

## Re: Planning Board meeting recording

T E Hopkins <ewellhopkins@mac.com>

Fri 11/15/2019 10:55 AM

To: Oak Bluffs Planning Board <planningboard@oakbluffsma.gov>; Terry Donahue <tjd2650@gmail.com>; Matthew D'Andrea <mdandrea@mvyps.org>

Thank you Kim,

Terry - Please pick-up this material promptly. You can also sign-up on the town website to receive notifications when all meeting agenda and minutes are posted. Kim will be happy to assist you in the sign-on process if needed.

I expect you will handled audio material in a responsible manner and not release segments of dialogue out of context.

Ewell

*Ewell Hopkins*

*Oak Bluffs Planning Board - Chairperson*

*1.508.560.7227*

<http://www.oakbluffsma.gov/182/Planning-Board>

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On Nov 15, 2019, at 10:46 AM, Oak Bluffs Planning Board  
<[planningboard@oakbluffsma.gov](mailto:planningboard@oakbluffsma.gov)> wrote:

Dear Terry,

I've made a copy to a CD of last night's Planning Board meeting. It's ready to be picked up at Town Hall.

Best,

Kim Leaird

Administrator to the Planning Board of Oak Bluffs

Oak Bluffs Town Hall

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Oak Bluffs, MA 02557

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## OAK BLUFFS PLANNING BOARD

Meeting Minutes

NOVEMBER 14, 2019

5:00 p.m. at Oak Bluffs Fire Station, 6 Firehouse Lane, Kitchen Meeting Room

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**Members in Attendance:** Ewell Hopkins, JoJo Lambert, Erik Albert, Mark Crossland, Bill Cleary

**Members Absent:**

**Staff in Attendance:** Kim Leaird (*Administrator*)

**Attendees:** Andrea Rogers, Llewellyn Rogers, Brian Patrick Hall, Terry Donahue, David Diriwachter, Gail Barmakian, Peter Goodale, Jason Balboni, Matt Viaggio, Kris O'Brien, Christine Flynn

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*Chairperson Hopkins opened the meeting at 5:00 p.m.*

### **Approval of Minutes**

Chairperson Hopkins noted that there had been a public records request of the draft of the October 24 minutes and so the draft had been released prior to tonight. Member Albert made a motion to accept October 24, 2019 meeting minutes as written. Member Lambert seconded. Motion passed.

### **Update on Progress of the Zoning Reform Subcommittee**

Mark Crossland, chair of the Zoning Reform subcommittee said they initially met with town counsel to get some direction on which bylaws they should address, ones that have cost the town money due to ambiguity or being poorly crafted.

- In addition, the subcommittee looked at Dukes County Ave. in the B1 district. Lou Rogers from the Zoning Board of Appeals (ZBA) said the way the lines had been drawn cause a lot of issues when applicants came in front of the ZBA. With a map on an overhead, he pointed out areas that did not go to the back of the property line, etc. He said although there may be a good reason why it was drawn this way he doesn't think there is a good reason and he believes they should re-zone the area—have a public hearing so people can weigh in. Section 2.3.1 gives them [ZBA] right to change 30 feet, but if they rezone, everyone can be B1 and there will be no issue with it. Pointed out three lots in the Campground and a random area near Sunset Lake designated B1 – why? He said in his opinion, it makes sense to re-draw.

Gail Barmakian said there is a lot of history to this and that John Bradford should know – said what town lacks is a buffer zone in the bylaws and this part of B1 abuts residential. She argued that it may not make sense to go to end of property – there have been a lot of complaints from the Campground. Suggests if they're contemplating this is that they allow for buffer zones. Another issue that should be addressed is the entirety of the B1 district needs to be considered – not just Dukes County Ave. Ideas being proposed mean there would be the potential for a liquor store in back yard.

Lou Rogers said he doesn't know which lots would be affected that way. Gail said you'd have to provide conditions or some type of buffer zone. Lou said they (ZBA) need dimensions because right now in a hearing they get ruler out and measure because there is no definitive line unless they use the lot line.

Chairperson Hopkins said that if they are talking about modifying the B1 district, did they look at the whole of B1 and if they didn't – why? Is there a driver beyond having a definitive line for the ZBA? Member Crossland said they did not, only looked at Dukes County Ave. He said the driver was town counsel because it costs town a lot of money and it would eliminate gray areas in the bylaws.

Gail said so they were not proposing or putting any considerations in place?

Attendee David Diriwachter asked when was the subcommittee formed and what was its mandate.

