

December 10, 2020

The regular monthly meeting of the Oxford Board of Port Wardens was called to order by the Chairman, Thomas Campbell, on Thursday, December 10, 2020, at 6:00 p.m., via "Zoom" due to the on-going pandemic of a virus known as Covid-19.

Other members participating in the virtual meeting included board members Robert Hyberg and Robert Trevorrow, along with Town Manager, Cheryl Lewis.

The minutes of the meeting of October 8, 2020 were approved and accepted with the following corrections:

- Page 2, top, "Mr. Hyberg mentioned that ..." should read "Mr. Trevorrow mentioned ..."
- Page 2, bottom of first paragraph, "... application as their next meeting." Replace "as" with "at".

The following application was reviewed by the board:

Permit #20-06 - Carol Hammond, 106 Benoni Street, request to construct a new 6' wide pier, 99 linear feet from MWH for a total of 120 linear feet. Representing Mrs. Hammond, by virtual appearance, was Cheryl Tomey from Lane Engineering. Ms. Tomey noted that the proposed work would not include mooring pilings or a boat lift and would be staying within the lateral line setbacks. Chairman Campbell stated that the Port Wardens had received a letter from neighbor Michael Klein at 108 Benoni Street. He noted that Mr. Klein had many concerns regarding the proposed pier, one of which involved the date at which a modification was made to this property in which a portion of property that was formally part of 108 Benoni Street had been deeded over to 106 Benoni Street back in 1974. Chairman Campbell explained that Section 23.05, which addresses Area, Width, and Yard Requirements for the "R-2" Historic Residential District, states under Exceptions that "for lots of record on or prior to June 20, 1953, and with a street lot line of 50 feet or less, yard requirements are modified as follows: side yard depth – 5 feet, rear yard depth 8 feet. Because the property at 106 Benoni Street had been modified in 1974, the modified side yard setback of 5 feet would no longer apply to this property and, as such, the side yard setback would actually be 8 feet. In that case, without some kind of cooperation or agreement between neighbors, it would be difficult under the Oxford Zoning for the Board of Port Wardens to approve the application. Chairman Campbell did note that the board had met with Mrs. Hammond in consultation several months ago but at that time they were not aware of this item which typically isn't in their jurisdiction and which would also require the HDC and Planning Commission to look over and clarify this matter. Chairman Campbell opened up the floor to those individuals virtually present at the hearing. Michael Klein, neighbor and owner of the parcel that was changed in 1974, spoke and asked if everyone was aware the Hammond property had just been sold and that the new owners had already begun to move into the house at 106 Benoni St. Both Linda Sattler (104 Benoni St.) and Elizabeth Candler (100 Sullivan's Alley) stated they were aware of the sale. Chairman Campbell asked Town Manager Cheryl Lewis if she was aware of the sale. Manager Lewis responded that the town office had heard that but until the office is notified by the State that the property has been sold, they could not act on it. However, she thought the board already had a significant question regarding the property so the fact that the property was sold may not matter. Ms. Tomey spoke stating that she had just been made aware that the property had been closed prior to this meeting but so far everything was still in the Hammond name. She added that the ownership should not affect the marine process but that a question about the lot size was a different question. Chairman Campbell stated that given the width of the property he did not think the Port Wardens could approve the application. Ms. Tomey responded that the Hammonds were trying to fit in as wide a dock as they could for safety reasons to be able to go

