



Town of Ogunquit
Planning Board
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**OGUNQUIT PLANNING BOARD
PUBLIC HEARING and REGULAR BUSINESS MEETING
MINUTES
NOVEMBER 23, 2020
ONLINE VIA ZOOM**

REGULAR BUSINESS MEETING

A. ROLL CALL –

Members Present: Steve Wilkos (Chair)
Mark MacLeod (Vice-Chair)
Bob Whitelaw
Elaine Cooper
Steven Meller (1st Alternate)

Members Excused: Jackie Bevins

Also, Present: Scott Heyland, Code Enforcement Officer

Mr. Wilkos noted that for each motion voted on during this meeting Board Members would identify themselves and vote yea or nea verbally.

**Mr. MacLeod Moved to Excuse Ms. Bevins.
MACLEOD/WHITELOW 4:0 UNANIMOUS**

Mr. Wilkos noted that, due to Ms. Bevins absence, Dr. Meller would be a full voting member for the duration of this meeting.

B. PLEDGE OF ALLEGIANCE –

C. MISSION STATEMENT – The Mission Statement was read by Ms. Cooper.

D. MINUTES – November 9, 2020 Meeting and October 26, 2020 Lighting Workshop.

**Mr. MacLeod Moved to Accept the Minutes of the November 9, 2020 Meeting as Amended.
MACLEOD/MELLER 5:0 UNANIMOUS**

**Mr. MacLeod Moved to Accept the Minutes of the October 26, 2020 Lighting Workshop as Submitted.
MACLEOD/COOPER 5:0 UNANIMOUS**

E. PUBLIC INPUT –

Mr. Wilkos asked if there was anyone from the public who wished to address the Board on any matter not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

1.A PUBLIC HEARING:

ABOVE TIDE INN / BLAIR HODGE – 64 Beach Street – Map 7 Block 90-A – RP – Site Plan Review for a post 1930 structure. Application to remove existing single family dwelling, add one foot to existing foundation, and construct a new single family dwelling on existing footprint.

Mr. Hodge and his representative Nat Amsden give a brief recap of the proposed project.

Kirsten Ross (184 Highland Avenue) asked if the Public Hearing would be kept open throughout the Board's discussion.

Mr. Wilkos confirmed that the Public Hearing would be kept open through the Board's discussion and would be closed when they go into deliberation.

Ms. Ross asked for confirmation that the proposed structure will be a single family home.

Mr. Hodge confirmed that it will be a single family structure as noted in the application.

1. ABOVE TIDE INN / BLAIR HODGE – 64 Beach Street – Map 7 Block 90-A – RP – Site Plan Review for a post 1930 structure. Application to remove existing single family dwelling, add one foot to existing foundation, and construct a new single family dwelling on existing footprint.

Mr. Wilkos reminded everyone that the standards for reviewing this application are outlined in Section 4.5.E of the Ogunquit Zoning Ordinance regarding construction or activities in any Shoreland Zone.

Ms. Cooper noted that the Applicant had stated at the last meeting that he would provide a copy of the contract demonstrating that he has Right, Title, and Interest in the property as required by Item 7 of Section 4.5.E.

Mr. Hodge responded that he provided a copy of the Addendum to the Purchase and Sales Agreement, which shows that he has Right, Title, and Interest.

The Board noted that they are not attorneys and would not interpret a legal document.

Ms. Cooper pointed out that the Applicant's paperwork had conflicting Flood Zone identifications; and the Applicant had stated that he would correct them on Map B2 and Note #9.

Ms. Cooper added that Mr. Thibodeau said he would correct the map so that all seven H-Piles would be shown instead of the six which are currently indicated.

Mr. Amsden responded that the Flood Certification appears to have conflicting Flood Zone datums. He referenced the explanation memo he submitted to the Board just prior to this meeting.

Ms. Cooper noted that the application paperwork indicates three Flood Zones: V, VE, and A. She asked which zone is correct.

Mr. Amsden responded that the three zones overlap at this location.

Ms. Cooper expressed confusion and asked for more clarification and she suggested that everything should match and be consistent.

Mr. Heyland reiterated that the Planning Board's review is to determine the correct location for the structure and if there is a better place for the foundation; if the Board feels it needs additional information in order to do this, they can ask for it.

