

PLANNING & ZONING MEETING MINUTES
MARCH 6, 2017

Meeting of the Planning and Zoning Commission of the Town of Ocean Ridge held on Monday, March 6, 2017 in the Town Hall Meeting Chambers.

I. CALL TO ORDER

The meeting was called to order at 8:30 AM by Chairman Gerald Goray.

II. ROLL CALL

Town Clerk Stevens led the roll call which was answered by the following:

Richard Bajakian
Penny Kosinski
Mauro Walker

Gerald Goray
Mark Marsh

Staff present: Town Attorney Brian Shutt, Town Manager Jamie Titcomb, Town Engineer Lisa Tropepe, Building Official Don McIntosh, Zoning Official Manny Palacios, and Town Clerk Tracey Stevens.

III. APPROVAL OF THE MARCH 14, 2016 MINUTES

Member Marsh moved to adopt the March 14, 2016 minutes; seconded by Member Walker. Motion carried 5-0.

IV. ORDINANCE REVIEW

1. Ordinance No. 619: Site Plan Review Procedures

Attorney Shutt advised that the Board may take public comment on each ordinance and since this meeting is quasi-judicial, no testimony needs to take place. Chair Goray stated the Board will take public comment on each item. Attorney Shutt noted that the proposed ordinances are a starting point for discussion, and staff is here to listen to the Board's input on proposed changes.

Attorney Shutt mentioned that the Site Plan Review Procedures Ordinance is intended to give the Zoning Official some extra input on single-family and two-family homes regarding compatibility issues with the Town, having the Planning & Zoning Commission look at building plans before the Zoning Official approves them. The Commission would look at whether the plans accomplish a balance of the streetscape, are compatible with other buildings in the Town, etc. The building would have to meet our code as well, but this would give an extra review with the developer/builder, and a recommendation would go to the Zoning Official. The Zoning Official would then take into account the Commission's comments before approving the plans. Attorney Shutt noted that the Commission would be making a recommendation, not a final decision on the plans.

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Chair Goray stated that for the past 25 years, the Town has been looking at whether or not we would like an architectural review board. He reiterated that the Commission's recommendation would not be binding, and Attorney Shutt confirmed.

Attorney Shutt stated that all plans for new construction or renovations 50% over the current value of the structure would come in front of the Commission.

Attorney Shutt stated that we can develop a procedures list so that within so many days that staff receives a set of plans, the Commission would meet to review them so we are not holding up developers.

Chair Goray asked if the Commission could have a sub-committee, and Attorney Shutt advised that we would want the entire Commission to make a decision, and there would be no time savings because the meeting still needs to be noticed either way.

Member Marsh gave some background on why this is coming in front of the Commission. He stated that plans come in to the Town and the Zoning Official is asked to review the final building plans and make a judgment call on compatibility. He stated that we have had issues that could impact the community as a whole. He noted that Ocean Ridge is only one of a few committees on the coast that does not have an architectural review board, and for the sake of character of the town, we need to have some review. He stated that in some instances, the applicants go through a lot of expense and then the town finds issues or problems with the design, and it is only fair that if there is an issue, they are alerted early enough. He stated that the phrase "consistent with the established neighborhood character" in the ordinance leaves things wide open; however, we need to be conscious of using that term when reviewing plans. He mentioned that this would take that burden off the Building Department. He stated we also need to address the issue of flat roofs, where our ordinance states as long as you have a 4 and 12 pitch you can have a flat roof. He noted that we do not want to dictate house colors and such; this ordinance is intended more to preserve the fabric of the town.

Member Walker asked about the underlined section: "Prior to the Administrative Official making a determination on the application, if the application involves the construction of a single or two-family structure under separate ownership". Attorney Shutt responded that we are trying to maintain compliance with the minor and major development section of the code so we don't change the entire fabric of how things are looked at. He noted that the 50% threshold is common whether it is a nonconforming use or a tipping point, and if greater than 50% you may need to apply more codes.

Member Bajakian noted that Member Marsh is the only Architect on the Commission. He stated he knows how to look at building plans, but does not know what the basis would be for the Commission to reject an application. He stated he does not want to open up the town to a lawsuit if the Commission's recommendation is that they can't build something that complies with the code. Member Marsh responded that the Commission's review will be purely aesthetic, and the Building Department will be taking care of land issues, etc. He noted that the Commission's review will be done in the very early stage

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of the building process. He mentioned that we should have a minimal standard of what will be submitted so it is clear enough for everyone to understand, and not so technical so the Commission does not get lost with it. He suggested a short form submission requirement for material to be reviewed by the Commission.

