Mr. DeHart what he will do if the Town Attorney says that they need a letter from the condominium association.

Mr. DeHart responded that he will have it ready.

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland informed the Board that he would have updates to the Shoreland Zoning shortly and he suggested a workshop.

The Board scheduled a workshop to take place at 4:00 p.m. on February 12, 2018 regarding Shoreland Zoning Changes.

Ms. Freedman asked about Form Based Code.

Mr. Heyland responded that there are several very good informational websites and he offered to provide the links.

I. OTHER BUSINESS –

1. Discussion of Select Board Workshop.

The Board agreed that the following input would be presented to the Select Board at the February 19, 2018 Select Board Meeting:

1. Committee Membership:

- Do you have the right number of committee members and/or alternates to do your work?

The Board noted that it lacks one alternate member.

- Are membership requirements appropriate? (Residents only; allow residents of neighboring communities; etc).

The Board agreed that the residency requirement is appropriate; and that Planning Board members should be residents of Ogunquit.

- Are there certain skills sets that you'd like future members to have to round out the committee?

New members should attend training seminars offered by the MMA and SMPDC, etc. Potential new members should be informed before appointment that they will need to do so.

- Do you have ideas to retain and attract members?

Continue to encourage the public to consider service.

Let people know that the Board must abide by the Ordinance and State Statutes and not personal feelings.

Have a member of the boards and committees address the Select Board on a regular basis and explain what, and how they do what they do on those committees.

2. Is there any assistance you need such as staff support, a Select Board Liaison, collaboration with other committees, funding, other?

Work more closely with other boards and committees such as the ZBA, Conservation Commission, Shellfish Commission, and Historic Preservation. Express the Planning Board's desire to have representatives of these boards and committees attend Planning Board meetings.

Increase in the Land Use Office's line item budget for the services of the Town Planner (SMPDC).

Increase in the Code Officer's ability to liaison with the Town Attorney.

The Planning Board does not require a Select Board liaison.

3. Any problems/suggestions/ideas:

- Are there any issues, concerns, or obstacles that the committee is facing that hinder its ability to accomplish its work?

There is a very short seasonal construction window for construction. Is there a way to expedite applications which are sometimes stalled for minor technicalities.

Not enough workshops.

- Do you have ideas/suggestions that could improve the committee's ability to do its work?

It was agreed that the Planning Board is a good board comprised of independent members.

- Do you have ideas that you would like the Select Board to consider that could improve the Town?

Rescind the term limits policy.

J. ADJOURNMENT –

**Mr. Hayes Moved to adjourn at 7:30 p.m.
HAYES/MACLEOD 5:0 UNANIMOUS**

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Approved on February 12, 2018