



Land Use Office
Post Office Box 875
Ogunquit, Maine 03907-0875

**OGUNQUIT ZONING BOARD OF APPEALS
MEETING MINUTES
FEBRUARY 1, 2018**

CALL TO ORDER - 4:00 PM

Members Present: Jay Smith (Term Expires 2020)
Doug Mayer (Term Expires 2019)
Mike Horn (Term Expires 2018)
Jerry DeHart (Term Expires 2020)
Carole Aaron* (Term Expires 2018)
Glenn Deletetsky** (Term Expires 2018)

Members Excused Peter Griswold (Term Expires 2019)

* 1st Alternate ** 2nd Alternate

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer

Mr. Smith noted that a quorum was present; and the Board would follow the agenda as posted.

Mr. Smith noted that due to Mr. Griswold’s absence Ms. Aaron would be a full voting member for the duration of this meeting.

ACCEPTANCE OF MINUTES – January 11, 2018

**Mr. Mayer Moved to Accept the Minutes of the January 11, 2018 Meeting as Submitted with the exception of Article X which will be discussed at this meeting.
MAYER/HORN 5:0 UNANIMOUS**

OLD BUSINESS –

1. By-Laws: review, amend, re-adopt.

The Board reviewed the By-Laws and agreed to replace “The Board” with “ZBA”.

Mr. Smith noted that the primary focus of this meeting is the proposed language for Article X. Which was missing from the existing document. He informed the Board members that he reviewed past By-Laws and discovered that Article X was missing from all of them. With the insertion of Article X – Decision, the Roman Numerals will be brought back into conformity.

The Board reviewed the proposed language for the insertion of Article X as proposed by Chairman Smith. It was noted that the current By-Laws did not contain an Article X which should cover Decisions.

Mr. Horn noted that he reviewed the Maine Land Use Laws “Decisions”. It was agreed by the Board members that the language proposed by Mr. Smith was more extensive and very similar to the Maine Land Use Laws.

Mr. Smith noted that he obtained the proposed Article X language from the Cities of Westbrook and Wells ZBA By-Laws and Process Rules. He asked if the proposed language was “overkill” and if it was consistent with the ZBA’s standards of operation, and if it was in accord with the Zoning Ordinance and State Laws. It was agreed that it met all those standards.

Ms. Aaron asked if electronic communication (e-mail) should be included as a means of dissemination of the Decision.

The Recording Secretary explained that the original Decision document is sent to the Applicant via U.S. Certified Mail and a copy is sent via e-mail when an e-mail address has been provided. It was also noted that the Town no longer keeps paper copies of the files.

It was agreed that e-mail would not be added to Article X Subsection D.

It was noted that the By-Laws must reflect and be guided by the Comprehensive Plan; although the Comprehensive Plan is not “Law” it is an overview guiding document for the direction of the Town.

**Mr. DeHart Moved to accept proposed Article X Subsections A, B, C, D, and E as submitted, and the proposed By-Law Amendments as written.
DEHART/MAYER 5:0 UNANIMOUS**

NEW BUSINESS – None

CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland noted that the Planning Board would be holding a workshop to update the Shoreland Zoning Ordinance on February 12th and that the ZBA is encouraged to attend. He noted that the proposed changes are not State mandated however it is strongly recommended that the Town of Ogunquit adopt them.

Mr. Heyland stated that the changes will be reviewed at Planning Board Workshops and a Public Hearing; they will then go to the Select Board for further workshops and Public Hearings.

Mr. Smith suggested that these changes may have an impact on what some people can, and cannot, do with their property.

Mr. Horn pointed out that one of the changes would allow property owners to come to the ZBA for a variance to build in the Stream Protection Zone. Currently building in the Stream Protection Zone is not permitted and there is no avenue for property owners to appeal this restriction.

Mr. Heyland agreed. He summarized that property owners in the Stream Protection Zones currently have no relief from the restriction on building there. The proposed changes, which are in line with State recommendations, would allow the property owner to come before the ZBA and request a variance to build a single family home in the Stream Protection District. If the

variance is granted the Applicant would then have to go before the Planning Board for a Site Plan Review, which would need to be approved before he (Mr. Heyland) could issue a building permit.

Mr. DeHart noted that there are two properties on the section of the Leavitt Stream which runs through the Windward Subdivision. That section was not designated as a "Stream" by the DEP, however the Town Ordinance does call it a stream which prohibits these two property owners from building a single family home on their lots. The proposed Ordinance change would give these two individuals the ability to come before the ZBA for a variance. He noted that these property owners purchased lots in an approved subdivision; and the restrictions preventing them from building were put in place after they purchased their lots.

It was suggested that if the ZBA members were to participate in the Workshop, and because some of the ZBA Members are members of the Conservation Commission, there may be an appearance of a conflict of interest in hearing future appeals involving this issue. It was agreed that this issue would be handled on a case by case basis.

Mr. Smith noted that determination of a conflict of interest does not become germane until a case is before the ZBA. At that time any member may say he/she has a conflict of interest and the ZBA members would vote on whether or not to recuse that member.

Mr. Smith added that conflict of interest involves a pecuniary interest; bias involves an opinion which might effect that members' ability to hear and make a fair and impartial decision.

Mr. Heyland summarized that some of the changes are more, and some are less, strict than the current Ordinance. Each property would be effected differently and would have to be looked at individually.

Mr. DeHart added that most towns have adopted the proposed changes, and that it may be more restrictive for those properties directly on the water.

OTHER BUSINESS –

Mr. Smith informed the Board members that the Select Board has asked the ZBA members to appear before them and share information about Board procedure etc. It will be a 30 minute discussion about the status of the ZBA and what it may need for resources to assist them in their work.

Mr. Smith informed the Board that the State of Maine has determined that remote participation of meetings is not allowed.

ADJOURNMENT –

Mr. Horn Moved to Adjourn at 5:00 p.m.
HORN/AARON 5:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Recording Secretary

Approved on March 1, 2018