



Town of Ogunquit
Planning Board
Post Office Box 875
Ogunquit, Maine 03907-0875
Tel: 207-646-9326

**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
MINUTES**

**DUNAWAY CENTER MAIN AUDITORIUM
October 28, 2019**

REGULAR BUSINESS MEETING

A. ROLL CALL –

Members Present: Steve Wilkos (Chair)
Mark MacLeod (Vice-Chair)
Muriel Freedman
Jackie Bevins
Priscilla Botsford
Brian Aromando (1st Alternate)
Elaine Cooper (2nd Alternate)

Also Present: Scott Heyland, Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – October 16, 2019 Regular Business Meeting.

The Minutes for the October 16, 2019 Meeting were unavailable.

E. PUBLIC INPUT – For any matter not on this agenda.

Mr. Wilkos addressed the public. Mr. Wilkos reminded members of the public that all correspondence with the Planning Board needs to go through the Ogunquit Land Use Office. Members of the public should not contact individual Planning Board members regarding any active Planning Board Application.

Mr. Wilkos also noted that due to the November 11th holiday the next Planning Board Meeting would take place on Wednesday November 13th.

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

F. UNFINISHED BUSINESS –

- 1. FINDING OF FACT FOR Old Village Inn Real Estate Holdings LLC - 250 Main Street – Map 7 Block 69 – DBD – Site Plan and Design Review. Application to construct a new one story structure with rooftop deck to be used as a Type 2 Restaurant. Approved on October 16, 2019.**

The Findings of Fact for the above-note application were unavailable.

- 2. YORK HARBOR BUILDERS / SUNSET RIDGE SUBDIVISION – Sunset Ridge – Map 18 Block 3-1 – RR1 - Subdivision Sketch Plan Application. Application to develop a four lot subdivision.**

James Paolini, the Applicant, addressed the Board and noted that the Site Visit held earlier in the day seemed to go very well.

Mr. Wilkos reviewed the Town Attorney's response to the Board's inquiry regarding the impact of Court Case Bodack v. The Town of Ogunquit upon other Planning Board subdivision applications.

Attorney Costigan responded that: "The Bodack decision was specific to the matter before the court at that time. The only Board take-away from that decision is that the Planning Board must adhere to the ordinance provisions, particularly the more stringent provisions when a conflict in the Ordinance exists."

Mr. Heyland summarized that the Town Attorney's response means that the Board should refer only to the Town of Ogunquit Zoning Ordinance and apply the language in the Ordinance relative to traffic impact. He added that when there is a conflict between two Ordinance Articles the Board applies the stricter of the two. This is general legal language which is included in most ordinances.

Mr. Wilkos referred to correspondence from an abutter on Berwick Road who questioned development on that road which will utilize the Berwick Road Route One intersection which she stated is a "failed intersection".

Mr. Heyland responded that if an application meets all the standards in the Ordinance then that applicant has standing to present that application to the Board. Mr. Heyland added that he is unsure how this abutter knows that the Berwick Road Route One intersection is a "failed intersection". He is unaware of any official study which determined that this is a failed intersection.

Ms. Freedman suggested that there are at least three failed intersections in Town: Berwick, Agamenticus, and Shore Roads.

Mr. Heyland responded that he hasn't seen any official study which shows that Berwick Road is a failed intersection; and he would not want to depend on a ten year old traffic study from a previous application. It is up to the Board to require this applicant to provide a traffic study which shows the current status of the Berwick / Route One Intersection.

The Board held discussion as to whether or not the Town of Ogunquit should pay for an official traffic study of the intersections in town. It was determined that this is a subject for future discussion; and for this specific application the Board will decide at a later date whether or not this applicant will be required to provide a traffic study as it relates to this subdivision application and this specific intersection.

Mr. Aromando summarized that this application involves less than five lots which makes it a minor subdivision. This applicant could develop the project by building one house every five years which he may be forced to do in order for him get enough of a financial return rather than his paying for a full traffic study. Mr. Aromando suggested that the Planning Board may not be able to require the Town to pay for a full traffic study of multiple intersections. That question may have to go to the Select Board and ultimately the voters.

Mr. Wilkos responded that this application is not at the stage where the Board would require a full traffic study. However the Board may require the Applicant to provide a Trip Generation Report as part of the Preliminary Plan Stage; and the Board may at that time, or later, require a Full Traffic Study based upon what the Trip Generation Report reveals.

