

OGUNQUIT PLANNING BOARD
PUBLIC HEARINGS and
REGULAR BUSINESS MEETING MINUTES
DUNAWAY CENTER MAIN AUDITORIUM
MONDAY FEBRUARY 27, 2017

PUBLIC HEARINGS

1. PROPOSED ORDINANCE AMENDMENT TO:

Article 2 – Definitions – “Bureau” and “Forest Management Activities”

Table 702.1 – Land Uses for “Forest Management Activities” and “Timber Harvesting”, and associated notation regarding “Reviewing Authority”

Article 9.21 – Forest Management Activities.

Article 2 – Definitions:

Vending or Buyer Operated Retail Device

...pay telephones, and automated multispace parking meters, are exempted from this definition, and therefore are not regulated by section 9.19.

Article 8.7.D and E - Lighting

D. All lighting shall be steady and not contain any intermittent or flashing light source, excluding traffic control devices.

E. These guidelines shall apply to all residential and non-residential properties.

Mr. Wilkos reviewed the proposed language, and Mr. Heyland provided a brief explanation of the changes. Mr. Wilkos asked if there was anyone who wished to be heard on any of the proposed Ordinance Amendments. There being no one the Public Hearing was closed at 6:03 p.m.

2. BLUE WATER INN / LEONA M. LAPIERRE – 111 Beach Street – Map 7 Block 85 – Shoreland General 1 (SG1). Request to amend Design Review. Application to install window style different from that approved on November 8, 2015.

Mr. Wilkos asked if there was anyone who wished to be heard on the above-noted application.

Doug Gains, the Applicant’s representative, provided a brief summary of the proposed plans. Mr. Gains confirmed that he met with the Ogunquit Historic Preservation Commission (OHPC) which had four concerns: 1) the size of the windows, 2) the glass railing, 3) the location of the sliding door screen, and 4) the window mullions. Mr. Gains stated that the sliding door screen cannot be moved because of structural support issues. However the Applicant is willing to use

mullions on the outside of the windows. He also agreed to replace the glass railing with baluster railings on the street side. Out of the four OHPC concerns the Applicant has agreed to three.

Newell Perkins, Chair of the Ogunquit Historic Preservation Commission addressed the Board. Mr. Perkins introduced Helen Horn who read an OHPC memo to the Board. Mr. Perkins noted that Marsha Williams has recused herself from hearing and voting on this application.

Helen Horn read a statement from the OHPC where she reviewed the history of the OHPC and Planning Board's actions with regard to this application. Ms. Horn noted that the most recent plans the OHPC was asked to review were not on paper but had already been constructed. She stated that the changes seriously detract from the north and west facades and are highly visible from the street and river. She asked "how the builder was allowed to move forward with these changes" and she stated that this application was not a review but a "rescue operation".

The OHPC met with the Applicant from 11:00 a.m. to 4:00 p.m. the OHPC struggled to restore some visual cohesion and to bring some architectural order and integrity to what is a key building at the gateway to Ogunquit Beach.

At a follow-up meeting on February 1, 2017 the builder presented revised plans with penciled in notations that: "owner and builder request after the fact approval of changes as built". Ms. Horn asserted that it was at this meeting where statements were made to the OHPC which were demeaning and challenging including the suggestion that "this might be of interest to Channel 8".

The OHPC registered their displeasure and disappointment at the blatant disregard for codes and procedure shown by this applicant. The OHPC asked the Town and the Planning Board to take steps to ensure that this does not happen again.

Newell Perkins addressed the Board not as Chairman of the OHPC but as a resident. He pointed out deficiencies as the application moves forward as a "completed" application before the Board. Mr. Perkins asserted that it is not a complete application and has not been completed according to the Planning Board standards.

