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OGUNQUIT PLANNING BOARD MINUTES MONDAY JULY 13, 2015

REGULAR BUSINESS MEETING 6:00 p.m.

Mr. Wilkos noted that earlier this evening the Board held its 4th Workshop regarding the Design Review Process. He reminded the public that they are welcome and encouraged to attend these workshops.

A. ROLL CALL –

1. Introduction of newly appointed Planning Board Members.

Mr. Wilkos introduced new Board members: Rusty Hayes, Don Simpson, Rick Dolliver, and Brian Aromando.

2. Election of Board Officers.

**Mr. Simpson nominated Steve Wilkos as Planning Board Chair.
SIMPSON/BEVINS 5:0 UNANIMOUS**

**Ms. Bevins nominated Muriel Freedman as Planning Board Vice-Chair.
BEVINS/SIMPSON 5:0 UNANIMOUS**

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – The Mission Statement was read by Ms. Freedman.

D. MINUTES – June 15, 2015 – Workshop and Meeting

**Ms. Bevins Moved to Accept the Minutes of the June 15, 2015 Workshop.
BEVINS/FREEDMAN 3:0 UNANIMOUS**

(Rusty Hayes, Don Simpson, Rick Dolliver, and Brian Aromando were not sitting Board members on that date).

**Ms. Freedman Moved to Accept the Minutes of the June 15, 2015 Meeting as Amended.
FREEDMAN/BEVINS 3:0 UNANIMOUS**

(Rusty Hayes, Don Simpson, Rick Dolliver, and Brian Aromando were not sitting Board members on that date).

E. PUBLIC INPUT – For any matter NOT already on this Agenda.

Mr. Wilkos asked if there was anyone who wished to be heard on any matter not on this evening's agenda. There was no one.

F. UNFINISHED BUSINESS –

1. FINDINGS OF FACT FOR:

- 1. RYAN RILEY – LOVE SHACK JUICERY – 68 Shore Road – Map 6 Block 69 General Business District 1 (GBD1) Site Plan Review for a Change of Use from Commercial Retail to Type 3 Restaurant in a pre-1930 structure.**

Ms. Freedman Moved to Accept the Findings of Fact for RYAN RILEY – LOVE SHACK JUICERY – 68 Shore Road – Map 6 Block 69 as submitted.

FREEDMAN/BEVINS 3:0 UNANIMOUS

(Rusty Hayes, Don Simpson, Rick Dolliver, and Brian Aromando were not sitting Board members on that date).

- 2. JOHN STAND – ART OF SIGHT – ART OF MIND GALLERY- 622 Main Street – Map 9 Block 82 – Site Plan Review for Change of Use for a pre-1930 building. Proposed change of use from residential to commercial art gallery.**

Ms. Bevins Moved to Accept the Findings of Fact for JOHN STAND – ART OF SIGHT – ART OF MIND GALLERY- 622 Main Street – Map 9 Block 82.

BEVINS/FREEDMAN – Motion carried unanimously (Mr. Wilkos recused himself, and vacated the room, due to a conflict of interest).

(Rusty Hayes, Don Simpson, Rick Dolliver, and Brian Aromando were not sitting Board members on that date).

G. NEW BUSINESS –

- 1. KATHLEEN CAMMAROTA / ROBERTO'S RESTAURANT – 200 Shore Road – Map 6 Block 112 – LBD - Site Plan Review for a Change of Use for a Pre-1930 structure. Application for Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outside service.**

Jerry Dehart addressed the Board as Ms. Cammarota's representative. Mr. DeHart produced a letter from the Applicant authorizing him to act on her behalf. Mr. Dehart gave a brief overview of the proposed project. He noted that the Fire Chief's Memo indicated a fifteen square foot requirement per patron. Mr. DeHart expressed confusion about this requirement because the dining area under consideration is an outside patio with nothing to restrict patrons from exiting the area in an emergency. That being said he agreed to abide by the restriction.

Mr. DeHart noted that Roberto's current outside seating consists of 62 seats and they would like to retain that. He noted that he originally applied for 37 seats, however it should have been four more than that for a total of 40 seats, with the maximum allowable 600 square feet of seating space.

Mr. Wilkos asked how many seats the applicant is applying for.

Mr. DeHart responded that they would like to apply for 62 seats. He informed the Board that he has an amended application asking for the additional seats, and he asked the Board to accept it.

Ms. Freedman asked how the 62 seats will fit within the space, as passed by the new ordinance restricting the outside dining/service to 600 square feet.

Mr. DeHart responded that the item that was passed has nothing to do with the Fire Department's requirement of 15 square feet per patron. That regulation is for inside dining and isn't a requirement for outside patios without enclosures.

Mr. Wilkos asked why the application fee boxes were not checked off.

