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Thomas A. Fortier
Town Manager

OGUNQUIT PLANNING BOARD MINUTES SEPTEMBER 9, 2013

REGULAR BUSINESS MEETING

A. ROLL CALL –

The Roll was called with the following results:

Members Present: Don Simpson (Chair)
Rich Yurko (Vice Chair)
Mark Renaud
Jackie Bevins

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer
Lee Jay Feldman, SMRPC

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – August 26, 2013

Ms. Bevins Moved to Accept the Minutes of the August 26, 2013 Meeting as Amended.

BEVINS/RENAUD 4:0 UNANIMOUS

E. PUBLIC INPUT – None

F. UNFINISHED BUSINESS – None

G. NEW BUSINESS –

Mr. Simpson noted that all three pending applications will be evaluated for completeness. If the applications are found to be complete Public Hearings will be scheduled, at which time there will be more detailed presentations.

1. AMI-O – 125 Shore Road – Map 6 Block 74 – Requested Amendment to Previously Granted Design and Site Plan (Original Approval Granted on February 27, 2012).

Mr. Simpson noted that the original application was for renovations to an existing structure. The Applicant is now seeking to amend that approved application and demolish the structure entirely and build a new one in its place.

Mr. Simpson asked the Code Enforcement Officer if the change in the size of the proposed new structure represents any problems from a zoning perspective.

Mr. Heyland responded that it was his understanding that the volume / footprint had not changed.

Mr. Simpson noted that the pending application states that the current square footage of the building is 1249 square feet and the patio is 1579 square feet. The new construction is listed at 2810 square feet with is slightly less. He asked the application for a breakdown between the building and the patio.

Michael Ramsey responded that he did not have the exact numbers with him.

Mr. Yurko confirmed that the existing structure is a single floor and the proposed new structure will be two floors. He asked for the total restaurant space between the two floors.

Mr. Ramsey responded that the first floor, which is the dining and kitchen area, is 1249, the second floor is smaller however he did not have the exact square footage with him.

Mr. Yurko noted that the Board is currently dealing with three issues: what currently exists, what was approved in 2012, and what the applicant is seeking to do now. He confirmed that the existing structure is a single floor and that the already approved application was for two floors plus a basement.

Mr. Yurko asked for a description of the differences between what was approved last year and what the applicant is asking for now.

Mr. Ramsey responded that much of the utilized space is currently outdoors. His objective is to enclose that area so that it can be utilized for three seasons or year round. While doing so they incorporated a flat roof structure which would include seating for sunbathing etc.

Mr. Yurko asked if a parking analysis was done during the last application process, and was the question asked as to whether or not parking spaces needed to be increased?

Mr. Ramsey responded that the question did come up and it became a moot point because 95% of his business will be in-house motel guests. While he does not turn away people from the outside, the vast majority of his customers will be hotel guests. Mr. Ramsey noted that he does have 38 more parking spaces than he is required to have for the hotel.

Mr. Yurko pointed out that this amendment application appears to have some dramatic changes from what was approved in 2012, and that the parking question needs to be reviewed again. He does not see the current application as an amendment to a prior approval, he sees this as a new application, and if it is a new application then it has to comply with the current Zoning Ordinance. Mr. Yurko noted that the current Ordinance requires a traffic impact study if there are more than 10 parking spaces required, or if there are more than 50 trips per day. Mr. Yurko noted that this is the first application to come before the Board since the Zoning Ordinance was Amended in June 2013 and the Board can not ignore the new requirements.

Mr. Simpson agreed that the Board needs to answer the questions as to whether or not this is an amendment or a new application.

Mr. Heyland asked about the changes to the seating numbers.

Mr. Ramsey responded that the original application called for 87 seats on the first floor and 96 on the second floor. The current application asks for 120 seats on the first floor and 70 on the second floor. He noted that the original plan called for the retaining of a small section of three existing walls and restricting the new structure to the original footprint. After reviewing the plans with the engineers it was determined that it would be more cost effective to construct a whole new building.

Mr. Ramsey reiterated that the restaurant is intended primarily for the use of his in-house hotel guests.

Mr. Yurko pointed out that there is a sign at the entrance to the hotel that invites the public in to the restaurant. He also stressed that the Board has a responsibility to look at the calculations and determine whether or not this application triggers the need for a traffic study. He stated that the new traffic studies were put in the Ordinance because of a court case which states that there can be no development in any congested area, or any area near a failed intersection.