out over the water. Given the 8' setback requirement, she stated that they might be able to narrow the pier down to 5' or may be able to fit in a just a portion of the length they had been proposing. Mr. Klein asked if the new neighbor was even interested in doing that. Ms. Tomey responded that was a part of what they were purchasing when they bought the property. Chairman Campbell offered a recommendation that perhaps the new owners could talk to their neighbors and maybe come up with something that would be acceptable to all. He added that he did not know if the Port Wardens would want to approve a long, skinny pier. Chairman Campbell then asked Mr. Klein directly that if the new neighbors were willing to make the proposed pier shorter to be used more as a viewing dock, would he help them in accomplishing their goal. Mr. Klein gave a resounding response that he was "not for it." "Period." He added that he knew Tom Williams, the past property owner of 106 Benoni, who was the one who was deeded that portion of land from 108 Benoni Avenue back in 1974, and that, according to Mr. Klein, it was never Mr. Williams' intention for a dock to be there and that he just wanted a place for his chairs. He again emphatically stated he was totally against it and that he could not imagine any compromise that he would find agreeable. Elizabeth Candler and Vladimir Dubinski, property owners at 100 Sullivan's Alley, added that their concern was that they were permitted to build a pier on their property, which they had done last summer, but not at the full, permitted allotment and questioned what impact a pier at 106 Benoni Avenue would have on their pier. Town Attorney Lyndsey Ryan, also virtually present, responded that because their extended pier permit was already permitted, the Port Wardens, when considering this application, would be acting as if the approved total length of their pier already existed as a full build out. Ms. Candler responded that her concern would be that the piers (hers and the applicants) would collide almost and that it was hard for her to visualize on paper. Attorney Ryan responded that at this point, the Port Wardens have not looked into that because the application, as proposed, does not meet the setback of 8'. However, if the applicant were to revise the application and resubmit it, they were still probably going to encroach on the setback on either side and in order to do that, they would need a letter of "No Objection" from the adjacent property owner. If they can meet all that criteria, the Port Wardens could look into Ms. Candler's concerns with regards to what the applicant is proposing. Chairman Campbell warned Ms. Candler that her permit was not in perpetuity. Ms. Candler responded that she was aware the permit was good for only about 3 years and that she just wanted to understand the impact. Neighbor Linda Sattler also voiced her concerns in stating that she and her husband didn't want to see the pier either. Mr. Trevorror made a motion to table the application until the next meeting based on the need for more definition of what the applicant wants submitted for approval. Mr. Trevorror also noted that the land is encumbered by a deed restriction that would need to be worked out and that he would defer to the Town Attorney on that matter even though it is clear in the deed of 1974 there is a restriction for building on this property. In closing the discussion, Chairman Campbell stated the application would be tabled until the next meeting if the applicant has something new to present, and if not, to let the Port Wardens know.

CONSULTATIONS

A virtual consultation was held with John Sutton, property owner at 4521 Bachelors Point Court, and member of the Bachelors Point Homeowners Association. Prior to the start of the consultation, Chairman Campbell stated that the Bachelors Point Homeowners Association shares a dock in the Campbell Bachelors Point Marina that he owned and recused himself on any decisions made by the board. However, we wanted to offer his support of the project Mr. Sutton was going to discuss. Mr. Sutton addressed the other board members stating that his request for a consultation was for information purposes only at this time. He explained that the association has an approximately 35 – 40 year old timber bulkhead, 216' in length, located behind floating docks across from Campbell's marina, with wooden and steel pilings supporting those floating docks. The timber bulkhead on the north end is

badly deteriorating and the goal is to begin a replacement project next year around November in 2021. The thought is that it will take about 3 months to get the project done. An application for repair was sent to the MDE in October 2020. Mr. Sutton stated that the association's goal is to come back before the Board of Port Wardens at their next meeting to let the board know where they are, review the plan, and schedule things along that nature. Mr. Sutton pointed out that Chairman Campbell would be the most impacted by the work scheduled to be done. It was pointed out by the board members that construction details would be needed. Mr. Sutton noted that everything would be done land side. Chairman Campbell noted that the association would need to submit a sediment and erosion plan because of the disturbance and that Manager Lewis could advise the association about this process. He added that his Bachelor Point boatyard already has permits to work on the other portion of the jetty as it goes out the channel. Mr. Sutton agreed to submit a soil and erosion plan. Mr. Hyberg asked what type of material would be used for the bulkhead. Mr. Sutton responded the association was leaning toward vinyl at this time. There were no other questions raised by the board members and Chairman Campbell stated again that he supported the project wholeheartedly. Mr. Sutton thanked the members for their time adding that he would be back in touch later.