Mr. Heyland responded that he determined that, due to previous applications submitted by these three applicants, these current applications constitute amendments, and that the fees were already paid and new fees should be waived. He agreed that the applicant might have to ask for a waiver of the new fee.

Mr. Wilkos asked Mr. Feldman if the Code Enforcement Officer has the authority to waive a fee.

Mr. Feldman responded that the Code Enforcement Officer does not have the authority to waive fees for new applications and Mr. Feldman considers these to be new applications. However Mr. Heyland is correct in saying that under Section 6.6.3 Application Submission Requirements the applicant might request a waiver for the fee. Mr. Feldman summarized that the applicant would have to request the waiver in writing.

Mr. Wilkos summarized that the Board may grant a waiver for the \$500 application fee, if the applicant submit's the request in writing.

Ms. Bevins expressed her opinion that the waiver fee should be waived.

Mr. Wilkos asked why any applicant should have to pay the \$500.

Mr. Dolliver stated that the three applications in front of the Board today are all existing restaurants and they will still be restaurants, there is no change of use.

Mr. Wilkos disagreed, he suggested that changing from a Type 1 to a Type 2 is a change of use.

Mr. Simpson asked if fees have been waived in the past. He also questioned whether or not the Planning Board is legally permitted to waive the fee.

Mr. Heyland responded that past fees were only waived when the applicant requested it. He stated that these businesses have paid the fee for past applications and he considered this to be an extension of those earlier applications.

Mr. Feldman again stressed that any waiving of the fee should be in writing as part of the other waiver requests. He agreed with Mr. Wilkos that review by the Town Attorney wouldn't hurt. He cautioned the Board against granting waivers that are not requested in writing.

Mr. Wilkos asked if the Board may proceed if the applicant agrees to pay the fee.

Mr. Feldman agreed that they could.

Mr. DeHart agreed that he had submitted a check however, the \$500 check was returned to him. He agreed to resubmit it and pay the fee. He confirmed that they are not asking for a waiver and they will resubmit the fee.

Mr. Wilkos re-summarized that the original application was for 37 seats, and he asked how many seats the applicant is requesting now.

Mr. DeHart responded that they are now requesting 62 seats.

Ms. Bevins asked Mr. Heyland if he wants a specific drawing of the property clearly indicating where the tables will be located, how many chairs, and where they will be located.

Mr. Heyland agreed. He stated that the reason these three applications are before the Board is because none of them have authorization for outside service. Specifically Roberto's never received approval for the existing outside seating, it has just developed over time. He noted that "grandfathering" is based upon legally existing things which become nonconforming. The outside seating at Roberto's was never legal. This current application is to establish an accurate picture of where the seats are, how many tables and seats there are, and how they are being used.

Mr. Heyland added that the allowable 600 square feet, divided by 15 square feet per person, allows for a maximum of 40 seats. Roberto's already exceeds that amount of seating. It doesn't make a difference if the patio area is contained or not.

Mr. Simpson asked about Roberto's Pizzeria and if, at the original Change of Use Hearings there was discussion regarding the outside tables and chairs. He suggested that they were intended to be used as a waiting area only, not for outside dining or service. He also agreed that the application indicates an excess of 62 seats.

Mr. Wilkos asked if the Board believes that there is a material change in the application based upon the seating recalculation. He noted that if it is a material change the Board should probably table the application.

Mr. DeHart responded that he needs clarification regarding the 15 square feet per patron and the restriction of the number of seats. He asked where that restriction comes from. Mr. Dehart informed the Board that if they are unable to grant the request for the original 37 seats or the amended 62 seats, the applicant will agree to the maximum 40 seats. He also stressed that three additional seats is not a material change.

Mr. Heyland responded that the Life Safety Code requires assembly occupancies which include restaurants, pubs, bars, and those types of settings to have a maximum density of 15 square feet per person. He understands that the argument might be made that outside use is not the same however in the event of an emergency people need to be able to exit the area. The area may be contained by vegetation, stone, etc which is why the 15 square feet applies. Mr. Heyland noted that the Fire Chief agreed.

Mr. Wilkos read Fire Chief Mark O'Brien's Memo to the Board dated July 13, 2015 which states that: "Seating calculations need to match square footage with maximum seats shown. 15 square feet per person with seats & tables".

Mr. DeHart asked for confirmation that in the Town of Ogunquit, for outside dining, 15 square feet per person will be required. And if his applicant drives down Shore Road she will expect that treatment will be applied to everyone from one end to the other.

Mr. Heyland confirmed.

Mr. DeHart asked the Board to consider a three seat addition to his originally submitted plan. He confirmed that he has sixteen copies of the revised plan.

Ms. Freedman noted that the plan indicates 542 square feet.

