

MINUTES  
PLANNING BOARD  
TOWN OF DAMARISCOTTA  
September 6, 2016  
7:00 PM

**MEMBERS PRESENT:** Jonathan Eaton, Stephen Cole, Shari Sage, Bruce Garren, Wilder Hunt

**STAFF PRESENT:** Anthony Dater, Town Planner

**PUBLIC PRESENT:** Jenny Villeneuve, Town Attorney; Marilee Harris, Stepping Stones; Susan McAlister, abutter; William Howlett, Stepping Stones; Bill Hain, Stepping Stones; Mark Hamilton, Stepping Stones; Lucille Andersen, Stepping Stones; Jessica Sirois, abutter; Debra Lucchesi, tenant; Barbara Howlett, Stepping Stones; Jeff McKeen, Pemaquid Oyster Co.; Celia Cart, Pemaquid Oyster Co.; Tom Quaranto, interested public; Haas Tobey, Land Use Committee; Gina Hamilton, Wiscasset Newspaper; JW Oliver, Lincoln County News;

**CALL TO ORDER:** Chairman Eaton opened the public hearing portion of the meeting at 7:05 pm.

**PUBLIC HEARING – ON THE FOLLOWING TECHNICAL CHANGES TO ORDINANCES:**

1. **FLOODPLAIN MANAGEMENT ORDINANCE, ARTICLE VI.N.1: TECHNICAL CHANGES TO CORRECT THE ELEVATION OF CONTAINMENT WALLS TO THREE FEET ABOVE THE BASE (100-YEAR) FLOOD ELEVATION IN TIDAL WATER.**
2. **SHORELAND ZONING ORDINANCE, SECTION 15.B.4: TECHNICAL CHANGES TO CORRECT THE ELEVATION OF THE LOWEST HABITABLE FLOORS OF PRINCIPAL AND ACCESSORY STRUCTURES TO THREE FEET ABOVE THE BASE (100-YEAR) FLOOD ELEVATION IN TIDAL WATER.**
3. **SHORELAND ZONING ORDINANCE, SECTION 16.E: TECHNICAL CHANGES TO CORRECT THE ELEVATION OF THE LOWEST HABITABLE FLOORS, INCLUDING BASEMENTS, OF PRINCIPAL AND ACCESSORY STRUCTURES TO THREE FEET ABOVE THE BASE (100-YEAR) FLOOD ELEVATION ALONG TIDAL RIVERS.**

There was no public comment on the public hearing items. Comment period closed at 7:08 pm.

**REGULAR MEETING CALLED TO ORDER AT 7:09 PM**

**A. REVIEW AND DECISIONS ON THE 3 ORDINANCE AMENDMENTS FROM PUBLIC**

On motion Cole / Sage to approve the technical changes (3) to the Floodplain Management Ordinance and the Shoreland Zoning Ordinance as specifically listed above. (attached)

**VOTE: 5-0 IN FAVOR**

**B. MINUTES**

06/06/16 - Board signed minutes previously approved.

On motion Hunt / Garren to approve an addendum to the 06/06/16 minutes to clarify the approval of Finish Line Detailing's application.

**VOTE: 5-0 IN FAVOR**

C. OLD BUSINESS

1. STEPPING STONES – PLEASANT & HODGDON STREETS – LOTS 7/41 & 41-1 – RESIDENTIAL DISTRICT – PRELIMINARY SUBDIVISION AND SITE PLAN APPLICATION OF MULTI-UNIT DEVELOPMENT.

Town Attorney Jenny Villeneuve was present to address the Board's concerns.

She told the Board that grandfathering refers to the non-conforming use that predates the ordinances – the word “use” can be interchanged with building or structure when reading the ordinances. In this case they are discussing 7 units (2 in main house & 5 others) that predate the ordinances of the Town - the Board needs to determine if they did exist pre ordinance.

She told the Board that in accordance to the Land Use Ordinance Article 9, section A.1.a.5 – a non-conforming use shall be presumed extinguished if it is abandoned or not used for a period of one year, but that the Board may waive the presumption due to extenuating circumstances – in this case a building permit was issued by CEO for the demolition and replacement of 2 units, and building permits in Damariscotta are good for 3 years. If the Board determined that they did not intend to abandon the use then they can deem the use grandfathered.