Member Crossland said the committee had been meeting for eight weeks.

Chairperson Hopkins said the Planning Board is looking at more comprehensive zoning reform in the future but the mandate was “*What are the low-hanging fruit that we could take on and fix*” in advance of town meeting. Process would include a series of public input, a review by town counsel and then a vote at town meeting.

Discussion followed about reluctance to look at changing B1 district if they were not looking at the entire district.

- **Bylaw 3.4 Accessory and Guest Apartments** – Lou Rogers spoke about strengthening the language. They looked at similar bylaws in other island towns. Chairperson Hopkins asked about the driver for these changes.

Lou said that **3.4.1.2** said that it must be owner-occupied for 5 years and it is a decision that the ZBA can waiver. Applicants come in driven by engineer groups trying to work the system. It is mostly seasonal people who come in wanting to add a guest house. Chairperson Hopkins asked what has changed that makes this language no longer relevant.

Andrea said they have waived to help island families stay put but then others come in and say if you did it for them you have to do it for us.

They suggest that language be changed from “5 years” to “2 previous years” in order to remove any ambiguity.

Proposed changes 3.4.1.5

1. The lot, dwelling and all the building shall be in single ownership.
2. The house must have been owner occupied by the applicant for 2 years previous years and in the case of a newly constructed principle structure the time will start the date of the Certification of Occupancy is granted, must continue to be owner occupied after the conversion is allowed.
3. At no time shall both portions of the property be rented.

4. An affidavit shall be provided stating that one of the two dwelling units shall be occupied year around by the owner of the property, except for bona fide temporary absence for no more than 4 months; seasonal occupation by the owner shall not disqualify the applicant.
5. Accessory Apartment shall not access the non-habitable portion of the accessory structure, such as basements, storage areas, garages and the likes from the interior of the apartment nor will the accessory apartment that is in the principle structure have access to the habitable space within the principle structure.
6. Accessory Apartment shall consist of no more than one living room, one bathroom, one kitchen and one bed room.
7. Applicants that are affiliated with a Home Owners Association or the likes will submit a letter of said Association with approval or disapproval of project.
8. An Accessory or Guest Apartment in any residential district is allowed by Special Permit issued by the Board of Appeals, subject to the following conditions: (see language below...)

Chairperson Hopkins said he's not sure about Homeowners Associations (HOA's) – not sure town wants to be in a battle defending HOA covenants.

Gail Barmakian said she would – the Town is more lenient than an HOA. The Town can't enforce HOA rules but she felt it opens town to litigation. It's a factor to be considered. You would want to get a letter from the HOA saying they are aware of the project.

Chairperson Hopkins said that if town has bylaws and conditions where they feel accessory apartments are acceptable, then if we require a letter from the HOA we are in effect enforcing the HOA. Gail said you are avoiding litigation.

Lou moved on to the proposed conditions (additions in red):

**3.4.2 Conditions.** The Building Commissioner shall verify that all of the following conditions have been met:

1. A plot plan of the existing dwelling unit and proposed accessory apartment shall be submitted, showing the location of the building on the lot, proposed accessory apartment, location of any septic system and required parking. A mortgage inspection survey shall be sufficient to meet this requirement.
2. Not more than one accessory apartment may be established on a lot.
3. The accessory apartment shall not exceed 750 sq. ft. in floor space, **which will include all habitable space, closets, bathrooms hallways, interior stairways, decks, porches and no deductions for wall thicknesses**, and shall be located in the principal residential structure on the premises or in an accessory structure.

4. Any new entrance to the principal residence or accessory structure shall be on the side or rear of building.
5. There must be at least 7500 square feet of open space on the lot which is unpaved and unoccupied by any structure.
6. The external appearance of the structure in which the accessory apartment is to be located shall be of the same architectural design and have same material and color scheme as principle structure.
7. Sufficient and appropriate space for at least one (1) additional parking space shall be constructed by the owner to serve the accessory apartment. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway. All parking spaces and driveways will be tied together so to have the appearance of one combined driveway/ parking area, extra curb cuts are not allowed.
8. No permits under this section may be granted within the coastal district.

Discussion followed about how decks and stairs are measured. Gail Barmakian asked if there had been any discussion about accessory apartments and affordable housing. Not so far.

Discussion about proposed condition re: external appearance. Chairperson Hopkins asked if the ZBA was going to take on architectural review for everything because this is a new conversation.