Mr. DeHart responded that this is a misunderstanding. They are asking for the full 600 square feet and 40 seats. He indicated that they will obtain the additional 38 square feet by narrowing the entrance from the main door.

Ms. Freedman asked if the Board should get a new plan.

Mr. Simpson agreed that a new plan is needed. He also requested a more explicit memo from the Fire Chief.

Mr. Simpson asked if any of the outside seats are under an overhang or cover.

Mr. DeHart responded that there are. He again argued that there is an interpretation issue regarding outside uncontained seating requiring 15 square feet per patron. He also argued that the addition of three seats is not a significant change from the original application. He stated that if it is the opinion of the Board that it is a significant material change, then the Applicant will request the original 37 seats.

Mr. Wilkos asked Mr. DeHart for confirmation that he is now asking for 37 seats and the original application.

Mr. DeHart responded that he is.

At this time the Board reviewed the Applicant's Waiver Requests, with the following results:

Item 6.6.C.3.G - Existing & Proposed: Building footprints, Parking lots, Drivers, Walkways, Roads, Landscaping, Grading/Clearing, and Undisturbed Areas.

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.H - Existing & Proposed: Two foot Contours.

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.i - Location of all wetlands, rivers, streams, brooks and other water bodies, natural features, on-site or adjacent.

REASON: There are no known nor documented wetlands, rivers, streams, brooks and other water bodies, natural features, on-site or adjacent.

Ms. Freedman Moved to Approve the waiver.

FREEDMAN/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.J - High Intensity soil survey (for undeveloped, vacant sites w/o water & sewer).

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.L - The boundaries of any flood hazard areas and the 100-year flood elevation.

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item: 6.6.C.3.N.i - Sewer Service Area.

REASON: The property is not outside the sewer service area.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.N.ii - Outside Sewer Area — Septic System Design

REASON: The property is not outside the sewer service area.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.O.i - Water Service Area.

REASON: The property is not outside the water service area.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.C.3.O.ii - Written Statement from Fire Chief approving hydrant locations or other fire protection measures deemed necessary.

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

Item 6.6.03.O.iii - Outside Water Service Area.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/BEVINS 5:0 UNANIMOUS

REASON: The property is not outside the water service area.

Item 6.6.C.3.P - Location, names and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent.

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.Q - Width and location of any streets, public improvements or open space shown upon the official map and in the comprehensive plan, if any, within the site.

REASON: The site is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.R.- Location of any open space to be preserved and a description of proposed ownership, improvement and management.

REASON: The property is currently developed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.S - Hydrogeological assessment prepared by a certified geologist or registered professional Engineer — outside of public water & sewers.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

REASON: The property is not outside of public water and sewer areas.

Item 6.6.C.3.T- An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.

REASON: The properties current and future functions as a restaurant shall remain the same, so the type of vehicular traffic arriving and leaving the property will not increase. There will be no proposed change to amount of traffic.

Mr. Simpson asked the Applicant how many outside seats currently exist.

Mr. DeHart responded that there are currently 62 seats, and they will be reducing that number to 37. They will be reducing the number of outside seats by 25.

**Mr. Simpson Moved to Approve the waiver.
SIMPSON/HAYES 5:0 UNANIMOUS**

Item 6.6.C.3.U - A traffic analysis, prepared by a Registered Professional Engineer with experience in traffic engineering (for project requiring 10 or more parking spaces, or projected 50+ trips per day).

REASON: The properties current and future functions as a restaurant shall remain the same, so the type of vehicular traffic arriving and leaving the property will not increase. There will be no proposed change to amount of traffic.

Mr. Wilkos asked how many parking spaces Roberto's will be required to have.

Mr. Heyland responded that without an accurate internal floor plan he would be unable to answer that question. If this application is approved an additional six parking spaces will be required.

Mr. Dehart expressed his belief that the parking was approved when the pizzeria application was granted and that they currently have enough parking to cover the outside patio service seating.

Mr. Heyland asked if the previous approval for the pizza shop included parking discussions.

Mr. DeHart responded that it did.

**Mr. Simpson Moved to Approve the waiver pending confirmation by the Code Enforcement Officer that sufficient parking spaces were granted under the pizzeria application.
SIMPSON/BEVINS 5:0 UNANIMOUS**

Item 6.6.C.3.V- Areas within or adjacent to the proposed site which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the Comprehensive Plan.

REASON: The property is currently developed, so there is no valuable wildlife habitat.

**Mr. Simpson Moved to Approve the waiver.
SIMPSON/HAYES 5:0 UNANIMOUS**

Item 6.6. 3.W - Historic areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places, Ogunquit Historic Register, or have been identified in the comprehensive plan.

