

2. Further clarification for vegetation standards regarding removal of hazard trees, invasive species, etc.

Mr. Heyland noted that some of the proposed changes involve removal of language which matches language which the State removed from their standards. These changes were made for consistency.

Jay Smith asked for a comparison of the definition of Shoreland Zone with the language of Normal Highwater Line. He perceived them to be inconsistent.

Mr. Heyland agreed to look into this. He also noted that there have been several new definitions added to Article 2.

Jay Smith asked if the added definition of Wetland was helpful.

Mr. Heyland agreed that it may be redundant however it refers back to Freshwater Wetland and Coastal Wetland.

Mr. Heyland noted that he had the Shoreland Map available in case anyone wanted to ask about a specific property.

Mr. Heyland referred to Table 702.1 Land Uses which currently prohibits construction in the Stream Protection District (SP). Mr. Heyland summarized that in 2015 the town further regulated and extended some of the stream protected areas. As a result there are lots located on the Leavitt Stream which are unbuildable. A property owner came to him with a Building Permit application which he was required to deny because the entire lot was in the Stream Protection District. Under the current Ordinance property owners in this situation have no recourse. The proposed changes would provide an option to go to the Zoning Board of Appeals for a Variance, then they can go to the Planning Board for a Permit under full review, similar to a Site Plan Review, to develop the parcel. The proposed language in Note 12 (Provided that a variance from the setback requirement is obtained from the Board of Appeals) is identical to the State language.

There have been some comments as to whether this change lines up with the intentions of the changes enacted by the Town in 2015. Mr. Heyland noted that it will be up to the Town to decide which way it wants to go. The Town's regulations may always be stricter than the State's.

Mr. Wilkos summarized that construction of a single family home in the Stream Protection District is currently not allowed.

The proposed changes would be a two step process. The applicant would first request a variance from the Zoning Board of Appeals; and if granted, the applicant would then come before the Planning Board for Site Plan Review.

Jay Smith noted that Table 702.1 permits "Clustered or Planned Unit Residential Development" after Planning Board Subdivision Review. He pointed out that it might not be inconsistent to allow for a single family home where we already allow cluster developments in the "sacred" Stream Protection Areas.

Mr. Smith asked for the difference between a clustered or planned development and a single family home construction from a land use standpoint.

Mr. Heyland responded that he was unsure how well thought out the 2015 changes were with regard to individual properties. Cluster developments are where all the units are condensed leaving a large amount of open area. If that were to happen it is likely that the Planning Board would require the development to stay away from any streams. Mr. Heyland suggested there may not be any land, which would fit a cluster development, which is in Stream Protection.

Mr. Feldman noted that anything that goes through Subdivision Review requires the Planning Board to look at environmental impact; and the Board can put restrictions on a subdivision developer that they can't put upon an individual wanting a single family home building permit.

The proposed change would require a variance from the Zoning Board as well as review and scrutiny by the Planning Board; which would include issues such as environmental impact, erosion control, and stream protection under the Shoreland Zoning Regulations.

Mr. Heyland noted an increase in the Minimum Net Residential Area for properties which are both SLR and RP. As an example a 40k square foot lot would become legally non-conforming. This change would effect future splitting of such lots.

Mr. Smith asked for clarification of “tidal” as being ocean front.

Mr. Heyland agreed and added that non-tidal would be upland rivers, lakes, or ponds.

Mr. Smith asked if the proposed changes make things more restrictive in that it requires a larger lot for those properties in the RP and SLR.

Mr. Heyland agreed that some of these changes will effect people. This is only the first of many public hearings and it is his hope that people will come forward with any questions or concerns regarding specific properties.

Mr. Heyland continued to review the proposed Ordinance Amendments page by page; and the Board invited the public to come forward with questions as each item was discussed.

Mr. Smith noted that there is no minimum water frontage requirement for the Perkins Cove area, regarding piers, wharfs, and docks.

Mr. Wilkos asked about Permits from the Planning Board.

Mr. Heyland responded that this would involve shoreline stabilization, retaining walls, seawalls, revetments, etc. which may require a permit from the Planning Board as well as an NRPA Permit from the State.

Regarding vegetation removal and revegetation. Mr. Heyland reviewed proposed changes which involve: hazard trees definitions, storm damaged trees removal, and the introduction of more language regarding tree diameters, removal of tree stumps, possible requirement of licensed arborist prior to tree

removal, maintaining natural landscapes, invasive vegetation removal, submission of revegetation plans, and survival rate of plantings. These changes will be very helpful to the Code Enforcement Officer.

Mr. Heyland noted that the primary changes involve: nonconforming structures, 30% expansion rate, vegetation removal and replanting, and the ability of property owners to request a variance and permit to build in the Stream Protection Areas.

Bill Baker noted that the Conservation Commission has been working with the DEP and FB over the last few years on projects to clean up the water; and one clear suspect was the Leavitt Stream. He noted that making any changes to the voter approved restriction from construction within the 75 foot stream setback would not be a good thing. He asked that the proposed language be struck; and that the Stream Protection restrictions, which are stricter than the State's, stay in place.

Mr. Heyland responded that he needs direction from the public and the Board as to what they want to do with the Stream Protection questions. He noted that all the changes would need to go to the DEP and the Town Attorney for review, and ultimately the voters.

Mr. Feldman reiterated that it is up to the Board to discuss and give directions to the staff.