David Diriwachter asked about restrictions for owner-occupied – asked if the proposal is for 2 years for everybody. He said if changed you are only going to hurt those people this bylaw was intended to help. Thinks with all the conditions all the people with power and money can get around it and those who can't will not. Andrea Rogers disagreed and said that they want to help people by eliminating the five years and make it two years. Regardless, something needs to change because there are too many loopholes.

Question about what happens when property sells? The guest house is there without restrictions.

- **Bylaw 4.4** – Anything under 100 sq ft. is defined – JoJo spoke about garage doors and adding language that directs applicant to get a special permit from ZBA for garage over 10'...

#### **4.4 ACCESSORY STRUCTURES IN THE R1, R2, R3 AND R4 DISTRICTS**

(Amended 4/12/06 ATM Art. 15.)

**4.4.1 Less than 100 Square Feet.** The minimum setback between any shed of one hundred (100) square feet or less and any lot line other than the street line shall be five (5) feet.

**4.4.2 Less than 500 Square Feet; Used as a Garage:** The minimum setback between any structure of five hundred (500) square feet or less used solely as a garage, and any lot line other than the street line shall be ten (10) feet. Adding language about needing a special permit from the ZBA for garage door over 10 feet.

Gail asked if there's anything that prevents an under-sized lot from creating garage apartments on 5,000 feet. Discussion about whether or not conforming.

Chairperson Hopkins asked them to rank by priority the bylaws most important to subcommittee .  
Member Crossland said:

1. 3.4 and 4.4 and definition;
2. Zoning bylaws of 1928 and 1948 and
3. Changing B1 zoning on Dukes County Ave.

He also said that Erosion control and Signs but both need to still be discussed by subcommittee. The subcommittee would like to have a public hearing before they give it to town counsel for him to rewrite it. Discussion around public hearings for public to weigh in – would two public hearings for each be appropriate?

Member Lambert said she felt they were being rushed. Chairperson Hopkins said she was arguing his point. What do we need to do to get each one to town meeting? It is important for public to understand changes being proposed.

Maybe at least two at each public hearing would be possible.

Member Albert said he thought working on B1 was a reach for this town meeting.

Christine Flynn said she thought that date for getting in warrant was mid-February and then there is 60 days to hold hearings before town meeting. Chairperson Hopkins said we are not asking town counsel to write it. He said he'd like to see two hearings per bylaw.

Consensus of subcommittee was that they could be combined, changes being proposed were not that extensive and could be addressed together at a hearing.

Gail said she wanted to impress upon them that changing zoning bylaws was a very big thing. She thought B1 needed more thought and Member Crossland agreed.

Chairperson Hopkins said there should be at least two formal opportunities to address each topic – whether the bylaws/issues were combined together or presented separately. Then written comments should be accepted and based on that we write up bylaws and forward to town counsel.

Member Crossland made a motion to move forward with 3.4, 4.4 and 11.1; 1928 / 1948 and exclude the B1 Dukes County Ave for right now.

There was no discussion.

Chairperson Hopkins asked if the subcommittee is willing to do the work to get the word out – social media, noticing, etc.

All were in favor of the motion.

## **Nitrogen in Our Ponds and Planning for the Future**

Erik Albert. He said from the Wastewater meetings he attended, they can't do anything in town. Suggested sending a letter to Shellfish committee stating this is what they would like to see. Bill said his understanding was that the shellfish could help reduce nitrogen. Chairperson Hopkins said his concern is that they coordinate with all efforts in place and what he's considered on the CWMP. Referenced needs assessment – what he'd suggest they ask is how they can assist needs assessment where feasible. He's asked if there's still time to submit feedback. He thought the board could help Member Albert's effort by working with the CWMP.

Gail Barmakian asked them to identify their jurisdiction. If they're interested people in the -- but where is their jurisdiction as a Planning Board. All of this has been vetted. She said to read the Needs Assessment which is online where everything is addressed including the regulatory process as well as shellfish promulgation.

The CWMP details the way the town will address wastewater. Right now the direction it's going vs 20 years ago is different. They're in violation of the Clean Water Act now and susceptible to a lawsuit. Once you're in violation, the DEP won't work with you. Peter Goodale and Chairperson Hopkins said while a lawsuit is not what they want the threat of one can help to push along public opinion.

Chairperson Hopkins said the Planning Board should be more involved in the CWMP process than historically they have been. Concern not enough input from existing users, does not see this information in the needs assessment. He said they can help other areas in town to affect the CWMP.

Chairperson Hopkins asked if Member Albert would work with Kim to craft a letter to the Shellfish committee saying that they are prepared to work more closely with them. Felt they didn't know enough about the issue to make a recommendation.