REASON: The property is currently developed and identified as a historical building, there will be no alteration to the building.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.Y - Storm water Management Plan.

REASON: There will be no change to the building footprint. Storm water will not be altered.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.Z - Erosion and Sediment Control Plan.

REASON: There is no water shed nearby and no construction planned.

Mr. Simpson Moved to Approve the waiver request.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.AA - Location of any streets, public improvements or open space shown in the comprehensive planned or capital improvements plan, within the site.

REASON: No construction proposed.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.BB - Parcels of land proposed to be dedicated to public use and the conditions of such dedication.

REASON: There is no land proposed to be dedicated to public use and the conditions of such dedication.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.CC - Location/Method of Land Clearing and Construction Debris Removal.

REASON: The property is currently developed, no land clearing will occur.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.DD - It is required that applicants submit a cost estimate for setting performance Guarantees pursuant to section 4.8.

REASON: Not applicable due to no proposed construction.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.EE - State and Federal Permits.

REASON: Not applicable due to no proposed construction. This ends the requested waivers.

Mr. Simpson Moved to Approve the waiver.

SIMPSON/HAYES 5:0 UNANIMOUS

Mr. Feldman noted that the building was constructed in 1750 and he asked if the application involves any exterior modification.

Mr. Wilkos reviewed Mr. Feldman's July 2, 2015 Memo to the Board (*a copy of which will be retained in the Applicant's Planning Board file*).

Mr. DeHart responded that there is no proposed construction associated with this project.

Newell Perkins, Chair of the Ogunquit Historic Preservation Commission addressed the Board. He reviewed the Commission's June 24, 2015 Memo to the Board members asking them to consider buffering, preferably vegetative, between the patio and Shore Road. Mr. Perkins stressed the neighborhood significance of the entire Shore Road corridor, and the importance of properly incorporating outside dining space into the fabric of that neighborhood.

The commission recommended that the entrance to the pizza dining area be narrowed and that the pizza delivery vehicles be parked out of sight when not in use.

Mr. Wilkos asked if the Commission has discussed the plan with the applicant.

Mr. Perkins responded that the applicant was not available.

Mr. Simpson reminded everyone that a previous application decision resulted in input from the town attorney who stated that the historic preservation commission's input is for historic structures, not landscaping and surrounding property.

Both Ms. Bevins and Ms. Freedman expressed their belief that this applicant's property is well kept and that with a reduction of the number of outdoor seats there will not be huge crowds sitting "on Shore Road".

Mr. DeHart responded that the applicant declines the Historic Preservation Commission's requests, he also noted that the application doesn't require Design Review.

**Mr. Simpson Moved to find the Application complete and schedule a Public Hearing.
SIMPSON/FREEDMAN 5:0 UNANIMOUS**

Mr. Wilkos informed the Applicant that the Public Hearing would take place on July 27, 2015 at 6:00 p.m.

Mr. DeHart confirmed that he would bring a check for \$500 in to the Land Use Office.

2. WAYNE PERKINS / PERKINS COVE LOBSTER POUND – 324 Shore Road – Map 3 Block 4-5 – LBD – Site Plan Review and Design Review for a Pre-1930 structure. Application for Change of Use from Residential to Type 3 Restaurant.

Jay Audet, Josh Audet, and Wayne Perkins all addressed the Board.

Mr. Jay Audet reminded the Board that the pending application involves no exterior changes to the building other than those granted three years ago when the residence garage became a lobster pound. Whatever the Board determines the current use to be, the applicants are requesting to become a Type 3 restaurant.

Regarding the Fee, Mr. Perkins paid the fee for the previous application which was tabled and withdrawn. They are hoping that the original \$500 fee would apply to this application. Mr. Audet informed the Board that they would pay the \$500 fee again if necessary. They want to move the application along as quickly as possible.

Mr. Wilkos read a letter from Mr. Audet into the record where in Mr. Audet officially withdrew his original application for a change of use from residential to Type 1 restaurant. That original application has been withdrawn and this is a new application.

Mr. Wilkos asked about the waived \$500 fee.

Mr. Heyland responded that he agreed with the applicants that they paid the original fee and the application was almost immediately retracted.

Mr. Audet added that the fee was paid, and the application was only discussed at one meeting before it was tabled.

Mr. Feldman agreed that the application fee was submitted, and the original application was not withdrawn until the new application was submitted. The applicant is seeking to replace one proposed use with another.

Mr. Wilkos asked if this matter needs to be addressed in the waiver checklist.

Mr. Feldman responded that it does not, that the application fee has been paid.

The Board members agreed with Mr. Heyland and Mr. Feldman.