Member Walker asked how a decision is made on what comes to the Commission, and Attorney Shutt responded that under this ordinance, all new construction or renovations 50% over the current value of the structure would come in front of the Commission, and the Commission would make a recommendation to the Zoning Official. The Zoning Official would then make a determination on whether the plans are in compliance with the Town Code.

Chair Goray asked what this would entail based on the current volume of building permits submitted to the Town, and Town Manager Titcomb stated that every set of plans that meets the threshold would come to the Commission and the Commission would be meeting on a much more regular basis to review the plans. He noted that we are currently around 200% above our projection on building permit revenue for the year. Town Clerk Stevens noted that we had around seven new home building permits this past year. Town Manager Titcomb stated that the Commission would meet at least monthly to review applications.

Town Manager Titcomb asked the Attorney what the recourse would be for an applicant if the applicant does not agree with the decision of the Commission. He also noted that we need to work out the procedural elements.

Chair Goray asked if other communities have adopted this kind of advisory procedure as opposed to a mandatory Architectural Review Board, and Attorney Shutt stated he is not aware of any. He stated the way the ordinance reads now, the Commission would make a recommendation which would not be binding, and the Zoning Official could still approve an application if it meets all Zoning codes.

Member Marsh asked if the Town Commission would have a role as far as appeals, and Attorney Shutt responded that if the Zoning Official denies an application, his decision could be appealed to the Town Commission.

Chair Goray asked if this would work as a practical matter. Member Marsh responded that the ordinance does not have teeth. He stated it is a great start, but we may need to enact more detailed criteria for submission and review. He stated this would make the Commission redundant if we make a decision that cannot be enforced.

Member Walker stated he would like more information about how other towns have done this in detail, along with stats on how many times the P&Z may need to meet.

Public comment: Terry Brown, Harbour Drive South, stated his comments should not be taken as in opposition to the ordinance. He stated homes have been built in his neighborhood that have not been in character with the town. He stated it will be nice to

be able to attend a meeting to state his opinion, however, there is no real enforcement mechanism and no defined criteria. He stated we would be looking for a lawsuit if the Commission rejects an application. He also noted that Commission members could be influenced politically, as it is opinion based criteria and very subjective. He would like to see criteria defined in the code and have some actual enforcement.

Don McIntosh, Building Official, stated that he strongly suggested we setup an Architectural Review Board (ARB). We need criteria on how you want your streets to look, and without an Architectural Review Board, you won't be able to accomplish what you want.

David Hutchins, Harbour Drive North, Alternate Member on the Board, stated that the language "buildings should conform with the neighborhood character" is too vague. He stated it would be a good idea to come to a consensus on what neighborhood character is.

Member Kosinski asked what historically has been the opposition to an ARB, and Member Marsh responded that Ocean Ridge is a self-preserving town and people respect other people, but we are a popular destination now and with that comes some aggravation. He stated that based on the comments, we may want staff to go back and develop some guidelines.

Attorney Shutt stated that with the current version, if the developer does not agree with the Commission's recommendation, there is no appeal process. They would just go to the Building Department for approval.

Chair Goray stated that we need to come up with a more definitive ordinance that provides more formal review standards and a process for ultimate approval at some point. He stated that the alternative is to have a formal ARB.

Attorney Shutt stated that it is his understanding that it is the consensus of the Commission for staff to re-work the ordinance so it has a little bit more teeth to it, and give the Commission better direction as to what is compatible or not. If the applicant cannot obtain the P&Z's recommendation for approval, then it would be appealed to the Town Commission. If the P&Z recommends approval, the application would go to the Zoning Official for review.

There was consensus of the Commission for staff to go back and work on the ordinance based on the discussion.

2. Ordinance No. 620: Deck Setbacks

Attorney Shutt stated we have had some issues recently because there is no pool setback or any other type of impervious surface from adjacent right of way lines, and in his conversations with the Town Engineer, a three foot setback seemed to be a common number that could be used to stay away from some of those issues.

