

# OGUNQUIT PLANNING BOARD

## PUBLIC HEARING and REGULAR BUSINESS MEETING JULY 29, 2013

### PUBLIC HEARING

#### 1. Judith Dennis / Bandito's Mexican Grill – 68 Shore Road – Map 6 Block 69.

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application.

John Curwin from the Parson's Post House (62 Shore Road – Map 6 Block 70) addressed the Board. The Parson's Post House is a direct abutter, to the north, of the Applicant's property.

Mr. Curwin stated that his primary concern is the amount of noise which may result from the proposed plan.

Mr. Simpson noted that for some time the Applicant has already been doing what she is now asking permission to do, he asked Mr. Curwin what the experience has been like so far.

Mr. Curwin responded that the existing tables are only a few feet from the property line and guests' bedrooms and there has been bothersome noise. He noted that Parson's Post also has an outdoor sitting area and the noise from Bandito's has been intrusive.

Mr. Renaud asked how late into the night the noise continues.

Mr. Curwin responded that 10:30 to 11:30 p.m. is not uncommon.

Mr. Simpson asked if there was anyone else who wished to be heard. There was no one and the Public Hearing was closed at 6:05 p.m.

### REGULAR BUSINESS MEETING

#### A. ROLL CALL –

The Roll was called with the following results:

Members Present: Don Simpson (Chair)  
Rich Yurko (Vice Chair)  
Mark Renaud  
Jackie Bevins

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer

#### B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – The Mission Statement was read by Mr. Simpson.

D. **MINUTES** – July 8, 2013 and July 12, 2013

**Mr. Yurko Moved to Accept the Minutes of the July 8, 2013 Meeting as Submitted.  
YURKO/BEVINS 4:0 UNANIMOUS**

**Mr. Yurko Moved to Accept the Minutes of the July 12, 2013 Meeting as Submitted.  
YURKO/BEVINS 4:0 UNANIMOUS**

E. **PUBLIC INPUT** – None

F. **UNFINISHED BUSINESS** –

1. **FINDINGS OF FACT FOR:**

A. **Anthony & Lindee Payeur / A&L Flavors, Inc. – 731 Main Street –  
Map 12 Block 10-A. Approval Granted on July 8, 2013.**

**Mr. Yurko Moved to Accept the Findings of Fact for Anthony & Lindee Payeur /  
A&L Flavors, Inc. – 731 Main Street – Map 12 Block 10-A.  
YURKO/RENAUD 4:0 UNANIMOUS**

B. **Tommy Ta / Frozo Cup – 20 Shore Road Unit 1A – Map 12 Block 10-  
A. Approval Granted on July 8, 2013.**

**Mr. Yurko Moved to Accept the Findings of Fact for Tommy Ta / Frozo Cup – 20  
Shore Road Unit 1A – Map 12 Block 10-A.  
YURKO/BEVINS 4:0 UNANIMOUS**

Mr. Simpson noted that this business will not open until the spring of 2014 which is within the required one year timeframe.

2. **Judith Dennis / Bandito’s Mexican Grill – 68 Shore Road – Map 6 Block 69 –  
Site Plan Review for a post 1930 structure. Revised Application - Request to  
maintain existing seating of twenty-five (25) indoor seats and twenty-four  
(24) outside seats per plans submitted on July 9, 2013. Request for approval  
for outside dining from 11:30 a.m. to 10:00 p.m. for a Type 3 Restaurant in  
the General Business District 1 (GBD1).**

Mr. Yurko noted that there has been concern over the hours of operation, possible noise, and the fire pit, and he asked the Applicant to respond.

Kevin Dennis responded, he stated that Bandito’s is a quiet restaurant, not a party place. He stated that the next door neighbors have called the police several times this month to complain about noise, and all of the police reports indicate that no violations were found when the officers arrived on site.

Mr. Dennis noted that they have had outdoor seating for nine (9) years and the new owners of the Parson’s Post House purchased the property knowing that there was a restaurant next door. He suggested that the noise level will not be any different if

customers pick up their food and take it outside to sit and eat it, or if they have a wait person take their order and deliver food to the outside tables. Wait service will not increase the noise level.

Mr. Simpson asked when they received their liquor license, and how long they have owned the property.

Mr. Dennis responded that his mother has owned the property since 1971 and they received their liquor license in 2011.

Mr. Simpson reminded the applicant that at the last meeting, it was noted that they were already in violation of the outside service ordinance. He asked if, since that time, they have been serving outside.

