

OGUNQUIT PLANNING BOARD MINUTES

NOVEMBER 24, 2014

REGULAR BUSINESS MEETING – 6:00 PM

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
Lee Jay Feldman, SMPDC

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES –UNAVAILABLE

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

F. UNFINISHED BUSINESS –

1. **WAYNE PERKINS – 324 Shore Road – Map 3 Block 4-5 – Limited Business District (LBD). Site Plan Review for Change of Use from Retail to Type 1 Restaurant. Post 1930 structure.**

Mr. Simpson stated that he has reviewed the contents of the Application packet and sees nothing missing.

Mr. Yurko thanked Mr. Feldman for his memo (dated 11/18/2014) to the Board wherein he responded to comments made at the November 10, 2014 Meeting by abutter Jim Hartwell's attorney.

At this time the Board reviewed the Applicant's requested waivers:

Item 6.6.C.3.G: Utilities, Sewers, Water Mains, Culverts, and Storm Water Management
We are asking for a waiver because the utilities are already on sight.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.C.3.H: Two-foot Contours.

Project requires no change to existing contours.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.C.3.J: High Intensity Soil Survey.

We are asking for a waiver because the project involves an already developed lot.

Mr. Yurko Moved to Grant the requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.C.3.L: The boundaries of any flood hazard areas and the 100-year flood elevation. We are asking for a waiver because this location is not located in any flood zone.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.C.3.M: A copy of any proposed deed restriction.

We are asking for a waiver because there are no deed restrictions for this property.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.C.3.N.i: Sewer service area.

A letter from the sewer district stating that it has the capacity to collect and treat the waste water is included in the packet.

Mr. Yurko noted that because the letter from the Sewer Department had been provided to the Board no waiver was required.

Item 6.6.3.C.N.ii: Septic System Design

We are asking for a waiver because this property is hooked up to public sewer.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.C.3.O.i: Water service area.

A letter from Kennebunk, Kennebunkport and Wells Water District stating the review and approval of the water system design is included in the packet.

Mr. Yurko noted that because the letter from the Water District had been provided to the Board no waiver was required.

Item 6.6.C.3.O.ii: Approval of hydrant location.

We have requested a letter from the Ogunquit Fire Chief. At the time of submission, we have not received this letter, but we do not expect there to be an issue. We are not requesting a waiver from this requirement and will provide a copy of the letter when we receive it.

Mr. Yurko noted that because the letter from the Fire Chief had been provided to the Board no waiver was required.

Item 6.6.3.O.iii: Outside water service area.

We are asking for a waiver because this project is serviced by public water.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.3.P: Locations, names, and present widths of existing streets, highways, easements, building lines, parks, and other open spaces.

This item is beyond the scope of this project.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.Q: Width and location of any streets, public improvements or open space shown upon the official map and in the comprehensive plan, if any, within the site.

This item is beyond the scope of this project.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.3.R: Location of any open space to be preserved and description of proposed ownership, improvements and management.

We are asking for a waiver because no areas are intended to be open space.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.3.S: Hydrologist assessment prepared by certified geologist or Registered Professional Engineer - outside of public water & sewer areas.

We are asking for a waiver because this project is serviced by public water.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.T: An estimate of the amount and type of vehicular traffic to be generated on a daily and at peak hours.

We are asking for a waiver because, based on the size of the business, we are only required to have a maximum of 2 parking spaces.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.U: Traffic impact analysis, prepared by a registered professional engineer with experience in traffic engineering (for projects requiring 10 or more traffic spaces or projected 50 or more trips per day). We are asking for a waiver because this project involves the renovation of a single car garage whose square footage required no more than 2 parking spaces.

Mr. Yurko Moved to Grant the Requested Waiver because it does not meet the standard.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.V: Area within or adjacent to be proposed site which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan.

We are asking for a waiver because this project involves a developed site.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4: UNANIMOUS

Item 6.6.3.W: Historic Areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places, Ogunquit Historic Register, or have been identified in the comprehensive plan.

We are asking for a waiver because to our knowledge this project involves property that is not on a historic site.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.Y: Stormwater management plan.