Mr. Wilkos reviewed a memo from Town Attorney Natalie Burns in which Attorney Burns responded to Mr. Heyland's question regarding whether or not the Planning Board may review an application from an applicant who is currently in violation of an ordinance. Attorney Burns responded that there is nothing in the Town's Ordinance that prohibits an application or the review of an application. In some cases there is a need for an application and review to bring the property into compliance. Enforcement of the Land Use Office and Building Codes is separate from the Planning Board review and approval process.

Mr. Jay Audet informed the Board that the project has been completed. This is due to the Planning Board approval which they received three years ago. It involved the conversion of a single bay garage into an operating lobster pound. They changed the standard garage door into a single person entry door. Included in the Board members' packets are elevations of all sides of the building, cut sheets for the door, and a drawing of where the two proposed tables will be located. Mr. Audet noted that the two tables will be as far away from Shore Road as possible.

Mr. Wilkos reviewed Mr. Feldman's July 2, 2015 Memo to the Board (*a copy of which will be maintained in the Applicant's Planning Board file*).

Mr. Heyland explained to the Board members that some of the current paperwork was transferred from the original application to the new application. In addition Mr. Feldman did not receive all of the paperwork, thus he noted in his memo that some documentation was missing. That documentation has since been submitted.

Ms. Freedman stated that not everything on the checklist was checked off.

Mr. Heyland suggested that the Board go through the missing items in Mr. Feldman's July 2, 2015 Memo and confirm that every required item is either submitted, or a waiver request has been made.

Mr. Wilkos asked Mr. Heyland to review the "missing" material as noted in Mr. Feldman's Memo.

Mr. Heyland asked about Item 6.6.C.3.B – he asked if that information was included on the standard boundary survey.

The Board members agreed that this requirement has been satisfied.

Mr. Heyland asked about Item 6.6.C.3.C – the map and block number, also contained on the boundary survey.

The Board members agreed that this requirement has been satisfied.

Mr. Heyland asked about Item 6.6.C.3.D – verification of right title and interest in the property – a deed to the property.

The Board members agreed that this requirement has been satisfied.

Mr. Heyland asked about Item 6.6.C.3.E – Standard boundary survey of the parcel.

The Board members agreed that this requirement has been satisfied.

Mr. Heyland asked about Item 6.6.C.3.F – building footprints etc which will be contained on the Applicant's parking layout.

The Board members agreed that this requirement has been satisfied.

Ms. Freedman asked about Item 6.6.C.3.I.

Mr. Heyland noted that it had been submitted and the Board agreed.

Mr. Wilkos asked about Item 6.6.C.3.L – 100 year flood Elevation.

The Board agreed that this item had been submitted.

Mr. Wilkos asked about Item 6.6.C.3.M – proposed deed restrictions.

Ms. Freedman noted that the applicant has requested a waiver and has also checked off that it was submitted.

Mr. Feldman noted that if the item has been submitted then no waiver is required.

Mr. Wilkos noted that requested item 6.6.C.3.M – proposed deed restrictions.

Mr. Heyland responded that there are no proposed deed restriction.

Mr. Wilkos asked about item 6.6.C.3.O.ii – approval of hydrant location.

Ms. Freedman again noted that the applicant has requested a waiver for this item, however it has also been submitted so no waiver is required.

Mr. Wilkos reviewed a Memo to the Board from Fire Chief, Mark O'Brien dated July 13, 2015 which states that "if dining area is 120 square feet then seating is for 8 customers. 15 square feet per person with seats and tables".

Mr. Wilkos asked about Item 6.6.C.3.W – Historic areas within or adjacent to the proposed site.

Mr. Feldman informed the Board that this item involves the significance of the neighborhood and is not restricted to the property in question. He suggested the Board discuss whether or not changes to the applicant's property will effect the neighborhood.

Mr. Heyland reminded the Board that this application is also for Design Review.

Mr. Wilkos asked about Item 6.6.C.EE – DHHS Permits

Mr. Feldman informed the Board that this item refers to the kitchen codes for health.

Mr. Jay Audet informed the Board that over the past three years the business has been in operation DHHS has come in multiple times.

Mr. Josh Audet added that they come in three to four times per year and there have been no complaints. They have been fully compliant.

Jay Audet added that this application doesn't involve any changes to the kitchen. He noted that the only change will be the addition of two outside tables.

Mr. Feldman offered to contact DHHS and determine whether or not there are different requirements between the retail business they were operating and the restaurant operation they propose.

Mr. Wilkos noted that Mr. Feldman has stated that the application required Design Review for the change of the garage door to a walk-in door, and the two tables for outside dining.

Mr. Audet noted that the door change was approved three years earlier.

Mr. Feldman reminded everyone that the earlier approval was vacated by the Courts, however to be safe the Board should revisit the issue and reaffirm the Design Review changes.

Mr. Wilkos asked about Mr. Feldman's comments regarding parking spaces.