Lisa Tropepe, Town Engineer, stated that many years ago, people would build pools and decks with no issues. Today, houses are being built in a complex way. People are now putting pools in front of the house, on the side of the house, and if you have nothing in the code in regards to setbacks, some pool decks are falling on the property line, or sometimes a couple inches off the property line, sometimes on someone else's property or in the public right of way. She stated that the code for a pool deck states that the water needs to sheet flow away from the pool itself, so you have stormwater flowing off your pool deck. The code also states that you should not impact adjacent properties. If you put a pool deck up to the property line, and it is sheet flowing away from the pool to meet your pool code, you're in violation of your other codes, so there is a conflict. She stated that other municipalities have five foot setbacks, and feels that three feet gives you the ability to deal with the drainage, sheet flow off the deck, and gives property owners the ability to landscape in the three foot area, as privacy has been an issue as well. She stated that a lot of the challenges staff has had in the past few years are projects that meet the code, but become a problem for the adjacent property owners, or are built into the right of way where the Town Manager then has to make a decision as to whether we will give the property owner a permit to encroach into the right of way. We are proposing the three feet today to address stormwater, privacy issues, and right of way issues.

Chair Goray asked if the Town Engineer is recommending that we advise the Town Commission to approve this ordinance as written, and Ms. Tropepe answered "yes, sir".

Member Marsh noted that FEMA is raising their elevations which will wreak havoc with drainage control. Ms. Tropepe agreed.

Member Kosinski moved to approve the ordinance as written; seconded by Member Bajakian. Motion carried 5-0.

3. Ordinance No. 621: Construction Site Management

Attorney Shutt reviewed the highlights of the Construction Site Management ordinance for the Commission. He stated that the ordinance prohibits construction parking in the right of way all together unless the Building Official allows it due to a plan submitted to the Town. He also noted that we added a section for temporary construction fences around the entire site. He stated that some communities have it all around the site, and some have it just adjacent to the public right of way. He stated that the ordinance references noise and times for construction. The ordinance also has a section for silt fences as per NPDES requirements. There would need to be an approved site plan for construction/storage trailers. The ordinance also adopts a construction site management handbook which the contractor will need to sign off on each time a building permit is pulled so there is no question as to what the requirements are ahead of time. Attorney Shutt stated that a lot of these things were already in the code, but now we are placing them in one code section to make it more user friendly.

Member Bajakian stated there may be a contradiction between Section 64-49 Temporary Structures and Section 67-9 regarding storage trailers not to be used as a dwelling or

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lodging unit. Attorney Shutt responded that a trailer can be occupied as an office during the day, and Member Bajakian stated this needs to be specified.

Member Walker asked if we are enforcing our rules now, especially in reference to parking in the right of way, and he referenced landscapers. Attorney Shutt responded that there is an exception for non-construction work for service vehicles etc. to park in the right-of-way now. He stated that this is meant to address construction vehicles that may be on the site for six to eight months at a time and parked there constantly.

Member Marsh stated that temporary fencing is a concern. He's not sure if all projects can accommodate that, however, it's a huge liability issue if there are hazardous conditions. He stated that the right of way is a fair limit of protection, but dust and dirt should not be migrating out. He stated he is not sure about having a fence by the water though because it is unsightly, and we may be imposing on the smaller projects.

Member Kosinski referenced Section 67-1(h) and asked if the Town Commission is the appropriate body for appeals, as she does not feel someone should need to wait for 30 days for an appeal. Attorney Shutt responded that we will take suggestions from the Commission on that. Member Marsh stated it works in this case, and it is a housekeeping issue that the Town Manager could handle. It was the consensus of the Commission to change this to the Town Manager.

Member Kosinski asked about Section 67-9 (5), second sentence "if land development or construction activities do not commence within the required time period..." She would like to add in the words "they must remove the construction trailer, and if not, the Building Official will commence code enforcement." She feels it should be up to the Contractor to comply.

Chair Goray stated he did some research on other towns and the idea of a construction handbook appears to be very practical and effective.

Public Comment: Terry Brown, Harbour Drive South, stated he is concerned with parking for construction in the right of way, especially on the A1A state road right of way. He stated there is only one sidewalk on A1A, and we do have construction workers parking on the sidewalk. He stated a special designated zone for no parking at all would be worth considering to address safety of pedestrians. He also asked if there is criteria to address the issue of the length of time that someone needs to finish a construction project. Attorney Shutt responded that according to the building code, a person can pull a permit every six months. He stated there is no drop dead date, as it really isn't viable.