Joan Griswold from the Marginal Way Committee, noted that if more than three woody species are planted than they need to be three different species. She suggested this would be spotty and if only three plants are going in they should be the same species. Ms. Griswold suggested this requirement may be too restrictive for home owners and for the caretakers of the Marginal Way.

Mr. Heyland noted that the vegetation language came from the State, and he agreed that it could be modified.

Ms. Griswold asked about signage. She noted that the Marginal Way Committee may want to install an additional educational sign regarding vegetation, similar to the geology and wildlife signs already in place.

Mr. Heyland agreed that he would have to look at that separately. He suggested that the intent of the change might not address the Marginal Way signage; and that there are some exemptions which the Marginal Way might fall under.

Jerry DeHart noted that in 2015 when the Leavitt Stream protection was extended it effected two building lots which had not been built on. Those lots are part of the Windward Subdivision which went through the subdivision process. That process included all State approvals as well. The value of those two lots is effectively zero because they are now unbuildable. The proposed changes only give an opportunity for the property owners to go through a very extensive review process to obtain both a variance and a Planning Board Permit to build a single family home.

Mr. DeHart suggested that the voters in 2015 may not have been informed that they were changing two peoples' significant investments over something which had already gone through subdivision review. The DEP has not ever said that this portion of the Leavitt was a "stream". He asked that the proposed change be included for those two people who are at risk of losing their investments.

Jay Smith referred to the Ordinance definition of “Stream”:

A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams, as depicted on the most recent, highest resolution version of the national Hydrography Dataset available from the ~~edition of a~~ United States Geological Survey 7.5 minute series topographic map, on the website of the United States Geological Survey or the National Map to the point where the ~~body of water~~ stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream. (Amended 6-12-18)

The following additional water bodies, or portions thereof, also shall be considered as “streams,” for the purposes of this Ordinance:

High Rock Stream – Those portions above ground, as depicted on the Official Zoning Map.

Josias Branch - as depicted on the Official Zoning Map.

Leavitt Stream –As depicted on the official zoning map. (Amended 6/10/14 Effective 6/11/14)

Ocean Meadows Stream - as depicted on the Official Zoning Map.

Moody Pond and Moody Pond Outlet - as depicted on the Official Zoning Map.

North Village Stream - as depicted on the Official Zoning Map.

Quarry Stream - as depicted on the Official Zoning Map.

Mr. Smith asked if the extra streams are not included in the National Hydrography Dataset or if they are designated by the Town of Ogunquit. He suggested they are not, because of the notation “as depicted on the Official Zoning Map”. He asked if the “Streams” are recognized only locally or nationally.

Mr. Heyland responded that he was unsure if the entire length of the Leavitt was part of the National data set.

Bob Winn stated that the Leavitt Stream north of Jotham’s Lane is a blue line on a national geo map; which indicates that it is considered to be a “stream”.

Mr. Heyland responded that it is his understanding that the DEP was on site in the area of the Windward Subdivision and that they determined that this portion of the Leavitt Stream did not meet the DEP definition of a “Stream”. He added that it is up to the Town to determine whether or not it wants to regulate this section of the Leavitt, even if it is not defined as a stream by the DEP.

Peter Griswold asked what the Town is going to do about McMansions; and the impact of these huge houses on the Marginal Way. He also asked about peoples’ views being obstructed by the growth of trees; and the use of view easements.

Kirsten Ross suggested this is the first time people have heard about the stream protection change and she asked for more time for the audience to digest the information, unless the Board is going to base its decision on the few people who became aware of it at this meeting. Ms. Ross stated that the changes were presented as “nothing less strict” and the change to the Leavitt Stream is certainly less strict. She suggested that little changes erode protections away. Ms. Ross noted that she is a neighbor of the two properties in question.

Ms. Ross asked if the changes are being made for these two properties and if the changes will impact the entire Stream Protection District. She noted that the Windward Subdivision Review took place

prior to the current Shoreland Zoning Standards. Ms. Ross stated that the town voted separately to protect those streams and she asked if that vote has to be repealed separately. Can the currently proposed shoreland zoning changes be voted on as a single change? She asked that the proposed language be removed.

Mr. Wilkos noted that the last time the Shoreland Zoning Ordinance came up it was said that things were rushed.

Mr. Heyland responded that the Board could hold another workshop, it will then hold a Public Hearing. The next step is to send it to the Select Board which will hold several more public hearings. However it is up to the Board. Mr. Heyland noted that the changes are not mandated, this is an attempt to be proactive and keep up with the times. The DEP newsletter states that The Department strongly urges communities to amend their local ordinances in a manner that is consistent with current State law. DEP is not saying the Town has to comply with State standards however he (Mr. Heyland) suspects that at some point the Town will have to. Also, communities which do nothing may be open to appeals, whereas towns which do follow State recommendations may not be so vulnerable.

Mr. Heyland suggested the Board should vet the ordinance and put it forward to the voters.

Mr. Wilkos polled the Board members asking if they should hold another workshop.

The Board unanimously agreed that it should.

Mr. Hayes stated that he is very reluctant to “take property” until he knows the owners of those two lots are aware of what is happening. He would like to receive some input from those two property owners.

Rick Dolliver stated that a single family home can’t be built on one of these two lots, however cluster housing is allowable. He asked if those two lots couldn’t be combined for building 3 or 4 condominium cluster units. He suggested it seems strange that the town would alienate two house lots and allow cluster housing in the same place.

Mr. Heyland responded that it is a complicated question.

Mr. Wilkos adjourned the Workshop at 5:45 p.m.

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Town of Ogunquit
Recording Secretary

Approved on February 26, 2018