

**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
JANUARY 28, 2013**

REGULAR BUSINESS MEETING – 6:00 p.m.

A. ROLL CALL –

The Roll was called with the following results:

Members Present: Don Simpson (Chair)
Rich Yurko (Vice Chair)
Craig Capone
Jackie Bevins

Also Present: J.T. Lockman, SMRPC, Town Planner
Lee Jay Feldman, Senior Planner SMRPC
Maryann Stacy, Recording Secretary

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – January 14, 2013

**Mr. Yurko Moved to Accept the Minutes of the January 14, 2013 Meeting as Submitted.
YURKO/CAPONE 4/0 UNANIMOUS.**

E. PUBLIC INPUT –

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

F. UNFINISHED BUSINESS –

- 1. FINDINGS OF FACT FOR: JACQUELINE BEVINS / JACKIE'S TOO – 91 Perkins Cove Road – Map 3 Block 67-1 – Design Review and Site Plan Review for a post 1930 structure.
Approved on January 14, 2013**

**Mr. Yurko Moved to Accept the Findings of Fact for JACQUELINE BEVINS / JACKIE'S TOO – 91 Perkins Cove Road – Map 3 Block 67-1 as submitted.
YURKO/CAPONE 3/0 (Ms. Bevins was recused)**

- 2. Village Square Shops – Map 7 Block 68 – Extension Request.**

Robert Alexandre addressed the Board and explained that he is requesting a one year extension. He noted that it is a large project, and in addition his employee has had some medical problems

and has been out of work for some time. For these reasons he is looking to start the project in the fall of 2013.

Mr. Yurko Moved to Grant the Extension Request under Section 6.6.E.2 and 11.12.B, one year extension on both Site Plan and Design Review.

YURKO/ CAPONE 4/0 UNANIMOUS

Mr. Yurko noted for the audience that applicants are required to begin construction within one year of receiving Planning Board Approval, however a request for a one year extension is almost automatically granted. If the applicant needs a second extension he will have the burden of proving why he should be given an additional year, and the burden of proof in that case is somewhat higher than for the first extension.

G. NEW BUSINESS –

1. BUILDERS OF OGUNQUIT / JOHN MIXON – 5 Bourne Lane – Map 5 Block 35-A – Subdivision Sketch Plan - Application to develop an eight (8) unit condominium/subdivision.

Mr. Simpson informed the applicant and the audience that the only purpose of this particular meeting is for the Board to be given an overall explanation of the project and to determine whether or not the application paperwork is complete, and perhaps to schedule a site visit. This meeting is not Public Hearing and the public will not be invited to address the Board.

Rick Licht addressed the Board as the Applicant’s representative. Mr. Licht noted that his goal for this evening is to provide the Board with an overview of the proposed project and the existing conditions at the property, and to leave the meeting with a full understanding of what the Board’s concerns are and what the process is, as well as clarify which sections of the Ordinance will be applicable to the project.

Mr. Lockman explained that this is only the first stage of the Subdivision review process. The Board will probably conduct a site walk, and then the applicant will have six months to submit his Preliminary Plans. The Preliminary Plans will be reviewed for completeness and will have a Public Hearing and further discussions, and when the Preliminary Plans are approved the application process moves to Final Plan Review and approval. The entire Subdivision process usually takes eight or nine meetings.

Mr. Licht noted that the property is known as the “Russell Estate” and is located at 5 Bourne Lane. He stated that the property consists of approximately 2.6 acres +/-, noting that they have not obtained a full survey yet. Mr. Licht reiterated that this is only a “sketch plan” involving a preapplication conference, not a formal application and everything is schematic in nature, and while it is reasonably detailed it is not the final product.

The property is primarily in the Residential Zone with a small portion along Shore Road being in the Limited Business District. There is an existing old house and several outbuildings which will be removed. This property does not have frontage on Bourne Lane or Shore Road, it does have a twenty foot (20’) right-of-way easement, over the driveway of the Barn Gallery, which turns into a twenty-five foot (25’) easement which leads to the Ogunquit Playhouse parcel. The parcel under consideration here was at one time part of the Lane (Ogunquit Playhouse) parcel and was

split off from it a number of years ago. Mr. Licht stressed that there is a great deal of vegetative buffering already in place as well as a fence.