Mr. Perkins stated that the State of Maine requires any proposed building, being used as a commercial space, requires floor plan drawings to be approved by a civil engineer or a registered architect. The plans must show the locations of emergency exits and the number and design of emergency doors and windows; and those plans must be submitted to the State Fire Marshall's Plan Review Office for approval of emergency exit capacity, flow pattern for the proposed expected patron level, and the systems of safety for everyone who utilizes the premise. Mr. Perkins pointed out that the original plans submitted on 10-15-2015 were prepared by a licensed architect and approved by the State Fire Marshall's Office. Those plans included three emergency exit doors with crash bars opening outward. Mr. Perkins noted that the application before the Board does not mention "doors" and that the amended plan reduces the emergency doors by 50% from four emergency exits to two for a building planned to hold 175 patrons plus wait staff and kitchen staff.

Mr. Perkins asserted that the original approval letter is no longer in effect due to the substantial reconfiguration of the entrance and exits. Mr. Perkins informed the Board that he called the State Fire Marshall's office and asked if the recently added three door bifold patio doors and the four door bifold patio doors could be utilized as emergency exits; and he was told "no".

Mr. Perkins summarized that the present application is incomplete for not recognizing the removal of 50% of the emergency exit doors; and the moving of one remaining exit door to the east of its presently approved location. With the application having been submitted without an accurate floor plan and without a letter of approval of the changes from the State Fire Marshall this application is not complete. Mr. Perkins asked the Board to table the application pending receipt of a new engineering plan, which must be signed and stamped by a registered engineer before they are submitted to the State Fire Marshall.

Marsha Northrop stated that the time and effort exerted by the Planning Board to ensure the charm of this important historic building was erased when changes were made without proper notification and Board approval. She asked "what is the purpose of having ordinances in place if they are not followed?" She stressed that this is an important moment for the Planning Board's future. Ms. Northrop cited 30A MRSA 4452 which states that work must be enforced by Code Enforcement if the Planning Board expects its recommendations to be respected. She asked the Board to deny the plans and restore the original plans.

Madeline Brown stated that this is a black and white case because the Planning Board's decision was ignored and the applicant built something different. The only reason this is back is because a resident saw what was happening and notified the Code Enforcement Officer back in December. She noted that the Zoning Board of Appeals denied a similar application requiring the applicant to modify a built deck down to the scale of the plan which was originally approved.

Peter Kahn (3 Tern Street) asked the Board to remember the comments made in the January 6th meeting, when they said that all applicants need to be treated in the same manner, and this application is precedent setting.

Brad Morin, Attorney for Lafayette Ogunquit which is the abutting hotel next door stated that his client also lost his building in the 2015 fire and he objects to the planned location of the HVAC unit to the side of the building abutting his client. It is his understanding that the unit was originally intended to be placed on the roof and the applicant now intends to install it in the small space between the two buildings. He noted that this is not an after the fact request, this unit has not been installed yet; and his client is concerned about the HVAC unit being so close to his building. He noted that the space between the two buildings is very narrow and he asked how this unit can be serviced without someone going onto the Norseman property. He asked the Board to consider alternatives to the proposed location of the HVAC equipment.

Mr. Morin noted that his client had some design plans which were not approved and he made many compromises to get his approval and he finds it unpleasant that the Blue Water Applicant may receive "after-the-fact" approval.

Mr. Wilkos asked if there was anyone else who wished to be heard. There being no one the Public Hearing was closed at 6:28 p.m.

3. 10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4'x190' fixed walkway and 5'x30' pier connected to a 3'x26' seasonal ramp and 10'x20' float for access to the Ogunquit River; to serve both residences.

Mr. Wilkos asked if there was anyone who wished to be heard on the above-noted application.

Tim Forrester from Eco Analysts addressed the Board as the Applicant's representative. Mr. Forrester provided a short overview of the proposed project during which he confirmed that the walkway will be elevated a minimum of four feet (4') so it matches a 1:1 ration of height to width over the intertidal vegetation per the requirement set forth by the Army Corp of Engineers. This allows for adequate light penetration in the intertidal zone and minimizes impacts to the vegetation in that area. He noted that the 5'x30' pier will have a minimum of eight and one half feet (8.5") of clearance below mean high water, which provides adequate space for people to access the resource. Mr. Forrester noted that the 3'x26' ramp and 10'x20' float are minimal in size and the float has skids to minimize its contact with the sand at low tide.

