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PLANNING BOARD

January 26, 2010 - Minutes

A meeting of the Orleans Planning Board was called to order at 7:00 p.m. in the Nauset Meeting Room at the Orleans Town Hall. **Present: Chairman:** John Fallender; **Vice-Chairman:** Seth Wilkinson; John Ostman; Kenneth McKusick; **Associates:** Gary Guzzeau; Chet Crabtree. **Planning Department Staff:** George Meservey; **Secretary:** Karen Sharpless. **Also Present:** Board of Selectmen Liaison: Jon Fuller.

Moment of Silence for Paul O'Connor

Fallender requested a moment of silence for Paul O'Connor who passed away on January 22, 2010.

7:00 P.M. – PUBLIC HEARING – Zoning Bylaw Amendments

Amend the Zoning Bylaws section 164-22 Modifications

Fallender requested that Chet Crabtree vote as a regular member for this meeting. Ostman read the legal ad into the record.

Fallender opened the public hearing on the proposed zoning bylaw amendments at 7:01 p.m. Meservey read the following proposed zoning bylaw to the Planning Board members and audience:

ARTICLE ##. AMEND THE ZONING BYLAWS SECTION 164-22 MODIFICATIONS

To see if the Town will vote to amend the Zoning Bylaws, Section 164-22.A (3) to insert the following **new language**

*One (1) single family dwelling may be erected, **added or maintained** on any lot, regardless of a common ownership with that of adjoining land located in the same residential district, which existed on August 2, 1973 **or which was shown on a preliminary plan prior to that date and which was further shown on a definitive plan which was subsequently filed and approved by the Planning Board**, and contained at least 20,000 sq. ft. and had a minimum frontage of 120 ft. or has 50 ft of arc frontage on a cul-de-sac and is 120 ft. wide at the building line and the **existing structure(s) or the proposed structure** is located on such lot so as to conform with the minimum requirements of front, side and rear yard setbacks and to all other requirements for such structure in effect at the time of building.*

Meservey explained the reason for two proposed zoning bylaw amendments as follows:

The first is a proposed change to the Modifications section of the bylaw, which allows a dwelling to be built on an undersized lot and the second amendment is a minor correction to the Schedule of Uses Table, concerning beauty parlors and beauty salons.

Each fall, the Planning Board considers a list of possible Zoning amendments that has been kept through the preceding year. These ideas can come from town's comprehensive plan, Town staff or boards, or from the general public. The Planning Board determines priorities for action and the Zoning Bylaw Task Force works on proposals for the upcoming Town Meeting.

The following is an explanation of Modifications Section 164-22a.3.

This section of the Bylaw allows the construction of a dwelling on a lot in a Residential District, which:

- Existed on August 2, 1973
- Contained at least 20,000 sq.ft.
- Had 120 ft. of street frontage, or 50 ft. on a cul-de-sac

The application of this section of the bylaw has caused some problems for property owners as noted in the following history of the issue:

In March 1973, the Town adopted a 40,000 s.f. minimum lot size. After this date, for a smaller lot in Town to be a buildable lot, it must have either 1) met the separate lot "grandfathering" provisions of state law (including the separate ownership), or 2) been authorized as an exempted lot under local zoning (Section 22 A 3).

What the modification section does is it qualifies a lot for construction only if it EXISTED on August 2, 1973. EXISTED means the lot was approved on a plan by the Planning Board and was recorded at the Registry of Deeds. In this case, the rights to build would be preserved.

Last year, a property owner applied for a building permit in a subdivision of 20,000+ s.f. lots. The Building Commissioner required the applicant to demonstrate that the lot was a buildable lot. The applicant was unable to show that the lot qualified, and the building permit was not issued. Although most of the lots in the subdivision already contained homes, once the Building Commissioner became aware of the problem, he could not in good faith issue a permit.

The Planning Board was made aware of the problem and began to research it. It has been discovered that there are four subdivisions in town with undersized lots that for various reasons recorded after the deadline of August 2, 1973. Therefore, the lots did not EXIST prior to the date. Those subdivisions are:

Briar Springs Hills Subdivision (February 14, 1978)
Skaket Highlands Subdivision (March 19, 1974)
Captain Curtis Way (portions) (various dates)
Shorewood Dr/Hinkle Lane (November 2, 1977)

In the case of each of these subdivisions, a preliminary plan had been filed, followed by a Definitive Plan. Under state law, the approved undersized lots were buildable under a "zoning freeze" for a period of 7 years after the approval date.

