

OGUNQUIT PLANNING BOARD REGULAR BUSINESS MEETING

August 8, 2011 6:00 p.m.

A. ROLL CALL –

The Roll was called with the following results:

Members Present: Tim Pinkham, Chair
Robert Coles, Vicechair
Craig Capone

B. MISSION STATEMENT - The Mission Statement was read by Mr. Pinkham.

C. MINUTES – June 27, 2011 Public Hearings and Regular Business Meeting.

The Minutes of the June 27, 2011 Meeting were Accepted as Submitted.

D. PUBLIC INPUT –

1. Resident Correspondence to the Board.

Mr. Pinkham read two letters from Ogunquit Residents into the record:

Letter signed by Robert Kinsman (14 Bittersweet Lane – Map 21 Block 7-5-632) and Jane Stevens (329 North Village Road – Map 21 Block 13), dated 25 July 2011:

“In 1977 the Ogunquit Planning Board granted Subdivision approval for Morton Hersom for the property then known as Sonoma Woods Subdivision. In 1989 Charles Maddox came before the Planning Board to split off a section of the original subdivision.

It has come to our attention that Mr. Maddox has seriously altered the Subdivision Plans without first returning to the Planning Board for its approval to amend the original proposal.

We are writing to you to request that you ask the Code Enforcement Officer to look into this situation and if necessary bring Mr. Maddox back before the Planning Board to explain on the record, the changes he has made and why.

As direct abutters of the property in question we are concerned about the implication to our enjoyment of our homes and the potential changes Mr. Maddox’s actions will have on our neighborhood. We would like to see an updated corrected plan of Mr. Maddox’s subdivision along with a properly done survey of his property; all filed with the Town so that we may review it and have a clear understanding of this subdivision.

We are also concerned that the Town has been aware of this particular problem for some time and that little action has been taken. That being said we ask the Planning Board Chairman to please read this letter into the public record, we also request the Board to instruct the Code Enforcement Officer to investigate, and report his findings to the Board along with his recommendations for correcting his situation.....”

Mr. Pinkham asked the Code Enforcement Officer if he had looked into this situation.

Mr. Lempicki responded that he is in the process of investigating and he would answer specific questions from the Board. He also noted the presence of the new owner of the above-noted lot.

Mr. Lockman noted that changes to a subdivision is an enforcement issue, and when Mr. Lempicki has completed his investigation and written to the owners, they may come back before the Board for an after-the-fact approval. However protocol does not allow the Planning Board to “instruct” the Code Enforcement Officer to take specific action.

Mr. Coles noted that there was a second letter, which Mr. Pinkham read into the record:

Letter from David Chaves (48 Bittersweet Lane – Map 21 Block 6-3-1), dated 29 July 2011:

“I would like to bring to your attention the condition of Bittersweet Lane. The existing culverts were replaced and the new culverts were not installed properly. This project has created chaos—trees uprooted, cut back, pushed over, half standing. In fact, at the end of my driveway, there is a culvert that was torn up and a new one installed to drain the water off one side of the road to the other side of the road where the water is just sitting. The new culvert is shorter than the previous one. Now the entrance of my driveway is narrower and very dangerous. If someone is too close to the culvert area, they will go off the road.

I am requesting that the Town Manager and Planning Board Members inspect and/or investigate this project. I would also like to know the degree of responsibility of the owner of the Bittersweet Lane right-of-way as far as upkeep, repairs, snow removal, etc. The owner of the right-of-way lives in Florida during the winter and I am concerned that if there is any kind of emergency on Bittersweet Lane, emergency vehicles will not be able to respond.

I also question the legality of this project. I thought any building/road project had to go before the Planning Board for approval. For the safety of residents on Bittersweet Lane, I would appreciate a timely response to this situation.

Thank you for your attention to this very important matter...”

Mr. Lockman noted that he has not reviewed this project however it appears to involve a private road in a subdivision which may appear on a plan at the Registry of Deeds.

Mr. Lempicki responded that it was an old subdivision in 1977.

Mr. Coles asked if the two letters refer to the same subdivision.

Mr. Pinkham responded that they do.