Per the DEP and Army Corp Permits, the ramp and float will come out of the water during the off season and they will not be in use for seven (7) months out of the year. The ramp will be stored on the end of the pier and the float will be taken apart and stored in the upland area of the Applicant's property.

Addressing the Harbor Master's comments, Mr. Forrester noted that the float will not interfere with navigation at low tide because it will not be in the water at low tide but will be sitting on the sand. He also asserted that the Town doesn't have a standard by which it evaluates whether or not something is an impediment to navigation. Typically he goes by the Army Corp's standards which this proposal meets.

Regarding the Harbor Master and Shellfish Wardens' concerns about access to the clam flats, Mr. Forrester reminded everyone that the Town does not allow commercial clamming in the river; and the float will only be in place during the summer when the clam flats are closed. In addition the proposed float will only occupy .008% of the actual clamming habitat space.

Regarding the Conservation Commission's (CONCOM) comments, Mr. Forrester noted that the Applicant attended the last CONCOM Meeting and he was able to dispel a number of misunderstandings, including that there would be a large boat associated with the project. Mr. Forrester stated that this is not true; this project is for kayak and paddle board use; and this is by no means a large boat application.

Mr. Forrester added that the CONCOM had concerns regarding shading impacts. This application has met all the standards required to reduce shading impacts. He noted that there is no sub-tidal vegetation or habitat at this proposed location.

Mr. Forrester stated that the square feet of impact has been reduced by an increased span between pilings and the proposal is less than ten feet (10') of direct impact.

Mr. Forrester noted comments which have been made regarding oil and gas. He asked how this could be regulated given that there are boats already being used on the river, and this issue is not even a part of this project.

Regarding the plovers and nesting terns. He met with the Maine Fish and Wildlife Regional Biologist, Brad Zitski at the beginning of the project and he will be in touch with them, and continue to work with them, throughout the scope of the project. The plan is to put in the Helix Anchors first. After the anchors are installed all the work will be done with hand tools. All of the work will be on the west side of the river and the birds typically nest on the other side of the river; and on the other side of the dunes.

Mr. Forrester stated that he has submitted a letter to the Board concerning the “public’s right to wharf out” and the public doctrine, which states that a property owner who has legally met the rules and standards has the right to wharf out; and the Planning Board will issue a permit if the Applicant meets those rules. This letter was prepared by Attorney Harry Center who was present to answer any questions.

Regarding concerns from citizens about historic preservation sign off on this project. He (Mr. Forrester) contacted the Maine Historic Preservation and the Five Tribes; and he received sign off letters from them which he has submitted to the Board and the Code Officer.

It is his understanding that the Town regulates these projects and that the Board’s decisions are based on Section 9 Article 15.C Piers, Docks, Wharfs, Bridges, and other structures items 1 through 7. He has reviewed all of these standards and provided responses stating why the proposal meets all these standards.

Newell Perkins provided a history of the docks and the three ramps and floats that have existed on the river for many years. The Dunes dock, ramp, and float extends into the river by no more than 30 or 40 feet. It has been in existence since the 1940’s and is nowhere near the river channel. The Colonial Village ramp and float is less than 25 feet from the shore and is nowhere near the river channel. The Seachambers Motel float and ramp has existed since the 1950’s and the float is beached out on the sand at low tide so that there is no hazard to navigation.

Mr. Perkins stated that, about 12 to 15 years ago, he applied for a fixed pier and float which would have extended out about 50 feet. The DEP refused his application because “in The Department’s opinion it would have started a trend of every property owner wanting a permanent dock on the river creating an unsightly riverscape”. He was offered a seasonal dock with a ramp or float, which he declined. His next door neighbor applied for a ramp/float extending out about 75 feet into the river and they were refused by the DEP. They chose to accept the seasonal dock without a ramp or float which is in place for no more than six months a year; and then removed.