Ms. Bevins noted that this application involves an accessory use to an existing hotel.

Mr. Simpson asked again for clarification as to whether or not this is an amendment to a previously approved application or an entirely new application.

Mr. Heyland suggested that it may not make much difference, the Board can look at the same issues and require the same information either way. He noted that there is still an existing approval in place and the Applicant could begin construction based on that approval tomorrow. Mr. Heyland also noted that the proposed structure is outside the setbacks and that lot coverage is not being increased.

Mr. Yurko noted that there is an ordinance provision which states that hotels are prior non-conforming uses in this district. He pointed out that there is no rule against a

restaurant as long as it complies with all of the rules that apply to a restaurant. If there was no restaurant existing and the Applicant proposed putting up a restaurant he would have to comply with all of the rules that any other restaurant going up on Shore Road would have to comply with. A restaurant will not be deemed an accessory use under the ordinance because there is a specific provision addressing this particular situation.

Mr. Ramsey noted that this is a pre-existing restaurant that has been in operation for many years.

Mr. Feldman suggested that regardless of whether this application is an amendment request or a new application the Board will still look at the same issues. Mr. Feldman suggested that this application is an amendment because there was an application and review process which occurred within one year. There is an active approval in place and a building permit could be pulled tomorrow based upon that 2012 approval. Therefore the approval is in effect and this current application is an amendment to that previous approval. This doesn't preclude any review by the current Board. Mr. Feldman suggested a short exercise to determine if there are any additional seats and how many vehicle trips they may generate and whether or not this trips the requirement for a full traffic impact analysis.

Mr. Simpson agreed.

Mr. Simpson asked how many seats exist now.

Mr. Ramsey responded that there are currently 87 seats including the bar. The 2012 application was approved for 183 seats, and the current proposed amendment is for 190 seats. This is an increase of seven (7) seats from the 2012 approval.

Mr. Yurko pointed out that since the 2012 approval there is a new Planning Board, a new Code Officer, and a new Planner.

Mr. Simpson was on the Board at the time of the 2012 Approval and he recalls the discussion about the parking and the fact that almost all of the restaurant patrons will be in-house hotel guests and that the parking question was satisfied at that time.

Mr. Yurko reiterated that there are two questions: (1) are there enough parking spaces? (2) how many vehicle trips will be generated? He noted that if the existing parking spaces exceed what is needed for the hotel and the current restaurant by 38 spaces, and all the applicant is adding is 96 seats, then he is probably within the 38 spaces.

Mr. Ramsey reiterated that the restaurant is primarily for the use of the hotel guests, however when someone from the outside asks to come in, they don't turn them away however this is not a common occurrence.

Mr. Simpson expressed his comfort with handling this application as an amendment and not a new application and he asked the other Board members if they felt the same way.

Mr. Yurko responded that he is comfortable dealing with it as an amendment as long as it is subjected to the current bylaws. He stated that when an amendment application is

drastically different than the original approval then the Board has to subject it to a full review.

Mr. Simpson asked the Applicant if he has reviewed the Fire Chief's Memo, and if he can accommodate the Fire Chief's request that the elevator be able to hold a stretcher.

Mr. Ramsey responded that he has met with the Fire Chief and it is his understanding that this is not a requirement. Mr. Ramsey noted that the proposed elevator is a standard size elevator and he does not believe that a stretcher will fit.

Fire Chief, Mark O'Brien added that he has reviewed the application and there is no requirement in the Code, however it is a request that if a new elevator is being put in the application size it to fit a stretcher. Chief O'Brien added that there are two straight stairways to the 2nd floor, which he was unaware of, and emergency responders can use these if necessary. He is now comfortable with the plans.

Mr. Simpson asked if the 2nd floor deck railings will meet code.

Mr. Heyland responded that they will.

Mr. Simpson asked about the fire alarm and sprinkler system.

Chief O'Brien responded that this will be reviewed by the State Fire Marshall.

Mr. Yurko asked if there will be any outdoor seating or outdoor dining.

Mr. Ramsey responded that there will not be any increase in what currently exists. He currently has eight to ten tables adjacent to the restaurant.

Mr. Yurko asked if there is table service.

