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**OGUNQUIT PLANNING BOARD MINUTES  
MONDAY MAY 9, 2016**

**PUBLIC HEARING**

**HARRY WINSTON REALTY/~~YOGT~~ ABBOTT'S CREAMERY – 237 Main Street – Map 7 Block 126 – DBD – Site Plan Review for a pre 1931 structure. Application for a Change of Use from night club to retail space.**

Mr. Wilkos asked if there was anyone who wished to speak for, or against, this application. There being no one the Public Hearing was closed at 6:01.

**REGULAR BUSINESS MEETING**

**A. ROLL CALL –**

Members Present:     Steve Wilkos (Chair)  
                                 Muriel Freedman (Vice Chair)  
                                 Don Simpson  
                                 Jackie Bevins  
                                 Rusty Hayes  
                                 Rick Dolliver (1<sup>st</sup> Alternate)

Members Excused:     Brian Aromando (2<sup>nd</sup> Alternate)

Also Present:             Scott Heyland, Code Enforcement Officer  
                                 Lee Jay Feldman, Town Planner, SMPDC  
                                 Maryann Stacy, Recording Secretary

**B. PLEDGE OF ALLEGIANCE -**

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

**D. MINUTES - April 25, 2016 Site Visit and April 25, 2016 Regular Business Meeting.**

**Mr. Simpson Moved to Approve the Minutes of the April 25, 2016 Site Visit as Submitted. SIMPSON /FREEDMAN 4:0 (Ms. Bevins was excused from the April 25, 2016 Site Visit).**

**Mr. Simpson Moved to Approve the Minutes of the April 25, 2016 Regular Business Meeting.  
SIMPSON/BEVINS 5:0 UNANIMOUS**

**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 meeting's agenda.

Steven Calabro addressed the Board regarding Mr. Giarusso's previous application (*which was approved on September 9, 2015*). Not the application before the Board tonight but the previous application which was already approved.

Mr. Calabro stated that he is here to talk about the wall, the parking, and the lights from the last application. Mr. Calabro stated that Mr. Giarusso installed a light pole on his (Mr. Calabro's) property behind the propane tank. He wasn't supposed to do this but he did it anyway. He also removed the plants at the end of the driveway in order to create another parking spot. These plants were in place to provide a visual buffer to hide the parking lot.

Mr. Calabro went on to say that Mr. Giarusso paved the entire parking lot when he was supposed to leave a seven foot setback. Mr. Giarusso also painted a parking space for Pizza Napoli directly on Mr. Calabro's driveway. His (Mr. Calabro's) driveway should be twelve feet (12'), but he only had nine feet (9'), now he only has six feet nine inches (6'9"). He went on to say that he went away, came back to find a new parking space with a car parking in it, and he was unable to get up his driveway.

Mr. Calabro asked the Board to correct these things or table the pending application for paid parking until these other issues are resolved. He also wanted these issues put on the record.

Mr. Wilkos responded that these issues seem to be enforcement issues, not Planning Board issues.

Mr. Heyland agreed and added that Mr. Giarusso's project is still underway and things are changing daily. He will look into Mr. Calabro's allegations.

Mr. Wilkos asked if there was anyone else who wished to be heard. There was no one.

**F. UNFINISHED BUSINESS –**

**1. FINDINGS OF FACT FOR:**

**EDDIES ON MAIN / EDWARD KAMINSKY – 414 MAIN STREET – Map 8 Block 26 –GBD2.**

**Mr. Simpson Moved to Approve the Findings of Fact for EDDIES ON MAIN / EDWARD KAMINSKY – 414 MAIN STREET – Map 8 Block 26 –GBD2.  
SIMPSON/BEVINS 5:0 UNANIMOUS**

**2. DAVID GIARUSSO – 661 Main Street – Map 13 Block 49 & 50 – General Business District 2 (GBD2). Site Plan Review for a new use of a paid parking lot.**

Mr. Dolliver addressed the Board. Mr. Dolliver noted that the Board members' packets contained a rather scathing e-mail to the Board from the Applicant, some of the content being untrue. Mr. Dolliver questioned how some of the information came to be in the Applicant's possession.

Mr. Dolliver suggested that there has been some ex parte communication between Board members and this Applicant. Because of this ex parte communication, false information was passed to the Applicant which ended up in an e-mail. This e-mail is a public record which anyone may look at.

Mr. Dolliver explained that he happened to be in the Land Use Office when the Traffic Study Peer Review came in. He asked for a copy of it under the freedom of information act, and he was given a copy. Mr. Dolliver reminded the Board members that ex parte communication between Board members and applicants is not allowed, and that this has been discussed many times.

