



Town of Ogunquit
Planning Board
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**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
MINUTES
APRIL 10, 2023**

A. ROLL CALL – 6:00 p.m.

Members Present: Steve Wilkos, Chair
Leslie Olear, Vice Chair
Jackie Bevins
Steve Meller
Rusty Hayes (via ZOOM)

Also Present: Tyler McOsker, Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE –

C. MISSION STATEMENT – The Mission Statement was read by Dr. Meller.

D. MINUTES – March 27, 2023.

**Dr Meller Moved to Accept the Minutes of the March 27, 2023 Meeting as Submitted.
MELLER/BEVINS 5:0 UNANIMOUS**

E. PUBLIC INPUT – The Planning Board welcomes input for any matter not on this agenda.

There was no public input.

F. UNFINISHED BUSINESS – None

G. NEW BUSINESS –

The Board agreed to move the presentation of the Facilities and Space Needs Committee regarding the Proposed Option 4 Plan for the Town Campus from Other Business to New Business.

Anthony DiLuzio, Vice Chair of the Facilities and Space Needs Committee gave an overview of the proposed plan.

Mr. Wilkos noted that there are brochures available with information about the proposal. He asked if there were any comments or questions from the Public. There were none.

1. NOVEMBER CHARLIE’S / JENNY DOLAN – 20 Shore Road Unit 1R – Map 7 Block 118-8 – DBD. Request for extension of Site Plan Approval Granted on April 11, 2022 which is due to expire on April 11, 2023.

Jenny Dolan and Christian Millian addressed the Board. Ms. Dolan provided an overview of the proposed business, a history of the fire and life safety procedures they have implemented; and her reasons for requesting an extension. She questioned the Ogunquit Fire Chief’s request for a fire engineer third party review of the work which had been done regarding the two-hour fire resistant paint application, and the report from her fire engineer. She stated that the Applicants are looking for an extension for a Type 1 Restaurant.

Chair Wilkos asked why the Applicants are asking for an extension.

Ms. Dolan responded that there may be additional requirements resulting from the Ogunquit Fire Chief’s request that another qualified engineer review the construction. This was not possible to do within the last year because they just met the requirements in the last two weeks; and they only received the Fire Chief’s letter within the last two weeks.

Mr. Millian added that they submitted a letter from their fire engineer and it was only two weeks ago that they were informed by the Ogunquit Fire Chief that this letter was insufficient, and that he wanted a third party review.

Chair Wilkos referenced the Applicants’ Planning Board Findings of Fact from April 11, 2022. He reviewed the Conditions of Approval, specifically Condition #3.

Chair Wilkos asked about the April 11, 2022 Condition of Approval #3 which was: “Per the Nortech System Engineer’s recommendation the floor-ceiling assembly will be upgraded to have a 2-hour fire resistance rating; and the underside of the floor-ceiling assembly will be protected by intumescent paint. To be inspected and approved by the Fire Chief and Code Enforcement Officer after installation”.

Ms. Dolan responded that she submitted a verification letter from Nortech Systems, however the Ogunquit Fire Chief wanted another qualified engineer to conduct an additional review of the construction. She acknowledged that this third party review has not been done.

Ms. Dolan stated that she contacted Peter Cutrer (the engineer recommended by the Ogunquit Fire Chief for the third party review) from 7CS Consulting LLC who informed Ms. Dolan that he did not want to work on the property anymore.

Attorney Gregory Braun addressed the Board on the Applicants’ behalf. He stated that the Board unanimously approved the original application in 2022. At the present time the Applicants are only waiting for approval by the Fire Chief for a Business License. He informed the Board that there are currently two civil litigation actions pending related to this property. He stated that the Applicants have endeavored to meet all of the Fire Chiefs requests, even when they objected to some of these additional requests.

It is his belief that the current request for an extension is not something which opens things up for a full and new review of this application.

Attorney Braun stated that the Applicants are not opposed to a third party inspection of the property, and they have attempted to work with the Town to determine who an acceptable third party inspector should be.

Attorney Braun asked that the extension be granted, or in the alternative that the issue be tabled for a period of 45 to 60 days to allow for the final third party review to take place.

Chair Wilkos again referenced the 2022 Condition of Approval #3 and asked why it has taken a year to satisfy it.

Attorney Braun responded that the work was done and a letter from NorTech Systems was provided to confirm that the requirement was met. However the Fire Chief was unsatisfied and without personally inspecting the property he requested a third party review.

The Applicants stated that the application of the intumescent paint has been in the process of being applied over the last year, with the last application in the stairwell sometime in the last six to eight weeks. Ms. Dolan stated that she and her husband applied the paint.

