

OGUNQUIT PLANNING BOARD MINUTES WORKSHOP and REGULAR BUSINESS MEETING SEPTEMBER 13, 2010

WORKSHOP – 6:00 P.M.

As a result of recent communications the Planning Board is requesting public input regarding the Town of Ogunquit’s definitions of the Restaurant Types 1 – 6 presently in use, with particular regard to the use of outside consumption of food or beverages vs. service to persons seated only at indoor seating on premises.

Mr. Pinkham opened the Workshop by informing the audience that the purpose was to gain input from the public regarding the wording of the Zoning Ordinance for Restaurants Types 1 to 6. Mr. Pinkham assured the public that the Board is not looking to undo what was voted on this past spring, nor is the Board looking to change outside dining in any zone. The Board is looking for input regarding outside seating, how it is applied, and how it is being utilized.

Mr. Yurko added that he was the person who suggested the need for this workshop. He had two primary topics for consideration:

1. Outdoor seating, particularly the definition of Type 1 restaurants which, according to the Ordinance, should not promote the consumption, outside of the enclosed building, of food and drink however there are a number of places in Ogunquit where this is currently occurring. Mr. Yurko asked if the existing definition matches what is currently occurring in Town and if it needs to be refined in any way. He noted that there is a tradition of prohibiting outdoor sales, however the providing of outdoor tables and chairs for use by patrons who purchase and collect products indoors has not been considered to be “outdoor sales” and has been seen as permissible.
2. How the Board looks at questions of outdoor dining in those areas where it is permitted and by what criteria Site Plan Reviews are evaluated. He suggested that there may be a need for a standard set of points which the Board must examine when evaluating a Site Plan Review involving outdoor seating, and or dining.

Charles Dahill, 17 Marginal Ave (Map 6 Lot 127). Mr. Dahill called for the names of the people who “communicated to the Planning Board”. His concern is the serving of alcohol after hours and the possibility that special interests are attempting to overturn the recent vote regarding outdoor dining along the Shore Road corridor. Mr. Dahill stated that the current ordinances regarding outdoor dining are working fine the way they are written and should not be changed in any way. He pointed out that the voters have clearly expressed this sentiment and he asked the Board to adhere to the voters’ wishes.

Mr. Yurko responded that no one has contacted the Board with a specific proposal to change the ordinances, and there have been no inappropriate communications to the Board. The people who have communicated to the Board are people who have come to Planning Board meetings to express their concerns and opinions in a public forum. Mr. Yurko asked Mr. Dahill to confirm that his primary concerns are: noise, hours of operation, nearby residences, and that he believes that the existing ordinances work well and should not be changed.

Mr. Dahill confirmed these concerns and restated that the thing that bothers him the most is the after hours consumption of alcohol and the serving of alcohol without the serving of food which in effect creates bars on Main Street and Shore Road.

Mr. Pinkham stated that there are State Liquor Laws in effect which the Town is unable to override.

Mr. Dahill responded that it was his understanding that, under Town Rule, the Town can impose stricter laws than those imposed by the State.

Bob Wolfort, 369 Main Street (Map 14 Lot 12). Mr. Wolfort has two commercial businesses at that location for food service with a liquor license as well as retail liquor sales. He is allowed to sell beer and wine from that location and customers are legally within their rights to go out onto his patio and consume that product. The Town has no statutory authority to say that this can not take place. There are however ordinances to deal with unruly or disruptive behavior. He was in support of the outdoor dining question because he felt this would develop some regulation in the Shore Road area to help define what those businesses can, and can not, do. When it was voted down he felt it was due to a lack of education within the community concerning what that ordinance was all about. Currently there is a lack of ordinances to control outdoor dining; there is also a lack of enforcement of the ordinances which are already in place. The Code Enforcement Office is not a 24/7 enforcement office and many of the more extreme violations take place at night and on weekends when the Code Enforcement Office is closed.

Mr. Wolfort called for the establishment of a set of parameters by which the Board can evaluate new Site Plan Review Applications involving outdoor seating / dining. This would provide a clear understanding on the part of the Board, the public, and the applicant of exactly what is expected.

Lesley Mathews, 13 High Ridge Lane (Map 16 Lot 108). Ms. Mathews asked if it would be possible for the town to establish a time by which the serving of food and alcohol must be discontinued outdoors. She suggested 7:00 p.m.

Mr. Yurko responded that, as a matter of zoning, the Board could set limitations as long as the applicant agrees to a condition of approval. If the applicant does not voluntarily agree, the Board's powers regarding hours of operation are somewhat limited.

