

FDoling, Asst.
TOWN OF ORLEANS
TOWN CLERKS OFFICE

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For Official Use Only

PLANNING BOARD

February 9, 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; **Clerk:** John Ostman; Kenneth McKusick; Chet Crabtree. **Associates:** Gary Guzzeau. **Planning Department Staff:** George Meservey. **Also Present: Board of Selectmen Liaison:** Jon Fuller.

Chairman Fallender stated that Gary Guzzeau will vote at this meeting.

7:00 P.M. - PUBLIC HEARING - Repetitive Petition - Whitford Boyd, 219 Main Street

John Fallender opened the public hearing for a Repetitive Petition for Whitford Boyd for property at 219 Main Street at 7:00 p.m. John Ostman read the legal notice in to the record. John Fallender read the following Massachusetts General Laws chapter 40A Zoning, section 16 into the record:

CHAPTER 40A. ZONING

Chapter 40A: Section 16. Final unfavorable decisions by permit granting authorities; reconsideration; withdrawal of petitions for variance or applications for special permit

Section 16. No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Any petition for a variance or application for a special permit which has been transmitted to the permit granting authority or special permit granting authority may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the special permit granting authority or permit granting authority.

John Fallender stated that Mr. Boyd needs to show that this is a significantly different application. The applicant, Whitford Boyd explained that he appeared before the Zoning Board of Appeals due to the construction of a garage office space. Boyd stated that he rented out the space to a plumber and a real

estate company and neighbors complained. Boyd explained that he received a letter from the Building Commissioner stating that the businesses could not be in the building and they moved out. Boyd stated that he appeared in front of the Zoning Board of Appeals in an attempt to get a Special Permit to have office space in the building and a variance for apartments. Boyd stated that the Zoning Board of Appeals denied the variance, the Building Commissioner's decision was appealed and the Special Permit was withdrawn without prejudice. Boyd explained that the businesses moved out of the building and he brought the building into compliance and reapplied to the Zoning Board of Appeals.

Meservy explained that the original application was for a residential garage. The Planning Board needs to make a judgment whether the proposal for a real estate office in the small rear building is materially different from a tradesman storing materials to work out of a garage downstairs with office space. Meservy stated that the Zoning Board of Appeals cannot render a decision on this application unless the Planning Board finds that it is a materially different application that what was submitted in July 2009. Meservy noted that without the Planning Board concurrence that the application is different, Boyd would have to wait for two years from the date of that decision before he could apply again. Meservy stated that the application would have to have specific and material changes in the condition upon which the previous unfavorable action was based. Planning Board members discussed whether this is allowed in the Rural Business District. Meservy pointed out that there is no "use" for trade storage in the zoning bylaws. Meservy stated that the only place that storage is listed is as a wholesale business which is only allowed in the Industrial Business District. Meservy noted that office support for a trade is allowed in this district, with a requirement for a Special Permit over a certain square footage. Meservy reminded Planning Board members of the importance of making a determination of whether the two applications are different.

Seth Wilkinson made a disclosure that Attorney Benjamin Zehnder is involved with this case and is Wilkinson's landlord for office space rental in downtown Orleans.

Public Comments

Robert Osterberg (Chairman of Zoning Board of Appeals) stated his opinion that according to section 16, the Planning Board and Zoning Board of Appeals has to find specific and material changes in the conditions upon which the previous unfavorable action was based. Osterberg stated that the previous unfavorable action was based upon the following: **1)** A failure to be in compliance with the Zoning Bylaw in the operation of the building; and **2)** The failure to set forth the specific findings on which a Special Permit can be granted. Osterberg explained that these were the reasons given by the Zoning Board of Appeals in denying the application. Osterberg stated that the Zoning Board of Appeals never reached the merits of the application which brings into doubt whether section 16 even applies in this situation. Osterberg explained that the Zoning Board of Appeals has decided to go the path of least resistance and present it in a way that the statute seems to read, but there is case law that says unless you meet the merits you have not really made a final unfavorable decision such as in court proceedings. Osterberg stated that the Zoning Board of Appeals heard this application and rendered an opinion in January. Osterberg noted that Mr. Boyd has complied with both of the conditions imposed by the Zoning Board of Appeals, so there are no material and specific conditions that lead to the unfavorable action that are unresolved and the Zoning Board of Appeals believes that this application should move forward at this time. Osterberg stated that it was never the intention of the Zoning Board of Appeals in the July decision to make Mr. Boyd wait two years with a vacant garage trying to get a hearing on a Special Permit. Osterberg stated that Mr. Boyd is entitled to a hearing and he respectfully submitted that the Planning Board should approve the determination of the Zoning Board of Appeals that there are no specific and material changes to be made and that the application should move forward.

Planning Board members discussed the two applications from Whitford Boyd to determine if there are differences after explanations from Mr. Boyd and Mr. Osterberg on the timeline and merits of the applications.

Richard Bessom (abutter at 7 Lewis Road) stated his opinion that there has been no change to the application except to have illegal people removed. Bessom noted that on the building permit, it was stated that the building was to be used for personal use and now Mr. Boyd wants to turn it into a commercial building. Bessom stated that he and two other abutters are against this proposal.