Gail said that many conversations had taken place over the years on these issues re: oysters in a large scale and the conditions of Lagoon Pond. Suggested they talk to Dave Gundren to do more due diligence on this issue.

Chairperson Hopkins said he feels they need to do more due diligence. Doesn't know what unforeseen consequences are of putting oysters in lagoon. Member Albert agreed. Member Lambert said Joe Forns is a biologist and knows about ponds, eel grass – and might be a good resource. Gail said they have done this due diligence. Brian said you could reach out to Chilmark warden and asst. warden. Christine Flynn said oyster farming is one way and that MVC has done extensive studying on shellfish – she recommended contacting Sherri Russo who has wealth of information.

Chairperson Hopkins said there are two paths they can take: 1) request opportunity to be more involved in conversation more formally; or 2) make a recommendation. Member Cleary said he'd vote to learn more.

Chairperson Hopkins empowered Member Albert to reach out to be more collaborative with the three groups mentioned. Express our interest to work collaboratively on solutions.

## **Update on Progress of the Green Community Designation Subcommittee**

Bill Cleary gave an update. He said they are at very beginning of process to get this designation from the state. In order to achieve, they have to meet five criteria.

- **Criterion 1 & 2 – Renewable Energy Development – Solar Generation Sited:**  
*Adopting Expedited Application and Permitting Timeline*
- **Criterion 3 – Reaching 20% Reduction – Energy Use Baseline;**  
*Adopt Energy Reduction Plan (ERP)*

- **Criterion 4** – *Hybrids and Electric Vehicles – Fuel Efficiency*
- **Criterion 5** – *Stretch Code Adoption – Minimize Life-cycle Cost of New Development*

They've had four meetings so far, one tomorrow, and have added a few new members to the subcommittee. Grant program at end. Gail said there is a state statute re stretch code and suggested they speak with Tom Perry and analyze financial impact.

Chairperson Hopkins said the Town will need to sign off on language after going to departments to gather support.

### **All-Island Planning Board Meeting Minutes**

Chairperson Hopkins updated the board on the AIPB meeting that convened to discuss the proposed changes to the DRI Checklist. Edgartown clearly had an agenda they wanted to push re subdivision recently in front of MVC. Doug Finn took detailed minutes and distributed to those who participated.

### **Board Updates**

Mark Crossland: Weston and RKG want to have a final meeting for second proposal.

Ewell Hopkins:

- Kathy Laskowski has asked if Planning Board would like to join ICAN and requested each member's contact information. Board voted to keep correspondence through Ewell and Kim.
- We continue to received letters about the track and field and are keeping written public record open, but no more oral testimony until we received a formal application
- There have been informal and formal requests that he recuse himself from discussions about the track and field but has not entertained that. If other board members want, he will make it a future agenda item.
- Gave update that MVP grant application was submitted, received support from FinComm, MVC, Wastewater, Water, and Conservation.

### **Public Input**

Terry Donahue and Brian Patrick Hall spoke and said they were concerned the Planning Board is hearing input on the High School track and field project when application has not yet been made. Chairperson Hopkins said this began with applicant's OPM asking to be on agenda. We scheduled it, the public attended it, but the OPM was unable to make it at the last minute. He said they had felt comfortable that the process had begun. Late in day on day of hearing they received a request to postpone the meeting but public had shown up anyways.

Terry said that what had been allowed as public testimony is not based on anything concrete as an application has been yet.

Chairperson Hopkins said we will not close door to the written testimony we are receiving

Brian said the reality is that there has been a lot of hard work into this but feels that chair has been vocal about his support of grass and can't be impartial.

Chairperson Hopkins said there are ethics guidelines and specific rules for being a public official. Nowhere in the ethics rules does it say that you can't have an opinion. In terms of being able to oversee or facilitate a process, the guidelines are clear. He said he has spoken to Ethics board already. The Planning

Board is most effective when it doesn't advance an agenda but facilitates a process of discussion. What he personally believes doesn't matter. As he's said in the past, the Planning Board does not have authority to choose turf vs non-turf decision.

Member Cleary said that for him personally, Ewell's character speaks for itself.

Peter Goodale asked Member Crossland about 1928 vs 1948 zoning and what that plan was supposed to be.

### **Adjourn**

Meeting was adjourned at 7:00 p.m.

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*Minutes approved January 9, 2020*

### **Documents on File**

- **Agenda**
- **Board packet**
- **Sign In Sheet**