Jeremy Griffin, 13 Ledge Road (Map 5 Lot 13-2) addressed the Board. Mr. Griffin was on the Planning Board when the definitions of the 6 restaurant types were developed. Mr. Griffin suggested that there seems to be some confusion regarding the interpretation of the term "promoting outdoor dining". The Board did not want to prevent restaurants from having patios with patio furniture, however there are restaurants, which are not serving "take out" in "take out containers" for food to be brought home, which have patio tables including napkin holders, salt and pepper shakers, and in some cases outdoor heaters. Clearly these restaurants are "promoting" outside dining and are not meeting the intent of the ordinance.

Mr. Yurko asked when this type of issue should come before the Board. He pointed out those applications which come before the Board do not include the question of heaters, napkin dispensers, or salt and peppers on the outdoor tables.

Mr. Griffin responded that this is an enforcement issue and it's up to the Code Enforcement Office to enforce restrictions on outdoor dining. Mr. Griffin also felt that the ordinance is very clear in what is allowed and what is not. He would not like to see any changes to the ordinance, however existing ordinances need to be enforced consistently.

Mr. Yurko pointed out that there has been a lot of talk about “outdoor sales” which spills over into the discussion of “outdoor seating”.

Mr. Griffin disagreed and noted that downtown restaurants which have outdoor dining have patrons pay their bills outside, even though there is no “outside sales”.

Mr. Yurko responded that the ordinance states that outside sales are not permitted unless allowed by a different, more specific section of the Ordinance.

Mr. Griffin suggested that this is part of the conversation that is causing confusion. He again expressed his belief that the ordinance, as written, is clear, and that the use of napkins and salt and pepper on outdoor tables, and the use of non-disposable packaging promote outdoor dining.

Michael Score, 368 Shore Road (Map 3 Lot 2A2). Mr. Score referred the Board to the definitions section of the Ordinance, particularly that of Restaurant Type 1, which states that the restaurant must meet all of the characteristics including that food and beverages must be served to persons seated at indoor seating on the premises. Item 3 states that the design and the facilities and the packaging doesn't promote the consumption of food or beverages outside the enclosed building. Mr. Score suggested that Item 1 and Item 3 are in contradiction to each other. He suggested Item 3 might be removed from the definitions of Type 1 and Type 2 Restaurants.

Mr. Lempicki responded that if Item 3 is removed from the definitions it will do away with “take out” food entirely.

Mr. Lockman added that Item 3 was included to allow for people dining in a restaurant to take a meal away with them for someone else. It was intended to discourage major take-out restaurants while still allowing patrons to occasionally bring home a meal.

Mr. Score agreed and asked Mr. Lempicki if people are required to come before the Board for a patio.

Mr. Lempicki responded that they do not have to come before the Board as long as the patio does not extend more than three inches above the ground surface.

Mr. Score suggested that the use of the word “promote” may be the cause of some confusion. One person's interpretation of the word may be different than another person's.

Mr. Yurko responded that business people are supposed to “promote” their establishment, and that making advertising, of a nice patio, a “bad thing” is an awkward way of regulating outside dining.

Mr. Score responded that business owners can advertise their restaurants and even advertise outdoor dining in those areas where it is allowed. He agreed with Mr. Griffin that the outside placement of tables and chairs with napkins and silverware “promote” the outdoor consumption of food.

Mr. Griffin suggested the Board might consult with the Code Enforcement Officer, the Town Planner, and the Town Attorney.

Mr. Dahill reiterated that the established zones and existing ordinances are working well and should be left alone. He also stressed that the Board needs to consider the needs of residents as well as the business owners. It was his opinion that the residents are often shortchanged when the business owners come asking for more and more allowances.

Jackie Bevins asked for confirmation that patrons can purchase beer and wine, take it outside, and consume it. She asked if people can purchase beer from Cumberland Farms and consume it in the parking lot.

Mr. Lempicki confirmed that they can in those zones where it is permitted.

Alan Yaffe, 40 Limestone Road (Map 18 Lot 1A7). Mr. Yaffe suggested that very little has been said about the rights of the residents, everything seems to be about the rights of the businesses. Mr. Yaffe stated that the primary use of outdoor patios is the serving of liquor. Mr. Yaffe reminded the Board that the restaurants made a very good profit without outside dining, and the continued pushing of what is allowed needs to be curtailed, particularly the outdoor sale of alcohol.

Jerry DeHart, 25 Scotch Hill Trail (Map 7 Lot 15-4). Mr. DeHart reminded the Board that they had asked if this issue was something which needed discussing. It was Mr. DeHart's opinion that this workshop has been a waste of time and this issue does not need further discussion.

Jerry DuPont, 14 Wharf Lane (Map 7 Lot 111). Mr. DuPont reminded the Board that he has been before them as an abutter of a "take out" restaurant which has violated the conditions of approval imposed upon it by this Board. This "take out" restaurant has placed outdoor tables right up to his property line. These tables contain candles and salt and pepper etc. He has complained many times and still the tables are there. Mr. DuPont also expressed concern that restaurants are allowed to put up tents to expand their seating area.

