

## OXFORD PLANNING COMMISSION

### MINUTES

JULY 7, 2009

The regular monthly meeting of the Oxford Planning Commission was called to order by the chairperson, Pamela Baker, on Tuesday, July 7, 2009 at 7:00 p.m., in the meeting room of the Oxford Community Services Building.

Other commission members in attendance were Ted Lutkus, Don Silliman, Tony Passarella, and Bernie Witter.

The minutes of the meeting of June 2, 2009 were approved and accepted as distributed.

There were no new building permits approved in the Town Office.

Prior to the review of a building permit by the Planning Commission, Mrs. Baker announced that a discussion of a resolution with regards to the annexation of submerged lands located under certain public waters adjacent to the town boundaries in order to regulate placement of wharves, piers, mooring piles, mooring buoys, floating docks, and associated or related structures would be the first item on the agenda. Because of the number of people in the audience, Mrs. Baker informed the crowd that this was a draft resolution that had been forwarded to the commission from the Commissioners prior to their consideration of whether to introduce it or not. She reminded the crowd that this was a public meeting, not a public hearing, and, as such, the commission would not be taking public comments as this process did not require comments from the audience. Mrs. Baker went on to state that the process is for a draft to be offered to the appropriate commission (in this case the Planning Commission) for comment. Upon receipt of the commission's comments, the Commissioners can decide to introduce the resolution as it is, modify it, or not introduce it at all. Should they decide to introduce it there would be public notices in the local newspaper and a public hearing held, at which time concerns would be heard from the public. Mrs. Baker explained the history of this resolution to the Planning Commission members, stating that the Commissioners had received a request from the Oxford Board of Port Wardens regarding moorings. The Port Wardens were particularly concerned about safety issues as they related to moorings around the Town of Oxford, about whether the moorings were adequate for the vessels tied up to them, the locations being used, whether the placement was appropriate relative to piers and commercial traffic, and the fact that there was no ability to chart all these moorings. Mrs. Baker further stated that the town had met with Department of Natural Resources (DNR) Police and the Assistant Attorney General from the DNR. The DNR reported that the town did not have any jurisdiction over the areas in question, just Talbot County. The Talbot County Council and Talbot County Planning Commission were approached as well, and they agreed this was an interesting topic but they declined to take any action, thus leaving the town with this as an option. Mrs. Baker confirmed that the Oxford Planning Commission was merely considering at this night's meeting a resolution to move the town limits to annex submerged lands adjacent to town property, and in part of Town Creek, ( some of the creek is already within town limits), and also portions of the Tred Avon River. According to Mrs. Baker, with regards to questions as to

whether it is actually legal to annex submerged lands and water, it can be legally done as the 1998 Maryland Court of Appeals found that land actually means submerged lands and water. Basically what this resolution would do would annex part of the Tred Avon and additional areas of Town Creek into the town. It would not put into place any regulations on those areas. If that were to happen, it would be done at a later time. It would have to happen with the approval of the DNR, it could not be done independently, and it would have to be done in conjunction with the rules that are set up in Section 8 of the Maryland regulations.

Mr. Lutkus stated that he had looked over the proposed draft resolution and that his first question was whether land was covered by the statute. Mr. Lutkus noted that the commission has been assured by counsel that land under the water is covered by the statute so this resolution would be permissible under Maryland law and that the town has the right to extend its boundaries by pulling in the water. Having gone over that issue, Mr. Lutkus thought the important thing to realize is that there is a safety issue involved and how that issue is addressed. As is stands, the county does not seem interested in helping the town. Mr. Lutkus stated that his understanding was that the DNR has a limited interest in this and has not responded with a request to review the situation as it exists. If that is truly the case, the only other body to regulate this issue would be the Town of Oxford and this is what this resolution is aimed at – the right to regulate and control the waters outside the town’s current boundaries. He went on to say that it was his understanding that the Board of Port Wardens are in favor of such action and are ready to enforce it. Mr. Lutkus stressed to the public that this was just a first step and that there was nothing really detrimental in the resolution as it would be open to a lot of change and discussion. Mr. Passarella questioned if the Army Corp of Engineers and the Coast Guard should be consulted. Mrs. Baker responded that she thought they would be included if the town imposes any regulations on this area but not for the straight forward annexation.