Because many homes were built prior to the expiration of the zoning freeze, they were lawfully constructed. They can be added onto or rebuilt if necessary.

However, the homes built after that period may not have been properly authorized.

It was once a common practice for developers to “checkerboard” the ownership of their lots so that they were entitled to separate lot protection under MGL 40A, 6. However, a Falmouth legal case indicated that the so-called checkerboarding must take place *before* a change in zoning that would otherwise affect the lots. In the case of the four subdivisions in Orleans, the zoning change had already taken place before the final approval of the lots. In those cases, the lots were entitled to the zoning freeze period of 7 years, but were not protected as separate building lots after that period.

The Planning Board has previously heard from numerous lot owners of both vacant and build upon. After much discussion, it was the unanimous opinion of the Board that those property owners had purchased their lots in good faith. The vast majority of lots have been developed, and there was nothing observed in the subdivisions to indicate that there could be a problem with the buildability of the lots.

The Board was further concerned with the ability of homeowners to make additions to the homes that were built after the zoning freeze period had expired.

Therefore, the Planning Board has proposed a zoning amendment to section 164-22 A. (3) that would provide lot protection to such lots if by the effective date of August 2, 1973, a **preliminary plan had been filed**, showing the lot, and which was subsequently filed and approved by the Planning Board.

The four subdivisions all had preliminary plans filed before the August 2 date. Therefore, if the amendment is passed by the Town Meeting, all of the affected lots will become buildable, and those lots with existing homes will be treated like any other home in town.

The Planning Board has strongly favored taking steps to limit the growth and development of the Town. They have not changed their perspective. In this case, however, they feel that the fair and right thing to do for these subdivisions is to amend the zoning bylaw to allow the lots to be buildable lots under zoning. In all, there are 13 vacant lots we have identified that would be qualified under this amendment.

Letters from Property Owners:

The following letters from property owners were referenced during the meeting:

Barbara & John Natale (11 Pleasant View Drive) - in favor of the amendment
Donald & Margaret Mattison (38 Hinkle Lane) - in favor of the amendment
Natalie Timme (30 Fox Ridge Drive) - in favor of the amendment
Attorney Francesca Bignami (19 Dale Ann Drive) - against the amendment
Raymond Cavanaugh, Jr. (21 Pleasant View Drive) - in favor of the amendment
Tom Minichiello (11 Fox Ridge Drive) - in favor of the amendment

Planning Board members noted issues raised by Francesca Bignami in her letter of opposition to the proposed zoning amendment with regard to property owners with vacant lots vs lots with existing buildings. Meservey and Fallender met with Town Counsel regarding Bignami's letter and it was determined that the issues have been properly addressed in the proposed bylaw amendment.

Public Comments:

Stuart Miller (34 Fox Ridge Drive) thanked the Planning Board for their efforts in crafting zoning bylaw amendments and the public hearings to resolve the issue of undersized lots and stated his support of the proposed bylaw amendment and his opinion that it would benefit the whole town.

Seth Wilkinson noted the intent of the Planning Board to address past checkerboarding in the affected subdivisions which was allowed at the time they were created and explained his opinion that it will protect developed lots as well as preserve the buildability of the remaining vacant lots. Wilkinson noted that Bignami's letter would allow protection and expansion rights to lots that have existing buildings, but not provide protection to any undeveloped lots.

George Meservey explained that Attorney Bignami has expressed the opinion in her letter that property owners with existing dwellings in the affected subdivisions should be protected under the law of "expectation interests" but Town Counsel feels that the proposed zoning bylaw amendment would provide clarification on the issues of property owner protection.

Chet Crabtree expressed concerns with some of the comments made in the letter from Bignami regarding a lack of rights for property owners with vacant lots.

Jon Fuller stated that the Board of Selectmen has supported the Planning Board in researching the issues in the affected subdivisions. The Board of Selectmen will vote on what articles will be included on town meeting warrants and whether they support the articles.

William Overton (5 Fox Ridge Drive) stated that he has owned his property since December 1984 and would not have paid taxes on the lot as a buildable lot if he had no intention of eventually constructing a dwelling on the lot.

