



Zoning Board of Appeals  
Post Office Box 875  
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**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
APRIL 4, 2019**

**CALL TO ORDER - 4:00 PM**

Members Present: Jay Smith, Chair (Term Expires 2020)  
Jerry DeHart, Vice Chair (Term Expires 2020) Arrived at 4:15 p.m.  
Peter Griswold, Secretary (Term Expires 2019)  
Doug Mayer (Term Expires 2019)  
Mike Horn (Term Expires 2021)  
Carole Aaron\* (Term Expires 2019)

Unexcused Absence: Glen Deletetsky\*\* (Term Expires 2019)  
\* 1<sup>st</sup> Alternate \*\* 2<sup>nd</sup> 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. DeHart’s absence Ms. Aaron would be a full voting member for the duration of this meeting.

**ACCEPTANCE OF MINUTES – October 18, 2018**

**Mr. Griswold Moved to Accept the Minutes of the October 18, 2018 Meeting as Submitted.  
GRISWOLD/AARON 5:0 UNANIMOUS**

**OLD BUSINESS – None**

**NEW BUSINESS –**

With Mr. DeHart’s arrival at 4:15 Ms. Aaron stepped down as full voting member and resumed her alternate status.

Mr. Mayer noted that the Agenda indicates two appeals for the same application. He asked if the Board would be hearing both appeals.

Mr. Smith responded that it is his intent to hear the Administrative Appeal, under Article 5.2.A, first.

- 1. LAFAYETTE OGUNQUIT LLC – 135 Beach Street – SG1 – Map 7 Block 87-89.  
Administrative Appeal and Request for a Variance:**

**Administrative Appeal Under Article 5.2.A – Appeal of Code Enforcement Officer’s January 25, 2019 denial of a Building Permit to construct an elevator for handicapped access at the Norseman Resort.**

Mr. Smith confirmed that there was a quorum; and that there are no conflicts of interest.

Attorney John Bannon from Murray, Plumb, and Murray addressed the Board as the Applicant’s representative.

Attorney Bannon stated that there was a failure to notify the DEP before the deadline. Attorney Bannon and Mr. Heyland agreed that the Applicant would not argue the Variance Request at this Hearing. The Applicant would only argue the Administrative Appeal at this time.

The Board agreed.

**Mr. Smith Moved to Bifurcate the two Appeals and only deal with the Administrative Appeal under Article 5.2.A at this Hearing.  
SMITH/GRISWOLD 5:0 UNANIMOUS**

Attorney Bannon introduced the other individuals present who might speak on behalf of the Applicant:

Katie Kelly - General Manager of the Norseman;  
Mike Cady - Head of maintenance for the Norseman;  
Geoff Aleva from Civil Consultants.

Mr. Bannon noted that this application is not an appeal for a denial of a Building Permit. The remedy for this applicant is that the application will go to the Planning Board for Site Plan Review if it this Board grants appeal.

Mr. Bannon asserted that the Code Enforcement Officer erred in his determination that a .3% increase in the building coverage on this lot, for the construction of a 200sf elevator for handicapped access to the 2<sup>nd</sup> floor of the hotel, would increase the existing nonconformity of the building coverage on the property.

The Code Enforcement Officer applied the 15% building coverage standard from Section 9.8.D of the Zoning Ordinance; and was not applying the Shoreland Building Coverage Standard which is the proper code to apply.

Mr. Heyland added that outside of the Shoreland Zone the only things included in “building coverage” are buildings as defined in the Ordinance. In the Shoreland Zone the definition is different and includes buildings and other things such as parking lots and other non-vegetated surfaces. Thus, the definition of “building coverage” in the Shoreland Zone is considerably stricter than that used for non-Shoreland zones. It is also mandated by the State.

Mr. Bannon argued that when applying the Shoreland Zone Standards the addition of the elevator would not increase the existing non-conformity.