Mr. Dolliver stated that he has done nothing wrong. He asked for a public document which he was given. In the above-noted e-mail from the Applicant he (Mr. Dolliver) has been accused of inappropriate actions which he vehemently denies. He has, and always will do, what he thinks is right for the Town. Mr. Dolliver has reviewed information from the Town Attorney and has confirmed that he in no way has to recuse himself, however in the best interest of the Town he will recuse himself from hearing this application. Furthermore he expects the Board to address the issues he has raised regarding the ex parte communication. Particularly the ex parte communication between Ms. Freedman and the Application which lead to the Applicant's e-mail.

Mr. Dolliver left the auditorium.

Mr. Wilkos asked for Mr. Feldman's opinion on Mr. Dolliver's having received the traffic peer review before the other Board members.

Mr. Feldman responded that while it may have been premature, Mr. Dolliver is also a member of the public who is permitted to obtain that information. While it may have violated Planning Board protocol he had the right to obtain it.

Mr. Wilkos stated that, in the future, any communication will be distributed to the Board members at the same time; and any request for premature receipt of information will be vetted through him.

Mr. Wilkos asked about Mr. Dolliver's assertion of ex parte communication between Ms. Freedman and the Application.

Mr. Feldman responded that Ms. Freedman should respond and if there had in fact been ex parte communication she should recuse herself. Then the Board should vote on whether or not she can participate without prejudice.

Ms. Bevins informed the Board that Mr. Giarusso's email states that she also was accused of having received the peer review when she never did. She received the peer review in her packet

as per standard protocol. In addition she has received a threatening text message from Mr. Giarusso and she will be recusing herself from hearing his application.

Ms. Freedman admitted that she told Mr. Giarusso that Mr. Dolliver had the peer review. That was the only thing that was said. She and the Applicant have never had any further conversation about his application. She did inform Mr. Giarusso that Ms. Bevins had also received the peer review; it was an honest mistake as she genuinely believed that she (Ms. Bevins) had received it. When she learned of her mistake she informed the Applicant that Ms. Bevins did not receive the peer review prior to picking up her packet.

Mr. Wilkos asked Ms. Freedman if she believed she could make a fair and impartial decision on this application.

Ms. Freedman responded that she did.

Mr. Wilkos asked the Board members if they believed Ms. Freedman should recuse herself.

The Board unanimously agreed that Ms. Freedman should recuse herself.

Ms. Freedman left the auditorium

**Mr. Simpson Moved to recuse Mr. Dolliver.  
SIMPSON/BEVINS 4:0 UNANIMOUS**

**Mr. Simpson Moved to recuse Ms. Freedman.  
SIMPSON/BEVINS 4:0 UNANIMOUS**

Ms. Bevins stated that she would be recusing herself because she was also mentioned in the Applicant's e-mail and because she has received unpleasant texts from Mr. Giarusso.

Mr. Wilkos asked if she felt she could make a fair and impartial decision on this application.

Ms. Bevins responded that she could not.

**Mr. Simpson Moved to recuse Ms. Bevins.  
SIMPSON/HAYES 3:0 UNANIMOUS**

Geoff Aleva, Civil Consultants summarized the project as allowing daytime public paid parking when the restaurant is closed. He noted that the Maine DOT, the Ogunquit Police Department, and Public Works Department had no issues with the proposed project. The project has been peer reviewed and changes have been made to the plans based on comments from that review.

The primary change is the restriction of access points to the north of Angelina's restaurant. There will now be one way in and one way out: one way traffic flow through the parking lot. They added seasonal planters along the northern exit area to control the speed of traffic entering route one. The planters may be removed in the winter to allow for plowing of the parking lot.

Mr. Aleva noted information on the plans referring to Maine DOT improvements to the crosswalk which provides access to Ocean Street. The Maine DOT will add ADA strips at the crosswalk itself, there will be new signage indicating pedestrian crossing with an arrow on each side of the crosswalk. They will also repaint the crosswalk. Mr. Aleva confirmed that all crosswalks in the Town will be treated the same way.

In addition they will be changing the two way egress to one way entrance and exits with appropriate signage. There will also be a parking attendant at the rear of the parking lot. This will prevent backup of cars onto Route One.

Mr. Aleva noted that the lot was used all last summer without signage, striping, or anything and there were no issues.

Mr. Aleva reviewed the response to the traffic peer review. He noted that the DOT considers one way in and one way out as one curb cut. Thus, with the reconfigured entrance and exit flow pattern they have reduced the curb cuts.

Mr. Wilkos reviewed Mr. Feldman's Memo to the Board dated 5-2-2016 wherein he stated that:

“As you recall, the application before you is to approve the parking lot as a day pay parking lot for the use by the general public.

There have been a few issues that the applicant has been trying to address for the Planning Board. Those issues include:

- Trip Generation;
- Entrance configuration as it relates to safety.

Tom Errico, PE a traffic engineer at TYLIN International in Falmouth has been retained by the town as a third party review agent looking at the two issues noted above.

