

OGUNQUIT PLANNING BOARD MINUTES

SEPTEMBER 22, 2014

A. **ROLL CALL –**

The Roll was called with the following results:

Members Present: Don Simpson, Chair
Rich Yurko, Vice Chair
Jackie Bevins
Muriel Freedman

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer
Maryann Stacy, Recording Secretary

B. **PLEDGE OF ALLEGIANCE -**

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

D. **MINUTES** – September 8, 2014 Regular Business Meeting.

Mr. Yurko Moved to Accept the Minutes of the September 8, 2014 Meeting as Submitted.
YURKO/BEVINS 4:0 UNANIMOUS

E. **PUBLIC INPUT** –

Mr. Simpson asked if there was anyone who wished to be heard on any matter not on the Agenda. There was no one.

F. **UNFINISHED BUSINESS** – None

G. **NEW BUSINESS** –

1. **Stickamayka Group, LLC / Steven R. Dunlevy – 7 Oarweed Lane (Building #2) – Map 3 Block 91 – Shoreland and Perkins Cove Residential District (PCR). Site Plan and Design Review for a pre 1930 structure. Application to demolish existing dwelling and construct a new building.**

Mr. Simpson noted that the action at this meeting would be to determine completeness of the application and schedule a Public Hearing if appropriate.

Steven Dunlevy addressed the Board. Mr. Dunlevy confirmed that he is the owner of the property in question.

Mr. Simpson referred to Mr. Feldman's (SMRPC) September 15, 2014 Memo to the Board wherein he (Mr. Feldman) stated:

“There are a number of issues that the Planning Board will want to consider as part of the review of the application prior to holding a public hearing and taking action on the application. There are as follows:

- *Article 3 NONCONFORMANCE Section(s) 3.3.H.2 & 3 It is important to note that at the time the board votes to approve and make its’ Findings of Fact that you need a finding that indicates that the new home has been setback from the water to the most Practical Extent Possible.*
- *Article 9 STANDARDS FOR SPECIFIC LAND USES Sections(s) 9.15.B.7 & 8 which specifically discuss the Floodplain management issues. The Planning board should seek a permit or sign off from the Maine Department of Environmental Protection prior to approving the project due to the location from the Shoreline.”*

Mr. Simpson asked Mr. Heyland to comment.

Mr. Heyland responded that it is the Board’s duty to find the proper location for the relocation of the new structure. That the structure must meet all setbacks, to the greatest practical extent. In this case the new structure will be pushed back from the water as far as possible. The new structure’s location will improve the non-conformity on the water side however there will still be some non-conformity there. The other setbacks will be met.

Regarding the DEP. The law requires any work that close to the water to have a full DEP Permit.

Ed Brake from ATTAR Engineering addressed the Board.

Mr. Simpson asked if they had applied for the DEP Permit.

Mr. Brake responded that they have started the process with DEP. A DEP representative has visited the site and they have scheduled a pre-application meeting.

Mr. Simpson asked if they have scheduled a date for this meeting.

Mr. Brake responded that no date has been set.

Mr. Yurko confirmed that the Applicant has not actually filed an application with the DEP.

Mr. Brake confirmed this and added that their plan is to run the DEP Application in conjunction with the Planning Board Application.

Mr. Yurko asked how long it takes to get a DEP Permit and what the process is. He stated that the Planning Board’s process shouldn’t get too far in advance of the DEP permitting process.

Mr. Brake responded that the DEP has 60 to 90 days from the date the Applicant files the application.

Mr. Simpson expressed concern that the DEP Permit is part of the Planning Board Application and the Board's task at this meeting is to determine completeness of the application. The DEP Permit is an important missing piece of the application. He is reluctant to proceed without the DEP Permit. His concern is that the DEP may require changes to the plans which would effect the Plans currently before the Board.

Mr. Yurko noted that the Board might require changes to the plans which would effect the DEP Application, requiring the applicant to reapply or modify the DEP Application.

Mr. Heyland responded that the DEP will want to know where the structure is going to be located. He also pointed out that this site is so restrictive that the location of the structure is very limited.

Mr. Brake stated that they often run the DEP permitting process side by side with the Planning Board process. This allows them to get input from the Board, the DEP, and the Public and make timely changes to the plans as needed.

Mr. Yurko reminded everyone that there is only a single Planning Board meeting in October and it is almost a month away. That might give the Applicant time to get the DEP Application filed and receive some initial input from them.

Ms. Bevins asked if this is a pre 1930 structure.

Mr. Simpson responded that it is.

Mr. Yurko asked for an explanation of the non-conformance issues.

Mr. Heyland responded that there are several nonconformities: side yard setback from the abutter's property requires fifteen feet (15'), water setback from the Highest Annual Tide (HAT) mark is seventy-five feet (75'). The entire structure is under the setback. The law requires that the structure be moved back to the greatest practical extent considering all the site's features.

Mr. Yurko asked for confirmation that the Board has an obligation not to expand a non-conforming structure except in very specified limits.

Mr. Heyland responded that in General Zoning non-conforming structures may not be expanded. In the Shoreland Zoning the structure's setback requirements are the water and a 30% expansion is allowed. No more than 30% of floor area or 30% of volume may be exceeded over the lifetime of the structure. The only outstanding question with this application is the floor area calculation. There is still the question of the rooftop deck. The allowable 30% expansion encompasses both interior and exterior floor space.