Mr. Witter strongly stated that he had a problem with the annexation as this was an annexation of land, not water, and that the Port Wardens were concerned with water regulations. It seemed to Mr. Witter that the whole focus of the resolution was to assume jurisdiction over the waters, not the land, so that the resolution seemed totally unnecessary. Mr. Witter felt that if one wanted to regulate what is on the water, one does not need annexation. He added that the town should have joint responsibility, or hope to, with the DNR to regulate the waters. According to Mr. Witter, the DNR has already given joint jurisdiction in the case of Kent County and Annapolis. He added that there was no reason why Oxford could not work with the DNR to work out sensible rules to regulate buoys in Oxford waters, and, as such, was whole heartedly opposed of having any annexation of land under the waterways, adding the he felt the DNR would grant the town the power to have some control. Mrs. Baker responded that it was her understanding that that was not what the Assistant Attorney General of the DNR had told the town. Mr. Witter countered that he would like the DNR to put something in writing as to what the town can do and that the Board of Port Wardens should make public their recommendations as to how they would like to regulate the water around Oxford which should be made public so everyone in the town would know what was being discussed.

Mr. Silliman asked if the moorings located off the Strand were regulated. Mrs. Baker responded that individual moorings are somewhat generically covered by some State regulations that say you have to have the mooring identified and not obstructing channels and waterways. Mr. Witter stated that it seemed strange to him that the town should suddenly engage in a regulatory exercise without first finding out what in fact is being proposed. Mr. Silliman responded that what was being proposed was no different than what the Planning Commission usually does only that it was happening on the water. For example, if one wanted to make a modification to their property, they would have to submit a plan for approval which would have to be approved under certain standards. By comparison, if one wanted to put out a mooring, they would have to get approval to do so. Mr. Witter argued that some residents do not like the idea of having to go before the Port Wardens to get permission for something that has not yet been defined.

Mr. Lutkus again expressed his concern over safety issues and felt that the Board of Port Wardens would be more "on top of it" than the DNR. Though he understood this had been going on for a number of years without any regulations, he thought the resolution was a good way of going forward with the next step. Mr. Witter asked what was wrong with asking the Port Wardens to put forth their visions of what the regulations should be, having an open meeting in town to find out if people agree with those issues, and once the regulations have been accepted and agreed to, then go to the DNR. If the DNR doesn't agree with the town, then the town should go on to what is being said in the resolution. He added that he did not think a specific proposal had been made to the DNR. Mr. Passarella added that perhaps the DNR did not care what the town did. Mrs. Baker thought the DNR had concerns that Oxford does not try to regulate or plan anything with mooring buoys in waters that are not part of the Town of Oxford. Mr. Witter again questioned how was anyone to know that since a precedent had been set by which the DNR has allowed that to happen in Annapolis and Kent County. This shows that the DNR is willing to cooperate and let rules come into existence that have been proposed by jurisdictions. Mrs. Baker held to the idea that if the town ever planned to do anything with regulating mooring buoys that what was proposed in the resolution would be the first start. Mr. Witter again argued for the need to have an open discussion with the town before seeing the resolution move forward. Mrs. Baker stated that the way to have a true public hearing whereby everyone knows what is happening is to introduce a resolution, send out a public notice and information out for people to review. It was also mentioned that someone had sent out to the public an anonymous flyer with misinformation which Mrs. Baker found to be appalling and reprehensible of the individual who had done so. Again, she was of the opinion that if the commission were to go forward with this, they should give the Commissioners something to start with.