We are asking for a waiver because this involves a developed site and there is no proposed change to the site.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.Z: Erosion and sedimentation control plan.

We are asking for a waiver because this involves a developed site.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.A.A: Location of any streets, public improvements, or open space shown in the comprehensive plan or capital improvements plans, within the site.

We are asking for a waiver because this project involves no intended open space.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.BB: Parcels of lands proposed to be dedicated to public use and the conditions of such dedications.

We are asking for a waiver because none are intended to be proposed.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.3.CC: Locations/method of land clearing and construction debris disposal. We are asking for a waiver because this is a developed site.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/FREEDMAN 4:0 UNANIMOUS

Item 6.6.3.DD: Cost estimates for setting performance guarantees, pursuant to section 4.8. We are asking for a waiver because no bond is intended.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

Item 6.6.3.EE: State and Federal Permits.

Upon approval, we will contact DHHS.

Mr. Yurko Moved to Grant the Requested Waiver.

YURKO/BEVINS 4:0 UNANIMOUS

At this time the Board reviewed the Site Plan Submissions Checklist and found it to be complete.

**Mr. Yurko Moved to find the Application Complete and schedule a Public Hearing
YURKO/FREEDMAN 4:0 UNANIMOUS**

Mr. Simpson informed the Applicant that the Public Hearing would take place on December 15, 2014 at 6:00 p.m.

G. NEW BUSINESS –

1. JOHN MIXON – 5 Bourne Lane – Map 5 Block 35A – Residential and Limited Business District. Subdivision Sketch Plan for Phase II (Units 5-7) of a seven unit condominium subdivision.

John Mixon addressed the Board. He summarized that he had submitted a similar plan to the Board over a year ago. At that time the plan was to demolish the existing dwelling and garage and construct seven new units. The Applicant has since decided to keep the existing structures, renovate them, then add two more structures, and construct three additional new dwelling units.

Mr. Mixon addressed the issue of vehicle access to the property. Mr. Mixon maintains that the access way is not a street. He cited Attorney Burns' March 4, 2013 memo wherein she confirmed that it is not a street and didn't need to be a street. Mr. Mixon stated that it is also not a driveway because it did not meet the definition of a driveway in 2013. At that time it serviced five dwellings and four lots. Mr. Mixon asserted that there is nothing in the Ogunquit Zoning Ordinance which requires a street or driveway to access a piece of property. Mr. Mixon cited two other existing developments which are accessed without a driveway or street as defined in the Ordinance.

Mr. Mixon stated that Phase I of this project produced four units. He noted that during this phase he shared parking with the Barn Gallery without any traffic problems, he installed town water, town sewer, underground electric, and propane. In addition he removed over one hundred old growth plants and replanted them off site. He later returned many of them to the original site.

Mr. Mixon stressed that the current application involves the construction of three units. This does not trigger a traffic study. He noted that he could wait four years and then construct two units without ever coming before the Board.

Mr. Mixon again referred to Attorney Burns' 2013 Memo to the Board.

Mr. Simpson asked for confirmation that of the four existing units, two are new and the other two are the previously existing house and garage/apartment.

Mr. Mixon confirmed that one of the houses is the original house which was on the lot; the other unit is a garage/apartment which he intends to demolish and replace with a new structure similar to the proposed units.

Mr. Simpson summarized that Mr. Mixon has built two new structures, the original house has been renovated which gives him three, and the rest of the project is covered in this application.

Mr. Mixon responded that the project will be more attractive if the garage/apartment is removed and replaced with a more attractive building.

Mr. Yurko asked how large the apartment over the existing garage is.

Mr. Mixon responded that it is approximately 900 square feet and the new building would be about 1,800 square feet. He also noted that the existing garage apartment is currently occupied.

Mr. Simpson pointed out that as of June 12, 2013 Article 2 did change in terms of the definition of access to the facility. Letters from both Attorney Burns and Mr. Feldman stated that the access point does have to meet the current definition and does have to meet a 50' right-of-way. There is further input that this project does trip the fifty or more trips per day and thus it requires a traffic study.

Mr. Mixon responded that he saw no changes to access; the only change he is aware of is driveway.