In a recent conversation with Tom he has indicated that the trip generation being considered by the applicant's traffic engineer was done correctly and he concurs with it as it relates to the Peak Hour projections. Where there has been some level of discomfort is the way the applicant is presenting the trip information for Daily Trips. It seems that the data was generated in a non-conventional means and he could not arrive at a similar conclusion.

On the matter of the entrance configuration, Tom has indicated to the applicant representative and myself that he would recommend adding “permanent features” along the frontage ( the applicant is proposing 3 portable planters) and that the overall site should have no more than two curb cuts to the property. The applicant has not addressed Tom Errico's concerns with the design at this time. I have attached Tom Errico's full analysis for your consideration.

As a reminder to the board, the applicant appeared before you and obtained a permit several months ago for the parking lot configuration as it exists today and related to the use of the restaurant.”

Mr. Feldman reiterated that parking lots do not have a use which is a generator of traffic thus there is no trip generation information.

Mr. Wilkos stated that the Applicant needs to meet the requirements of Article 8.13 of the Ogunquit Zoning Ordinance. The peer review from TyLin dated March 21, 2016 brought up five or six points which the Applicant needs to address. He suggested the Board review the concerns:

“I would expect a number of the parking lot users to be destined to the beach via Ocean Street. A crosswalk is provided across Route 1 at the site and accordingly safe conditions should be provided. It appears that the Maine DOT Route 1 Improvement Project is not complete, but I want to note that the crosswalk currently does not have warning signs and is not ADA compliant. Both items should be addressed for implementation.”

Mr. Aleva confirmed that Maine DOT will take care of this.

Mr. Feldman added that the Board could impose a condition of approval that the site not be used for daytime parking until the Maine DOT has completed the crosswalk improvements.

“As noted by GRCEI, sight distance is obstructed by signs at the southernmost driveway. Signs also obstruct sight lines at the northerly driveway. Accordingly, adjustment of signs at the northerly driveway should be considered.”

Mr. Aleva responded that this issue has been addressed. The “specials sign” will be relocated, and the “additional parking” sign at Pizza Napoli will be removed.

Mr. Giarusso added that they have already been removed.

“The signage for the proposed parking lot north of the site is confusing and it is my assumption that the adjustments are being implemented – of should be a requirement as a condition of approval.”

Mr. Aleva responded that there is no connection particularly given the way the parking lot is striped. This is not an issue.

Mr. Feldman agreed, and noted that there are wheel stops in the opening.

Mr. Aleva agreed and added that the most northerly parking spaces along Route One are located between the properties of Pizza Napoli and Angelina’s and are numbers 16, 17, & 18.

Mr. Wilkos asked if there was a current photo of the property.

Mr. Aleva responded that there is not.

Mr. Hayes asked for a Site Visit to the property.

Mr. Simpson expressed his position that he sees no need for a site visit.

Mr. Giarusso stated that the large parking sign has been removed. The specials sign on Angelina's will be removed. He added that there are planters blocking the pass through between Angelina's and Pizza Napoli.

Mr. Heyland agreed that the signs may have been removed and he asked for confirmation that they will not be put back.

Mr. Giarusso agreed that they would not be replaced. Mr. Giarusso expressed frustration that he has had to come back before the Board so many times.

Mr. Wilkos asked if a photograph would satisfy Mr. Hayes.

Mr. Hayes responded that it would not.

Mr. Giarusso asked if three Board members may vote.

Mr. Feldman explained that with only three sitting Board members at the table, any vote must be unanimous for it to pass.

Mr. Giarusso asked for a vote tonight!

Mr. Feldman reiterated that if one member votes in the negative the vote fails.

Mr. Hayes Moved to Scheduled a Site Visit  
HAYES/WILKOS 2:1 (Mr. Simpson dissenting).

The motion failed.

“Historically an inter-parcel connecting provides the ability to circulate between the subject project site and the Pizza Napoli site. The inter-parcel connection is likely to be beneficial particularly when both restaurants are operational. The current site plan eliminates this connection.”

Mr. Aleva responded that historically people did drive back and forth however it was never officially delineated as a common right-of-way. A parking space has been place there and plantings have been added to prevent vehicles from passing through.

Mr. Feldman agreed that if there is a parking space and plantings to prevent pass through the concern should be satisfied. He noted that it was the abutter who requested this blockage.

Mr. Simpson asked for confirmation that there are planters there now to prevent the cross through from one business to the other.

Mr. Aleva confirmed this.

The last item on the T.Y. Lin Memo was:

“I find the driveway condition on the north end of the site to be potentially unsafe and confusing due to the site circulation system, driveway separation, delineation of curb cuts and the number of curb cuts. I would suggest that one one two-way curb cut be provided on the north end of the site and the curb cut be formally delineated.”

Mr. Aleva responded that the new traffic flow is one way in, and one way out and indicated it with standard DOT signage and stop bar. The planters help narrow the entrance and reduce traffic speed. He reiterated that the DOT considers the cuts to be a single curb cut due to the one way traffic flow.