Mr. Licht addressed the issue of Net Residential Density, which he called the “Carrying Capacity of the Project”. The Applicant proposes building eight single family condominium dwelling units which qualifies the proposed project as a subdivision under the Ogunquit Subdivision Regulations and Zoning Ordinance. He noted that the drawings are conceptual only and are not the final designs. The Applicant is anticipating eight two-story, cottage type dwellings with garages. This project will be dedicated to veterans and service members. There will be a single driveway which forms a one way loop, the center of which will contain a veteran’s memorial park.

Mr. Yurko asked for the size of the units.

Mr. Licht responded that they will be 1,500 to 1,800 square feet with a minimum of thirty feet separation between the structures. The loop drive will be eighteen feet (18’) with driveways leading to each separate unit.

With regard to utilities, the site is currently serviced with septic (there is no public sewer hook up that they are aware of), public water, and propane for heat, there is overhead power at the back of the property line. The new proposal is to provide underground power and will connect with Town sewer and water, probably at Bourne Lane. The existing septic system will be removed.

Regarding storm water runoff, there is a small drainage area and wetland at the southwest corner of the site. The proposal is to use under drain filter beds or biogardens directed to the rear swale.

Regarding access, the Applicant has interpreted the ordinance under Article 2 which lists a number of deduct for land not suitable for development. Those deducts are removed from the gross land area and the result produces a new number which becomes the basis used to determine the number of units which the land can support. In the District involved here, the units are based on 12,500 square feet of land area for each unit.

The calculations the Applicant used are: 113,000 square feet gross area, deducted from that is the 25 foot easement, a couple of thousand square feet for storm water retention areas, with a calculated net area of 101,000 square feet which was divided by the 12,500 square feet which gives them just over eight units.

Mr. Licht pointed out that Mr. Lockman suggested that they also need to deduct the proposed roadways. It is the Applicant’s assertion that the only roadways which need to be deducted are existing streets and right-of-ways. The applicant disagrees with Mr. Lockman, and he (the Applicant) did not deduct the proposed roadways when calculating net area.

Mr. Yurko questioned how the Applicant arrived at this interpretation. Mr. Yurko cited a portion of the definition of Net Residential Area from the Definitions Section of the Ogunquit Zoning Ordinance:

“...As of the April 2, 2005 effective date of this provision, the net residential area of a lot or lots subject to subdivision review shall be calculated by taking the total area of the lot and subtracting, in order, the following areas not suitable for development:

1. *Land within street rights-of-way, or below low, medium or high volume driveways...*”

Mr. Lockman pointed out that there is something called a “very low volume driveway” which serves only one or two driveways and these very low driveways are not deducted. In this project the driveways which connect the individual homes to the loop drive are very low volume and do not have to be deducted. The loop driveway is a medium volume drive and as such it does need to be deducted.

Mr. Licht referred to the “carrying capacity of the project.” He argued that the project has not yet been designed, thus you take the land on its own merits and deduct those areas which are not suitable for development such as: right-of-ways, poor soils, existing easements, wetlands, etc. Then you move forward and design the project. The question is: how can you deduct things you haven’t designed yet? Mr. Licht argued that the intent is to deduct those things which are currently in existence such as streets, right-of-ways, etc not things which are not yet proposed.

Mr. Licht stated that in the “planning world” carrying capacity indicates what the land is capable of supporting with typical not developable areas.

John Bannon, Attorney for the Applicant addressed the Board. He agreed with Mr. Licht that net residential area is “carrying capacity” for a lot, and that the determination of the carrying capacity of a lot is determined prior to looking at a proposed project. He stated that if you were to deduct proposed areas, why not deduct the houses which will be occupied on the lot.

Mr. Bannon asked, and answered a number of questions:

What kind of development is this? A Subdivision.

Will it create any new lots? No

Why is it a subdivision? Under State Statute, the construction of three or more dwelling units on a single tract of land creates a subdivision. Mr. Bannon noted that some subdivisions create lots and other subdivisions do not.

How is maximum density calculated for this project? You take the total area of the lot available for development and divide it by the minimum lot size as determined by the district in which the parcel is located. In this case primarily Residential District, or 12,500 square feet.

What is the area for a lot that is subject to Subdivision Review but is not a lot that is created by a subdivision? Mr. Bannon Referred to Article 2 of the Ogunquit Zoning Ordinance which states that “the lot area *“for a lot not created by a subdivision is measured as follows: it is the area of land enclosed within the boundary lines of the lot minus land below the normal high water line of a water body or upland edge of a wetland, and areas beneath public or private streets serving more than two lots”*. Also in Article 2 the definition of Net Residential Area states that *“For a lot or lots not contained within or constituting a subdivision, the net residential area shall equal the lot area for lots not created by a subdivision, as defined by this ordinance”*.