Mr. Pinkham asked if Mr. DuPont's reference to "tents" actually refers to awnings.

Mr. DuPont responded that he was referring to anything which allows the business to expand and eliminate the setbacks. Mr. DuPont also called for more support of the Code Enforcement Officer and his ability to enforce those ordinances already on the books.

Mr. Pinkham thanked everyone and closed the Workshop at 7:00 p.m.

REGULAR BUSINESS MEETING – 7:00 P.M.

A. ROLL CALL –

The roll was called with the following results:

Members Present: Tim Pinkham, Chairperson
 Richard Yurko, Vice Chairperson
 Hank Hokans
 Greg Titman
 Craig Capone

B. MISSION STATEMENT – The Mission Statement was read by Mr. Yurko.

C. MINUTES – August 23, 2010 Regular Business Meeting.

The Minutes of the August 23, 2010 Meeting were accepted as submitted.

D. PUBLIC INPUT – None

E. **UNFINISHED BUSINESS** – None

F. **NEW BUSINESS** –

1. **LAURA ROSE / COMPASS ROSE YOGA – 221 Main Street – Map 7 Lot 124 – DBD. Site Plan Review for a post 1930 structure. Application for change of use to convert a dwelling unit into a yoga studio.**

Diane Ouellette addressed the Board as Ms. Rose’s representative. She and Ms. Rose studied together and she (Ms. Ouellette) will be one of the yoga instructors at Ms. Rose’s studio.

Mr. Capone asked if the yoga studio will be on the first or second floor.

Mr. Lempicki responded that while it visually appears to be on the second floor it is actually considered to be the first floor.

Mr. Lempicki informed the Board that Ms. Rose has agreed to abide by all of the Fire Chief’s requirements, and that he (Mr. Lempicki) will confirm that they have been met before a Certificate of Occupancy is issued.

At this time the Board reviewed the Site Plan Review Submissions Checklist and found it to be complete.

**Mr. Hokans Moved to Find the Application Complete for LAURA ROSE / COMPASS ROSE YOGA – 221 Main Street – Map 7 Lot 124 – DBD. Site Plan Review for a post 1930 structure. Application for change of use to convert a dwelling unit into a yoga studio.
HOKANS/YURKO 5/0 UNANIMOUS**

The Public Hearing for this Application was scheduled to be held on September 27, 2010 at 6:00 p.m.

G. **CODE ENFORCEMENT OFFICER BUSINESS** –

Mr. Lempicki informed the Board that he has received questions and concerns about the new blasting ordinance. He would like to bring a representative of the blasting company to the next meeting to speak to the Board.

Mr. Pinkham agreed.

Mr. Hokans asked about the property at 297 Main Street.

Mr. Lempicki responded that work has proceeded on the interior of the structure only, no exterior work has been done. Surveyors have been to the property and the applicant will come back before the Board when the survey is complete.

H. **OTHER BUSINESS** –

1. **Discussion of above noted workshop.**

Mr. Hokans suggested that Item 1 and 3 of the Type 2 Definitions seem to be in conflict.

Mr. Yurko responded that Type 2 Restaurants can be either indoor or outdoor seating but that take out should not be a dominant part of the business.

Mr. Hokans asked about the serving and consumption of alcohol only being served in an enclosed area.

Mr. Lempicki added that “enclosed area” is a vague term. Enclosing may only be a fence or a roped off area. It does not mean indoors.

Mr. Yurko suggested that there does not seem to be any great desire, on the part of the public, to change the Ordinance. There does seem to be some desire for the Board to be more vigilant. It was his belief that the one gap in the Ordinance seemed to be in a lack of criteria for Site Plan Review when outdoor dining is involved, which doesn’t apply to the LBD.

Mr. Hokans responded that the primary things they are trying to protect are the rights of the residents and sleeping rooms, and the language available to the Board to evaluate these things. The other thing which bothered him was the Type 1 Restaurant and that they should not promote the consumption of food outside the enclosed building. It was his opinion that the placement of outdoor tables and chairs promotes outdoor consumption of food and beverages.

Mr. Pinkham noted that this is a problem of interpretation.

Mr. Lempicki informed the Board that advertising of outdoor dining is being done even though it isn’t permitted. He suggested that Board approvals might contain more explicit conditions of approval.

Mr. Titman agreed that Board approvals need to contain more specific conditions of approval which should be clearly outlined in the Findings of Fact.

Mr. Capone questioned the intent of the use of the word “promote”.

Mr. Hokans suggested the Board members take a period of consideration before they make any suggestions.

The Board agreed

I. ADJOURNMENT -

**Mr. Hokans Moved to Adjourn at 7:25 p.m.
HOKANS/YURKO 5/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on September 27, 2010