Mr. Heyland added that the first thing that needs to be determined is whether or not this subdivision is within one mile of the Berwick/Route One Intersection. If it is then the question of whether or not it is a failed intersection becomes more relevant. He reminded the Board that the Town Attorney has informed the Board that it needs to look forward and not backward with respect to the status of the intersection.

Mr. Wilkos referred to Article 6.2.13 of the Subdivision Regulations regarding Trip Generation Reports and he added that as part of this report the Applicant's engineer would include the distance between the Subdivision and the subject intersection.

Mr. Paolini stated that the parking doesn't meet the threshold for a traffic study; and the proposed subdivision is more than one mile away from the intersection.

Mr. Wilkos responded that the Board needs this information to be confirmed by a traffic engineer as part of an official report.

Mr. MacLeod referred to the following two articles in the Subdivision Regulations; things which will need to be included on the Preliminary Plan:

6.2.13. Estimate of Traffic Generated. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours...

6.2.14. Traffic Impact Analysis.

The requirement for a Traffic Impact Analysis will be determined by what the Trip Generation Report tells the Board.

Mr. Paolini responded that it was his understanding that the trips generated from his four house project do not meet the threshold for a traffic study requirement.

Mr. Heyland added that the Trip Generation Report will tell the Board exactly how far the entrance to the subdivision is from the Route One/Berwick Road intersection. He noted that whatever the Trip Generation Report says it does not close the door on the Board's requiring a full traffic study. It will be up to the Board to determine what it needs to reach its decision.

Mr. Wilkos informed the Applicant, that for his Preliminary Plan Submissions he will need to refer to Article 6 of the Subdivision Regulations. The Board will also require the Trip Generation Report to include the exact distance between the proposed subdivision and the Route One/Berwick Road intersection. He also informed the Applicant that the Board may, at any time, require a full traffic study.

Mr. Heyland suggested the Applicant may want to have a traffic engineer prepare the Trip Generation Report before he prepares the rest of the Preliminary Plan Submissions. This will give the applicant a clearer understanding of where he stands with regard to what he will need before moving forward.

Ms. Cooper asked for a few things as part of the Preliminary Plan Application Submission:

- A Clearer Narrative with more information;
- Better topographic map;
- Soil plan;
- CMP pass under rights.

Mr. MacLeod asked for more information regarding the preservation of natural resources on the site. He referred to Article 9.5.1; and he asked for a clearer understanding of which trees will be retained and which trees will be removed. Mr. MacLeod suggested a "no cut zone" around the wetlands.

Ms. Botsford asked for information on buffering along Berwick Road as well as delineation of no cut zones and whether or not individual trees will be posted as protected. She noted that several other subdivisions have agreed to mark the trees which are protected.

**Mr. MacLeod Moved to Find the Application complete for YORK HARBOR BUILDERS / SUNSET RIDGE SUBDIVISION – Sunset Ridge – Map 18 Block 3-1 – RR1 - Subdivision Sketch Plan Application. Application to develop a four lot subdivision.
MACLEOD/FREEDMAN 5:0 UNANIMOUS**

3. TOWN OF OGUNQUIT – 124 Beach Street – Map 7 Block 132 – SGD1. Site Plan Review and Design Review for expansion and renovation of existing bath house with reconfiguration of parking and drive aisles.

Stephen Bradstreet addressed the Board as the Applicant’s representative. Mr. Bradstreet noted that the Water District and Sewer District letters, which the Board required, have been submitted and he is asking the Board to find this application complete and schedule the Public Hearing.

Mr. MacLeod Moved to Find the Site Plan Review Application Complete for TOWN OF OGUNQUIT – 124 Beach Street – Map 7 Block 132 – SGD1. Site Plan Review and Design Review for expansion and renovation of existing bath house with reconfiguration of parking and drive aisles.

MACLEOD/BOTSFORD 5:0 UNANIMOUS

The Board scheduled a Site Visit for this application which will take place on Wednesday November 13, 2019 at 3:00 p.m.