Mr. Lockman reiterated his earlier comments that when the Code Enforcement Officer writes to the property owner and the abutters, it will be up to the people who have the title problem caused by recording a split which should have, and did not, come before this Board, to correct the problem. The remedy will be for them to come before the Board for review.

Mr. Lempicki interjected that it wasn't a legal subdivision split, that it was illegal. He has not finished his research on the owners, however it should have been subdivided when a portion of Lot 3 was improperly split by an abutter, and was not approved by the Planning Board. The 1977 splits were approved by the Planning Board and he received those drawings six (6) weeks ago. The start of the problem originated with Mr. Payeur and several different people. In 2006 he (Mr. Lempicki) issued a building permit for Mr. Maddox to build a house on eighteen (18) acres, the house has been built and the

owner will shortly be asking for a Certificate of Occupancy. In the mean time Mr. Maddox is completely out of the picture, he has sold his portion to a new owner who has divided the land back the way it was in 2006, when the building permit was issued. There was a deed drawn up for splitting that house off, but under the new owner it was divided into one single lot so there was no subdivision that ever took place. He (Mr. Lempicki) was told that the deed came into effect in January or February when Mr. Maddox was in Florida and Mr. Lempicki informed him (Mr. Maddox) that it would get straightened out when he returned. Subsequently the lot was sold and is now one single lot; however there was another building permit issued for a foundation. The new owner informed him that this foundation will be an accessory use storage building and their intent is to come before the Board to subdivide the lot.

Mr. Lempicki confirmed that there is still one illegal cut, and no building permit will be issued for that lot until it is subdivided properly. He (Mr. Lempicki) only found out about this six or seven weeks ago. The Subdivision Plans were never submitted to the Code Enforcement Office. Mr. Lempicki looked in the Town Hall basement for the 1977 plans and was unable to locate them. He did receive copies from a surveyor six or seven weeks ago.

Mr. Coles asked where, if not to this Board, the abutters can take their concerns.

Mr. Lockman responded that they can go to the Town Manager and the Code Enforcement Officer.

Mr. Lempicki stated that he doesn't work for the Planning Board and they can't work-load him. He works for the Town Manager and the Selectboard

Mr. Pinkham thanked him for that clarification.

Robert Kinsman (14 Bittersweet Lane) addressed the Board. He created Bittersweet Lane in July of 1979 and he has lived there since 1978. He noted originally there was a Lot 1 and Lot 2.

Mr. Lempicki noted that the Maddox Lot out back was Lot 3 and the illegal split occurred when a lot was sold to an abutter out of Lot 3 – that's the illegal subdivision.

Mr. Kinsman responded that originally there were two lots, and Mort Hersom sold Lot 1 and Lot 2 to Mr. Payeur who asked for an additional five (5) acre lot out behind.

Mr. Lempicki attempted to distribute material to the Board members.

Mr. Lockman suggested to the Board that it may be inappropriate for the Board to become involved in this issue any further until Mr. Lempicki can complete his investigation. He suggested the individuals need to figure out the details, and get new drawings, then determine the corrective action required so everyone has "good title". The property owners should then apply to the Planning Board for consideration. Mr. Lockman agreed that this appears to be an important issue which should go through proper procedure.

Mr. Kinsman thanked the Board for hearing him and agreed to proceed as recommended.

E. UNFINISHED BUSINESS –

1. FINDINGS OF FACT FOR:

1. ELIVIA II, LLC - ADMIRAL'S INN – 95 Main Street – Map 6 Block 4.

**Mr. Coles Moved to Accept the Findings of Fact for ELIVIA II, LLC - ADMIRAL'S INN – 95 Main Street – Map 6 Block 4.
COLES/CAPONE 3/0 UNANIMOUS**

- 2. DOROTHY CAPEZZUTO / FOOTBRIDGE REALTY TRUST – 659 Main Street – Map 13 Block 50.**

**Mr. Capone Moved to Accept the Findings of Fact for DOROTHY CAPEZZUTO / FOOTBRIDGE REALTY TRUST – 659 Main Street – Map 13 Block 50.
CAPONE/COLES 3/0 UNANIMOUS**

F. NEW BUSINESS –

- 1. NELLIE LITTLEFIELD, LLC / EVERETT MINK – 27 Shore Road – Map 7 Block 104 – Site Plan Review for a pre 1930 structure. Application to bring substandard driveway up to Code and enlarge for two-way traffic, and enlarge parking lot to accommodate public parking.**

Carol Morrisette addressed the Board as the Applicant's representative. Ms. Morrisette asked the Board to accept a revised site plan. It is the Applicant's position that they can better minimize the scale and impact by maintaining the existing one-way traffic flow.