A consultation was next held with Greg Zimmerman who was considering installing a mooring and was looking to gather a better understanding of the mooring process. He informed the board members that he was from Easton and that it was his understanding, in talking with diver/surveyor Jeff Mathias, that there were several moorings in town waters that have been abandoned and wanted to know if he would be able to secure one of those abandoned moorings if it were to meet the code. Chairman Campbell responded that Mr. Zimmerman should look to see if the location he wants would meet the needs of his vessel and that the size of the abandoned mooring would need to be reviewed. He noted that some of the abandoned mushrooms were around 100 pounds and others might be 300 pounds. Mr. Zimmerman stated that when he was looking at the application, he saw that it asked for specific information with regards to the mooring. He added that he was thinking that if he applied for a mooring, the existing abandoned mooring's original owner would have provided this information on their application. As such, he was curious that if he were to find an abandoned mooring that would meet his specifications and inspected, could he apply for that one. Chairman Campbell responded that some of the moorings and mushrooms were out in the creek long before the mooring rules were applied. He added that Mr. Zimmerman could hire Mr. Mathias to help him and that though the mooring locations are established on the town map; no one knew for sure what was placed in the water prior to the town's application process. Either way, Chairman Campbell stated, the equipment would have to be inspected prior to Mr. Zimmerman hooking up to it and using it as operational equipment. Mr. Trevorrow added that Mr. Zimmerman would need at least a 300 lb. mooring. Taking a different approach, Mr. Zimmerman asked that if he just wanted a new mooring, was there a chart of the water that designated the mooring areas. Chairman Campbell responded that the board would encourage him to look at a few places off The Strand and to talk to Mr. Mathias as there were some ideal locations out on Town Creek. The placement of the mooring would be determined by the draft and location. Mr. Zimmerman asked if Oxford had any regulations as to where dinghies could be left ashore. Chairman Campbell responded there weren't any designated permanent places on the beach and that Mr. Zimmerman would have to make arrangement with the town office. Mr. Zimmerman thanked the board for their time in addressing his questions.

Prior to the review of the last consultation, Mr. Hyberg stated he remembered that in the past someone had wanted to have a mooring to use as part of a charter business. He thought that somewhere in the town codes it was written that the moorings were not for commercial use and wanted to confirm that. Manager Lewis referred the board members to the Oxford Town Code, **Section 11.14 – Charter**

Activities which states, in part, that all charter activities shall only be permitted from a commercial marina and that “charter activities undertaken from a mooring within the waters located within the incorporated limits of the Town of Oxford, or from a beach or any other property located within the Town other than a commercial marina, shall be prohibited.”