Mr. Witter suggesting a motion for a resolution "in the interest of the residents of Oxford to regulate and introduce some standards for buoys surrounding the town's waterways and that if the Commissioners want to hear comments on that issue, so be it." Mrs. Baker recommended adding to that resolution that based on the history of the last two years it requires annexation. Mr. Witter again strongly expressed his objection to bringing up annexation and that he was not

convinced that was the way in which this resolution had to go. Mrs. Baker debated that this had been going on for two years and that if more people showed up for the Commissioners meetings they would be aware of that. In her opinion this seemed like a step forward that made sense. Mr. Passarella read aloud from the proposed resolution Section 4 whereby it states, in part, that the Town Commissioners shall conduct a public hearing on this Resolution and that prior to the hearing, the Town Clerk shall arrange for the publication of a legally sufficient notice of the hearing in the local paper, four times, at least 15 days prior to the hearing. It goes on to say that the Town Clerk will also notify the Talbot County Council, the Talbot Co. Planning and Zoning Commission, and Department of State Planning, and Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. Mr. Passarella also saw this proposed Resolution as a first step and that the Planning Commission would just be recommending this step as part of a long process.

Mr. Silliman made a motion to recommend to the Commissioners that they pursue the resolution as presented to the Planning Commission. The motion was seconded by Mr. Passarella and carried with the following votes:

Donald Silliman	-	Aye
Anthony Passarella	-	Aye
Theodore Lutkus	-	Aye
Pamela Baker	-	Aye
Bernhard Witter	-	Nay

This concluded the review of the discussion of Resolution 1001.

The following building permit was reviewed by the Planning Commission:

Permit #09-33 R-2 Mr. and Mrs. William Korab, 516 E. Strand, enclose existing porches, add major gables on east and west and minor gable dormers on south and north; addition to west elevation. Mrs. Korab was present to discuss her application. Mrs. Baker gave a brief review of what last transpired with this application pointing out that the Korab's lot, as it exists, has a large amount of defined impervious coverage. The owners are proposing two small additions. As Mr. Lutkus had pointed out at last month's meeting, the owners are not really increasing the impervious coverage because it is already covered in impervious surfaces, particularly gravel. The commission had said at their last meeting with the Korabs that because most of the gravel is "walkable" they wanted to see the driveway gravel delineated on their site plan. Assuming the "walkable" gravel, even though by definition is not considered pervious, is pervious, the parking plus the solid structure still comes in under the 40% coverage allowed. All the members agreed this made sense. A motion was made by Mr. Silliman to approve the building permit as submitted as of this date. The motion was seconded by Mr. Lutkus and unanimously carried with all in favor.

Permit #09-49 R-2 Thomas Corl and Mary Cotton, 206 N. Morris Street, exceed side yard setback on north side of second floor rear/middle by 2' x 35' for a total of 96.25 square feet. Mr. Corl reminded the commission that at last month's meeting he had made a conceptual

presentation whereby he was proposing to move a section of his existing house to the back of the footprint and place new construction between the Victorian front and the garret dining room section of his house. Basically the project involves restructuring the existing house but maintaining the existing footprint. However, it would involve moving a portion of the house and adding a section which would include a second floor where there is none now. This would result in part of the new construction encroaching into the north side setback, even though it would remain on the existing footprint. Mrs. Baker stated the commission would have no choice but to disapprove the request since the new construction would not meet the terms of Section 9.02. Mr. Corl stated he understood what the problem was and wanted the commission to officially reject his request so he could move on to the Board of Appeals. Mrs. Baker noted that the impact on the neighbors would be fairly moot. Mr. Corl stated that his neighbors were aware of what he wanted to do and were OK with it. Mr. Silliman made a motion that the application be turned down based on not meeting the current setbacks. The motion was seconded by Mr. Lutkus and unanimously carried with all in favor. Mr. Silliman then made a motion that a recommendation be sent to the Board of Appeals stating that a variance be granted to permit the construction of the house as proposed. The motion was seconded with all in favor of the recommendation.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Lisa Willoughby  
Assistant Clerk