Mr. Ramsey responded that there has been table service for eight years.

Mr. Yurko responded that this is not permitted in that district.

Mr. Ramsey pointed out that the facility is located next to the pool area and they have never made any secret about the fact that they have had table service for breakfast and lunch for twenty-five years. They started to serve dinner out there about eight years ago. He suggested that he is grandfathered.

Mr. Simpson asked the Code Enforcement Officer to see if there is any history regarding outside service at the Anchorage. How long have they served outside, and when did the ban go into place for that district.

Ms. Bevins Moved to Find the Application complete .
BEVINS/YURKO

Mr. Yurko suggested that if the Board receives additional information within the next week he would be comfortable holding the public hearing on September 23rd and voting,

however if a great deal of information is submitted at the public hearing he would not be comfortable voting at that time.

Mr. Yurko asked the applicant to provide:

Calculations of the existing restaurant space, the approved 2012 space, and the current proposed space.

Calculations of the required parking spaces for existing conditions, 2012 approved conditions, and new proposed plans.

Mr. Ramsey asked if Mr. Yurko was considering this as a “stand alone” restaurant in terms of meeting requirements.

Mr. Yurko responded that he is. He also suggested that the current application should reflect the fact that there is outdoor dining and that the applicant considers it to be grandfathered.

Mr. Yurko stated that there are two questions he wants answered: are there enough parking spaces? This includes all required parking for hotel rooms, proposed restaurant, and any other onsite activities which require parking spaces. And question 2: whether the proposed changes trip the requirement for a traffic impact study. This will be based on the addition of ten parking spaces or fifty vehicle trips per day. If that requirement is tripped then the Board will either require the traffic impact study or it may vote to waive it.

Mr. Simpson agreed that he wants to see three sets of calculations: existing, 2012 approved, and current proposed plan. He also informed the Applicant that if the Board is not satisfied after the Public Hearing on September 23rd they may delay approval to the following meeting.

Mr. Simpson reminded everyone that the majority of restaurant patrons will be from the hotel and he asked how this is factored into the parking requirements.

Mr. Heyland responded that the Ordinance does not address this specifically and the Board will have to look at the restaurant as a stand-alone restaurant, and the Applicant can request a waiver from the parking requirement by showing proximity to trolley stops, public parking facilities, or other factors.

Mr. Simpson restated Ms. Bevins Motion with the condition that the requested information be submitted prior to the application submittal deadline:

**Ms. Bevins Moved to Find the Application complete.
BEVINS/YURKO 4:0 UNANIMOUS**

Mr. Simpson noted that the Applicant should have the requested information in to the Land Use Office within one week, and that the Public Hearing would take place on September 23rd.

Mr. Ramsey asked for clarification regarding the required information concerning “restaurant space”.

Mr. Simpson responded that the Board wants the current square footage, the previously approved square footage, and the current proposed square footage broken down by interior and exterior seating areas.

Mr. Yurko added that he would like to see a seat count as well.

Mr. Feldman noted that parking standard requires one parking space per 100 square feet of useable area, this excludes kitchen, storage, etc. “usable space” includes the seating area, the bar area, etc. Restaurant front area.

2. Town of Ogunquit / Public Works Building – 30 Salt Shed Road – Map 19 Block 5-A – Site Plan Review to construct an 80’x120’ prefabricated steel building to house Public Works Department and associated equipment.

Mr. Simpson noted that this application has been discussed at length. He also noted that there is a State Building Permit which will expire on October 2nd.

Mr. Simpson asked if the existing fuel station, currently located adjacent to the dog park, will be moved to the new location.

Stillman Bradish responded that the plan is to move it, as soon as the funding is in place. There will be a pad put in place to receive the pumps.

Mr. Simpson asked about the Conservation Commission’s Memo.

Mr. Bradish responded that there is no plan to change the existing storm water management plan. He noted that there are some upland wetlands which were man made when the Maine Turnpike went through in 1947. The soil scientist agreed that due to the distance the water will run through a vegetated area there will be no problems.

Mr. Simpson asked if the DEP has commented.

Mr. Bradish responded that the DEP stated that no DEP Permit is required. He noted that the Code Officer contacted DEP to confirm this and received a letter from them.

Mr. Simpson asked about the Fire Chief’s Memo.