The final consultation was a review of a revised dock plan as it applied to Permit #20-05 for Penny Klotz, property owner of 207 South Street. Because the new information was received too late for the neighbors within 100’ of the property to be notified and the permit reopened for review, the board reviewed the new information as a consultation/discussion only. Penny Klotz and Dani Walton from Lane Engineering were both virtually present to discuss the changes with the board members. Chairman Campbell gave a brief of history of the property stating that 207 South Street was a single property having 2 existing piers and other non-conformities involving extension over the harborline, setback issues on the south side of the second pier, and a boat lift. He explained that Ms. Klotz has come before the board with a new proposal for a single dock, closer to the center of the property, which will meet the 8’ sideyard setbacks and would be located behind the harborline. However, the owner still would like the option of having a boatlift. Another item, that had been an issue at the board’s past meeting with Ms. Klotz, pertained to a concern about the bulkhead replacement on the north side of the Klotz property where it abuts the Ingram property at 203 South St., had also been solved as well. Chairman Campbell referred to a buffer mitigation requirement sheet, as it pertained to the proposed bulkhead work, that Mrs. Ingram signed on 12/3/20 with a handwritten sentence from her stating that she was “pleased to see that these plans address removing the bulkhead from my (Mrs. Ingram’s) property. It was also noted that Mrs. Ingram has signed Ms. Klotz’s drawing stating that she was ok with the new plan. Chairman Campbell explained that the real question was with regards to the boatlift and could it be relocated or a replacement of it be approved in lieu of the fact they owner already has one and will be solving several other inconsistencies on this waterfront property. Chairman Campbell added that he felt as though the boatlift should have a size description on it as the existing boatlift on the property was a small one. Mr. Hyberg spoke stating that the question that came to his mind was with regards to the definition of grandfathered and if that meant “in place” or anywhere within the setback areas. Chairman Campbell responded that he believed it meant “in place.” Mr. Trevorrow believed the new boatlift would be considered as essentially new construction. Chairman Campbell offered some background information regarding boatlifts explaining that they have not been permitted on Town Creek since the early 1990’s. Chairman Campbell’s view was that in this case, the board would not be granting the applicant a new lift and would only be allowing her to move the existing lift. He noted that this was an unusual property in that it had many maritime non-conformities, the majority of which Ms. Klotz was correcting. Mr. Hyberg spoke expressing his concern that should the board allow the relocation of the boatlift, they could be setting a precedent with other similar requests. Mr. Trevorrow agreed stating that the neighbors may have something to say about it. Chairman Campbell stated that in this situation, the immediate neighbors are in support of what Ms. Klotz is proposing. Mr. Trevorrow asked who the neighbors were on either side. Ms. Klotz responded that it was the Schroeder family, who sold her the property at 207 South Street, and that they lived next door to her at 209 South Street. She added that part of the agreement at the time of the sale was an arrangement for an escrow to be set aside to cover some of the costs of doing this project. She added that the boatlift was a big reason as to why she purchased the property. Dani Walton from Lane Engineering spoke stating that she and the applicant were trying to reduce all of the non-conformities other than the boatlift and that it was clear from the aerials provided that the boatlift had been in place long enough to be considered grandfathered. She added that she thought it important to note that the plat that combined the 2 lots back in 1990 showed the 2 piers as existing. With that in mind, her argument was that if the town had an issue with the 2 piers being on one property, they should not have allowed that plat to be recorded

without one of the piers being removed. As such, it was her belief that if Ms. Klotz wanted to replace both of those piers in-kind, she should be able to do so and that this new revised plan was kind of a compromise of relocating the boatlift which she thought benefitted not only Ms. Klotz, but all of her neighbors as well, by proposing a pier that works a lot better for the surrounding properties and allowing Ms. Klotz to keep her boatlift. She ended the conversation by stating that if she and Ms. Klotz decided they wanted to pursue in-kind replacement of the 2 docks and keep the boatlift where it is, she believed they could do that. Chairman Campbell stated that he had one other concern which involved placement of the next door neighbor's pier (203 South Street) and Ms. Klotz's new proposed pier which appeared to move the pilings for the boatlift 4' to 5' closer to Ms. Ingram's pier. Ms. Walton responded that she had an aerial overlay of the proposed pier location and that the distance between those 2 piers would be 21', which was a real number. Ms. Klotz added that she and Mrs. Ingram had had many discussions about the waterfront and that Mrs. Ingram's primary concern was that there is rather shallow ground around her pier for the first 30' and that it was in this area that her grandson uses for his boat that handles the shallow water. She explained that Mrs. Ingram wanted to make sure her grandson could continue to use that area and that she was very happy with the plans Ms. Klotz and Ms. Walton had come up with. Mr. Trevorrow commented that he agreed with what Chairman Campbell had stated earlier, that the revised plan resolves most of the non-conformities and that as far as the boatlift was concerned, he felt the board could stipulate that it not exceed its current existing lift size. Attorney Ryan spoke stating that if the grandfathering allowed for the move of the lift, then she thought it would be fine. However, she pointed out that grandfathering, in general, is that one is replacing in-kind and not replacing and moving and, as such, she would be concerned about the moving. She added that she understood the revision was better and thought that there was another issue with the 2 piers and getting approval with the state but warned the board if they were to allow a grandfather for something that was being moved, it would be hard to decline another application for a grandfather when another wants to move a non-conforming structure somewhere else. She offered to do more research before the next meeting to see if there was some type of extenuating circumstance where one could make a finding that the grandfathering would be appropriate to be moved in this circumstance. However she stated she could not comment on that right now. Attorney Ryan reminded everyone that this revised application would need to be advertised again and notices sent to the neighbors in order for the application to be reviewed in January. She added this would give her time to look at the code and really see what, if any, implications this would have and provide the board an opinion prior to the January meeting. Ms. Walton asked Attorney Ryan if this would be something that she and Attorney Ryan could discuss via email without either her or Ms. Klotz needing to come back before the Port Wardens in January. Attorney Ryan agreed that could be done. Ms. Klotz addressed the board members stating that if the concern was in setting a precedent, could it not be the fact that she and Ms. Walton had corrected so many other things and gone from 2 docks to 1 in exchange for the boatlift. She expressed the feeling that making this a case as setting a precedent would be hard unless some similar set of circumstance arose. Attorney Ryan responded that they could look at this as a replacement that is grandfathered and if they have enough information they may be able to narrowly tailor the grandfathering while moving it so that it wouldn't apply in any other circumstance. Chairman Campbell again stated that the board still needed to have a size requirement on the boatlift and that the board is trying to preserve the view on Town Creek by not having 35'+ vessels up on boat lifts all along the harbor. For his part, Chairman Campbell offered his support to some degree but did have concerns about setting precedence. Mr. Trevorrow stated that he agreed with Chairman Campbell and the cleanest option would be to eliminate the boatlift altogether and just propose the new pier as shown with a couple of pilings for slips. Ferry Captain Tom Bixler, virtually present at the meeting, stated that a precedence setting situation is a very grievous mistake and that thought must be given to the long term good for everything. He added that the intent has always been to eliminate the boatlifts as they came