Mr. Perkins asserted that the river narrows at the location of the proposed project; and if this project is permitted all the kayakers and paddle boarders will have to detour around the float “which may make the applicant the recipient of mumbled expletives all summer long”. Mr. Perkins stated that if the Applicant’s “pockets are deep enough he can take the Town to court expecting to have things his way”. Mr. Perkins went on to say that the DEP Approval is likely

the result of the Department's substantial reduction in State funding and their desire to utilize their funds for environmentally important issues and policies and let the towns fight their own battles to keep the river open for all to use and to keep the environment as scenic as possible. In addition Mr. Perkins stated that interfering with the public's right to use the channel of a river unhindered will hold great weight with the Courts and no town should shirk its inhabitants' rights due to the fear of a lawsuit. Mr. Perkins asked the Planning Board to give great consideration to the directives of the Comprehensive Plan, particularly Chapter 6 Resource Management Policy... Critical Areas...Coastal Policy.... Mr. Perkins stated that in the best interest of the Ogunquit River and the Town he asked the Board to deny this dock, ramp, and float all of which would be located in a Resource Protection Zone of the Ogunquit River; as well as interfering with the free unhindered passage in the channel of the Ogunquit River for paddle boarders and boaters. Mr. Perkins showed a map of Resource Protection Zone in the area.

Bill Baker, Chairman of the Ogunquit Conservation Commission addressed the Board. Mr. Baker stated that the proposed project will indirectly alter approximately 1,188 square feet due to shading from the walkway, pier, and float; and that CONCOM obtained this figure from the EPA Document.

Mr. Baker noted that the CONCOM is concerned with the long term effects, particularly of shading, on the marsh grass because all structures will be used during the high sun growing season. The orientation of the pier dock system will be oriented more east / west than the NOAA recommended north / south. Mr. Baker suggested that there must be a way this project could further minimize the impact on 1,188 square feet of marsh grass due to shading.

Mr. Baker expressed initial concern that the pier and dock might not be removed at the end of the season. He has since been assured that the Code Enforcement Officer will see that they are removed as required.

Mr. Baker also expressed concern over the question of the "large boat". He noted the Applicant's Natural Resource Application wherein he was asked to "tell us about your boat" and he responded that his "boats require a draft of approximately two feet". Mr. Baker asked how large a boat that is. He stated that he has owned several non motorized boats and none had a draft of two feet, which is considerable.

Mr. Baker again referred to the EPA document which states that no activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The purpose of the proposed project is to provide high tide only access to navigable waters. He noted that there is a public launch 400 feet from the applicant's project site and the nearest private marina is five miles away. Mr. Baker noted that given the size of the applicant's boat, trailering and launching would be impractical and a slip would not provide readily available access to the river. Mr. Baker suggested that this may be where the confusion began.

Mr. Baker stated that at CONCOM's February 16, 2017 meeting Mr. Pierce stated that the "big boat" was a rumor, and he owned only a couple of kayaks and paddle boards. Mr. Baker suggested that either of these types of boats could be carried or placed on tandem wheels and walked to the nearby boat launch where launching would be simple. CONCOM calculates that the time and effort to take the boats to the public launch is about the same as it would take to

access them from the proposed pier and dock. Mr. Baker referred to the EPA Document, page 4 #6 which states that the most practical alternative is not the building of this system of pier ramps, walkways, piers, and float but the use of the nearby public access at the Footbridge Beach as long as the boat referred to is not a "large boat".

Regarding the Piping Plover early arrival, Mr. Baker, who is a Piping Plover Monitor, noted that the birds are on their own schedule and have been known to arrive in late March. This may be something the EPA and/or the Fish and Wildlife are unaware of.