Mr. Feldman responded that it is his opinion the Applicant only requires two parking spaces, two less than the number they propose. He also noted that the application requests seating for 8 patrons which might alter the number of parking spaces the Board may require.

Mr. Heyland added that as a result of the interior space and the outside seating they should probably have four parking spaces, which is what they are asking for.

Mr. Audet noted that they anticipate walk-in traffic as well.

Mr. Heyland summarized that the required number of parking spaces is two, which they have.

Mr. Wilkos asked about a screening proposal from abutters.

Mr. Wayne Perkins asked why they need screening. He noted that his property was originally a residence, and that commercial operations next to residences require screening. He was originally a residence next to The Hartwell House, a commercial property, and there was no screening. Now they are both commercial businesses and he doesn't believe any screening is required.

Mr. Feldman responded that the issue is not a completeness issue.

Mr. Heyland's interpretation is that buffering should be required. This may be done with vegetation or fencing.

Mr. Jay Audet noted that the plans indicate a five foot buffer.

Mr. Heyland added that the applicant might request a written waiver request for the buffering. He also noted that the ordinance refers to a "potential" residential use, and the applicant's property could revert to residential use.

Mr. Jay Audet informed the Board that they will be requesting a waiver from the buffering.

Ms. Bevins asked for a more detailed drawing identifying where the outside tables will be located.

Mr. Jay Audet responded that they have not purchased the tables yet. He stated that the application already indicates where the tables will be placed.

Ms. Bevins asked for a drawing with measurements indicating exactly where the tables will be located.

Mr. Audet argued that they have clearly located where the tables will be located, they will not be anywhere near Shore Road.

Mr. Aromando suggested the Applicant provide a drawing of the exact table location at the same time they submit the waiver request for the buffering.

At this time the Board reviewed the Applicant's Waiver Requests, with the following results:

Item 6.6.C.3.G: Utilities, Sewers, Water Mains, Culverts, and Storm Water Management.

We are asking for a waiver because the utilities are already on sight.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.H: Two-foot Contours.

Project requires no change to existing contours.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.J: High Intensity Soil Survey.

We are asking for a waiver because the project involves an already developed lot.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Mr. Wilkos noted that the Applicant's checklist indicates that Item 6.6.C.3.L was a waiver request.

Mr. Audet responded that the flood zone has been submitted and the waiver request is withdrawn.

Item 6.6.C.3.M: A copy of any proposed deed restriction.

We are asking for a waiver because there are no deed restrictions for this property.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.N.i: Sewer service area.

A letter from the sewer district stating that it has the capacity to collect and treat the waste water is included in the packet.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.N.ii: Septic System Design

We are asking for a waiver because this property is hooked up to public sewer.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.O.iii: Outside water service area.

We are asking for a waiver because this project is serviced by public water.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.P: Locations, names, and present widths of existing streets, highways, easements, building lines, parks, and other open spaces. This item is beyond the scope of this project.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.Q: Width and location of any streets, public improvements or open space shown upon the official map and in the comprehensive plan, if any, within the site.

This item is beyond the scope of this project.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.R: Location of any open space to be preserved and description of proposed ownership, improvements and management. We are asking for a waiver because no areas are intended to be open space.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.S: Hydrologist assessment prepared by certified geologist or Registered Professional Engineer - outside of public water & sewer areas

We are asking for a waiver because this project is serviced by public water.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.T: An estimate of the amount and type of vehicular traffic to be generated on a daily and at peak hours.

We are asking for a waiver because, based on the size of the business, we are only required to have a maximum of 2 parking spaces.

Mr. Simpson Moved to Approve.

SIMPSON/HAYES 5:0 UNANIMOUS

Item 6.6.C.3.U: Traffic impact analysis, prepared by a registered professional engineer with experience in traffic engineering (for projects requiring 10 or more traffic spaces or projected 50 or more trips per day).

We are asking for a waiver because this project involves the renovation of a single car garage whose square footage required no more than 2 parking spaces.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.V: Area within or adjacent to be proposed site which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan.

We are asking for a waiver because this project involves a developed site.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.W: Historic Areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places, Ogunquit Historic Register, or have been identified in the comprehensive plan.

We are asking for a waiver because to our knowledge this project involves property that is not on a historic site.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.Y: Stormwater management plan.

We are asking for a waiver because this involves a developed site and there is no proposed change to the site.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.Z: Erosion and sedimentation control plan.

We are asking for a waiver because this involves a developed site.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.AA: Location of any streets, public improvements, or open space shown in the comprehensive plan or capital improvements plans, within the site.