Attorney David Reid stated that he represents the property owner at 69 Captain Linnell Road. Reid explained his opinion that the proposed zoning bylaw amendment will allow the bylaw to be interpreted as it was always intended to provide protection for the previous zoning lot size and allow for dwellings to be erected as understood prior to 1985.

Meservey read the following modification to the zoning bylaw Section 164-22.A (3) into record.

To see if the Town will vote to amend the Zoning Bylaws, Section 164-22.A (3) to insert the following new language

One (1) single family dwelling may be erected, added or maintained on any lot, regardless of a common ownership with that of adjoining land located in the same residential district, which existed on August 2, 1973 or which was shown on a preliminary plan prior to that date and which was further shown on a definitive plan which was subsequently filed and approved by the Planning Board, and contained at least 20,000 sq. ft. and had a minimum frontage of 120 ft. or has 50 ft of arc frontage on a cul-de-sac and is 120 ft. wide at the building line and the existing structure(s) or the proposed structure is located on such lot so as to conform with the minimum requirements of front, side and rear yard setbacks and to all other requirements for such structure in effect at the time of building.

MOTION: On a motion by **John Ostman**, seconded by **Kenneth McKusick**, the Board voted to accept the proposed zoning bylaw amendment 164-22 Modifications as amended and forward it to the Board of Selectmen for inclusion on the Annual Town Meeting warrant.

VOTE: 5-0-0 The motion passed unanimously.

Seth Wilkinson left meeting at 7:30 p.m. and Chairman Fallender requested that Gary Guzzeeau vote for the remainder of the meeting.

Amend the Zoning Bylaws section 164-13 Schedule of Use Regulations

John Ostman read legal ad into the record.

Meservey gave the following summary of the proposed zoning bylaw amendment for 164-13 Schedule of Use Regulations:

The proposed zoning bylaw amendment is for a change to the Schedule of Uses table in the zoning bylaw which describes which types of land uses are permitted in each of the zoning districts. Meservey explained that the table has been carried forward with separate listings for "beauty salon" and "beauty parlor". Since it is not easy to differentiate between a salon and a parlor, the proposal would place both uses in a single category called beauty salon and beauty parlor.

MOTION: On a motion by **John Ostman**, seconded by **Chet Crabtree**, the Board voted to accept as written the zoning bylaw amendment 164-13 Schedule of Use Regulations and forward it to the Board of Selectmen for inclusion on the town meeting warrant.

VOTE: 5-0-0 The motion passed unanimously.

Fallender closed the public hearing on the proposed zoning bylaw amendments at 7:35 p.m.

OLD BUSINESS

Wastewater Management Steering Committee Final report

Planning Board members acknowledge receipt of the Final Report of the Wastewater Management Steering Committee dated December 15, 2009 and Meservey noted that it has been submitted to the Board of Selectmen who will meet with members of the Wastewater Management Steering Committee to discuss the recommendations.

Village Center Market Study

Meservey informed Planning Board members that Peg Barringer from Fine Point Associates has been hired through a competitive bidding process to coordinate the Village Center Market Study and will attend the February 9, 2010 Planning Board meeting.

Seasonal Rental Issues

Meservey gave an update to the Planning Board on meetings with the Police Chief regarding problems with noise and overcrowding as a result of seasonal rentals in town. Fuller suggested that the Planning Board consider addressing this as a general bylaw rather than a zoning bylaw.

APPROVAL OF MINUTES: January 12, 2010

MOTION: On a motion by **Kenneth McKusick**, seconded by **John Ostman**, the Board voted to approve the minutes of January 12, 2010.

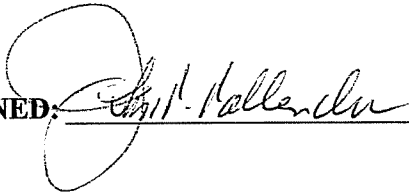
VOTE: 5-0-0 The motion passed unanimously.

ADJOURNMENT

MOTION: On a motion by **Kenneth McKusick**, seconded by **John Ostman**, the Board voted to adjourn the Planning Board meeting at 7:57 p.m.

VOTE: 5-0-0 The motion passed unanimously.

SIGNED: _____



DATE: _____

Feb 9, 2010