Mr. Wilkos asked if the curb cuts are already in place.

Mr. Aleva responded that the curb cuts have been in place for many years.

Mr. Feldman suggested the addition of right-out and left-out signage so people will know where to line up. He suggested left and right turn lanes exiting from the lot.

Mr. Heyland asked for detail on the signage, he indicated that the “P” sign indicates a municipal parking lot.

Mr. Aleva responded that those signs were removed. He agreed that they were confusing and were similar to public parking signage.

Mr. Wilkos reviewed an e-mail from a member of the public who expressed concern about people finding the Footbridge Beach parking lot full, traveling up Ocean Street and having to cross over two lanes of traffic to enter the Applicant’s parking lot.

Mr. Giarusso responded that his parking lot will eliminate people circling around looking for parking. He added that his lot fills up by 1:00 p.m. and that’s it. Cars begin to leave around 2:30 to 3:30; they don’t all leave at the same time. He added that he won’t be parking that many cars. On the weekends the lot may be full. This is not about his getting rich; this is about protecting his lot from people just parking on his property. He is only in front of the Board so he can pay someone to sit out there and babysit his lot.

Mr. Wilkos asked what time the parking lot will be open.

Mr. Giarusso responded that last year the lot would go out there from 10:30 to 11:00. By 1:30 the lot was full and it was done. There are no cars going in and out. People are dropping families and gear at the beach and one person is coming up to park and walking alone down to the beach.

Mr. Wilkos asked what hours are noted on the plans.

Mr. Feldman responded 9:00 a.m. to 4:00 p.m.

Mr. Giarusso reiterated that no one will park there at 9:00 a.m. At that time people will be parking at the beach parking lot.

Mr. Simpson asked what a stop bar is.

Mr. Aleva responded it's the painted stripping on the ground at a stop sign.

Mr. Wilkos asked if paid parking is considered outside sales.

Mr. Feldman responded that they are not. Parking lots are a separate stand alone category; and are permitted in the zone.

Mr. Hayes suggested that if Angelina's opened for breakfast and lunch it would increase traffic flow more so than a paid parking lot.

Mr. Feldman responded that additional open hours for the restaurant would generate more traffic; however the paid parking lot is not considered to be a traffic generator.

Mr. Simpson Moved to Approve the Application for DAVID GIARUSSO – 661 Main Street – Map 13 Block 49 & 50 – General Business District 2 (GBD2). Site Plan Review for a new use of a paid parking lot with the following three conditions:

1. Business will not become operational until the Maine DOT completes the sidewalks and handicapped crosswalk;
2. Two signs be removed: the hanging special sign and the parking sign;
3. A detail proposal for signage be submitted to the Code Enforcement Officer.

SIMPSON/

Mr. Wilkos asked if the Board needs copies of the sign.

Mr. Feldman responded that Mr. Heyland will request details of the signs as part of the sign permitting process.

Mr. Giarusso stated that the "P" parking sign is an international symbol for parking. This assists people coming from another country. He did not use it to indicate that his parking lot was a municipal parking lot.

Mr. Wilkos responded that this is a code enforcement issue, not a Planning Board issue.

Mr. Aleva agreed to work with the Code Office to see that this issue is taken care of.

It was agreed that the curb cuts are already in place and can't be changed.

Mr. Wilkos called for a second to Mr. Simpson's motion. There being no second the Motion Failed.

Mr. Wilkos asked what happens now.

Mr. Feldman responded that a new motion might be made.

Mr. Wilkos stated that he wants to be sure Section 8.13 of the Ordinance is satisfied.

Mr. Hayes agreed that his concern is Section 8.13 – pedestrian safety.

Mr. Aleva responded that he believes that pedestrian safety has been addressed. The DOT has addressed it with the new sidewalks and the pedestrian sidewalks. The Applicant has addressed it with signage. The previous use never had any signage indicating one way in and out, and a stop sign stopping vehicles from entering Route One without looking for pedestrians.

Mr. Wilkos reviewed Section 8.13.A of the Ogunquit Zoning Ordinance, which states that:

*“General Provision shall be made for vehicular access to, and circulation within, all land use activities, lots, subdivisions and activities requiring site plan review, in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. In addition, access and circulation shall also conform to the following standards and the design criteria below.”*

Mr. Aleva noted that as part of the previous Planning Board Application the Applicant rectified many of the internal lot issues where parking spaces were not the proper size, isles widths were not the proper width, and the internal lot circulation needed to be reconfigured, with the one way entrance and exits.

Mr. Wilkos asked if that satisfied the Board.

Mr. Simpson responded that it does.

Mr. Hayes reiterated that he is still unclear about the layout and signage and he couldn't vote for, or against it, at this point. There had been talk about a pedestrian flashing light which seems to have fallen off the discussion. The Select Board said that the State was willing to give the Town three of these flashing lights and one was slotted to be installed in front of the Applicant's parking lot.

