

Town of Orleans
Zoning Board of Appeals
Meeting Minutes – March 15, 2023

On Wednesday, March 15, 2023, the Orleans Zoning Board of Appeals convened via remote participation using “Zoom” video technology, with real-time public access provided by Orleans Channel 18 on the Town website and cable television.

In attendance were the members Gerald Mulligan, Matt Cole, Lynne Eickholt, Sibel Asantugrul, Bruce Taub, and Austin Higgins, as well as Peggy O’Sullivan from MIS. Also, in attendance was Building Commissioner Tom Evers, Town Council Attorney Ford, and Board Secretary Jennifer Higgins. The meeting was duly noticed. The meeting was called to order at 7:00 pm by Gerald Mulligan who chaired the meeting.

Call Meeting to Order

A. Old Business:

1. Review meeting minutes from February 1, 2023, & February 15, 2023.

Mr. Cole moved; Ms. Eickholt seconded to approve the minutes from February 1, 2023 & February 15, 2023. Messrs. Mulligan, Cole, Taub, and Mses. Eickholt and Asantugrul voted aye; unanimously passed 5-0.

B. New Business:

- 1. Case #2196 –Phil Ruggieri, the owner of the Barley Neck Inn, has applied for a special permit in accordance with the MGLA Chapter 40A, Section 6 and under 164-C (2) of the Orleans Zoning Bylaw. The applicant is proposing to have a restaurant with entertainment and sale or distribution of alcoholic beverages including the outdoor “lawn area” with proposed limitations. The property is located at 5 Beach Road Map #36, Parcel #137-7. Ms. Asantugrul was recused from the case.**

Attorney Ford was present to review the history and legal issues of the application and to respond to questions from the Board members. The Building Commissioner had determined that the Inn could not continue offering outdoor live music without a special permit. Applicant applied to the Board to overturn the Commissioner’s ruling. On May 4, 2022, the Board ruled in favor of the Inn and overturned the Commission’s ruling. That Board decision was appealed by Attorney Dalmas’s clients to the Massachusetts Land Court. The agreement of a remand was made by the Land Court to the Zoning Board of Appeals. Both the Inn and the opposing neighbors have agreed upon a set of conditions that both are asking to be made part of the Board’s decision.

Attorney John Kanaga represented the Applicant and Attorney Victoria Dalmas was present representing the Appellants of the Board’s earlier decision. Attorney Ford presented the history of the case, the reasons for the application, the matters to be decided and the order of their consideration.

A motion to reconsider the prior vote.

Ms. Eickholt moved; Mr. Cole seconded to approve the motion.

Messrs. Mulligan, Cole, Higgins, Taub and Ms. Eickholt voted aye; unanimously passed 5-0.

Mr. Kanaga requested to withdraw the original appeal of the Building Commissioners decision on behalf of the applicants.

Ms. Eickholt moved; Mr. Cole seconded to withdraw the original appeal.

Messrs. Mulligan, Cole, Higgins, Taub and Ms. Eickholt voted aye; unanimously passed 5-0.

Mr. Kanaga stated that the Applicant is applying for a finding under M.G.L. c.40A, s.6 and its corresponding provision in the Orleans Zoning Bylaw §164-3(C)(2) that the proposed outdoor entertainment and food and beverage use on the property, is not “substantially more detrimental to the neighborhood”. The opposing neighbors and applicant have come to an agreement. The Applicant is requesting to continue with outdoor entertainment and food and beverages in accordance with attached protocols. Mr. Kanaga read the protocols in the agreement for the record. The music will not exceed 35 decibels during business hours.

Mr. Cole made a motion as presented inclusive of the eight-item protocol and the 40A Section 6 finding, seconded by Ms. Eickholt.

Mr. Mulligan, Cole, Higgins, and Ms. Eickholt voted aye; Mr. Taub abstained; passed 4-0-1.

2. **(Continued from January 18, 2023, and February 1, 2023) Case #2194- Kenelm W. Winslow Jr. Trust** has applied for a special permit in accordance with MGLA Chapter 40A, Section 6 & Section 9 Under 164-21, Side Yard Requirement. The applicant is proposing a second story addition and a deck. The property is located at 6 Ewing Drive Map #93, Parcel #14.

Greg Delory represented the Applicant and presented the reasons for and the details of the application. The Board received 14 communications from neighbors, including the infringed abutters, in support of the application. Mr. Delory explained that the deck was located for the opportunity to view Pleasant Bay. The proposal also necessitates moving the septic system. Stephanie Sequin, P.E. from Ryder and Wilcox presented the details of a complete redesign of the septic system. Those plans have been filed with the Town Health Department and are awaiting approval.

Ms. Asantugrul requested clarification on whether this is a new non-conforming structure.

Mr. Mulligan explained that the noncompliance is a side setback, and the increase is not a new noncompliance, it is an intensification of an existing.

Mr. Cole moved; Ms. Eickholt seconded to approve the Special Permit.

Messrs. Mulligan, Cole, and Mses. Eickholt and Asantugrul voted aye; unanimously passed 5-0.

3. **Administrative Matters:**

**Introduction to new members - Sibel Asantugrul Regular Member
Martin Szeber – Associate Member
Austin Higgins – Associate Member**

Meeting Adjourned

Respectfully submitted by Jennifer Higgins