Mr. Simpson asked how the applicant will address the traffic study request and the access issue.

Mr. Yurko asked what the buffering will be between the project, the access way, and the homes.

Mr. Mixon responded that he isn't ready to address that yet. This meeting is only to determine completeness and schedule a site walk and he will respond to those kinds of questions at a later date.

Mr. Simpson corrected himself. The driveway definition was changed on June 10, 2014.

Rick Licht addressed the Board. Mr. Licht stated that the access does not meet the definition of a driveway "serving not more than two dwelling units"; it is not a driveway because it serves more than two dwelling units. Also, by definition it is not a street, which leaves it in a gray zone which he will call an access way. It does not need to create frontage. The Applicant's plan is to provide a suitable access that will meet the Fire Chief's requirements for emergency access. The proposed access way will be almost as wide as Bourne Lane.

Mr. Licht displayed a site plan indicating the access way's location and dimensions. He noted that portions of the access way are ready to be based paved.

Mr. Simpson asked if Mr. Mixon has received an agreement from the Ogunquit Playhouse to pave the entrance way. He noted that the Playhouse owns that portion of the access roadway.

Mr. Mixon responded that he has full rights to improve the right-of-way, and he doesn't care if the Playhouse likes it or not.

Mr. Simpson informed that Applicant that he should be prepared to come back with a plan for meeting the 50' right-of way standards and the traffic study.

Mr. Feldman disagreed with both Attorney Bannon and Mr. Mixon. He cited a correspondence from the Town's Attorney (dated November 24, 2014), wherein Attorney Burns states that because the property already has more than two dwelling units the addition of any new units will require the upgrading of the existing access driveway to meet the local residential street standards as set forth in Article 10 as well as meeting those standards of any new street.

Mr. Feldman went on to say that last year's change in the definition states that a driveway is limited to no more than two units. The definition of a local residential street states that it is a street servicing a lot, or lots, containing less than fifteen dwelling units. Thus, if there are two or less dwelling units it is a driveway, if it has more than two dwelling units it becomes a local residential street. In addition, the definition of street says a public or private way providing frontage to a lot which meets those standards of Article 10 in the Subdivision Regulations. The definition of street says that it can be a public or private way but if there are more than two units being serviced it is a local residential street and must meet the standards.

Mr. Licht noted that this is a three lot subdivision and if the Applicant removes the garage/apartment, this leaves four lots under review. At ten trips per day that's forty trips and this does not trigger a traffic assessment.

Mr. Feldman responded that a subdivision is three or more lots in a five year period, the Applicant is adding four lots, plus the two that he has already received permits on, which trips this into the traffic impact requirement.

Mr. Yurko suggested that he is inclined to follow the Town Attorney's advice.

Mr. Simpson agreed.

Mr. Licht asked if the Board could schedule a Site Walk.

Mr. Simpson responded that he is disinclined to schedule a Site Walk until the application is found to be complete. The issues of access and traffic analysis need to be clarified first.

Mr. Mixon offered comments made by Attorney Burns in her letter dated March 4, 2013.

Mr. Simpson responded that since that date the law has changed. The ordinance was amended on June 10, 2014.

Mr. Yurko Moved to Table this Sketch Plan until the issues of access and traffic analysis have been resolved.

YURKO/FREEDMAN 4:0 UNANIMOUS

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland reviewed the amended Zoning Map illustrating the corrected Shoreland and Resource Protection Zones.

Mr. Simpson asked if these changes could negatively impact residences.

Mr. Heyland responded that they could and people should review the map on the Town Website or come into the Land Use Office for further clarification.

Mr. Heyland also noted that the Historic Preservation Commission would like to schedule a meeting between the OHPC and the Planning Board to review the Historic Preservation Ordinance.

Mr. Simpson agreed to do so after the holidays.

1. **OTHER BUSINESS** – None

J. **ADJOURNMENT** -

Mr. Yurko Moved to Adjourn at 7:00 p.m.
YURKO/BEVINS 4:0 UNANIMOUS

Respectfully Submitted

Maryann L. Stacy

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Planning Board Recording Secretary

Accepted on December 15, 2014