Mr. Heyland asked the Applicant to do the following for the Site Visit:

- Flag the building corners;
- Flag the height of the ridgeline;
- Flag the new curb-line;
- Flag the location of the new isle width at the front of the building;
- Flag the location of the new double isle width;
- Flag the location of the parking spaces which will be lost due to the new construction.

The Board scheduled a Public Hearing which will take place on Wednesday November 13, 2019 at 6:00 p.m.

G. NEW BUSINESS –

1, REDWOOD RESORTS LLC / COLONIAL VILLAGE RESORT – 548 Main Street – Map 9 Block 85-86 – SLC. Site Plan Review Application for replacement of existing collapsed seawall.

Brandon Binnette, the Applicant’s representative, gave a brief overview of the proposed project. He noted that the existing seawall has collapsed and will be replaced with a new structure which will bring the seawall back to its original construction appearance.

Mr. Heyland reviewed his October 21, 2019 Memo to the Board.

Mr. MacLeod noted that the Dept of Marine Resources activity dates will have expired and he asked if the Applicant will need a new updated letter from DMR.

Mr. Heyland responded that they will. He asked the Applicant to obtain an amended DMR letter with new dates prior to the Public Hearing date.

It was noted that the Inland Fisheries Letter was sufficient.

Mr. MacLeod asked if the new wall will be 7' above grade.

Mr. Binnette responded that the existing wall is 7' tall which was the original elevation. They will bring the new wall back to the original 7' and there will be backfill added to the top of the sea wall.

Ms. Cooper asked if they will use DEP Certified construction techniques and contractors.

Mr. Binnette responded that they will be using DEP Certified Contractors to protect the salt marsh. Any disturbance to the salt marsh will be remedied to original or better condition. They will also use seeds/replanting to match the species of salt marsh vegetation already growing in the area.

The Board reviewed the Site Plan Submissions Checklist.

Mr. MacLeod Moved to Find the Site Plan Application complete for REDWOOD RESORTS LLC / COLONIAL VILLAGE RESORT – 548 Main Street – Map 9 Block 85-86 – SLC. Site Plan Review Application for replacement of existing collapsed seawall. MACLEOD/BEVINS 5:0 UNANIMOUS

The Board Scheduled a Site Visit which will take place on Wednesday November 13, 2019 at 4:00 p.m.

Mr. Heyland asked the Applicant to flag:

Grade elevation;
Limits of the length of the seawall.

Mr. Heyland asked if temporary docks will be used during construction.

Mr. Binnette responded that they will use temporary docks during construction.

Mr. Wilkos reviewed correspondence from a member of the public asking if the Shellfish Commission and the Harbor Master will review and give input on this application.

Mr. Wilkos asked the recording secretary to reach out to the Shellfish Commission and Harbor Master.

2. DAVID GIARUSSO / ANGELINA'S – 655 Main Street – Map 13 Block 49 – GBD2 – Site Plan and Design Review to replace a 20'7.5"x27' three season canopy with a new 20'7.5" x22'6" four season framed structure. Height of 15'9" will not change.

Jerry Dehart addressed the Board as the Applicant's representative. Mr. DeHart provided a summary of the proposed project.

Ms. Bevins asked if the new structure will be smaller than what is there now.

Mr. DeHart responded that it will be smaller.

Mr. Wilkos asked if there will be an increase in seating.

Mr. DeHart responded that there will not be any increase in seating.

Mr. Heyland reviewed his October 21, 2019 Memo to the Board.

Mr. DeHart informed the Board that he had a wet-ink survey which addressed the front of the building as well as the adjacent lot. It was his understanding that this would be compliant with a boundary survey and he asked the Board to accept a Waiver Request for Site Plan Review Submission Item 6.6.C.3.E – Standard Boundary Survey of the Parcel.

Mr. Wilkos noted that the Ogunquit Historic Preservation Commission reviewed this application on September 25, 2019 and that they issued a Certificate of Appropriateness.

Mr. Wilkos reviewed the Fire Chief's October 17, 2019 Memo to the Board.

Mr. DeHart acknowledged that he has agreed to all of the Fire Department's requests.

Mr. Wilkos reviewed the Public Works Director's October 17, 2019 Memo to the Board.

Mr. Wilkos asked for the setbacks in the GBD2.