Ms. Cooper asked if the merging of the subject parcel and the abutter parcel into a single entity would require Planning Board or Code Enforcement approval.

Mr. Hodge responded that when he purchases 64 Beach street there will be reciprocal easements between the two properties which will include the drainage structure.

Ms. Cooper asked if a future owner, who doesn't want the easement for the drywell, can undo the easement.

Mr. Heyland confirmed that no new owner can undo the easement. Future owners will be made aware of the easements when they purchase the property and they will have to abide by those easements.

Ms. Cooper asked if the Applicant had done the calculations for a 100 year storm.

Mr. Amsden responded that he did investigate a 100 year storm. To accommodate a two day event they would need to double the size of the drywell, which would then occupy the entire parking lot area. His concern is that such a drywell structure might undermine the abutting property. He added that the area watershed is large and would be too great for the proposed system which is only designed to capture the water coming off the roof of the new house. He added that there is no 100 year storm mitigation in the area; and the DEP culverts are only designed for 50 year storms.

Ms. Cooper asked: "if the DEP uses 50 year storm calculations why didn't the applicant look at calculations for a 50 year storm?"

Mr. Amsden agreed to look at 50 year storm calculations; and he added that the 25 year calculations seem reasonable for a roof runoff system. This applicant isn't responsible for any runoff that comes off the property behind this lot. The plan they submitted is not a full storm water management plan. The system they proposed is for a couple of thousand square feet, and it is already oversized for a 25 year storm.

Mr. Wilkos asked Mr. Heyland if there was a requirement that the Applicant had to use calculations for a 50 year storm.

Mr. Heyland responded that there is no prescriptive code which requires the use of 50 year storm calculations. It is up to the Planning Board to determine whether or not the Applicant has to meet that level of water management.

Ms. Cooper noted that three Board members had asked about the soil borings and she asked if the applicant was going to submit the results of those tests. Her concern, and the Conservation Commission's concern, is that the applicant does not know what is under the area of the proposed drywell and whether or not that area is adequate. She doesn't want to see the applicant remove the building only to discover the soil is inappropriate for the approved plan.

Mr. Amsden responded that the Engineer Mr. Thibodeau spoke at the last meeting and informed the Board that the footings would be placed on adequate soils; and if it is later determined that the area is inappropriate they will make field alterations.

Ms. Cooper responded that she had asked for a report to be part of the application. She believes the Board should know the plan will work before it approves the application. Ms. Cooper reviewed discussion from the November 9, 2020 Meeting as noted in the minutes from that meeting.

Mr. Hodge responded that Mr. Thibodeau has scheduled testing and will oversee all the work on the site; and that the engineering of the site would also be reviewed by the Code Enforcement Officer.

Mr. Thibodeau confirmed that he has scheduled with SW Cole to conduct boring tests, however, due to their schedule it probably will not happen for a few weeks. Mr. Thibodeau reiterated that he is confident that the borings will be consistent with his calculations both for the structure foundation and the drywell.

Ms. Cooper reiterated that this is a very sensitive area and she wants to be sure that no pollution enters the river there. She noted that Maine Healthy Beaches has indicated that this area of the river is "polluted at low tide". She wants to be sure that the soils are appropriate in that location and can handle what is proposed to be put on this property. She reiterated that the Board was told this work would be done and she thinks it should be done before the existing building is removed.

Mr. Thibodeau responded that the reason for the modification to the foundation is because the new structure will be raised to accommodate the flood control.

Mr. Wilkos stated that the Applicant agreed to provide the test results from test borings.

Ms. Cooper asked if the numbers for the removal of the existing concrete patio have been added to the amended plan.

Mr. Amsden responded that he has not prepared an updated plan yet.

Mr. Hodge added that he will provide an updated amended plan.

Ms. Cooper asked if the Board was going to reschedule the cancelled Site Visit.

Ms. Cooper noted that this application involves a non-conforming lot with a non-conforming building which is going to be removed. She asked if the volume will be increased with the new structure and why this application is not being reviewed under Article 3.3 of the Ogunquit Zoning Ordinance.

Mr. Heyland responded that a few years ago the Town adopted new regulations directly from the DEP. Property owners within the 75 foot buffer are allowed to expand 30% of the building footprint as it existed in 1989. This project is not proposing any footprint expansion.