Mr. Baker requested that:

"The entire project be staked out prior to the planned site walk preferably to be held at low tide.

To see plans for the length of time the plywood sheets would be on the salt marsh while the building of all these pieces occurs.

To see the plans for the safe removal, storing and seasonal reinstallation of the 10 X 20' seasonal float and 3 X 26' seasonal ramp with minimal damage to the area.

To guarantee no toxic materials are used in the decking.

To see a plan minimizing damage to the marsh grass due to shading of almost 1200 sq ft of damage.

If there is a large boat owned by one of the trustees or owners if different from the trustees and if such a boat exists, what will be done to minimize damage due to prop and wake damage, oil and gas seepage, and scouring when moored at low tide. The Ogunquit River is not considered a navigable river by the state.

Reasons why the Footbridge access is not a valid alternative to building a lengthy system of walkways, piers, stairs, ramps, and floats as a 'practical alternative' to use the EPA's words for kayaks and paddle boards.

The Planning Board to consider an ordinance regarding the further construction of such lengthy walkways, piers, stairs, ramps, and floats across the Ogunquit River's marsh."

Fred Lynk (8 Fieldstone Lane) stated that he opposes this application and he echoed Mr. Perkins' statements. Mr. Lynk expressed concern about the removal of the pier and float. He noted that his neighbor has a float which he removes during the winter and stores in his yard. This impedes Mr. Lynk's view of the river and dunes, which he can't see during the summer because of the leaves on the trees. He asked the Planning Board to impose conditions so that the removed pier and float will be stored in such a manner as to not interfere with neighbors' views, he suggested they be stored in a building or off site.

Bill Lee (39 Frazier Pasture Road) who is also a member of the Conservation Commission, referred to a letter to the Planning Board from Eco Analysts dated January 24, 2017 which states that “no activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Mr. Lee suggested that due to the proximity of the Footbridge launch to the Applicant’s house it seems it would not be an issue to trolley kayaks and/or paddle boards the 450 feet to that location.

Mr. Lee added that within the application there is mention of contacting the Harbor Master regarding the potential of a mooring, that, along with the mention of the two foot draft concerns him. He suggested that because of the area’s sensitivity and high resource zone, it is incompatible with motorized craft.

Mr. Lee also stated that the scale and scope of this project is startling, and it is a large structure with many moving parts.

Mr. Lee referred to a January 24, 2017 letter from Eco Analysts Inc. which states “this project is less impact to the environment than any other alternative, including the no action alternative of not constructing the project”. Mr. Lee expressed confusion with this comment, however this statement is only true if the applicants, and others, continue to trample the salt marsh, the Spartina, and decline to use the public ramp which is two plus minutes away.

Regarding the shading Mr. Lee stated that if the dock is three feet wide it should be three feet off the marsh. He reminded everyone that the DEP stated there will be about 1,188 square feet of impacted area. Mr. Lee noted that this proposed plan helps mitigate the impact; it doesn’t make it go away. He suggested that there may not be any long term studies based on the long term, cumulative, effect of shading on the marsh. He agreed that the north/west orientation is less damaging than the proposed orientation however there is no way the applicant could propose a north/west orientation.

Mr. Lee noted that in order to minimize impact, a suggestion has been made to put plywood down on the marsh. He asked how long it would remain there and when it would be used. He also asked about potential toxicity from the planking of the walkway.

He agreed that it would be helpful if the applicant would stake out the boundaries of this project; and he suggested that comparison to the Footbridge replacement project is inappropriate.

Mr. Lee asked the Board to take its time and thoroughly review this application.

Peter Kaufman (30 Blackboar Drive) stated that one of the nice things about Ogunquit is that it doesn’t change very much. This is primarily because the Town watches things like dune protection, beach erosion, water quality etc. He uses the river often and is amazed at how many docks are already there that are an eyesore. Mr. Kaufman stated that this is not a small project and it will definitely be an eyesore. He asked the Board to consider the visual impact this project will have.