We are asking for a waiver because this project involves no intended open space.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.BB: Parcels of lands proposed to be dedicated to public use and the conditions of such dedications. We are asking for a waiver because none are intended to be proposed.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.3.CC: Locations/method of land clearing and construction debris disposal. We are asking for a waiver because this is a developed site.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.3.DD: Cost estimates for setting performance guarantees, pursuant to section 4.8. We are asking for a waiver because no bond is intended.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.3.EE: State and Federal Permits.

Upon approval, we will contact DHHS.

Ms. Freedman asked for an explanation of the applicant's reason.

Mr. Audet responded that they will contact DHHS prior to the Public Hearing.

Mr. Feldman added that they can't operate without approval from DHHS. He suggested the Board waive the permit for completeness purposes, however the applicant will need to provide DHHS Approval prior to being allowed to operate. He suggested the Applicant contact DHHS as soon as possible and get things started.

Mr. Heyland informed the Board that part of the problem is that the DHHS License may require significant financial investment, which is why some applicant's prefer to wait for local approval before they go to the State.

Mr. Aromando stated that the applicant is not asking for a waiver from having to get the permit, they are asking for a waiver to provide the permit at this time, however they will not be allowed to operate without first obtaining the DHHS Approval.

Mr. Hayes Moved to Approve the waiver request with the condition that the Applicant must provide DHHS Approval prior to the operation commencing.

HAYES/FREEDMAN 5:0 UNANIMOUS

**Ms. Freedman Moved to Find the Site Plan Submission Checklist Complete
FREEDMAN/SIMPSON 5:0 UNANIMOUS**

At this time the Board reviewed the Design Review Submissions Checklist and found all requirements satisfied.

Mr. Heyland noted that the applicant has provided material samples, he also pointed out that Design Review submissions may not be waived.

**Ms. Bevins Moved to find the Design Review Submission Checklist complete
BEVINS/SIMPSON 5:0 UNANIMOUS**

Mr. Feldman suggested the Board acknowledge each item on the Design Review Submissions checklist.

Mr. Simpson Moved to find that the Board has received the following:

11.5 – fifteen copies of a site plan and all supporting materials, including design review application form, and design review submissions checklist. Design Review application fee paid.

11.5 – Elevations of each side of the proposed building or structure to be constructed or altered, at a scale of at least ¼" = one foot, and in the case of alterations, showing conditions before and after the proposed work.

11.5 – Photographs of the site and existing buildings.

11.5 – Material samples, color swatches (shingles, siding, paints)

11.5 – Manufactures specifications/cut sheets doors, windows, applicable fixtures.

SIMPSON/HAYES 5:0 UNANIMOUS

Mr. Wilkos noted that the Public Hearing would take place on July 27, 2015 at 6:00 p.m.

3. RICK DOLLIVER / THAT PLACE IN OGUNQUIT – 331 Shore Road – Map 3 Block 53 – LBD - Site Plan Review for a Change of Use for a pre 1930 structure, from a Type 1 Restaurant to a Type 2 Restaurant with outside service.

Mr. Dolliver recused himself from the Board table.

Mr. Dolliver stated that his application is complete, he noted that he was told that the fee would be waived however he agreed to bring a check to the Land Use Office in the morning.

Mr. Wilkos reviewed Mr. Feldman's July 2, 2015 memo to the Board (*a copy of which will be maintained in the applicant's Planning Board file*).

At 8:45 p.m. Board member Bevins excused herself for the remainder of the meeting.

Mr. Wilkos noted that with Ms. Bevins absence Mr. Aromando would be moved to full voting member status for the remainder of the meeting.

At this time the Board reviewed the Applicant's waiver requests, with the following results:

Item 6.6.C.3.G -Existing & Proposed: Building footprints, Parking lots, Drivers, Walkways, Roads, Landscaping, Grading/Clearing, Undisturbed Areas

REASON: The site is currently developed.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.H - Existing & Proposed: Two-foot Contours

REASON: The site is currently developed.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.I- Location of all wetlands, rivers, streams, brooks and other water bodies, natural features, on-site or adjacent.

REASON: There are no known nor documented wetlands, rivers, streams, brooks and other water bodies, natural features, on-site or adjacent.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.J - High Intensity soil survey (for undeveloped, vacant sites w/o water & sewer)

REASON: The site is currently developed.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.L - the boundaries of any flood hazard areas and the 100-year flood elevation

REASON: The site is currently developed.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item: 6.6. C.3.N.i - Sewer Service Area.

REASON: The property is not outside the sewer service area.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.N.ii - outside Sewer Area - Septic System Design by LSE or PE

REASON: The property is not outside the sewer service area.

Mr. Hayes Moved to Approve.

HAYES/FREEDMAN 5:0 UNANIMOUS

Item 6.6.C.3.O.i - Water Service Area

REASON: The property is not outside the water service area.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.O.ii - Written Statement from Fire Chief approving hydrant locations or other fire protection measures deemed necessary.