Mr. Dennis responded that they have not.

Mr. Simpson asked for an explanation of why he may have seen waitstaff taking orders on three separate occasions.

Mr. Dennis responded that there has been no outside service or taking of orders. They have little cards which they place on the tables. Customers do all their ordering inside. There is no taking of money or transactions outside.

Ms. Bevins noted that, at the last meeting, the applicant stated that he would remove the wooden Adirondack chairs. She asked why they are still there.

Mr. Dennis responded that, this statement was made while they were still considering the original application. Under this new revised application he intends to leave the chairs in place. The original application included putting in a patio out front, they will now wait to do that in the fall.

Mr. Yurko summarized that the current application involves keeping the existing situation and allowing outdoor dining with wait service vs simple outdoor seating where customers serve themselves. He also asked for confirmation that there would only be 49 seats.

Mr. Dennis responded that there will be 24 seats outside and 25 seats indoors.

Mr. Simpson confirmed that the applicant is withdrawing the request to put in a front patio, and if, in the future, they decide they want the patio they will have to come back before the Board with a new application.

Mr. Dennis agreed.

Mr. Yurko noted that the Board has received letters expressing concern about outdoor dining in the area. He responded that the issue was decided by the voters and this area is now part of the General Business District which is the "center of Town".

Mr. Yurko noted that there are no restrictions, regarding the hours of operation, on businesses in the GBD1. While he is nervous about the level of noise, he is reluctant to single out this business by putting restrictions on it.

Ms. Bevins disagreed, while she is in favor of outdoor dining she suggested that the Board needs to consider the neighbors and she pointed out that the number of residences abutting restaurants increases further away from the center of Town. She would like to see a time limit placed on outdoor service. If service is closed at 9:30 patrons will still be sitting at tables at 10:30 or 11:00 p.m.

Ms. Bevins asked if the applicant would consider moving the entire project to the far side of the property, away from the Parson's Post Inn.

Mr. Simpson agreed. He asked Mr. Curwin if this change would help him.

Mr. Curwin responded that it would alleviate a lot of the general noise during the day. He noted that if the customers don't leave until 10:00 p.m. there are still employees doing clean up after that. He noted that he has ten to twenty guests sleeping on that side of the building.

Mr. Yurko asked if Parson's Post has always been in the GBD1.

Mr. Curwin responded that before the June 2013 vote they were in the Limited Business District. Their district designation changes along with the Applicant's.

Mr. Simpson noted that there has been a concerted effort to get residents and business owners to work together to resolve these types of issues and he asked the applicant if she would consider moving the tables and fire pit to the other side of the building.

Mr. Dennis responded that they would not. He stated that they have invested a great deal of money in the current set up, he pointed out that the current seating also allows for an ocean view. He also informed the Board that the other side of the building is rented.

Mr. Simpson pointed out that there is a door that accesses that other side of the property, and it wouldn't be difficult to serve tables on the south side of the building.

Ms. Dennis responded that she isn't allowed to have people on the other side of the building as long as it is a retail shop. She can not serve liquor or do anything on that side of the building. Furthermore, that door goes out to the parking, it doesn't go out to any seating area.

Mr. Yurko stated that the Board should not be redesigning the applicant's business. This is not a new business this is an established business. Given that the voters approved the extension of the GBD1 he would not support putting conditions on an application that are different from conditions imposed anywhere else in the GBD.

Mr. Yurko noted that if the applicant were to agree to stop serving at 9:30 and see that all customers were gone by 10:30 the Board could incorporate that into the approval. He asked why the Board should put restrictions on this business and not other businesses in the GBD: Front Porch, Cornerstones, Main Street, Etc.

Mr. Yurko again noted that when the voters approved the extension of the GBD they voted in the potential for “a creeping of the district”.

Ms. Bevins responded that the voters didn't say the Board can't put conditions on approvals. She noted that three times the voters have turned down outdoor dining in the LBD and now it will start to creep in. If it does become allowed in the whole district there will have to be conditions, and they won't be able to have businesses open until midnight and 1:00 a.m. Ms. Bevins noted the number of residences backing up to the businesses in the LBD, and that the voters never said the Board couldn't impose conditions.

Mr. Simpson agreed with Ms. Bevins and stated that he would like to see a closing time of 9:30 p.m.