Mr. Bradish responded that the power lines will be underground. He also noted that there are no bathroom doors off the lunch room or office because the staff requested that there be no bathroom access from eating areas. He noted that these plans were approved by the Fire Marshall.

Mr. Simpson reviewed the Fire Chief’s memo and it was confirmed that all concerns will be met.

Fire Chief O’Brien agreed that he is comfortable with this application going forward.

Mr. Yurko asked for more comments regarding the Conservation Commission’s Memo.

Mr. Heyland responded that the State of Maine has a threshold of one acre which was not met for this project. Thus the State of Maine does not require involvement. He also noted that if the Board determines, it may reflect in its approval the use of Best Management Practices be required.

Mr. Bradish noted that the plans do indicate a runoff area, and the soil scientist agreed that this could be used as a retention pond for storm water management.

Mike Horn, Chairman of the Conservation Commission noted that the Commission agrees with Mr. Bradish, however it would like some extra consideration of the use for this property. He noted that with the addition of the fuel depot and the possibility for spills this project begs additional examination.

Mr. Heyland reiterated that the Board could require the use of Best Management Practices.

Mr. Bradish responded that the fueling pads are designed to handle any fueling spills. He also noted that these plans have been reviewed by multiple engineers and have passed several public hearings and examination by the public.

Mr. Yurko Moved to Find the Application Complete and Schedule a Public Hearing for September 23rd.

YURKO/BEVINS 4:0 UNANIMOUS

- 3. Ogunquit Playhouse Foundation – 42 Main Street – Map 5 Block 42 – Site Plan and Design Review for two post 1930 structures. Application for change of use from office space to 5 boarding house units. Demolition of existing hotel and construction of a new 45 unit boarding house. Site improvements to driveways, parking areas, grading, drainage, utilities, landscaping, and lighting.**

John Lorden addressed the Board on behalf of the Applicant.

Mr. Yurko asked if the proposed rooms will look like hotel rooms.

Tony Fallon (architect) responded that they will . They will have limited cooking facilities in the rooms which will meet the ordinance requirements. There will also be some common kitchens with stoves etc.

Mr. Yurko asked if there would access to the rooms other than from the outside.

Mr. Fallon responded that there will be a few rooms on the east side, facing the river, which will have exterior doors under a porch, but the majority of the rooms will be accessed from a double loaded corridor.

Mr. Yurko asked if there will be an onsite manager.

Mr. Fallon responded that one of the units will be designated for a house manager.

Mr. Yurko asked for comments on the Conservation Commission's objection.

Mr. Lorden has a different interpretation of the Code. He also disagrees with the Commission's definition of Resource Protection District.

Mr. Yurko asked if he has vetted that definition with the Code Enforcement Officer.

Mr. Heyland agreed and asked for something on the plan delineating that area.

Mr. Yurko asked about the parking requirement waiver, and whether or not the applicant has calculated how many parking spaces they will need without the waiver.

Mr. Lorden responded that there are 5 units in the existing building and 45 units in the proposed building, 50 units all together. The Code Requirement is one space per unit for 50 parking spaces, they are proposing having 14 spaces, and requesting a waiver of 36 spaces.

Mr. Yurko asked if the applicant has reviewed the requirements for obtaining a parking space waiver.

Mr. Fallon responded that he included this in the Design Review application. This property will be utilized by Playhouse cast and crew, most of which will be coming by bus and will not have personal vehicles.

Mr. Yurko expressed his concern that if the plan is approved, with the requested waiver, and in the future the property is sold to someone who wants to operate it as a boarding house not for the Playhouse, there will be a problem with parking at that time.

Mr. Feldman responded that Board approval may be granted with the condition that if the property is sold or managed by anyone other than the Playhouse, for uses other than the Playhouse, it will have to come back before the Board for further review to determine if there will be any additional impacts.

Mr. Yurko suggested that even without a waiver the applicant could utilize the existing parking at the Playhouse.

Mr. Fallon noted that the contract with the actors union mandates that the Playhouse provide housing within walking distance to the Playhouse because the cast comes without vehicles.

Mr. Yurko asked for a mockup of the proposed building, noting that the existing building is well screened.

Mr. Fallon responded that the proposed building will be back a bit further and it also has a portion which is below grade, so it will have a very similar appearance to what is currently there.