Mr. Heyland responded that the required setbacks in the GBD2 are: 30' from the front, 15' to the side; or the existing building setback, whichever is less. In this case the existing building setbacks are 2'4 ¾" to the rear corner; and any new development on that line has to comply with that being the minimum setback. The existing building footprint is not perpendicular to the northerly lot line. Which is why the proposed new construction is stepped back.

Mr. DeHart explained that this is why they decreased the size on the front and side of the new structure; to comply with the minimum setbacks.

Mr. Aromando asked what "wet inked" means.

Mr. DeHart explained that in the past engineer/architect stamps were sometimes stolen and used on other drawings. Building Departments would require freshly stamped or "wet inked" stamps to prove the plan was a legitimate copy.

Mr. Heyland explained that the reason this application is before the board is because the front patio was covered with a temporary structure with no foundation. This application is for a full foundation with a structure above it.

Ms. Botsford asked if the Board needs to look at lot coverage; and if they need a full site plan in order to look at lot coverage.

Mr. Heyland responded that this will be up to the Board; and he noted that some information included on a Standard Boundary Survey is not included on this applicant's Site Plan and it will be up to the Board to decide whether or not what they have received is sufficient.

Ms. Botsford asked if there is a permit on file for the patio.

Mr. DeHart responded that the Applicant came to the Planning Board for review of the patio and temporary structure sometime prior to 2006.

Mr. MacLeod asked if the existing patio is a structure and thus considered part of the existing lot coverage.

Mr. DeHart responded that former Code Enforcement Officer Paul Lempicki required the patio to be at 3" elevation. This 3" elevation made the patio a structure.

Mr. MacLeod added that if the patio is considered to be a structure it will not increase the lot coverage.

Mr. Heyland agreed that if the patio is 3" above grade it is considered to be a structure, however he has not confirmed that the existing patio is in fact 3" above grade; and he has not made the determination that the existing patio falls under the definition of a structure.

Mr. DeHart reiterated that Mr. Lempicki determined this patio to be a structure.

Mr. Wilkos stated that it is important to this pending application for the Board to know whether or not the existing patio is a structure or not.

Mr. Heyland agreed and added that at this time he does not know.

Mr. DeHart responded that former Code Officer Lempicki categorized the patio as a structure.

Mr. MacLeod reiterated that if the existing patio is a structure the new project will not increase the lot coverage because the existing patio/structure is captured under the current lot coverage and the new structure will be located directly over it.

The Board reviewed the Design Review Submission Checklist.

**Mr. MacLeod Moved to Find the Design Review Application Complete for DAVID GIARUSSO / ANGELINA'S – 655 Main Street – Map 13 Block 49 – GBD2 – Site Plan and Design Review to replace a 20'7.5"x27' three season canopy with a new 20'7.5" x22'6" four season framed structure. Height of 15'9" will not change.
MACLEOD/BEVINS 5:0 UNANIMOUS**

The Board reviewed the Site Plan Review Submission Checklist.

Mr. DeHart asked the Board to accept and approve a Waiver Request for Site Plan Submission Item 6.6.C.3.E – Standard Boundary Survey of the Parcel. Mr. DeHart explained that the Site Plan which was submitted with this application very clearly illustrates that portion of the property affected by the proposed project. Preparation of a Standard Boundary Survey would cost the Applicant unnecessary money and time.

Mr. Wilkos asked the Board members how they feel about granting the requested waiver.

Ms. Cooper asked if the Site Plan will show the net area, frontage setbacks, and zoning standards for this parcel.

Mr. Heyland responded that the engineer did a good job of showing the setbacks for the affected area of this parcel. He added that a Standard Boundary Survey would include a block showing the lot area and dimensional standards for the zone the property is in; which this Site Plan does not include.

Ms. Bevins stated that the Board should have what they usually require.

Ms. Freedman stated that she would accept the waiver.

Mr. MacLeod stated that he feels a Standard Boundary Survey should be on file; and he would be willing to accept the Waiver if the patio is determined to be a structure thus making the question of lot coverage a non-issue.

Ms. Botsford responded that if the Board requires a Standard Boundary Survey from every other applicant then she would want one from this applicant as well.

Mr. Aromando asked what is missing from the Site Plan that would be on a Standard Boundary Survey; and if that missing information is needed for the Board to effectively review this application. Mr. Aromando noted that the Applicant isn't asking the Board to call the submitted material a Boundary Survey, he is asking the Board to accept the submitted Site Plan and waive the requirement for a Standard Boundary Survey.