Ms. Dennis responded that a lot of her customers come in between 9:00 and 10:00 p.m.

Mr. Yurko stated that if outdoor dining comes to the LBD there will need to be many restrictions because of the greater number of residences. However, this application comes in a somewhat different manner, and unless it can be shown that the Board has imposed restrictions on hours of operation on another business in the GBD then he is not willing to do so now.

Mr. Renaud noted that the applicant has stated that the Adirondack chairs will be left out front. He asked if they intend to serve customers in these chairs.

Ms. Dennis responded that if the Board tells them they can't, then they won't.

Mr. Renaud noted that those chairs are not part of this application and are not included in the seating count.

Ms. Dennis agreed and stated that the “liquor guy” doesn't consider them to be seats.

Mr. Simpson reiterated that the application is for 24 seats outside and 25 seats indoors and those Adirondack chairs are not part of the 24 outside seats. If the application is approved then the applicant can not serve food or beverages at those chairs.

Mr. Yurko noted that they can be used as a waiting area, or customers can take out their own food and eat there. People can order food inside, pick it up when it's done, and eat it at the Adirondack chairs.

Mr. Renaud asked if there needs to be a fence at the end of the outdoor seating area.

Ms. Dennis responded that they have a fence in the back and the “State liquor man” said that the garden counts as a fence because people won't walk through the garden. If customers were coming inside to pick up drinks then she would need to put up a chain, if alcohol is being served by wait staff at the tables then she doesn't need to put up the chain.

Mr. Heyland asked for confirmation that no alcohol would be allowed to be consumed at the Adirondack chairs.

Ms. Dennis stated “no alcohol out there at all”.

Mr. Heyland asked if customers would be allowed to consume alcohol in the Adirondack chairs while they wait for a table.

Ms. Dennis responded that they would not. “No alcohol out there at all”.

Mr. Heyland asked for confirmation that customers from the table area would not be allowed to wander away from the tables with alcohol and sit in the Adirondack chairs.

Ms. Dennis responded that only when the customers are getting their own stuff.

Mr. Simpson asked if the applicant would post signage indicating “no liquor beyond this point”.

Ms. Dennis responded that they would post such signs.

Ms. Bevins Moved to Approve the Application with the condition that the serving of food and beverages close at 9:30 p.m.

BEVINS / SIMPSON

Mr. Renaud expressed concern that the Board may not have the authority to impose such conditions.

Mr. Heyland pointed out that the change in the zone only allows the applicant to ask for outdoor dining, it isn't an automatic right and like any other application the Board needs to take all aspects into consideration and set limitations as needed. He noted that control has to start somewhere.

Mr. Simpson agreed with Mr. Heyland, he pointed out that this restaurant is directly up against another business where guests are sleeping.

Mr. Yurko noted that Café Prego is directly next to an inn and Prego doesn't have any restrictions on their hours of operation.

Mr. Dennis agreed to turn off the music at 10:00 p.m.

Mr. Simpson asked what type of music they have outside.

Mr. Dennis responded “it's a radio”.

Mr. Simpson restated Ms. Bevins' motion:

Ms. Bevins Moved to Approve the Application with the condition that the serving of food and beverages close at 9:30 p.m.

BEVINS / SIMPSON 2:2 (Mr. Yurko and Mr. Renaud Dissenting)

Mr. Simpson noted that the motion failed to carry because it requires three affirmative votes to pass.

Mr. Yurko Moved to Approve the Application for Judith Dennis / Bandito's Mexican Grill – 68 Shore Road – Map 6 Block 69 with a 10:00 p.m. cut off time for outside service of food and/or beverages and a 10:00 p.m. cut off time for music of any type, also all patrons must have vacated the outside tables by 11:00 p.m. In addition, Adirondack chairs in front of the building are not considered to be part of this application and are not to be used for service of food or beverages.

YURKO/RENAUD

Ms. Bevins asked if Mr. Yurko intends for everyone, staff included, to be gone by 11:00 p.m.

Mr. Yurko responded that he intends for all customers to be gone by 11:00 p.m.

Mr. Dennis asked what happens if his customers are still sitting at tables after 11:00 p.m.

Mr. Yurko responded that he needs to establish a procedure to empty the restaurant by 11:00. He agreed that they could move customers from the outside tables to the inside tables.