If the Board agrees that the Shoreland Building Coverage Standards apply, the addition of a 200sf elevator would not cause any increase in the existing non-conformity. Coverage would remain at 90.6% and the project may go forward.

Mr. Bannon noted that the proposed project is in the Shoreland Zone /SG1 Zone on Ogunquit Beach and is subject to the Shoreland Zoning Definitions.

Attorney Bannon reviewed his application submittals (*which will be maintained in the Applicant's Zoning Board of Appeals File*). He argued that the proposed location of the elevator's footprint is already non-vegetated and the addition of an elevator will not affect the lot coverage.

As an example Mr. Bannon suggested that if a building site is changed; and there is no change in the amount of surfaces which need to be included when computing building coverage; then there is no increase in non-conformity.

Mr. Bannon noted other sections of the Ordinance which "provide back-up": Section 3.1.C which controls general maintenance or repair to non-conforming structures.

Mr. Bannon noted the American's Disabilities Act; and that the purpose of the proposed elevator is to provide access to the 2<sup>nd</sup> floor guest rooms to people with disabilities. He added that the Applicant has no profit motive by adding the elevator; and it will not increase foot or vehicle traffic.

Section 3.3.C.4 states that the addition of steps does not increase the non-conformity. Mr. Bannon argued that there is no functional difference between the proposed elevator or steps.

Section 3.5 and its interaction with Section 9.8 cover TA4 uses; and deal with non-conforming TA4 uses. Mr. Heyland seems to base his decision upon his interpretation that the application does not meet the standards of Section 9.8.D and thus there is no relief under Section 3.5. Mr. Bannon disagreed; and noted that Section 3.5 allows for several options and reasons for expansion of a non-conforming TA4.

Mr. Bannon argued that with no increase in non-impervious surface, there is no increase in the nonconformity and the Code Enforcement Officer's interpretation and decision should be overturned; and the project should go to the Planning Board for Site Plan Review.

Mr. Griswold asked why the applicant is only now coming forward with this plan.

Katie Kelly responded that she also manages a resort in Wells Beach and it took her \$150,000 and over 10 years to work through the DEP requirements; and get permission to install an elevator on the Wells property in 2013.

The Applicant purchased the Norseman in 2002 and immediately put the addition of an elevator on a back burner while they worked on the Wells Beach Elevator Project. It is important to the property owners to provide all their guests with the ability to utilize the entire property and for handicapped guests to be able to stay in the more desirable 2<sup>nd</sup> floor rooms.

Mr. Smith stated that the issue on the table is whether there has been an error in judgment by the Code Officer.

Mr. Mayer asked if non-ADA guests will be able to use the elevator.

Ms. Kelly responded that they would, she wouldn't discriminate against anyone; and she confirmed that the proposed elevator will be located over existing pavement.

Mr. Mayer argued that if the pavement has to be removed to create a foundation to support the elevator; there will be sand under that pavement; which will bring the question back to the definitions of footprint and foundation.

Mr. Bannon responded that the removal of pavement and its replacement with another impervious surface doesn't affect how the definition of building coverage is applied.

Mr. Mayer asked for confirmation regarding which district the elevator will be located in. He noted that the line for the RP appears to bisect the inner parking lot.

Mr. Bannon disagreed; however even if the elevator is in RP the argument is the same.

Mr. Mayer argued that the project is in RP not SG1.

Mr. DeHart asked about the law regarding work in the dunes.

Mr. Bannon responded that the law allows for the construction of elevators in the frontal dunes if the elevator is built on an existing impervious surface.

Mr. Smith confirmed that the subject lot is a legally non-conforming lot with a legally non-conforming structure upon it.

Mr. Aleva confirmed that, on the Town Map, the subject parcel is labeled as being in the SG1 Zone. He added that the plan the Board was given was done in 2002 by another firm and he is unsure why the RP Zone is indicated on it. However the Town's official map shows the entire property being in the SG1; and he goes by the Town's map.