Mr. Bannon pointed out that he is not using the entire text of Net Residential Area in Article 2 because it doesn’t apply to this project due to the fact that this subdivision does not create a lot.

According to his calculations the total lot area of Lot 35A is about 102,300 square feet which leads to a maximum total of 8.18 dwelling units.

Mr. Bannon referred to Section 9.6 of the Subdivision Regulations which seem to say that the Board has to make deductions for those areas which are not suitable for development. However, in this case there is a conflict between the Zoning Ordinance and the Subdivision Regulations. Mr. Bannon reminded the Board that Regulations are not “ordinances”. If the Subdivision Regulations prescribe a result which the Zoning Ordinance does not, then the Board has to abide by the Zoning Ordinance. In this case it is the means by which lot area is calculated. Even if Section 9.6 did apply, the outcome is even more beneficial to the Applicant. In that case all of the required deductions are zero which leaves the Applicant with a total developable lot area of 113,000 square feet. 113,000 divided by 12,500 square feet equals 9.04 allowable dwelling units.

As a third scenario, if the Board were to apply Section 9.6 and the entirety of Article 2, and pretend that this lot was being created by a subdivision and was not a condominium, Mr. Bannon suggests the Board would apply the deductions and determine developable lot in the same way that Mr. Licht did. You can not deduct the parts that the developer proposes to develop because, by definition, if the developer is proposing to develop them then they can't be unsuitable for development. Mr. Bannon agreed with Mr. Licht's calculations.

Mr. Bannon addressed the question of whether or not the Board can deduct the area of low, medium, or high volume driveways, using the formula in Article 2. He does not believe it can be done. Mr. Bannon pointed out that in June of 2012 the Town repealed all of the sections of Section 8.13.B which dealt with design standards for driveways. The Ordinance no longer has any definitions for: Low, Medium, or High volume driveways, or what the design characteristics are for any of them. The result is that there are no design standards to apply to the driveways in this project. Instead, all driveways and entrance designs connecting to state or state aid highways shall meet the current Chapter 299 Highway Driveway and Entrance Rules of the Maine DOT, the ordinance also states that Subdivisions connecting to non-state or non-state aid highways within the Town shall also be required to meet said rules. These rules do not contain any design standards for driveways. They do specify how wide an intersection must be between a driveway and a state aid highway but they do not say how wide the driveway must be. Basically, under the Ogunquit Ordinance there are no standards for driveway construction: how wide they must be, how they must be constructed, etc. If the Town is to attempt to deduct areas for low, medium, or high volume driveways it would be relying on portions of the ordinance which no longer exist.

Mr. Bannon pointed out that those citations contained in Mr. Lockman's memorandum to the Board are no longer in the current Ordinances. Mr. Bannon distributed copies of his memorandum (*a copy of which will be maintained in the Applicant's file*).

Mr. Lockman responded by pointing out that the Applicant seems to be saying “how can we deduct something that we are proposing?” however they did deduct the area of storm water facilities when they calculated the net residential acreage. They deducted 2000 square feet for storm water facilities which haven't been created yet. The idea that you can't deduct things which are proposed, that you can only deduct things which already exist, doesn't hold together because the Applicant deducted the storm water facilities that are not there yet. Mr. Lockman also noted that the storm water facilities were deducted properly.

Mr. Lockman acknowledged that he had an outdated Zoning Ordinance in front of him. He also noted that it will be at the Preliminary Plan Stage when the number of units, street and driveway layouts, and proper deductions will be confirmed.

Mr. Bannon noted that he has not had much time to confer with Mr. Licht regarding the proposed storm water facilities and if Mr. Licht deducted proposed facilities then Mr. Bannon believes this was done incorrectly.

Mr. Licht responded that they are only at a conceptual level and are only attempting to determine the number of dwelling units from a conservative standpoint.

Mr. Yurko asked if everyone agreed that this project involves a non conforming lot. Everyone did. He asked if the current use of the lot is residential and if the use would change.

Mr. Licht agree that it is a legally nonconforming lot with a conforming use, and that it will remain so.

Mr. Yurko referred to Section 3.4.C of the Zoning Ordinance, which states that “... *The structure(s) or use(s) on such lots may be repaired, maintained, improved, enlarged, changed or relocated...*”. It appears to Mr. Yurko that the applicant is doing none of these things, that he is actually submitting an entirely different plan, which doesn’t appear to be one of the things which are allowed. Mr. Yurko noted for the record that this lot is a nonconforming lot because it has no frontage on any street! It is a lot surrounded by other lots, and Ogunquit has a minimum frontage requirement for lots. It is unclear how this lot was created, it was probably created by splitting it off of another lot.