The Board agreed to accept the revised site plan (dated August 8, 2011), which Ms. Morrisette distributed.

Ms. Morrisette informed the Board that a Bed and Breakfast has been operating on that site for a number of years. The Inn requires a total of eight (8) parking spaces and the existing parking lot, which has more than enough spaces, is a good opportunity to provide public parking. The existing parking lot has 6980 square feet of parking and they propose an increase of 1080 square feet with a minimum of new paving. This new plan will also maintain the historical appearance of the property.

She noted that the updated site plan: maintains the one-way entrance, it allows the granite post and iron fencing to stay in place, while utilizing the easement on the far side of the building as a one way exit from the property. The Applicant has no problem meeting any parking requirements for the existing use, they are not proposing any new structures thus there will be no increase in the footprint.

Mr. Lockman noted that, without having had the opportunity to review the new plans, he can see why the Applicant would think that providing public parking is a good idea. However there are still some zoning issues. Mr. Lockman referred to his 1 August 2011 Memo to the Board:

"I have reviewed the above-captioned application for enlarging the driveway and creating public parking at 27 Shore Road, adjacent to the Nellie Littlefield Inn. Before considering this to be a complete application, I would offer the following comments:

- 1. A new public parking lot as a principal use (not accessory to an Inn or Hotel) is not a permitted use in the LB zone (see Table 702.1, on page 76). A parking lot exists on the property, which is used as accessory parking to the Inn, but this proposal is to enlarge the lot within the LB portion of the property and convert the use to public parking. Although the area in LB has been in continuous use as an accessory parking lot, I believe it would be a violation of the nonconformance provisions of the ordinance to enlarge it for public use within the LB.*
- 2. I do not believe the enlargement of the driveway within the GB1 portion of the site would raise any zoning problems.*

3. *The ordinance does not provide for a valet parking lot stacked car sort of design. The Board in the past has allowed for some modest waivers in the dimension requirements in the chart on page 95 of the zoning ordinance for other applicants, but this would be an intensive parking use in a zone which is for “limited business” uses. The waiver of aisles and circulation for valet parking would be at the discretion of the Board.*
4. *A letter should be submitted analyzing the amount of parking required by the zoning ordinance for the owner’s business, the amount of parking provided, so that the Board may determine that the additional parking proposed can be offered to the public, and is not needed to bring the existing property into compliance. I would suggest exploring offering public parking within the extent of the current parking lot, which appears to be legally nonconforming within the LB district.*
5. *More information is needed on the proposed new stockade fence and cedar tree plantings, to determine compliance with the buffer standards of section 8.3.*
6. *If impervious surfaces are to be increased, a stormwater management plan may be required, particularly in light of the Conservation Commission comments.”*

Mr. Lockman stressed that he has a problem with any increase in the pavement in the Limited Business District (LB) portion of the site. He agreed that they might fit seven (7) or eight (8) more parking spaces without extending the pavement. And because the parking lot is already there and the use is already there they might offer these additional eight spaces to the public. Mr. Lockman also noted that it is within the Board’s authority to waive the dimensions of parking spaces, but to create new valet parking, where cars are stacked three deep, is a violation in the Limited Business District (LB). Mr. Lockman noted that a parking lot, as a principal use, is not permitted in Limited Business District (LB).

Regarding the new site plan, Mr. Lockman liked the use of the one-way plan. He noted that not increasing the driveway is a positive change, as is the additional buffering along the property line.

Ms. Morrissette interpreted the parking as a “grandfathered use”. If the parking lot was not already in existence they certainly would not propose putting one in. She noted that the new plan proposes adding 3.5 parking spaces in the Limited Business District and 5 parking spaces in the General Business District (GBD). She acknowledged that those will all be stacked spaces but she interpreted parking as a grandfathered use.