Mr. Aromando added that if he is able to review the submitted material and come to the same decision he would from a Standard Boundary Survey; and if there is a valid reason to waive the submittal of the survey he has no problem waiving that submission requirement. As long as he can stand on what was provided and know that it applies to the Ordinance.

Mr. Aromando noted that the primary issue with not having a Boundary Survey relates to coverage. He added that the granting of a waiver will allow the Board to find the Application complete. He needs to look at what's presented with the application, what's required by the Ordinance; and ask if what has been submitted conforms.

Mr. Aromando noted that the Applicant is basing his waiver request on time constraints and financial burdens and he (Mr. Aromando) would consider those reasons to be valid.

Mr. Aromando stated that the only thing he can see that is missing from not having a Standard Boundary Survey is the coverage calculations and those can be obtained from the Applicant without the need for the Survey.

Ms. Botsford suggested the Code Enforcement Officer doesn't have all the information he needs to adequately advise the Board with regard to this parcel's specifics.

Ms. Cooper asked if the existing patio is a poured foundation.

Mr. DeHart responded that it is.

Mr. MacLeod suggested that the Board has three options open to it:

1. Table the Application until the Code Enforcement Officer can visit the site and make a determination as to whether the existing patio is a structure or not;
2. Grant the Waiver and conduct a Site Visit and then base a final decision for approval on what the Board sees;
3. Deny the Waiver and require the Applicant to provide a full Standard Boundary Survey.

Mr. DeHart suggested that it would be inappropriate for a current Code Enforcement Officer to override or change a determination made by a previous Code Officer. If that were to happen there could be changes made to existing condition determinations all the time.

Ms. Botsford asked if the Land Use Office has a copy of the permit from when the patio and temporary structure were built.

Mr. Heyland responded that he doesn't believe that there is a copy of that permit in the files.

Mr. DeHart added that both the patio and the temporary structure were constructed with valid permits sometime after 2005.

Mr. MacLeod added that he is happy to grant the waiver as long as they know that the patio is a structure and is considered as part of the current lot coverage.

Mr. Heyland added that even if the Board waives the requirement for a Standard Boundary Survey the applicant will have to provide some of the information the Board is talking about on the Final Site Plan: building footprint, setbacks, and any other information the Board wants included on the Final Site Plan.

Ms. Cooper agreed that she would be willing to waive the Standard Boundary Survey as long as all the information is included on the Final Site Plan.

**Mr. MacLeod Moved to Grant the Submission Waiver request for Site Plan Submission Item 6.6.C.3.E – Standard Boundary Survey of the Parcel for GIARUSSO / ANGELINA’S – 655 Main Street – Map 13 Block 49 – GBD2 – Site Plan and Design Review to replace a 20’7.5”x27’ three season canopy with a new 20’7.5” x22’6” four season framed structure. Height of 15’9” will not change.
MACLEOD/BEVINS 4:1 (Mr. Wilkos Dissenting)**

With the Granting of the Waiver the Board reviewed the Site Plan Submissions checklist.

**Ms. Freedman Moved to Find the Site Plan Application Complete for GIARUSSO / ANGELINA’S – 655 Main Street – Map 13 Block 49 – GBD2 – Site Plan and Design Review to replace a 20’7.5”x27’ three season canopy with a new 20’7.5” x22’6” four season framed structure. Height of 15’9” will not change.
FREEDMAN/BEVINS 5:0 UNANIMOUS**

The Board Scheduled a Site Visit which will take place on Wednesday November 13, 2019 at 2:00 p.m.

Mr. Heyland asked the Applicant to flag the locations of the building corners

The Board Scheduled a Public Hearing which will take place on Wednesday November 13, 2019 at 6:00 p.m.

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS – None

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 7:55 p.m.
MACLEOD/BOTSFORD**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

APPROVED ON NOVEMBER 13, 2019

Notes:

- *These minutes are not a transcript.*
- *Copies of all referenced documents will be maintained in the Application packet on file with the Land Use Office.*
- *All Planning Board meetings are video archived, and may be viewed for one year after the meeting date, on the Town of Ogunquit’s website at www.townofogunquit.org.*