Mr. Griswold asked if it would be possible for the Norseman to put a floor over the parking lot similar to what was done at Huckleberry. Using Mr. Bannon's argument the Applicant could come back asking to put another level over the existing parking lot.

Mr. Bannon responded that he can't answer that question; and the Board is here to look at the project before it now not some future hypothetical proposal.

Mr. Smith invited Mr. Heyland to address the Board.

Mr. Heyland stated that he has no opposition to elevators or ramps; in fact he often requires them. For this project he sees the proposal as being a building that contains an elevator within it. Initially the applicant wanted to have the elevator go all the way to the roof, where they wanted to install a rooftop deck. When he informed them that they could not do that because the elevator

would have been higher than 35 feet; they amended the project so that the elevator would run from the ground level to the first and second floor only.

Mr. Heyland agreed with most of Mr. Bannon's comments; however it is the property use as a hotel that causes the problem.

When he reviews an application he goes through a review process where he asks himself:

What is the use here? The answer is that this property's use is for a TA4 Hotel/Motel which is a non-conforming use.

Article 3.5 of the OZO specifically addresses hotels and allows for the expansion and alterations of the hotel. Article 3.5 sends things to Article 9.8 which allows for expansions and alterations as long as all the provisions of Article 9.8 are met.

Mr. Heyland asserted that the proposed elevator structure meets the definition of a "building" – it has a roof and walls etc.

Section 9.8.D says that buildings shall not cover more than 15% of the lot.

Mr. Heyland went on to explain that 9.8 says that the requirement shall be complied with by all transient accommodations Type 4; it doesn't care if the project is in the Shoreland Zone or not.

In 2007 the voters decided that buildings would not cover more than 15% of a lot. It isn't about other types of lot coverage; it's about buildings and does not allow for an exchange of asphalt area for the roof of a building – the proposed elevator structure meets the definition of a building.

Mr. Heyland disagreed with Mr. Bannon's comparison between stairs and an elevator. The proposed elevator is a two story tall building with an asphalt pitched roof which is very different from a set of steps.

Mr. DeHart asked about the Applicant's Exhibit A –Mr. DeHart asked Mr. Heyland if he would give the applicant a permit for a 36' ramp under Article 3.5.4?

Mr. Heyland responded that he can't really answer without all the information. However he probably would not.

Mr. Heyland noted that he was finished with his presentation.

Mr. Bannon stated that the Applicant is allowed to rebut comments; and he asked to be heard.

Mr. Bannon argued that the only definition which can be applied to section 9.8.D is "building coverage"; not "building".

Mr. Heyland responded that if a new project was presented to him, he would look at the lot coverage to see if it met the total coverage test. If the project involved a hotel he would then look at the building coverage to be sure the building coverage didn't exceed 15%. There are two separate tests; and one is specific to hotels which has its own limitation to 15%.

Mr. Smith asked if anyone else wished to be heard. There was no one and the public portion of the meeting was closed at 5:24 p.m.

Mr. Smith summarized that the case involves a legally non-conforming lot with a legally non-conforming building on it; and the key point for discussion is that this case involves a motel which is not an allowed use; however the Norseman is grandfathered as to its use.

Mr. Smith suggested the Board must apply this strictest of standards to an appeal in the shoreland zone. The Board may affirm, reverse, or modify the Code Enforcement Officer's decision.

Mr. Smith reviewed Article 1.5 of the Ordinance; and he noted that when there is any ambiguity the stricter standard will govern.

Mr. Smith referred to Article: 3 and he noted that all of the five criterion must be met. He suggested that an elevator falls under the standard of Article 3.5.

Mr. Smith then suggested the case must be considered under Article 9.8 as referred to by Article 3.5.

Mr. Smith stated that the Board has the ability to interpret the standards of the Ordinance and what the intent of the voters was when it was approved.