Mr. Giarusso responded that he was there supervising the parking lot and he saw families who had been dropped off at the beach with all their gear having one person park the car in his lot and walk back down to the beach. He also pointed out that even without his parking lot there are a lot of people who cross Route One from all the hotels in the area, and twenty more people coming from his lot won't impact the situation. He added that if the Board doesn't approve his application people will park there anyway.

Mr. Hayes responded that if it was his lot, and safety and traffic were his only concerns, he would put up a sign that said “no parking – tow away zone”.

Mr. Giarusso stated that he had that sign and people still parked there. He admitted that he never had anyone towed. There isn't a tow company in town that will do that. He asked for the reason why the Board doesn't want to approve this application.

Mr. Hayes responded that the Board is concerned about pedestrian safety.

Mr. Wilkos stated that he is comfortable with the statement that the intersection of Route One and Ocean Street is one of the highest crash locations in town.

Mr. Giarusso responded that there have been three accidents in three years, and most were early in the morning.

Mr. Aleva stated that the applicant has done everything he can. There is good line of sight coming out of the area particularly to where the trolley stops and pedestrians gather. He asserted that Section 8.13 of the Ordinance has been addressed and he asked for Mr. Feldman's opinion.

Mr. Feldman responded that the DOT is putting in appropriate crosswalks with signage and handicapped accessibility. Whether that meets the Board's standards it is up to the Board, particularly in dealing with Findings of Fact. He confirmed that there is a State program that will provide for flashing beacons and it is the developer's responsibility to pay to put those in.

Mr. Feldman confirmed that the DOT's signage, crosswalk striping, and handicapped accessible pads all meet the Town's required standards for crosswalks.

Mr. Wilkos noted that there was a motion on the table that did not have a 2<sup>nd</sup>.

Mr. Simpson stated that his motion still stands, without a 2<sup>nd</sup> it fails to pass. He asked what happens now.

Mr. Feldman responded that the Board might review the Site Plan Approval Checklist and the Board will need to say whether each standard had been met. This would serve as the Applicant's Findings of Fact, and if the application is denied on any one of those sixteen findings, then Mr. Giarusso would have the information he needed should he choose to sue the town or appeal the Board's decision to Superior Court.

Mr. Feldman also suggested the Board table the application until they have more time to consider, or hold a site visit. He noted that if the Board votes to table there is no further discussion tonight and the Board acts on the tabling.

Mr. Simpson stated that, regardless of the Applicant's proposal, the State's work on Route One has made that section of the Route One significantly safer for pedestrians.

Mr. Simpson stated that he did not want to see this application denied because a motion failed to pass. He would agree to a Site visit if it would help move this application along in a positive fashion.

Mr. Giarusso asked what the Board would be looking for at a Site Visit. He stated that if the Board doesn't want to give him his approval they should deny him. He called the Board to approve or deny!

Mr. Hayes responded that he wants to see signage that is, and is not, in place. He also wants to see the crosswalk.

Mr. Giarusso stated if Mr. Hayes were to see those things, he should be able to vote yes on the application.

Mr. Hayes responded that he won't make that call now and he won't be bullied.

Mr. Giarusso stated that he now feels he has another Board member he has an issue with and he feels he isn't "getting a fair shake".

Mr. Wilkos called the meeting to order.

Mr. Giarusso stated that some of the Board members are "thick as thieves, and he was just attacked".

Mr. Wilkos again called the meeting to order and stated that it seems as if the Board feels a Site Visit would be helpful to move things along.

Mr. Giarusso responded that they are moving it along to a denial. He doesn't want to come back again. He would rather go to Superior Court so he can show how the Board members act and talk about projects with other people.

**Mr. Simpson Moved to Table the Application and Schedule a Site Visit.  
SIMPSON / WILKOS 2:1 (Mr. Hayes Dissenting)**

Mr. Giarusso stated that Mr. Hayes asked for a site visit and he is now voting against it.

Mr. Aleva responded that a site visit would be beneficial.

Mr. Hayes asked to move ahead with the Checklist.

Mr. Wilkos asked what happens if the Checklist fails.

Mr. Feldman responded that the Board can vote on the application and the Recording Secretary can prepare the Findings of Fact tomorrow so that Mr. Giarusso has thirty days to file an appeal with Superior Court.

Mr. Giarusso asked if the Town would have to bring an attorney.

Mr. Feldman responded that this would be up to the Town.

Mr. Wilkos suggested again that a Site Visit would be helpful, and that the Board would vote on the application at the next meeting.

Mr. Hayes responded that his concern is with pedestrian safety and he reconsidered and agreed to a site visit.

**Mr. Simpson restated his motion to table the application pending a Site Visit.**

Mr. Wilkos asked if there was any discussion. There was no discussion and Mr. Wilkos called for a vote on Mr. Simpson's motion.