Ms. Cooper responded that she is referring to vertical expansion, not horizontal expansion.

Mr. Heyland responded that volume expansion is not part of the Board's review. This application involves a structure in the 75' setback; and vertical expansion is allowed.

Mr. Hodge stated for the record that the footprint is not expanding and the existing patio will be removed so there will be a net reduction in the footprint. Also the 2nd floor space will be 20% smaller than the current building's 2nd floor space.

Mr. Whitelaw referred back to the question of Right Title and Interest. He noted that Mr. Hodge's November 23, 2020 e-mail to the Code Officer refers to a "glitch in the title". Mr. Whitelaw asked for an explanation of the glitch.

Mr. Hodge responded that he did not provide a copy of the entire Purchase and Sales Agreement Contract. It was discovered that there was a problem with the title. The problem was tracked back several owners which is why the addendum was created. Ken Ray is Mr. Hodge's partner. Mr. Hodge agreed to have his attorney speak with the Town Attorney.

Mr. Whitelaw suggested that the Board cannot move forward until the establishment of Right Title and Interest is resolved.

Mr. Wilkos agreed that applicants need to establish Right Title and Interest before they come before the Planning Board. He also agreed that the Board members are not attorneys and he asked if they felt the Town Attorney should review the contract and provide her opinion.

The Board unanimously agreed that the Town Attorney should review the Purchase and Sales Agreement Contract and the Addendum and give the Board her opinion as to the Applicant's Right Title and Interest.

Mr. MacLeod noted that the Sewer District wanted to do a sewer line video inspection. He noted that the children's swim beach is directly across the river from this property and if there is any chance this property's sewer line is compromised it should be corrected now.

Mr. Hodge responded that he spoke with Phil Pickering and he informed Mr. Pickering that he wanted to put in a new sewer pipe from this property to the manhole on Beach Street.

Dr. Meller reference Item 5 of Section 4.5.E and he asked about the parking arrangement and if it will impact visual access of the waterway.

Mr. Amsden responded that the areas marked out for parking are already being used for parking. There will be no increase in parking. The reciprocal easements between the two properties will resolve current parking issues. He added that the easements will be “in perpetuity”.

Ms. Cooper asked about consideration for the nesting birds.

Mr. Amsden agreed that they will be cognizant of the nesting times for Piping Plovers and the INFW letter addressed that issue as well.

Ms. Cooper stated that when Mr. Hodge comes back she wants him to have addressed all the questions discussed at this meeting and to have submitted all the amended documents.

Mr. Wilkos asked the Board members if they wanted to reschedule the Site Visit.

It was agreed that the Site Visit should be rescheduled.

The Site Visit was scheduled for December 14, 2020 at 3:00 p.m.

Kirsten Ross asked if the Board would keep the Public Hearing open through the next meeting.

Mr. Wilkos agreed that it would.

Ms. Ross asked where the piles would be driven and if the applicant could indicate those locations on the ground for the Site Visit.

Mr. Amsden responded that he would do his best however some of the pilings will be inside the foundation which currently has a structure on it. He will mark the locations on the outside of the foundation.

**Mr. MacLeod Moved to Postpone the Application for ABOVE TIDE INN / BLAIR HODGE – 64 Beach Street – Map 7 Block 90-A – RP.
MACLEOD/MELLER 5:0 UNANIMOUS**

G. NEW BUSINESS –

1. SUNSET RIDGE SUBDIVISION – Berwick Road – Map 18 Block 3-1 – RR1 – Subdivision Final Plan Application for three residential lots and private roadway.

Geoff Aleva from Civil Consultants addressed the Board as the Applicant’s representative. Mr. Aleva give a brief summary of the proposed project.

Mr. Aleva noted that, per the Fire Department’s recommendation, the new houses will have sprinkler systems.

Mr. Wilkos reviewed the Town Planner and Town Department Heads application review memos (*memos will be archived in the Applicant's Planning Board file*).

Ms. Cooper pointed out that Note #6 on Map R1 and Note #12 on SD1 do not match.

Mr. Aleva agreed to correct the inconsistency.

Mr. MacLeod asked when construction will begin and end.