Mr. Bannon noted that Section 3.4.C also states that “...*only in conformity with all other dimensional requirements of this Ordinance besides those requirements of lot area, or street frontage which made the lot nonconforming...*”

Mr. Yurko again reiterated that the Applicant proposes to demolish the existing buildings and put up eight new buildings, he is not doing any of the things allowable under Section 3.4.C. This could negate the grandfathered status.

Mr. Bannon asked if the Applicant could do any of the things outlined in Section 3.4.C without complying with the street frontage requirements.

Mr. Yurko agreed that this is the way the Ordinance reads, however he doesn’t believe that this project falls within the scope of those allowable actions.

Mr. Bannon asked if Mr. Yurko believes that the structures, or use, on this lot are being changed.

Mr. Yurko responded that it was just agreed that the use is remaining the same.

Mr. Bannon stated that the use is changing. While it is not changing from residential to commercial, the type of use is changing. This is the change that Section 3.4.C is intended to allow. The Applicant has to comply with everything except lot area or street frontage.

Mr. Yurko asked if the Applicant has provided proof of authority to appear before the Board.

Mr. Licht responded that a copy of the Purchase and Sales Agreement is in the Board records.

Mr. Yurko referred to the Conservation Commission's Memo (dated January 18, 2013) to the Board, which stated that the application is incomplete, and that the application indicates that there are wetlands on the property. He asked for confirmation that wetlands are not included in the calculations for net residential area. He also asked for specifics regarding the location and area of the wetlands.

Mr. Licht responded that the issue of the nonconforming lot will probably have to be resolved at a later date. Regarding the wetlands, he noted that the wetlands are not typically mapped at the sketch plan stage however they are conceptually indicated on the sketch plan and the Applicant has had the DEP out to look at the property and he does have a letter from them. All of this information will be further detailed at the Preliminary Plan.

Mr. Licht noted that the Town Ordinance speaks to wetlands as: forested wetlands with three definitions and the definition of forested wetland is the old DEP 10 acre wetland, and using that definition there are no "wetlands" on this property. The Applicant will define wetlands per the DEP Code, but by the Town Code there are no deductions for wetlands, therefore the Ordinance deduct is not for wetlands, it is for wetland soils and there aren't any wetland soils.

Regarding the access issue for a lot without frontage, Mr. Licht noted that Section 8.1 of the Ordinance states that as long as the lot was created prior to 2005 the lot is a clean and clear lot and the Applicant does not need the requisite frontage. The Applicant will demonstrate that the lot predates 2005 as part of his due diligence during the Preliminary Plan Stage.

Mr. Licht agreed that the intersection is troublesome and they will address this at the Final Stage, they will also seek out input from the Fire Chief regarding internal access within the property.

Mr. Licht noted that he did not see anything in the Sketch Plan Submissions requirements that he needs to provide proof of purchase option at this stage.

Mr. Yurko noted that the Board has received a number of letters regarding this project, and he asked if the appropriate fees have been paid.

It was confirmed that the fees have been paid and that the Purchase and Sale Agreement is in the Board's paperwork.

Mr. Lockman reminded the Board that at this Sketch Plan stage the objective is to review the sketch, tell the Applicant what is missing and instruct him on what to expect for the Preliminary Plan, and visit the site.

Mr. Yurko asked if there is a Public Hearing at this stage.

Mr. Lockman responded that generally the Public Hearing is held at the Preliminary Plan stage, however the Board can hold a Public Hearing at any time.

Mr. Simpson stated that it is his opinion that the site visit should take place as soon as possible and that based on the amount of input the Board has already received from the public a public hearing would be beneficial.

Ms. Bevins asked if they might hold the Public Hearing at this meeting.

Attorney Howe, who represents several of the abutters, asked the Board if there is anything in the rules that would prohibit anyone who was present from appearing at the end of the agenda, although not posted, without limiting a Public Hearing at a later time.

Mr. Lockman stated that the Board should stick to the agenda.

Mr. Simpson agreed that the Board would stay with the posted agenda.

Mr. Simpson summarized that the Board would: determine whether or not the application is complete, schedule a site visit, and schedule a public hearing.