Robert Osterberg (Chairman of Zoning Board of Appeals) stated that the nature of the business and the extent that they were going to use the space was never determined. Osterberg explained that when the Site Plan Review Committee originally approved the garage, they stipulated that if the garage was to be used for commercial purposes, it would be subject to the requirements of a Special Permit, which was never applied for and was not in compliance with the Zoning Bylaws. Osterberg stated that the garage is now vacant and has been brought into compliance with the Zoning Bylaws. Osterberg commented that the Zoning Board of Appeals is now prepared to consider whether there should be a Special Permit for a commercial use for the garage and then determine whether the commercial use meets the Zoning Bylaws.

Chairman Fallender closed the public hearing for a repetitive petition for Whitford Boyd, 219 Main Street.

MOTION: On a motion by **Kenneth McKusick**, seconded by **Seth Wilkinson**, the Planning Board voted that the reapplication to the Zoning Board of Appeals by Whitford Boyd for 219 Main Street does have specific and material changes in the conditions upon which the previous unfavorable action was based.

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

VILLAGE CENTER ECONOMIC STUDY

Peg Barringer (Fine Point Associates) discussed the Scope of Services, a schedule of tasks and the proposed Village Center survey with Planning Board members. Barringer noted that Professor Michael Lavin will take responsibility for conducting the Orleans business inventory with a template created by Fine Point Associates. Planning Board members discussed the various types of information that could be obtained from business owners that would be helpful to the town in their review of the Village Center. Barringer suggested opening up the survey to surrounding towns and to include seasonal residents as well as year-round residents to better understand the market needs.

Seth Wilkinson was called away from the meeting at 7:51 p.m.

Planning Board members discussed projections for resident spending levels and the possibility of coordinating information from the Cape Cod Commission to widen the information for the town's database. Planning Board members discussed gathering information on comparisons with other village centers. Planning Board members discussed the impact of formula businesses in towns and

village centers. McKusick noted the need for an analysis of what is currently in the Village Center District and what will be needed in the future.

Planning Board members reviewed a proposed schedule for the next six months for tasks, meetings and assessments on village center issues. Planning Board members discussed holding public meetings and present their findings to the Board of Selectmen when it is complete. Ostman strongly recommended involving business leaders as well as Chamber of Commerce members in the process. Planning Board members discussed how to reach the different dynamics of year-round and seasonal homeowners, business owners, and renters.

OLD BUSINESS

Overcrowding at Rental Properties

Meservey described to Planning Board members the steps that have been taken to meet with various town departments to determine ways to deal with the issue of overcrowding in rental properties in town. Meservey noted that the main issues are: Vehicles blocking roads; limited emergency vehicle access; noise issues; and overcrowding in general. Meservey explained the various issues and how they can be dealt such as adhering to the town's noise bylaw. Meservey suggested an option of adopting a general bylaw regarding use and occupancy of rental units which would need to be reviewed by town counsel. Planning Board members agreed to research what other towns are doing to address this problem and consider forwarding the issue to the Zoning Bylaw Task Force for further review.

NEW BUSINESS

Residential Wind Facility

Meservey explained a situation where a homeowner wants to install a 10' pole with a 1 KW wind turbine on top of the gable end of his house. Meservey stated that the homeowner went to the Zoning Board of Appeals for a Special Permit under the town's wind bylaw. Meservey noted that the residential building height is 30' (with appurtenances not to exceed 5') and cannot be waived. Meservey described a conversation with Town Counsel where it was suggested that a simple reference in the building height definition that refers to the commercial and non-commercial wind facilities section of the bylaw (§35.1 Section D – Review Criteria) to make allowances for residential non-commercial wind turbines attached to homes.

MOTION: On a motion by **John Ostman**, seconded by **Chet Crabtree**, the Board voted to hold a public hearing on March 9, 2010 for consideration of an amendment to the building height definition.

VOTE: 4-1-0 The motion passed by a majority (Kenneth McKusick voted against the motion).

ELECTION OF A PLANNING BOARD CLERK:

MOTION: On a motion by **Kenneth McKusick**, seconded by **Gary Guzzeau**, the Board voted to elect John Ostman to be the Planning Board Clerk.

VOTE: 4-0-0 The motion passed unanimously.

APPROVAL OF MINUTES: January 26, 2010

MOTION: On a motion by **Kenneth McKusick**, seconded by **John Ostman**, the Board voted to approve the minutes of January 26, 2010.

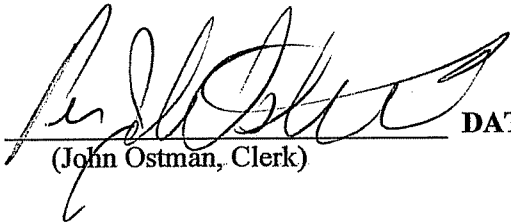
VOTE: 5-0-0 The motion passed unanimously.

ADJOURNMENT

MOTION: On a motion by **Kenneth McKusick**, seconded by **John Ostman**, the Board voted to adjourn at 9:42 p.m.

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

SIGNED:


(John Ostman, Clerk)

DATE:

4/7/2010