Kirsten Ross (184 Highland Avenue #10) expressed concern about the possibility of ice damage during the winter and the possibility of parts of the structure breaking loose in the winter and

causing damage. She is also concerned about the location of the winter storage of the float. She stated that she could have appealed this application because her concerns were not addressed however she chose not to. She stated that this application is precedent setting and she wants to see it stopped. She noted that from bridge to bridge has always been an open estuary and once this is put in other property owners will do it. She asked the Board to consider denying this application. She noted the Site Plan Review condition that it must be adequately screened and buffered from contiguous properties, and suggested this is impossible. Another condition is that it anticipates and mitigates potential nuisance created by its location. Ms. Ross stated that the site is at the narrowest point in the river and it will be a nuisance. Ms. Ross suggested that this is everyone's property and everyone is an abutter and that this project will be an eyesore. She asked that it be stopped.

Margaret Weeks (540 Shore Road) asked people to remember Isabelle Lewando and that this area is named for Isabelle. Ms. Weeks asked "what would Isabelle say about this proposal?"

Mr. Wilkos asked if there was anyone else who wished to speak for, or against, this application. There being no one the Public Hearing was closed at 7:14 p.m.

4. DAVID GIAURSSO – 655 Main Street – Map 13 Blocks 49&50 – GBD2 – Site Plan Review to “Add public parking use for when Angelina’s Restaurant is not open”.

Geoff Aleva from Civil Consultants addressed the Board as the Applicant's representative. Mr. Aleva provided a brief summary of the proposed project.

Mr. Aleva stated that this will be a daytime use as a paid parking lot. Hours will be from 9:00 to 4:00 p.m. and patrons will be given a ticket informing them that they must vacate the lot by 4:30 p.m. or risk being towed. He stated that the lot will have 29 parking spaces available for patrons. He also confirmed that the parking lot will not be used for paid daytime parking until an as-built plan has been prepared, presented to, and approved by, the Code Enforcement Officer.

Harry O'Hanesian expressed concern regarding the traffic patterns at this location. He stated that the Ocean Street intersection is a dangerous one. This proposed parking lot is directly across the street from this Ocean Street intersection.

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

There being no one this Public Hearing was closed at 7:18 p.m.

REGULAR BUSINESS MEETING

A. ROLL CALL –

Members Present: Steve Wilkos (Chair)
Muriel Freedman
Rusty Hayes
Mark MacLeod

Members Excused: Jackie Bevins

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

Mr. Wilkos confirmed that all cell phones were off the table, and that a quorum was present.

Mr. Wilkos reminded the public about the ongoing Comprehensive Plan Survey. He informed everyone that they can take the survey online, or pick up a paper copy at the Land Use Office, and that any questions or problems may be directed to the Land Use Office.

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – Ms. Freedman read the Board’s Mission Statement.

D. MINUTES – January 23, 2017 Workshop, Public Hearings, and Regular Business Meeting.

Mr. Hayes Moved to Approve the Minutes of the January 23, 2017 Public Hearings and Meeting as Amended.

HAYES/MACLEOD 4:0 UNANIMOUS

Mr. Hayes Moved to Approve the Minutes of the January 23, 2017 Workshop as Submitted.

HAYES/MACLEOD 4:0 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. There was no one.

F. UNFINISHED BUSINESS –

1. BLUE WATER INN / LEONA M. LAPIERRE – 111 Beach Street – Map 7 Block 85 – Shoreland General 1 (SG1). Request to amend Design Review. Application to install window style different from that approved on November 8, 2015.

Mr. Wilkos noted that a Public Hearing had been held earlier.

Doug Gains addressed the Board as the builder for the Blue Water.