up. He added that in this case he had no interest but that he did have a very historical business in town and felt that every time the town makes a different turn and doesn't retain the historic nature, it impacts everyone. Ms. Walton spoke and asked that if the board found that the boatlift concept could not be figured out, could both of the piers that are on the property now be replaced in-kind with the boatlift. Mr. Hyberg responded that if the state would allow it and gave its blessing and everything was in-kind, he did not feel that there would be any objections to that. Chairman Campbell agreed but suggested that the owner not go back with that plan as there was already a problem with it between neighbors. He also noted that where the boatlift is now is close to the bulkhead in an area where the water is very shallow and suspected that it was limited to use. Mr. Trevorrow again pointed out that the boatlift was what was putting the Port Wardens in a jam. He felt the new configuration was a good one and that it would have just enough dock space as that which the 2 old piers had. As for dockage, he added that he thought the new configuration was really nice. In closing, Chairman Campbell stated that the board would continue to look into the boatlift situation but were hopeful that maybe Ms. Klotz may decide she didn't really need it. Mr. Trevorrow noted that the neighbors would still have a say in the matter. Chairman Campbell agreed and gave the recommendation that Ms. Klotz move forward but be aware that there may be some push back regarding the boatlift. Once again the size of the lift was raised. Attorney Ryan offered that if Ms. Klotz could move it, the boatlift would have to be a replacement of what exists. Ms. Klotz asked that if she did decide to forgo the boatlift, could the neighbors still object to her plan. Attorney Ryan responded that if the pier Ms. Klotz was proposing met all the requirements of the Oxford ordinance, the board would not have to consider any adverse impacts. Mr. Hyberg brought to everyone's attention that there were only 2 boatlifts on Town Creek and both of them were close enough to bulkheads so that they were not obvious to any boat traffic nor did they draw attention to themselves. However, Ms. Klotz's proposed boatlift, in the location she is hoping to place it, was going to pop out even more and be obvious. Discussion came to a close and the permit tabled.

There being no further business, a motion was made and the meeting adjourned.

Respectfully submitted,

Lisa Willoughby
Assistant Clerk