The Board reviewed Section 5 of the Subdivision Regulations:

“Fifteen copies of the sketch plan and all supporting materials must be submitted 14 days prior to a regularly scheduled Planning Board meeting, in order to be placed on the Board’s agenda. The sketch plan shall show, in simple sketch form, the proposed layout of streets, lots and other features in relation to existing conditions. The sketch plan, which does not have to be engineered and may be a free-hand penciled sketch, shall show site conditions such as steep slopes, wet areas and vegetative cover in a general manner. The sketch plan shall be supplemented with a written project narrative, with general information to describe or outline the existing conditions of the site and a full description of the proposed development. The narrative should include general proposals for how any common areas and infrastructure will be managed and maintained. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the assessor’s tax map(s) on which the land is located. The Sketch Plan shall be accompanied by:

- 5.3.1. A copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision; and*
- 5.3.2. A copy of that portion of the county soil survey covering the proposed subdivision, showing the outline*
- 5.3.3. A completed sketch plan application form and a fee to be set by the Selectmen.*
- 5.3.4. In addition, the applicant shall pay a fee of \$1500 to be deposited in a special account designated for that subdivision application, to be used by the Board for hiring independent consulting services to review the application. If the balance in this special account is drawn down by 75%, the Board shall notify the applicant, and require that an additional \$750 be deposited by the applicant. The Board shall continue to notify the applicant and require an additional \$750 be deposited as necessary whenever the balance of the account is drawn down by 75% of the original deposit. Any balance in the account remaining after a decision on the final plan application by the Board shall be returned to the applicant.”*

**Mr. Yurko Moved to Find the Application complete.
YURKO/CAPONE 4/0 UNANIMOUS**

Mr. Yurko agreed to the need for a public hearing and suggested the Board open the floor to comments from those members of the public who are in the audience.

Mr. Yurko Moved to Open the Floor for Public Comment.

Mr. Bannon objected and stated that if a Public Hearing was not scheduled then the Board can not hold one.

Mr. Yurko responded that he is not suggesting the Board hold a Public Hearing, he is suggesting the Board open the floor to public comment.

Mr. Bannon again objected stating that the Applicant is unprepared to respond to public comments at this time. Sketch Plan is exceedingly informal and generally does not include a public hearing.

Mr. Yurko agreed that sketch plan is exceedingly informal and as such the Board can hear from members of the public any time it wants.

Mr. Yurko Moved to Permit Public Input Under Section I (Other Business) on the Agenda. YURKO/BEVINS 2/2 MOTION FAILS FOR LACK OF MAJORITY VOTE

Mr. Mixon informed the Board that he has no problem with a public hearing, that he wants the public to be fully informed and have full input. This project will be a “veteran’s project”. It will be built by veterans using all USA made materials. It will not be a veteran’s only project. If approved it will be open for sale to the public. However there will be a monument to the veterans and service members as the center piece of the project.

Mr. Simpson suggested the Board hold a site inspection prior to the Public Hearing so that it will be better prepared to respond to the public’s questions and concerns.

Mr. Lockman asked the Applicant about the conditions on the site.

Mr. Mixon responded that it is plowed and it has been completely walkable all winter. Parking is available for six or seven cars on site.

Mr. Yurko noted that the Board has a Workshop scheduled for 5:00 on February 13th and he suggested they conduct the site visit at 4:00 p.m. that same day.

The Board scheduled a site visit to take place on February 13, 2013 at 4:00 p.m.

Mr. Mixon agreed to the date and time for the site visit.

Mr. Simpson noted that the public is welcome to attend and observe, however discussion and questions will be limited to Board members.

The Board scheduled the Public Hearing to take place on February 25, 2013 at 6:00 p.m.

Mr. Mixon offered to leave a copy of the Sketch Plan at the Town Hall for residents to review.

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Simpson noted that the Town currently has a temporary Code Enforcement Officer and the Code Enforcement Office is running as usual.

I. OTHER BUSINESS –

Discussion regarding Planning Board and the Zoning Board of Appeals Workshop regarding a proposed amendment to Zoning Ordinance 8.13, Section A (Traffic Impacts and Street Access Control).

Mr. Simpson noted that the Planning Board and the Zoning Board of Appeals held a workshop earlier to discuss Section 8.13 of the Zoning Ordinance. Mr. Lockman and Mr. Feldman will be drafting suggested language which will be further reviewed by the Planning Board and probably the Town Attorney. After that it will be presented to the Select Board and hopefully the voters at the June 2013 Town Meeting.

J. ADJOURNMENT -

**Mr. Yurko Moved to Adjourn at 7:25 p.m.
YURKO/CAPONE 4/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Recording Secretary

Approved on February 25, 2013