Mr. Millian stated that the delay has been the result of their having to respond to additional requirements placed upon them almost from the beginning, the delay is not due to any actions of theirs.

Vice Chair Olear referenced a NorTech Systems e-mail dated April 4, 2023 which states "...While completing my work I discovered various items need to be addressed. First, paint other than FlameOFF Intumescent paint was applied to some of the basement surfaces. I required November Charlies to buy and apply FlameOFF intumescent paint to the basement walls and ceilings. ... As of March 16, 2023 November Charlie's had provided enough evidence (paint receipts, pictures, and statements) for NorTech to safely assume over 74 gallons (60+14) of FlameOFF intumescent paint had been applied to basement ceilings and stair walls..."

Vice Chair Olear stated that she does not read this statement as a "certification" that the work had been done. She asked how an "assumption" is equivalent to a "certification".

Attorney Braun responded that the writer is saying he himself did not apply the paint and he could only rely on the information he was given. Based on that information it was his assumption that the paint had been applied, as required, by the Ogunquit Fire Chief.

Vice Chair Olear stated that the e-mail indicates NorTech can't certify that the paint was applied as required; and she asked why the Applicants refused 7CS Consulting LLC access to the property, as the third party reviewer, to confirm that the proper paint had been applied as required.

Attorney Braun responded that 7CS Consulting was a third party inspector chosen by the Town of Ogunquit without input or approval from the Applicants; he (Attorney Braun) had requested further information from the Ogunquit Fire Chief as to why the NorTech letter was insufficient.

A lack of response to his request, and the 7CS inspector's attitude toward the Applicants, was the basis for denying access, or seeking to coordinate a different inspector.

Vice Chair Olear summarized that there is some information of involvement by NorTech in July 2022, however it isn't until March 2023 that NorTech states that they revisited the property and the work still wasn't done properly. At that time NorTech told the Applicants to do additional work, and now based on "paint receipts, pictures, and statements" NorTech is "assuming" the work has been done.

Vice Chair Olear summarized that the Applicants are asking the Board to rely on an assumption that a Site Plan Condition of Approval has been satisfied.

Attorney Braun responded that he is asking for an extension to allow time for a disinterested third party inspector to come in and do the work.

Vice Chair Olear responded that this could have been done back in 2022 when NorTech first had discussions with the Applicants. This request for an extension is coming to the Board one day before the Site Plan Approval is due to expire.

Dr. Meller asked why the engineer from 7CS Consulting was turned away after he had been told he would be granted access.

Ms. Dolan responded that she scheduled the appointment. She then received a letter from 7CS Consulting that was unfavorable towards her, and her attorney suggested she reach out to other consulting companies for the review. She did find another company which was acceptable to her however they cannot come to the property until next week.

Chair Wilkos stated that on March 23, 2023 Peter Cutrer of 7CS called the Applicants to schedule a walk-through of the property. Mr. Wilkos asked why that walk through was not scheduled.

Attorney Braun responded that Mr. Cutrer had a short telephone conversation with Ms. Dolan during which he stated that she showed a "disdain for fire safety" and "he had a question and doubt about her sincerity and truthfulness".

Chair Wilkos stated: if Mr. Cutrer had been allowed to come into the property on March 23rd this might have all been completed.

Ms. Dolan responded "No". When she spoke with Mr. Cutrer he indicated that there was likely additional work she would need to do in order to meet requirements.

Attorney Braun confirmed that he canceled the appointment with Mr. Cutrer, after Mr. Cutrer made it clear that he had a poor opinion of the Applicants, and he would likely find additional work which would need to be done to satisfy the requirements.

Chair Wilkos invited the Ogunquit Fire Chief to address the Board.

Fire Chief Osgood stated that he did an inspection when the Applicants were applying the intumescent paint and he discovered that they were using InsulEx Paint which is an insufficient

product. He provided the Applicants with a letter stating that the paint would not meet the standard. When he, and the Code Officer, went in for the Final Inspection he (Chief Osgood) informed the Applicants that he needed a letter which certified the application of the correct intumescent paint. He has yet to receive the requested certification.

FlameOFF Paint would meet requirements, however there is a required thickness which he is unable to measure. The engineer from 7CS, who the Applicants denied entry, is certified in FlameOFF and he could certify its use and correct application. Chief Osgood asked Mr. Cutrer to go in and certify that the paint used was FlameOFF, and not InsulEx, and that it was applied correctly.