Mr. Smith suggested the divergence between the Code Enforcement Officer and the Appellant can be found in Article 9.8.D. However he believes that it is the Town's objective to make it difficult to build in the Shoreland Zones or to exacerbate a non-conforming use.

Mr. Horn agreed that the intent of the Ogunquit Zoning Ordinance is to limit, and even prevent, expansion of non-conforming uses.

Mr. DeHart disagreed that the Norseman is "an illegal building" he asserted that it is a legally non-conforming building.

Mr. Mayer again brought up his concern about replacing a portion of a paved parking area with an elevator foundation.

The Board reviewed the difference in an exchange of coverage type: parking pavement vs. a structure such as an elevator foundation. It was noted that coverage is comprised of a variety of factors: parking lots, buildings, and other non-vegetative surfaces.

Mr. Smith suggested that if the Board only had to consider swapping out one impervious thing for another impervious thing there would be no problem. However as the Board looks at other Ordinance language which becomes more and more restrictive; until they get to Article 9.8.D which is very restrictive regarding increasing a building footprint. Mr. Smith suggested that the construction of the elevator increases the footprint.

Mr. Smith noted that:

One argument is that there is no increase in the “coverage”.

The opposite argument is that there is an increase in the “building portion of the coverage”.

Mr. DeHart disagreed that the voters’ intent was to prevent swimming pools and other accessory uses. He suggested that the elevator is less of a structure; and it is more comparable to a staircase.

Mr. Griswold referred to the Shoreland definition of coverage and noted that there would be no question the elevator could be approved. However by going through the ordinances down to Article 9.8 he believes the Code Enforcement Officer was correct in his interpretation.

Mr. DeHart agreed that the intent is to prevent excessive building coverage over existing paved areas; however in this case the issue is helping people with disabilities have access to all areas. Mr. DeHart suggested that the Zoning Ordinance does not contain ADA Access language. He stated that he has a more difficult time with the Administrative Appeal approach than he would have considering a request for a variance based upon ADA considerations.

Mr. Smith reminded the Board members that the question they need to address is whether or not the Code Enforcement Officer erred.

Mr. DeHart responded that he does not believe an elevator is a building; and he believes Mr. Heyland interpreted that portion of the ordinance incorrectly. Mr. DeHart noted that another Code Officer might interpret the same code differently.

Mr. Mayer stated that is his opinion that the crucial language is Article 9.8; and that the Code Enforcement Officer interpreted it correctly and his decision should be upheld.

**Mr. Griswold Moved to Uphold the Code Enforcement Officer’s Decision.  
GRISWOLD/MAYER 4:1 (Mr. DeHart Dissented).**

Mr. Smith confirmed that the Board has upheld the Code Enforcement Officer’s Decision.

**CODE ENFORCEMENT OFFICER BUSINESS – None**

**OTHER BUSINESS –**

Mr. Smith asked if the Board members were available to meet on the 2<sup>nd</sup> Thursday of each month instead of the 1<sup>st</sup> Thursday. The Board agreed that they could meet on the 2<sup>nd</sup> Thursday of the month.

This would require an amendment to the By-Laws.

The Recording Secretary agreed to provide a draft of amended By-Laws for the Board to consider and vote on at the May 2, 2019 Meeting.

Mr. Smith informed the Board members that the Annual Report for the Board is ready and will be submitted for publishing.

Mr. Smith reminded everyone that any member who has three or more unexcused absences from meetings may be removed from the Board.

Mr. Smith noted a recent training and strongly suggested that Board members attend at least one Zoning Board training seminar; particularly new Board members. It was agreed that this would not be a requirement included in the By-Laws; however attendance at one of these types of trainings, within the first year, is strongly recommended.

Mr. DeHart commented that this Board has a high level of addressing conflicts and or preconceptions and he would like to see this standard continue.

**ADJOURNMENT** –

**Mr. DeHart Moved to Adjourn at 6:25 p.m.**

**DEHART/MAYER 5:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy

Recording Secretary