**SIMPSON/WILKOS 3:0 UNANIMOUS**

Mr. Wilkos stated that the Site Visit would take place on May 23, 2016 at 4:00 p.m.

Mr. Giaursso asked for confirmation that the recused Board members would not be allowed to attend the site visit.

Mr. Wilkos agreed.

Mr. Simpson asked if Mr. Aromando would be allowed to attend and vote.

Mr. Feldman responded that if Mr. Aromando were to review the tape of tonight's meeting and review all of the record, and confirm that he has made himself familiar with the case he could attend and vote.

Mr. Wilkos again stated that the Site Visit would take place on May 23, 2016 at 4:00 p.m.

**3. HARRY WINSTON REALTY/~~YOGT~~ ABBOTT'S CREAMERY – 237 Main Street  
– Map 7 Block 126 – DBD – Site Plan Review for a pre 1931 structure.  
Application for a Change of Use from night club to retail space.**

Ms. Freedman, Ms. Bevins and Mr. Dolliver rejoined the Board.

Property owner Andrew Migliorini addressed the Board.

Mr. Wilkos noted that a Public Hearing had been held and no one spoke for or against the application.

Ms. Freedman asked for confirmation that there will be five tables with four seats at each table for a total of twenty seats. She also asked about bathrooms.

John Abbott, owner of Abbott's Creamery addressed the Board and responded that it is his understanding that an ice cream store is considered to be a retail store and is not required to provide a public/patron restroom. He does not intend to have a public / patron bathroom

At this time the Board reviewed the requirements as noted in Section 6.7 of the Ogunquit Zoning Ordinance and found all standards met.

**Mr. Simpson Moved to Approve the Application for HARRY WINSTON REALTY/~~YOGT~~ ABBOTT'S CREAMERY – 237 Main Street – Map 7 Block 126 – DBD – Site Plan Review for a pre 1931 structure. Application for a Change of Use from night club to retail space.**  
SIMPSON/BEVINS

Mr. Wilkos called for discussion. There was no discussion and Mr. Wilkos called for a vote on Mr. Simpson's Motion.

**SIMPSON/BEVINS 5:0 UNANIMOUS**

**G. NEW BUSINESS –**

**1. JUDY DENNIS/BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 – Application for an Amendment to a Site Plan Approved on July 29, 2013. Request to expand outside dining hours past 11:00 p.m.**

Judy Dennis addressed the Board and asked to have her arrangements changed. Ms. Dennis stated that no one else in town has any restrictions on them as to when they have to stop serving or when they have to bring people inside.

Ms. Dennis stated that she worked very hard to get into the GBD; and to limit her, and no one else, is unfair. She pointed out that, at the meeting where her approval was granted Mr. Yurko said several times that it was unfair to do that, and it was never discussed whether they had the right to do that.

Ms. Dennis stated that she is before the Board to determine whether the previous Planning Board had the right to limit her as to when she has to stop serving outside and when she has to bring people in.

Mr. Feldman referred to a document from the Applicant's 2013 application (*Letter to the Planning Board from Ms. Dennis dated 7/9/2013 and retained in the Applicant's file*) wherein Ms. Dennis stated that: "...We would like to continue with our seating plan of 25 seats inside and 24 seats outside with the permission to serve patrons in the outside seating area. Hours of operation will be 11:30 a. to 10 pm."

Mr. Feldman stated that the hours of operation were somewhat self imposed by the applicant.

Ms. Dennis denied any memory of writing that letter.

Mr. Feldman reminded the Board that at that time the hours of operation were self imposed. The Applicant is requesting a change which this Board may consider. This Board may impose revised conditions of approval or it may indicate that those were the conditions of approval and this Board is sticking with them. The Board has the authority to deal with this issue any way it sees fit.

Mr. Simpson acknowledged that he was on the Planning Board in 2013 when this Applicant first came before the Board. The condition of approval regarding outside hours of operation was asked by the applicant and agreed to by the Board at that time.

Ms. Dennis responded that the restriction of outside hours of operation were asked for by the owners of the Parson's Post Inn.

Ms. Dennis stated that now she wants to change the conditions to be like everyone else in Town. It was never her intent for that to be enforced like a law; it was just what she was going to do. She has since found that it is difficult to stop serving at 10:00 p.m. and have everyone inside by 11:00 p.m. Ms. Dennis went on to say that they don't make a lot of noise and they aren't disturbing anyone. She is just trying to give vacationers a nice time at her restaurant.

Ms. Bevins responded that she was also on the Planning Board at that time. She had wanted the Board to impose a condition to stop serving at 9:30 p.m. Ms. Bevins added that she has never seen so many complaints. She stated that in 2015 there were 22 complaints.

Ms. Dennis suggested all the complaints were from Parson's Post.