Regarding the Ogunquit Historic Preservation Commission (OHPC), Mr. Gains reiterated that he, and the Applicant, met with the OHPC which did agree to meet with them on an emergency basis. Mr. Gains stated that it was a long but, he thought, constructive and positive meeting. There was discussion and ideas were tossed back and forth. At that meeting Mr. Gains asked the OHPC to review this application as a new project and not review it compared to the old plans. The following Sunday he (Mr. Gains) received the OHPC's meeting minutes and motion and he was very disappointed in how he was portrayed, and in the motion in general. Mr. Gains stated that he recorded the meeting with the exception of the period when they left to visit the site. There were many things in the OHPC Minutes which were incorrect, things that were not said, and many things in the motion that were not said. At the time he didn't say anything to the Planning Board because the Town didn't need any drama, however when they last came before the Planning Board things got very negative and the Applicant's representative, Harvey Wells, asked to have the application tabled. He (Mr. Gains), Mr. Wells, and the Applicant reviewed everything and are now back before the Planning Board.

After the last Planning Board meeting the OHPC put this application on their agenda again. He did not ask for this, they took it upon themselves to revisit the application. He (Mr. Gains) attended that meeting. He did not bring any plans which were penciled on as Ms. Horn stated earlier. He did inform the OHPC that he had recorded the previous meeting and he was disappointed in their lies in their own minutes and motion; and he reiterated that some of the comments made tonight are not true.

The whole point of that 2nd OHPC meeting was to clarify that he (Mr. Gains) publicly disagreed with what the OHPC said. Mr. Gains reiterated that, at that meeting, he neither agreed nor disagreed with anything. Mr. Gains stated that he will agree with three of the four points raised by the OHPC. It is his opinion that at some point during that meeting the OHPC members stopped listening. Everything was all about that he didn't agree with anything OHPC wanted; and he didn't do anything, however that is not true. The Code Enforcement Officer and the Acting Town Manager were both at that OHPC meeting; and Mr. Gains recorded that meeting as well.

Mr. Gains stated that he is very disappointed in the OHPC. He believes that the historic preservation is a very crucial part of the process and he feels he was treated unfairly by them. He acknowledged that he made mistakes and he is now before the Board to correct them. The Applicant has lost eight weeks on this project, so there is some loss. If the Town had a fine structure in place he would have had to pay fines. Out of the four issues requested by the OHPC he has agreed to three; and the fourth he can't do for structural reasons.

Mr. Perkins expressed concern that the Applicant doesn't have a licensed architect or engineer. Mr. Gains stated that they do have a licensed architect and they have a licensed engineer overseeing everything they do. Mr. Gains noted that, due to health issues, Harvey Wells is unable to be at this meeting. Mr. Wells has been in contact with the State Fire Marshall and it is

Mr. Wells' understanding that if they are not changing the number of exits they only need to submit an amended plan. Despite Mr. Perkins statements, Mr. Gains confirmed that he did not decrease the number of exits. The front door is a bi-fold door and there is another bi-fold door on the deck. One panel of the deck door is a working door with a panic push bar. When he took the OHPC to the site he explained that to them, that he did not reduce the number of fire exits.

Regarding Lafayette's concerns about the HVAC equipment location. Mr. Gains met with them and explained the location of the unit and why. At that time Katie Kelley did not express any concerns. Lafayette has two of the exact same units; one of which is under their building and the other is outside their building.

Mr. Wilkos asked Mr. Gains if the Ogunquit Historic Preservation Commission falsified their memo to the Planning Board.

Mr. Gains responded "absolutely"; and he has proof in the form of a video he took during the meeting, and he added that the Code Enforcement Officer and Acting Town Manager were both there. Mr. Gains spoke with the Acting Town Manager because he felt it wasn't a Planning Board issue but that it belonged before the Select Board. It is still his intention to take this situation to the Select Board.

Regarding the Channel 8 comment referred to by Mrs. Horn; Mr. Gains stated that he told the OHPC that he "could have gone to Channel 8 and he could have done other things, but he didn't".

Mr. Wilkos stated that this is a new Design Review Application for the Blue Water Inn. He asked Mr. Heyland and Mr. Feldman to respond to some of the comments made during the Public Hearing.