Mr. Lockman disagreed and suggested that the plan proposes the addition of spaces #10 thru #17 on new pavement and #28 thru #34 as a back row. He suggested that they can only fit 16 spaces and they have proposed 35 spaces.

Mr. Pinkham asked if this parking lot has ever been used for “fee parking” in the past.

Ms. Morrissette responded that it has not, however it has been a parking lot for the Inn.

Mr. Capone asked if the grandfathering refers to the “parking lot use” as “accessory parking” vs. new “paid public parking use”.

Mr. Lockman also noted that spaces #1 thru #8 need to have an isle behind them. If there were cars in Spaces #28 thru #34 they couldn’t get out. The entire proposal depends on the use of valets.

Mr. Pinkham suggested this application is asking for a non-permitted use in the Limited Business District.

Mr. Lockman confirmed that an inn is permitted in the Limited Business District, as is accessory parking for an inn, and eight (8) spaces are all that is required in this case. If the applicant chooses to have additional parking for his accessory use, that’s his prerogative, however asking for more paving, two

more rows of spacing, a waiver to allow for valet parking system, and creating a principal use as a fee parking lot vs. an accessory use for the inn is a problem. Mr. Lockman suggested this will be an additional principal use and not an extension of the accessory use.

Mr. Coles asked - if property exists in two separate zones does the use in each zone dictate the standards for that portion of the lot?

Mr. Lockman responded that this has not been a problem before because inns and parking lots for inns have always been allowed in the Limited Business District and General Business District, and as long as the parking lot was used for the inn's guests there wasn't an issue and grandfathering was never needed. The two zone problem only applies here because principal use parking lots are allowed in General Business District but not in the Limited Business District.

Mr. Lockman referred the Board to Section 1.4.D of the Ordinance which allows for the possibility of extending the boundary line and allowing the Board to consider the first fifty (50') feet of the Limited Business District as part of the General Business District. This would get a few more parking spaces for the Applicant.

Mr. Lempicki asked if the Board is concerned because they will be losing the grass.

Mr. Pinkham responded, no - his concern is putting a business in a zone where it isn't allowed.

Mr. Lempicki added that there are new construction methods which allow for the use of grass as parking areas, it includes the use of gravel and sand and plastic followed by filler.

Mr. Capone noted that Section 1.4.D requires "...same ownership of record as when the line is established...".

Mr. Coles noted that this property has changed hands several times since the boundary line was established.

Mr. Coles noted that the new plans seem to indicated that the new egress is over the easement for the abutting property. He asked if this is an established use for that easement, and if not, why?

Ms. Morrisette responded that the inn does not use the easement at this time, there are flower pots placed to prevent cars exiting from the inn from using the easement. This was done out of courtesy to the abutters who use that driveway.

Mr. Lempicki added that they have a deeded right-of-way to use it.

Mr. Pinkham noted that the Ogunquit Dept. of Public Works has not responded to the Board's request for input. He asked the Secretary to inquire about this.

Mr. Pinkham also noted that there are several standards which this application does not meet in order to be found complete.

Mr. Capone agreed that he has a problem with the definition of "accessory parking" vs. "public parking".

Mr. Coles expressed concern with the degree of vehicle congestion in an area which already has a horrible traffic problem and a very bad intersection.

Mr. Pinkham suggested the Applicant needs to rework the application and address the concerns as expressed by the Board members.

Mr. Morrissette asked if she could resubmit revised drawings. The Secretary confirmed that if she submits the revised drawings by August 15th they can be included in the August 22nd Agenda, otherwise the next meeting will be September 12th which has a submittal deadline of August 22nd.

Mr. Pinkham summarized that the decision may come down to the definition of “public parking” whereby a fee is charged to the public to park there, vs. “accessory parking” where the parking spaces are for guests of the inn.

G. CODE ENFORCEMENT OFFICER BUSINESS – None

H. OTHER BUSINESS – None

I. ADJOURNMENT -

**Mr. Coles Moved to Adjourn at 6:55 p.m.
COLES/CAPONE 3/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on August 22, 2011