The Code / NFPA 101 is clear that if a third party inspection is needed the authority having jurisdiction, the Fire Chief, is allowed to choose who that third party is. Chief Osgood stated that he only asked Mr. Cutrer to do one thing: certify that FlameOFF was used and applied correctly, nothing else. The Applicants then refused access to that third party inspector.

Chair Wilkos summarized:

The Fire Chief has authority to pick the inspector;

The Fire Chief picked the inspector;

The Applicants denied the inspector access to the property.

Attorney Braun agreed.

Dr. Meller suggested that if the engineer from 7CS had been allowed access to the property, this request for extension may not have been necessary. He also pointed out that the Board doesn't have access to the telephone conversation or e-mail between Ms. Dolan and the 7CS representative. Dr. Meller suggested that the Board has no evidence to suggest that the engineer from 7CS would have let his personal opinion affect his final judgment regarding his review. He stated that the entire case has a feel that the Applicants may be searching for a third party reviewer who will be more favorable to them.

Mr. Hayes agreed and added that safety has to be the primary concern. He also expressed concern about patron egress.

Ms. Dolan agreed that the Fire Chief has the right to choose the third party inspector and she will abide by whoever Chief Osgood chooses. She wanted to know what the inspector would be reviewing so she could prepare. She just needs a little more time to do it properly.

Attorney Ferrante, representing 20 Shore Road LLC who owns five of the units on the subject property, asked to address the Board.

Attorney Braun objected to the Board hearing from Attorney Ferrante.

Chair Wilkos asked Attorney Ferrante if he intended to limit the scope of his comments to the issue of the requested extension and the associated fire inspection for the two-hour fire barrier paint.

Attorney Ferrante agreed to limit the scope of his comments.

Attorney Ferrante stated that 20 Shore Road LLC's concern is the adequacy of the fire protection. He reminded the Board that there was a fire in this unit in 2013 which caused significant damage to the remainder of the building. In 2022 the Board required demonstration of the application of a two-hour fire barrier, and based upon what he has seen there is no confirmation that this has been done; and there is no reason which justifies the delay in meeting that requirement. The Applicants have had a year to apply three coats of paint. Based on the history of the process in this case a third party inspection is necessary and based upon the Applicants denial of access Attorney Ferrante asked the Board to deny the extension.

Vice Chair Olear summarized:

From the start the Applicants were told to use FlameOFF;

On March 16th the Applicants' NorTech consultant verified that the Applicants used a different, and inadequate, product in some areas;

The NorTech consultant then relied on receipts, pictures, and statements and assumed, that the Applicants had done the corrective work;

Then, a licensed qualified inspector agreed, on short notice, to conduct an inspection; which could have confirmed for the Board that the correct work was done; however he was refused entry.

Vice Chair Olear expressed extreme concern about the time frame. She agreed that there are special circumstances however an extension is not a right, and she is inclined not to grant the request.

Chair Wilkos stated that if the Applicants had allowed the inspector in, and he had found additional work which needed to be done, this in Mr. Wilkos' mind would be a legitimate reason to grant an extension. However in this case the Applicants didn't allow the inspector access.

Vice Chair Olear Moved to Deny NOVEMBER CHARLIE'S / JENNY DOLAN – 20 Shore Road Unit 1R – Map 7 Block 118-8 – DBD request for extension of Site Plan Approval Granted on April 11, 2022 which is due to expire on April 11, 2023.

Per 1918 National Fire Protection Association (NFPA) 101 5.1.6 it is clear that the Ogunquit Fire Chief had the authority to appoint the third party inspector;

The Applicants' denial of entry of the third party inspector is exceedingly problematic. The Board determined that the Applicants' denial of entry to the third party inspector prevented Condition #3 from the April 11, 2022 Site Plan Approval from being satisfied.

The Board found that there is insufficient evidence to extend the April 11, 2022 Site Plan Approval, which included the condition (#3) that “the floor-ceiling assembly will be upgraded to have a 2-hour fire resistance rating; and the underside of the floor-ceiling assembly will be protected by intumescent paint. To be inspected and approved by the Fire Chief and Code Enforcement Officer after installation”.

**The above condition (#3) has not been satisfied.
OLEAR/HAYES 4:1 (Dr. Meller Dissenting)**

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Facilities and Space Needs Committee Presentation regarding Proposed Option 4 Plan for the Town Campus (*moved to the start of this meeting - see above*).

J. ADJOURNMENT –

Dr. Meller Moved to Adjourn at 7:55 p.m.
MELLER/OLEAR 5:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Town of Ogunquit

Planning Board Recording Secretary

Accepted: April 24, 2023

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 packets 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.*