Mr. Simpson restated the motion:

**Mr. Yurko Moved to Approve the Application for Judith Dennis / Bandito's Mexican Grill – 68 Shore Road – Map 6 Block 69 with a 10:00 p.m. cut off time for outside service of food and/or beverages and a 10:00 p.m. cut off time for music of any type, also all patrons must have vacated the outside tables by 11:00 p.m. In addition, Adirondack chairs in front of the building are not considered to be part of this application and are not to be used for service of food or beverages.**

**YURKO/RENAUD 3:1 (Ms. Bevins Dissenting)**

- 3. CAYCE HOLDINGS LLC - 422 Main Street – Map 8 Block 24 – Site Plan Review. Application for a post 1930 structure. Application to remodel parking layout, create new driveway, implement stormwater management structures and modify landscaping.  
Request to Table Site Plan Review to the Fall of 2013.**

Brian Wood addressed the Board as the Applicants' representative. Mr. Wood informed the Board that the Applicants have completed the Design Review portion of the project as it was approved by the Board, and he is anticipating a Final Inspection by the Code Officer.

Mr. Wood stated that the Applicants are asking to table the Site Plan portion of the application because they are uncomfortable presenting a final plan until the Maine Department of Transportation (DOT) presents its final plan for the Route One Project. He did meet with the DOT representative at the Town Meeting, at which time the applicant submitted a revised plan (*received and dated 7-29-13*).

The Applicant would like to extend the application. Mr. Wood noted that they did some landscaping in the front of the building to improve the looks of the property for the two existing businesses. The plan was agreed upon between the applicants and Ernie Martin from the DOT. The 1992 plan, which was approved by the Planning Board, included 21 parking spaces. Mr. Wood summarized the 1992 plan which included parking spaces which were partially on DOT property. The current Board has asked for the removal of parking spaces which were perpendicular to Route One.

Mr. Wood again noted that the applicants have done some landscaping, they also placed some dense gravel base in the configuration on the plan. This was done in anticipation of Board approval of the plan, and if the Board should decide against the proposed configuration the Applicants will remove the gravel base.

Mr. Wood noted that the owners of the property intend to live there over the 2013 winter and do not want to park along Route One. The residential portion of the property is planned to house the owners' two vehicles.

Mr. Yurko asked if the only thing before the Board is to table the Site Plan.

Mr. Simpson asked what remains to be decided.

Mr. Wood responded that they will come back with the same plan, after he confirms that the DOT can work with that plan.

Mr. Wood also suggested the Board might approve the plan with conditions. If the board approves the plan as submitted, and if the DOT plan does not change, then the applicants go forward as planned. If the DOT plan does change then the applicant's plan will have to be revised. He also has no problem coming back with the plan in the spring of 2014 if necessary.

Mr. Heyland asked the Board if his ability to issue a Certificate of Occupancy is contingent upon Site Plan Approval. His concern is that once the Certificate is issued the applicant's may disappear from the Planning Board process, or what would the status be if the Board denied the Site Plan Application?

Mr. Simpson responded that the Design Review for the structure was approved and all that is left for the Board to review is the storm water management plan.

Mr. Yurko agreed that the Board approved the plan as it relates to the structure/residence, the Board still has to approve the parking plan, and the storm water management plan.

Mr. Wood informed the Board that the Applicants do have an approved site plan from 1992 which they now seek to modify. The operation could continue under the 1992 plan as it has for some time. There is no proposed increase in seating or parking, the applicants are only looking to reconfigure the parking.

**Mr. Yurko Moved to Grant the Applicant's request to table the Application to the fall of 2013 with the stipulation that the applicant should come back before the Board in September 2013.**

**YURKO/RENAUD 4:0 UNANIMOUS**

Mr. Wood asked if the Board would move on a definitive Site Plan with the understanding that the DOT may change its plans.

Mr. Yurko responded that this is up to the Applicant. The Board will deal with whatever plan the applicant submits.

Mr. Wood responded that it may not be until the spring of 2014 before the DOT presents its final plan, however he agreed to revisit this application in September.

**G.     NEW BUSINESS – None**

**H.     CODE ENFORCEMENT OFFICER BUSINESS – None**

**I.     OTHER BUSINESS – None**

**J.     ADJOURNMENT -**

**Mr. Yurko Moved to Adjourn at 6:55 p.m.  
YURKO/RENAUD 4:0 UNANIMOUS**

Respectfully Submitted

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Maryann Stacy  
Town of Ogunquit  
Planning Board Recording Secretary

*Approved on August 12, 2013*