Mr. Yurko pointed out that the calculations are based on what is there now, and the new structure being allowed a 30% expansion beyond the existing structure. He noted that the existing structure appears to have a "subbasement/shelter".

Mr. Heyland responded that there is an underground “bomb shelter” which is almost like a basement. Under Shoreland Zoning basement area is counted toward total floor area and included in the 30% allowable expansion. The new building will capture the “shelter’s” floor area and put it toward the new structure.

Mr. Yurko noted that the proposed new structure is on stone pillars. He asked if the space below the structure will be included in the area calculations.

Mr. Heyland responded that it will not. He stated that the property is located in a FEMA Floodplain Zone which requires elevation of one foot above base flood elevation and a flow-through type foundation.

Mr. Yurko asked if Mr. Heyland has been to the site.

Mr. Heyland confirmed that he has been there a few times.

Mr. Yurko stated that, visually the existing house appears to be a one floor dwelling with a subbasement. The proposed structure will be elevated with two large floors above and a deck on the roof.

Mr. Heyland agreed that it appears as if the expansion is in excess of 30%, however when the calculations are done the expansion appears to be within the 30% allowable expansion, however there is still the question of the square footage of the rooftop deck. They may be required to reduce the top story by $\frac{3}{4}$ or $\frac{1}{2}$ to satisfy the 30% rule.

Mr. Brake responded that the total roof area is 975 square feet. However to meet the 30% calculations the roof deck would be limited to 540 square feet. They understand that the entire roof area cannot be a deck.

Mr. Yurko asked about the remaining 435 square feet of roof space that will not be “deck space”.

Mr. Dunlevy responded that it will be “accessible roof space” with a 1/4” pitch from the center out to move water.

Mr. Simpson asked how it will be “accessible”. He noted that from the drawings there appears to be a stairway at the back of the building.

Mr. Dunlevy agreed that it will be accessed via a spiral staircase at the back of the building.

Mr. Simpson reviewed the Ogunquit Historic Preservation Commission’s (OHPC) September 13, 2014 Memo to the Board wherein they request:

“1. Drawings from directly above the proposed structure showing the size, scope, and anticipated layout of the roof deck that appears to encompass a significant portion, if not, 100% of the roof area,

2. Details on the faux Mansard roof/railing appearing to surround the roof deck,

3. *Details on the 2 story exterior, open, attached spiral stairway used to access the roof deck.*

OPHC perceives these elements to be the introduction of new visual elements not seen in the buildings and structures in this enclave of neighboring structures.”

Mr. Yurko asked about the exterior materials for the proposed structure. He noted that for the Design Review portion of the application the Board will need to know what materials will be used.

Mr. Simpson agreed and added that typically samples are presented to the Board.

Mr. Simpson pointed out that the existing pre-1930 structure falls under the jurisdiction of the Ogunquit Historic Preservation Commission, the proposed new structure does not. The Design Review for the new structure is the responsibility of the Planning Board.

Mr. Yurko asked when the existing structure was last occupied.

Mr. Dunlevy responded that it has probably been over five years.

Mr. Yurko pointed out that the Non-conformity regulations state that if a nonconforming use is discontinued for over one year the “grandfathered” status is lost. He asked if this rule only applies to the use, and does it also apply to a nonconforming structure.

Mr. Heyland responded that the Non-conforming Use Laws states that a nonconforming use that is abandoned for more than a year cannot be reverted back to the same use. However this property is located in the Shoreland Limited Residential District and a single family use is allowed there. The continuation of that use will be allowed.

Mr. Yurko asked for a review of the non-conforming structure provisions to confirm that there isn't a similar provision.

Mr. Simpson agreed that a site visit is needed.

Ms. Bevins stated that she would like a site visit to take place before the application goes any further. She asked to have the proposed foundation be marked out for the Board to see.

The Board scheduled a Site Visit to take place on October 6, 2014 at 4:00 p.m.

Mr. Yurko Moved to Table this Application pending the Site Visit, and reconsider the application's completeness at the Board's October 27, 2014 Meeting.

YURKO/FREEDMAN 4:0 UNANIMOUS

Mr. Simpson informed the Applicant that the DEP Permit is a vital piece of the application and he suggested the Applicant be prepared to bring either the DEP Application or the permit to the October 27th meeting.

Mr. Simpson also asked the applicant to stake out the structure's proposed foundation location for Site Visit.

Helen Horn, Ogunquit Historic Preservation Commission, asked if the Applicant might be able to also put up something to indicate the height of the building.

Mr. Dunlevy invited the Board to visit his home. He noted that he used the same materials as those that will be used on this subject structure.

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland asked the Board to schedule a 2nd workshop to discuss the Boarding House issue.

The Board scheduled a workshop to take place on October 27, 2014 at 5:00 p.m.

1. OTHER BUSINESS - None

J. ADJOURNMENT -

**Mr. Yurko Moved to Adjourn at 6:25 p.m.
YURKO/BEVINS 4:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Recording Secretary

Approved on October 27, 2014