

OXFORD PLANNING COMMISSION

MINUTES

NOVEMBER 19, 2009

The regular monthly meeting of the Oxford Planning Commission was called to order by the acting chairman, Donald Silliman, on Thursday, November 19, 2009 at 7:00 p.m., in the meeting room of the Oxford Community Services Building.

Other commission members in attendance were Theodore Lutkus, Anthony Passarella, and Bernard Witter, who arrived later in the meeting.

The minutes of October 6, 2009 were approved and accepted as distributed.

There were no new building permits approved in the town office.

There were no building permits for review by the commission.

A consultation was held with Cathy Bitter, resident of 302 E. Strand, who asked to meet with the commission to ask some questions with regards to the zoning ordinance. Ms. Bitter informed the commission that she was aware that the restaurant located at 101 Mill Street was going to re-open and was planning on using a wood fired brick oven grill as their primary means of cooking. She stated that the concern of the residents in the area pertained to the wood burning cooking equipment and how it was going to affect the neighborhood in terms of smoke and odor. Ms. Bitter added that the parcel is zoned C-2 which does not allow for a restaurant but she presumed a special exception was granted to that property at some time for the restaurant. Mr. Silliman confirmed that when a special exception is granted it is granted to the property and continues to run with the property. He added that 101 Mill Street had a legitimate special exception granted to run a restaurant. Many homes in Oxford have fireplaces which are wood burning and, as such, Mr. Silliman stated that he did not understand Ms. Bitter's point as to why a wood fired grill brick oven would be any different. He thought the owners and/or leaser's would have to go through the process of obtaining a permit to construct a "fire breathing" apparatus which would have to be inspected, but stated that he would check with the town office to verify if that would be true. Ms. Bitter stated that the neighborhood would hate to see money invested in this equipment and improvements made if it turned out to be a problem. She added that the one of the questions the neighbors had was that while this restaurant is located in "C-2" and granted a special exception, if one were to look at the regulations, the only zoning classification that allows for a restaurant as a principal use is in the "M" zoning. This zone states explicit language regarding smoke and odor which Ms. Bitter quoted as being "such uses as do not create unfavorable or offensive conditions such as excessive noise, vibration, dust, heat, smoke, odor, or glare, and which would not tend to bring significant levels of environmental pollution." Ms. Bitter added that her assumption would be that depending on how the special exception read, that once a special exception is granted to allow that type of business, that they would still be subject to the same restrictions that the principal use classification implies. Mr. Silliman interjected stating the Ms. Bitter was reading from the "M" zoning, not the "C-2" zoning (which this property is zoned). Ms. Bitter questioned that if one

were opening a restaurant and the principal use zoning restrictions for a restaurant state that you cannot create these conditions, and a special exception is granted to allow a restaurant to open in a different zoning, wouldn't the same regulations that apply to a restaurant in a principal use district apply to a restaurant that has been granted a special exception? Mr. Passarella replied that Ms. Bitter posed an interesting question, but was of the opinion that with regards to a maritime/industrial district, whoever wrote the zoning ordinance was probably thinking more along the lines of offensive smokes and the burning of toxic elements, not the toasting of food. Mr. Witter added that a restaurant has been in this location and that there have always been some cooking odors. Ms. Bitter stated that no one in the neighborhood was concerned with normal restaurant conditions. However, there was difference with restaurants which use wood burning ovens and those which do not in terms of apparent odors in the atmosphere that may pose more of a problem in the summer when neighboring residents have their windows open. She stressed that the area residents have no way of knowing if the new equipment will create a problem or not and that it is a concern. Ms. Bitter added that in the future, if this does end up posing a problem to adjacent residents, could a zoning change be looked at in the future that would pose an additional restriction that would prevent the use of wood burning cooking equipment. Mr. Lutkus stated that he understood Ms. Bitter's line of thinking in that there is a section of the zoning dealing with smoke and obnoxious fumes but the zone in which this restaurant lies does not address these items and that it might be worth looking into to see if that definition could carry over into the "C-2" district which he thought was a good idea. Mr. Lutkus added at this time the commission does not know all the facts concerning this matter. The commission does not know if the restaurant will end up having a problem and if there are other laws that might come into effect, but right now there is nothing the Planning Commission can do to address this situation. Mr. Silliman added that there is nothing in the zoning ordinance that would allow the commission to say that one cannot use a wood burning fired grill and that the commission has to work within the perimeters of what is written in the Zoning Ordinance. However, he stated that he would ask in the town office if the new restaurant owners have submitted a permit for a wood burning stove. Ms. Bitter replied that her meeting with the commission was simply for clarification and to present questions that the neighbors have been asking. She asked what would be required to make major changes to the building and if the fire marshal or the health department would need to get involved. The commission responded that the restaurateurs would need a permit for a chimney and that it would have to be built to code. In closing, Ms. Bitter asked what the neighbors should do if this does become a problem. The commission responded that she address her concerns to the Commissioners. Mr. Silliman offered to write a memo to the Commissioners and send it on if the restaurant becomes a problem and will check with the Administrator, Lillian Lord, to see if there has been a permit to add a wood burning grill.

DISCUSSION OF PROPOSED DRAFT ORDINANCE – SHORT TERM RENTALS

The commission members next addressed a memo sent by the Commissioners asking for their comments on a revised draft ordinance with regards to short term rentals. Mr. Witter offered several insights with regards to the ordinance. These are as follows:

- Concern with regards to the building code relating to exits and means of egress, and the problem of property owners providing the proper affidavit stating their house conforms to these requirements. Mr. Witter was of the opinion that the wording was very loose in the ordinance and that the town should encourage that there be an official inspection by a qualified inspector as to whether or not a rental home meets the building code. Mr. Witter felt there should be concern with regards to the people who are renting short term rental homes. Mr. Passarella suggested looking into the creation of a check off list for people who are planning on renting out their homes. The list could include an inspection by a certified home inspector to make sure the home meets the building codes. Mr. Lutkus agreed that a check list would be good and that the way the ordinance was written was confusing.
- In one paragraph they refer to “the license” and in another paragraph they refer to “registration.” The ordinance never defines the definition of these two words. Mr. Silliman thought one word referred to the application form and the other referred to the actual approval. Mr. Witter thought these two words should be defined.
- The ordinance states that the town can withdraw a license if there are complaints of infractions but there is no process to identify what has to happen or at what point the town steps in and does something. How many complaints warrant the removal of a license? How serious do the complaints have to be? Mr. Lutkus added that it would be a judgment call in each case and could result in lawsuits.

Mr. Silliman volunteered to try to come up with something in writing to send on to the Commissioners addressing Mr. Witter’s concerns. Mr. Silliman posed the question if the commission members thought the Commissioners have an ordinance now that has the opportunity to actually work and be considered for passage. It was agreed that an inspection of a rental home should be made by a qualified person and that the homeowner would have to pay that expense. Mr. Witter raised the question of whether it would be a onetime inspection or an annual inspection and that the ordinance was not clear on that. Mr. Silliman stated he would add that concern to the list as well.

In summing up the discussion on the short term rental proposed ordinance, the general sense of the commission was that they would want to encourage the passage of this ordinance but with the following additions or clarifications: that the house be inspected by a qualified inspector acceptable to the town, find out if the town is accepting any additional liability, definition of registration and licensing needs, at what point is a license revoked, and whether there is going

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to be an inspection every year, and that all inspections should be paid for by the homeowner. Mr. Silliman offered to draft something up along these lines and e-mail it out for the commission members to review before sending on to the Commissioners.

There being no further business the meeting was adjourned.

Respectfully submitted,

Lisa Willoughby
Assistant Clerk