REASON: The site is currently developed

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.0.iii Outside Water Service Area

REASON: The property is not outside the water service area.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.P - Location, names and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent.

REASON: The site is currently developed

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.Q - Width and location of any streets, public improvements or open space shown upon the official map and in the comprehensive plan, if any, within the site.

REASON: The site is currently developed

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.R - Location of any open space to be preserved and a description of proposed ownership, improvement and management.

REASON: The property is currently developed.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.S - Hydrogeological assessment prepared by a certified geologist or registered professional Engineer — outside of public water & sewers.

REASON: The property is not outside of public water and sewer areas.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.T - An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.

REASON: The properties current and future functions as a restaurant shall remain the same, so the type of vehicular traffic arriving and leaving the property will not increase. There will be no proposed change to amount of traffic.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO

Mr. Simpson asked if there will be any changes to the currently existing outside seating.

Mr. Dolliver responded that he is allowed 28 seats and he has 26 seats.

Mr. Simpson asked when the outside seating was granted.

Mr. Heyland responded that it was originally an outside waiting area.

Mr. Simpson responded that it was a waiting area, now it will be a dining area.

Mr. Dolliver responded that the outside seating has always been a dining area, the difference now is that there will be wait service. The traffic will not increase, it will be the exact same amount of seating and space that was already there. Last summer people would go inside, order their food, pick it up, and take it outside to eat. The only difference now is that a wait person will take their order and bring them their food.

Mr. Simpson noted that there was never any application for outside dining, it was just done by the business owner.

Mr. Feldman suggested that these applications probably do not raise to the level of requiring a traffic impact study. He also suggested that the original use of these outside seats was as a waiting area and it is unlikely that they were ever intended for dining, even though that is what they were used for. He also suggested that no approval was ever given for outside dining.

Mr. Dolliver added that his application only requires four parking spaces, not the ten that would trigger a traffic impact study.

Mr. Wilkos suggested that because this applicant isn't required to undergo Design Review it may imply that any business might put whatever they want in place and not require Design Review.

Mr. Heyland agreed that any attempt to circumvent Design Review would be dangerous. He suggested that the criteria would be significant change.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.U - A traffic analysis, prepared by a Registered Professional Engineer with experience in traffic engineering (for project requiring 10 or more parking spaces, or projected 50+ trips per day).

REASON: The properties current and future functions as a restaurant shall remain the same, so the type of vehicular traffic arriving and leaving the property will not increase. There will be no proposed change to amount of traffic.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.V- Areas within or adjacent to the proposed site which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the Comprehensive Plan.

REASON: The property is currently developed, so there is no valuable wildlife habitat.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6. C.3.W - Historic areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places, Ogunquit Historic Register, or have been identified in the comprehensive plan.

REASON: The property is currently developed and identified as a historical building, there will be no alteration to the building.

Mr. Hayes Moved to Approve.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6. C.3.Y - Storm water Management Plan.

REASON: There will be no change to the building footprint. Storm water will not be altered.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C3.Z — Erosion and Sediment Control Plan.

REASON: There is no water shed nearby and no construction planned.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.AA - Location of any streets, public improvements or open space shown in the comprehensive planned or capital improvements plan, within the site.

REASON: No construction proposed.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.BB - Parcels of land proposed to be dedicated to public use and the conditions of such dedication.

REASON: There is no land proposed to be dedicated to public use and the conditions of such dedication.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.CC - Location/Method of Land Clearing and Construction Debris Removal.

REASON: The property is currently developed, no land clearing will occur.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.DD - it is required that applicants submit a cost estimate for setting performance Guarantees pursuant to section 4.8.

REASON: Not applicable due to no proposed construction.

Mr. Hayes Moved to Approve the motion.

HAYES/AROMANDO 5:0 UNANIMOUS

Item 6.6.C.3.EE - State and Federal Permits.

REASON: Not applicable due to no proposed construction. This ends the requested waivers.

**Mr. Hayes Moved to Approve the motion.
HAYES/AROMANDO 5:0 UNANIMOUS**

**Ms. Freedman Moved to find the Site Plan Review Submissions Checklist complete.
FREEDMAN/HAYES 5:0 UNANIMOUS**

Mr. Wilkos informed Mr. Dolliver that the Public Hearing would take place on July 27, 2015 at 6:00 p.m.

At this time Mr. Dolliver rejoined the Board.

H. CODE ENFORCEMENT OFFICER BUSINESS –

I. OTHER BUSINESS – None

J. ADJOURNMENT -

**Mr. Simpson Moved to Adjourn at 8:55 p.m.
SIMPSON/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy
Planning Board
Recording Secretary

Approved on July 27, 2015