Mr. Aleva responded that there has already been interest in these homes and the work will be done very soon.

Mr. MacLeod expressed concern that there is no sidewalk; however, after reviewing the Ordinance and seeing that the proposed street is a dead end with only three homes on it, and noting that the street connects to a street which also doesn't have any sidewalk, he is fine with not having a sidewalk on this street.

Mr. Whitelaw asked about the Skillings and Sons letter in which they note that they cannot determine water quantity.

Mr. Aleva responded that the Ordinance may need to be amended because there is no way to determine water quantity before drilling.

Mr. Heyland agreed that no well driller would guarantee, before drilling, that there will be a particular quantity of water.

At this time, the Board reviewed the Submissions Checklist and found all items to either have been submitted or not applicable to this application.

Mr. Aleva noted that he indicated that Item 7.1.4.5 US Army Corps, Section 404 had been submitted, however that form is a permit by notification form and due to a COVID situation in his office it has not been submitted yet. It will be submitted as soon as the employee returns to work, hopefully next week.

Mr. Aleva added that this is a permit by notification; and really only needs to be submitted prior to construction. He also suggested that due to the small size of the impact on the wetlands and the use of an oversize culvert with an earth bottom allowing wildlife to pass through, this project meets one of the categories which exempt it from requiring this permit.

Mr. Heyland agreed that this item might be considered to be not applicable.

Mr. MacLeod noted that the checklist submitted by the Applicant already indicates it is N/A, not applicable.

Mr. Wilkos asked if the Board can find the application complete without this form.

The Board unanimously agreed that they can move forward without this item.

It was noted that Item 7.3.19 – Location and method of disposal for land clearing and construction debris, was not added to the Plan.

Mr. Aleve responded that he will add the notation; and it will say that any tree cutting will be disposed of per State of Maine Waste Handling Practices. This is a standard notation used for almost all subdivision plans.

Mr. Aleve hand wrote a notation, “tree clearing and waste to be handled following MDEP waste requirements” on the plan and showed it to the Board. This will be Note 24 on the plan.

It was agreed that this satisfied the requirement as long as the amended plan is submitted prior to the next meeting.

Mr. MacLeod Moved to find the application complete for SUNSET RIDGE SUBDIVISION – Berwick Road – Map 18 Block 3-1 – RR1 – Subdivision Final Plan Application for three residential lots and private roadway.
MACLEOD/MELLER 5:0 UNANIMOUS

It was agreed that a 2nd Public Hearing would be helpful.

A Public Hearing (the 2nd for this application) was scheduled to take place on December 14, 2020 at 6:00 p.m.

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS – Discussion of lighting workshop held earlier this evening.

It was agreed that Mr. Heyland and Mr. Feldman would develop draft ordinance language for Type 2 Restaurant outdoor lighting.

Mr. MacLeod noted that most properties in Town do not comply with the Lighting Ordinance as it is currently written. He suggested the Board may want to require Lighting Plans from future applicants. This will make it easier to enforce compliance going forward.

The question was asked, if the Board will look at both commercial and residential properties.

It was agreed that both commercial and residential properties would be included.

Dr. Meller asked about the dark sky compliant requirement.

Mr. Whitelaw suggested that the Board needs to be careful about the crafting of any lighting ordinance. He expressed concern that an overreaching ordinance could impose financial and / or legal problems. He agreed that reviews of new construction is fine.

Ms. Cooper suggested that reviews shouldn't be restricted to Type 2 restaurants. It should apply to all commercial buildings in the district.

It was agreed that educating the public about light pollution would be a good approach.

Mr. Heyland summarized that he would like the Board to focus on Strings of lights; and what will happen when the Covid State of Emergency is lifted. He agreed that looking at lighting fixtures on residential properties would be difficult.

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 8:20 p.m.
MACLEOD/WHITELAW 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Town of Ogunquit

Planning Board Recording Secretary

Accepted on December 14, 2020

Notes:

- *These minutes are a summary of what was discussed and are not a transcript.*
- *Copies of all referenced documents will be maintained in the Application packet on file with the Land Use Office.*
- *All Planning Board meetings are video archived, and may be viewed for one year after the meeting date, on the Town of Ogunquit's website at www.townofogunquit.org.*