Garren asked for clarification on the definition of abandonment – if a unit is not lived in for 1 year is it abandoned?

Villeneuve told him not in her opinion – the non-conforming use (building/structure) still existed. The term use doesn't mean inhabited.

There was a large amount of audience discussion / questions regarding the level of occupancy on the property in the past and abandonment of empty units.

Bill Hain felt if occupancy levels of the past were going to be used to determine grandfathering, then the information given should be verified by the Board.

Garren referred back to the letter from GSBSD regarding 7 users on the property but acknowledged he is unclear how un-lived in structures weigh in on the grandfathering issue.

Villeneuve stated abandonment is based on the intent of the land owner and getting a building permit is a pretty clear expression of intent to continue the use. The non-conforming standard is the existence of 7 units on the one property, not whether all 7 units are lived in. The non-conforming standard is what gets grandfathered, not the number of units actually lived in.

The Board discussed the timing of the “appearance” of the tiny house and whether the number of grandfathered units should be 6 not 7. Eaton stated that an after the fact permit was applied for and received for the tiny house.

Hunt stated that he was present at a previous Planning Board meeting where he thought that the Board had already determined 7 grandfathered units as 2 in main house and 5 others. He felt the Board was getting tangled up in the word use – Attorney Villeneuve has told them that use = structure, building – all same.

Audience members questioned the Board's ability to grandfather a unit that was over the property line. Hain told the Board that they had the property re-surveyed to eliminate any boundary issues and Stepping Stones plans to adhere to all the

current setback requirements outlined in the ordinances. He noted a copy of the survey has been submitted to the Planner and should be in the file.

Audience members asked if this Board could override a decision made by a prior Board / meeting.

Attorney Villeneuve answered that the Board certainly could dig deeper and review additional facts - if that review contradicted an earlier decision, they can make that change.

Garren stated that he would not challenge a previous Board's decision on grandfathering 7 units.

Eaton was not sure that there was official Board action at that point in the process. He further stated that in his opinion the ability to rent 7 units at that site existed – not sure facts of who lived where, and when can ever be fully proved.

Cole said in his opinion, Stepping Stones has provided the evidence necessary and he's convinced they could move forward at 7 grandfathered units.

Eaton further stated that he doesn't believe there was ever an intent to abandon anything.

Garren said he has some reservations about main house with 2 units being included in the grandfathered total – they did exist in theory.

Sage agreed with Garren, but was more inclined to say 4 units could be grandfathered.

A question came from the audience on parking.

Hain told the Board that the parking meets the ordinance requirements.

On motion Hunt / Garren to approve Stepping Stones request that 7 units be given grandfathered status. **VOTE: 3-2 IN FAVOR**

Audience members asked if the appeal process stops the project.

Villeneuve stated that the Board made a minor, interim decision within the application process so there is no permit issued yet so nothing to stop.

Garren stated that the Board had previously decided to review this application under both, the Site Plan Review Ordinance and the Subdivision Ordinance. It has since been discovered that the Town's Subdivision Ordinance is not quite up to date with State Subdivision requirements and he would like to suggest that the Board change their mind and review the application under just the Site Plan Review Ordinance going forward.

Villeneuve agreed stating that the Town cannot have an ordinance that contradicts a State requirement. "...leased units do not need to be considered a subdivision as long as there is another municipal ordinance that would apply..."

On motion Garren / Cole to change their previous decision and review this application under the Site Plan Review Ordinance ONLY.

**VOTE: 4-1 IN FAVOR**

Dater told the Board that the Site Plan Review Ordinance states that a decision will be made within 45 days of accepting an application as complete – but that the time can be extended with the applicant's acceptance.

Garren stated that he was in favor of holding and advertising a public hearing for the detailed review at the next regular meeting on October 3, 2016.

Hain requested the Board review his written request for waivers.

Garren told him that the Board had his request and will consider the items listed.

Sage offered to provide copies of the waivers request to audience members.

Item was tabled until next Planning Board meeting (10/03/16) with a public hearing to start the detail review of the standards.

#### D. NEW BUSINESS

1. PEMAQUID OYSTER COMPANY, INC. – DAMARISCOTTA RIVER AT BRIGGS ROAD EXTENDED OFF BRISTOL ROAD – LOT 1/6 – RESIDENTIAL SHORELAND ZONE – APPLICATION FOR A FLOOD HAZARD DEVELOPMENT PERMIT FOR A PERMANENT PIER / RAMP / FLOAT SYSTEM PURSUANT TO THE FLOODPLAIN MANAGERMENTS ORDINANCE.