Ms. Bevins responded by showing her a packet of police reports (*a copy of which will be maintained in the Applicant's Planning Board file*).

Ms. Dennis stated that she has a page of police report responses saying that when they responded they didn't find anything.

Ms. Bevins responded that Ms. Dennis' was supposed to have everyone indoors by 11:00 p.m. She should have followed that requirement.

Ms. Dennis responded that people are outside enjoying the night and not disturbing anyone. She handed out a one page police report sheet to the Recording Secretary for distribution to the Board members.

Mr. Dolliver added that his restaurant has no outdoor service after 9:00 p.m. and he has no problem with imposing that restriction. He acknowledged that his business is located in the LBD.

Ms. Dennis responded that she fought to get into the GBD and she should have the same rules as everybody else in that district. She hasn't found one business that has restrictions for times of service or coming inside; and there are a lot of restaurants that are right next to guest houses.

Ms. Dennis noted that the Town has a noise ordinance which she is willing to deal with.

Mr. Dolliver agreed that Ms. Dennis fought to move the boundary line and get into the GBD, however she also volunteered, through the original application, to the hours of outside service. Mr. Dolliver suggested that now that she is attempting to back out of the agreement that she volunteered to, it opens the ability for the Board to look at all the police complaints. Mr. Dolliver

also confirmed from the police reports that the complaints did not all come from the same source.

Mr. Wilkos reviewed the Code Enforcement Officer's 5/2/2016 memo to the Planning Board wherein he stated that:

*"I have reviewed the request to amend a previously approved Site Plan for the Business located at 68 Shore Rd. also Known as Banditos Mexican Grill. In 2013 The Planning Board reviewed and approved with conditions the Change of Use from a Type 1 Restaurant to a Type 2 Restaurant. This change allowed the serving of patrons seated outside of the building. After Public input and lengthy discussions amongst the Board, it was determined certain restrictions should be imposed to reduce any potential negative affects onto abutting properties. The condition specifically requires the owner to stop any outside service and any music from occurring after 10pm. Also all patrons must vacate the outdoor areas by 11pm.*

*This property is located in the General Business District-1. The abutting property to the South is located within the Limited Business District (LB). Below are the limitations of a Type 2 Restaurant use located within the LB District.*

*(4) when located in the Limited Business Zone, the restaurant must also meet the following additional standards:*

- a. The exterior seating area shall be limited in size to no more than 600 square feet;*
- b. Outdoor serving shall not begin before 7:00 a.m. and no outdoor serving is allowed after 9:00 p.m.:*
- c. There shall be no outside music or outside entertainment allowed at any time;*
- d. Type 2 Restaurant use in the Limited Business Zone is limited to lots that abut Shore Road (Effective June 9, 2015).*

*Additionally, to confirm the Boards right to place conditions, Ogunquit Zoning Ordinance Article 6 Section 6.4 contains the following.*

**6.4 Powers and Duties** (Amended 4/01/06 ATM)

*The Planning Board shall have the powers and duties outlined in this Article 6.4. The Planning Board may call upon the Town Planner or a professional Planning Consultant and the Code Enforcement Officer, to assist it in the administration of its following powers and duties:*

*B. Site Plan Reviews: To review and approve, approve with conditions, or deny site plan reviews in accordance with the Town's Zoning Ordinance."*

Mr. Wilkos asked if Mr. Heyland had anything further to add.

Mr. Heyland responded that he wanted the Board to understand that the Applicant's property is located in the GBD1 however it is a direct abutter to a zone (LBD) that has a much stricter application of the Zoning Ordinance.

Ms. Dennis responded that she wants the same treatment as everyone else in the GBD; to stop serving when she wants to stop serving and to be able to sit outside whenever they want. There is no one else in the GBD that has these types of restrictions placed upon them.

Mr. Wilkos reminded Ms. Dennis that she accepted the conditions in 2013.

Ms. Dennis responded that when Mr. Yurko said he didn't know if the Board had the authority to place that restriction on her, she waited for the Board to discuss it.

Mr. Wilkos reminded the Applicant that the Planning Board has the authority to impose conditions of approval such as were imposed upon her in 2013.

Ms. Dennis responded that they should impose those same conditions on everyone else in the GBD. She stated that when her son was talking and agreeing to everything she was waiting for the Board to talk about whether or not they had authority to impose those restrictions. There was never any discussion and the application was passed "in two minutes".

Mr. Heyland stated that the Board imposes conditions of approval all the time. They may not all involved hours of operation however each application is looked at individually.

Mr. Wilkos agreed that it is unusual for the Planning Board to impose conditions involving hours of operation however in this case the applicant agreed.

Ms. Freedman stated that she has reviewed all the police reports. She pointed out that there are a lot of police reports and they don't all say that nothing was found. There are disorderly conducts, disturbing the peace, etc. and a lot of them occurred after 11:00 p.m. She noted that they had to be told to turn down music and other things. Ms. Freedman expressed concern that there is an inn next door, and the lateness of the disturbances seems to indicate that it wasn't customers.