Mr. Simpson asked if the Applicant has met with the Fire Chief regarding his recommendations.

Mr. Fallon responded that they will put in layers of compacted gravel covered with grass, they will also have a paved driveway on one side.

Mr. Yurko suggested that this application may trigger a traffic impact study. He asked the Applicant to meet with the Code Enforcement Officer to work out how this issue would be addressed if necessary.

Mr. Renaud expressed concern about the large number of parking spaces the Board is being asked to waive, and he asked how the number of fourteen (14) parking spaces was calculated. He suggested that currently the playhouse houses staff in off-site locations around town and that there is the potential that these individuals have vehicles which may not be obvious at the current site.

Mr. Fallon responded that the understanding is that the majority of the people using this facility will be without vehicles.

Mr. Renaud agreed with Mr. Yurko's concern about the future sale and use of this property. He also noted that he has seen off site housing locations where there have been many cars.

Peter Lewis responded that the proposed structure will satisfy approximately 70% of the Playhouse housing need.

Mr. Yurko suggested that applicant may want to consider amending the waiver request and housing some of the overflow vehicles at the Playhouse, where there is a great deal of property.

Mr. Lewis agreed that this plan is already in place along the boundary line between the Playhouse and Chamber of Commerce. They would set this up as a prescribed easement.

Mr. Simpson asked if there was anywhere on the subject property where they could locate additional parking.

Mr. Fallon responded that there is not.

Mr. Simpson referred to the Conservation Commission's Memo to the Board and asked the Code Enforcement Officer to comment.

Mr. Heyland responded that the boundary line for the RP Zone is unclear on the official Town's map which is why he has asked for a professional delineation to clearly show that the building envelope site is outside of the Resource Protection District. It is his (Mr. Heyland's) understanding that it is.

Mike Horn, Ogunquit Conservation Commission responded that he agrees that this is a much needed addition for the Playhouse, however these buildings are within the 250 foot setback, and the removal of the old buildings and the construction of new buildings requires review under the new standards. Maine State Statutes indicate that if the buildings are within 250 feet they are not allowed.

Mr. Feldman agreed that State Law suggests that the Shoreland Zone is 250 feet, however the only portion that is regulated is the first 75 feet adjacent to wetlands and resource protection areas and 100 feet from the Shoreland Zone. He agreed that it is confusing, everyone agrees that the Shoreland Zone is 250 feet but it is only regulated by any ordinance for the first 100 feet.

Mr. Yurko asked if all of the proposed buildings and paving etc are outside the 75 and 100 foot marks.

Mr. Feldman responded that they are, and he agreed with the Code Officer that these boundaries should be flagged and noted on the site plans. He agreed that the existing building is within the 75 foot area however it is an existing structure.

Mr. Fallon added that they have addressed the Fire Chief's concerns. He noted that they are now incorporating solar panels and he distributed cut sheets.

Doug Mayer, Conservation Commission reminded the Board that the Town has limited natural resources and the Commission's goal is to protect them and any project proposed close to rivers and wetlands needs to be looked at carefully and held to higher standards.

Fire Chief O'Brien responded to the applicant's inclusion of solar panels. While he is in favor of the use of solar panels he noted that photovoltaic panels are very dangerous to fire fighters. He noted that there is always voltage in them and it can't be turned off. This poses a hazard to fire fighters particularly when they cover the entire roof area. This applicant proposes using hydronic systems which utilize water and are less dangerous, however this too depends on the percentage of roof coverage. He agreed to work with this applicant on the use of the panels on this project.

Mr. Fallon responded that they intend to utilize approximately 30% of the roof and he will work with the Fire Chief.

Mr. Yurko Moved to Find this Application Complete and Schedule the Public Hearing for September 23rd.

YURKO/BEVINS 4:0 UNANIMOUS

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Mr. Simpson noted that that Board is working on possible Zoning Ordinance Amendments to give the Code Enforcement Officer alternative methods of enforcement. Mr. Feldman will submit language for the September 23rd meeting. At that time the Board members will review it and decide whether or not to hold another workshop, or vote to send it to the Select Board for submissions to the voters.

J. ADJOURNMENT -

Mr. Yurko Moved to Adjourn at 7:20 p.m.

YURKO/RENAUD 4:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy
Town of Ogunquit
Recording Secretary

Approved on September 23, 2013