Don McIntosh, Building Official noted the following issues:

1. Section 67-9 (5) "land development or construction activities must commence within 1 year" is in violation of the Florida Building Code and the Florida statutes, as you have 180 days after a permit is issued to begin work.

2. Item #4, “Certificate of Occupancy shall be issued before a trailer is occupied” is in violation of Florida Building Code and Florida statutes, as there is no certificate of occupancy for construction trailers because they are not habitable.
3. Item #3, “a construction trailer shall not be allowed for more than two years including renewal periods”, depending on the size of construction, a single family dwelling could extend up to 10 years. A contractor can call for an inspection within 180 days and the permit is then continued. We do urge contractors and homeowners to complete construction prior to that point and strive to assist them, but according to Florida Building Code, we cannot mandate that.

Chair Goray asked about Mr. McIntosh’s comment about cooking on site, and Mr. McIntosh explained that a habitable building is defined as a structure where you can prepare a meal, bathe, and sleep, and a construction trailer has none of those, as it is simply for the architect, engineer or project manager to have their approved plans on site and control how the work is being accomplished. Member Kosinski asked if there is another document other than the certificate of occupancy that is issued for a construction trailer, and Mr. McIntosh responded that a certificate of occupancy is only for a habitable structure, and a Certificate of Completion is for remodels that do not hit the 50% improvement threshold, and is meant for the property owner to show to the insurance company. Mr. McIntosh stated that we issue a building permit for construction trailers, but no certificate of occupancy, as it would be in violation of the Florida Building Code and statutes.

Mr. McIntosh stated he wrote a memo on fencing around two years ago. He stated that right now, we require fencing on a case by case basis. He stated we try to make sure any project on A1A is fenced completely because we have a lot of people who like to look at the construction going on instead of keeping their eyes on the road. He noted that silt fencing is a requirement on every construction site, but we do not currently require fencing. He stated if there is a permit for concrete restoration on a two-story building, we may require some type of shroud so concrete does not fall and injure someone. We do not require fencing for a roofing permit. He stated that with a CCCL permit, we work closely with DEP on frangible areas and turtle lighting. He stated the Town does not have an ordinance on that, but we are required under the Palm Beach County codes which are taken under consideration.

Mr. McIntosh stated that we may want to strike the last line in the construction management handbook under Item 4 “prior to issuance of a certificate of occupancy, all such facilities shall be removed from the site.” He stated the Town Engineer already inspects for final drainage, the Building Official completes final building inspections, and we get a final survey and elevation certificate before a permit is finalized. Mr. McIntosh also noted that sea grapes and sea oats along the coast cannot be disturbed.

The Commission developed the following conditions to the ordinance:

1. Construction fencing: “fencing shall be required as described herein adjacent to all public right of way areas excluding the ocean and intracoastal waterway, and along the adjacent side unless there is an adjoining fence, hedge or wall.”

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2. Section 67-1 (h) change from Town Commission to Town Manager.
3. Section 67-9 (3) leave wording as-is.
4. Section 67-9 (4) Certificate of occupancy for trailer wording to be changed to “approval from the Building Official shall be obtained before the trailer is occupied”.
5. Section 67-9 (5) leave wording as-is.

Member Marsh moved to recommend approval of the ordinance subject to the five stated conditions; seconded by Member Walker. Motion carried 5-0.

V. Discussion Regarding Assignment as Infrastructure Surtax Citizen Oversight Committee

Town Manager Titcomb mentioned that the Town Commission delegated the Infrastructure Surtax Committee duties to the P&Z, including the alternate members. He stated the amount we will receive is projected to be \$108,000, and our intent is to use those monies for infrastructure improvements in the Town, and we need to spend those monies in accordance with the county ordinances. He noted that there is no business before the committee today, but he wanted to give the information to the Board at this time.

VI. Adjournment

Member Walker moved to adjourn at 10:07 a.m.; seconded by Member Kosinski.

Minutes adopted by the Planning & Zoning Commission at its meeting on April 17, 2017.

Chairman Goray

Attest:

Tracey L. Stevens, CMC, Town Clerk