Ms. Dennis responded that she doesn't cater to the kids, she caters to people on vacation who want to sit outside and have a drink. They are not loud. She stated that she has always gotten along with her neighbors, but the lady next door called every single night.

She asked if her page of police calls had been handed out to the Board.

Mr. Wilkos asked how it would be different from what they already have.

Ms. Dennis responded that "it says they never found anything".

Mr. Hayes summarized some of the police reports:

8-14-15 charges of sale of liquor to a minor;

7-30-15 spoke to Bandito's about their lights and music wasn't turned off, advised the manager to lower the music;

9-9-13 Music too loud;

2-27 manager forgot to turn off music;

Another one was a disorderly conduct;

Mr. Hayes reiterated that the calls did not all come from one complainant.

Ms. Bevins stated that even if all the calls came from one neighbor Ms. Dennis should have followed the rules and not had anyone out there after 11:00 p.m. then she wouldn't have the complaints.

Mr. Wilkos noted that if there were one or two complaints it would be one thing, however the Board has been provided with a large number of complaint reports.

Mr. Feldman added that from a process standpoint the Board could continue this discussion at a public hearing.

Mr. Simpson asked if the Board could deny the application without a public hearing.

Mr. Feldman responded that the original application approval was for a Site Plan, and he is unable to find any language in the Zoning Ordinance that says anything about amendments being approved without a public hearing.

Mr. Simpson asked if the Board can take action without a public hearing.

Mr. Feldman responded that the Ordinance states that Site Plan Reviews are required to have public hearings, the Ordinance doesn't say anything about amendments to Site Plans being required to have a public hearing. Mr. Feldman asked for some time to review the Ordinance.

Michelle Webber, the Applicant's daughter addressed the Board. She suggested that what is happening is a dispute between her mother and a neighbor, and that there has been some harassment on the part of the neighbor. If the Applicant has violated a Town Noise Ordinance that would be one thing, but for the Town to get involved, based on the opinion of one neighbor is unfair.

Mr. Wilkos referred to the large number of police reports.

Ms. Webber asked if they know who the complainants were on each one.

Mr. Wilkos responded that they do.

Ms. Dennis added that the report sheet says that Laura would call every night at 11:00 p.m.

Ms. Dennis asked the Board to accept her sheet of police reports.

Mr. Wilkos reiterated that the Board has received copies of the police reports. He asked if the Board wants to review the sheet Ms. Dennis has presented.

The Board agreed that they did not need to see the sheet she presented.

Mr. Feldman referred to Section 6.6.B of the Zoning Ordinance which states that .

*“Changes to Existing Uses or Structures Requiring Site Plan Review - A use or structure which is listed as subject to site plan review in Table 702.1 may not be changed to another use or structure requiring site plan review, nor may the use or structure be expanded or altered unless a site plan approval is obtained from the Planning Board. Expansion shall be defined as:*

- 1. Any increase in floor area or land area devoted to a use requiring Site Plan Review or*
- 2. In the case of a restaurant use, the addition to any indoor or outdoor seating capacity; or*
- 3. In the case of a transient accommodation project classified other than TA-1, any additional rooms or units; or*
- 4. Any additional parking spaces devoted to a use requiring Site Plan Review.*

*No changes of any kind shall be made in any previously approved Site Plan without approval of such changes by the Planning Board.”*

Mr. Feldman noted that it does not say anything about a public hearing. He suggested that the Board does not need to hold a public hearing in order to make a decision on this type of an application.

Mr. Wilkos asked if the ordinance doesn't apply to a restaurant because there is no addition of indoor or outdoor seating.

Mr. Feldman agreed and pointed out the most relevant passage is the freestanding statement after item 4 which makes no mention of the need for a public hearing.

**Mr. Simpson Moved to Deny the Application for JUDY DENNIS/BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 – Application for an Amendment to a Site Plan Approved on July 29, 2013. Request to expand outside dining hours past 11:00 p.m.  
SIMPSON/HAYES**

Mr. Wilkos called for discussion. There being no discussion he called for a vote on Mr. Simpson's motion.  
**SIMPSON/HAYES 5:0 UNANIMOUS**

## **H. CODE ENFORCEMENT OFFICER BUSINESS –**

Mr. Heyland reminded all the town business owners about the ordinances regulating signs and strings of lights. Strings of non-colored lights are allowed on trees but are not allowed around windows or on other non-vegetative structures.

## **I. OTHER BUSINESS – None**

**J. ADJOURNMENT -**

**Mr. Simpson Moved to Adjourn at 8:25 p.m.  
SIMPSON/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann L Stacy

Maryann Stacy

Planning Board

Recording Secretary

*Approved on May 23, 2016*