Dater reviewed the flood hazard permit application submitted by Pemaquid Oyster Company, noting that it does require review by a professional engineer.

Celia Cart told the Board that the engineering firm of Gartley & Dorsky has signed & sealed the design.

Dater told the Board that it is his opinion that this fulfills the ordinance requirements.

On motion Cole / Garren to approve the application for flood hazard permit as submitted by Pemaquid Oyster Company, Inc.

VOTE: 5-0 IN FAVOR

Jeff McKeen of Pemaquid Oyster Company asked the Board to review / adjust their previously issued notice of decision regarding his company's application for a permanent dock, float & pier – specifically the condition of approval that stated the property will remain land locked. He further stated that they were not aware of <sup>Know</sup> that condition even being discussed at the time. He said they definitely do not <sup>what</sup> that to be a condition of their approval.

<sup>was</sup> The Board agreed – telling him that they did not believe it was their intention to require that and it could just be a typo.

Villeneuve told the Board that a municipality could not legally restrict an owner's deeded access. She further told them that they could reverse the decision but it is in the court system now and they (the Board) should ask their appeals Attorney if it is worth delving back into at this point.

Garren asked Villeneuve if there was a stay in place for Pemaquid Oyster.

Villeneuve told him that there is no legal stay in place, but the applicant should proceed at their own risk at this point.

The Board agreed to fix the conditions of approval at the appropriate time in the future.

**2. REVIEW OF DRAFT ACCESSORY APARTMENT ORDINANCE SUBMITTED BY THE LAND USE COMMITTEE. POSSIBLE PREPARATION FOR A PUBLIC HEARING AT OCTOBER 3, 2016 PLANNING BOARD MEETING.**

The Board was given draft 4A of the Accessory Apartment Ordinance to review. The ordinance was drafted by the Land Use Committee, to be inserted into the existing Land Use Ordinance. (see attached draft 4A)

Garren asked Dater if there is currently anything in the Land Use Ordinance on accessory apartments. Dater told him there was not and accessory apartments were not to be allowed in the Shoreland Zone.

Haas Tobey, member of the committee told the Board that the motivation for this ordinance was to allow people to age in place more easily.

Garren told Tobey it would be important for committee members to be present at the public hearing if possible.

Cole asked if the CEO could issue the permits – would it be necessary for the application to come before the Planning Board?

Dater told him that the CEO could handle the application. The committee felt it was important for the Planning Board to review for details – architecture, appearance, landscaping etc.

Cole stated that he felt the CEO could handle it unless he felt a specific instance should be reviewed by Planning Board.

Sage submitted her revisions to draft 4A for the Board to discuss. (attached)

After review & discussion, the Board decided the wording should remain as the original draft 4A submittal with the following exceptions:

- change the size restriction in section 2.e to be 2 bedrooms.
- Add wording to allow the CEO to review & issue permit, forwarding to the Planning Board for review in unusual or complicated circumstances.

The Board agreed to hold a public hearing review of the proposed Accessory Apartment Ordinance at their next meeting, October 3, 2016.

**E. OTHER**

**1. QUESTIONS FROM THE PUBLIC TO PLANNING BOARD**

None

**2. PLANNER'S REPORT**


None

F. ADJOURNMENT


On motion Cole / Garren to adjourn meeting at 9:50pm

VOTE: 5-0 IN FAVOR


Respectfully submitted by:

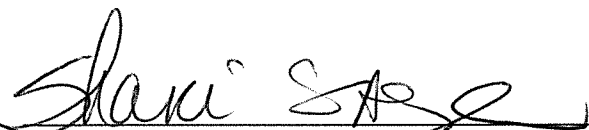
  
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Rebecca J. Bartolotta, Deputy Clerk

We, the undersigned, do hereby approve the minutes of the September 6, 2016 Planning Board meeting:

  
\_\_\_\_\_  
Jonathan Eaton, Chairman

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Wilder Hunt, Vice – Chairman

  
\_\_\_\_\_  
Stephen Cole

  
\_\_\_\_\_  
Shari Sage

  
\_\_\_\_\_  
Bruce Garren

Dated: 10/03/16