Mr. Heyland stated that the moving of the HVAC equipment from the roof to the space between the buildings was for esthetic reasons to give the roofline and building a cleaner look. They are not gaining any additional floor space. Mr. Heyland confirmed that HVAC units do not have to meet setbacks as long as they are on the subject parcel. Also, unlike the two original buildings destroyed by fire, the new buildings each have a three hour fire wall and they are both fully sprinkled with NFPA systems. They have the highest level of protection with regard to fire safety between the two buildings.

Mr. Heyland also stated that the comment made by Ms. Brown that "someone from the community saw this problem and that is why we are here today" is totally false. He confirmed that there is a property owner who now has to remove part of a deck because when he (Mr. Heyland) went out for a final inspection the enlargement was revealed. Regarding the Blue Water, at the time of the framing inspection, when he discovered that there was one door where there had been two he would have been having this conversation anyway. Mr. Perkins may have seen it first but he (Mr. Heyland) certainly wasn't looking the other way and he resents the insinuation.

Mr. Heyland stated that the placement of the HVAC mechanicals on the building's side does fall under the Board's Design Review considerations; however the placement is not problematic

from a Zoning Ordinance standpoint. The Board will review this as part of their looking at the windows and doors etc under Design Review. As the attorney stated most of this application is after the fact construction however the HVAC unit has not been installed and is an actual new addition. The Board can look at the heat pump under Design Review Guidelines and determine whether it is appropriate to be placed in the proposed location.

Mr. Wilkos stated that Mr. Heyland did take correct enforcement action; and it is the Planning Board's job to look at the new Design Review Application.

Mr. Heyland asked Mr. Gains if he was able to have the engineers locate the door-swing and the fence to confirm that they are compliant with the front property line.

Mr. Gains responded that he provided a survey showing the property line and he scaled it to show where the door is. There wasn't time to have an engineer come out in time for the next meeting. Mr. Gains confirmed that there is currently no "as built" plan showing the door swing.

Mr. Heyland confirmed that he is satisfied that the main primary entrance door is an out swing door and has adequate space to swing out over the sidewalk; and will not encroach off the property. He agreed that it is close but it does not encroach past the property line.

Mr. Wilkos asked Mr. Heyland to comment on the life safety comments raised during the Public Hearing.

Mr. Heyland responded that Life Safety matters are something that his office handles along with the State Fire Marshall. If he doesn't have confirmation from the State that the project meets all life safety requirements and the plan hasn't been reviewed and held satisfactory by the State he will deal with it. This has nothing to do with the Planning Board's Design Review. The caveat being that if the Board approves a plan and the State requires changes to that plan the contractor may be back before the Board for further approval of the State mandated changes.

Mr. Wilkos asked if the front, one, means of egress is satisfactory.

Mr. Heyland responded that there are actually three means of egress. Regarding the front door, he hasn't received confirmation from the State that it meets all life safety requirements for means of egress. However that door was reviewed by licensed architect Harvey Wells who informed the Board at the last meeting that the door meets all Life Safety Requirements. In addition, this consideration is not a requirement of Design Review.

Mr. Feldman agreed. The Board has two responsibilities for this project: Site Plan Review and Design Review which are in the Zoning Ordinance. Performance based standards, the layout of tables and number of seats is under the purview of the State Fire Marshall's Office and the Code Enforcement Office. For Design Review the Board does not need to know the number of seats. The Board looks at shingles, roof line, window and door designs. The Board is not looking inside the building to see the layout or placement of tables and seats.

At this time the Board reviewed the Design Review Standards Checklist as noted in the Zoning Ordinance under Article 11.7.C:

Newell Perkins stated that the Blue Water Inn building was in existence in 1909 and was not destroyed by fire before the last fire in 2015. The building next door however had been destroyed by fire sometime in the late 1930's.

The Board determined that while this is a new structure the original building, destroyed by fire was a pre 1930 structure and the new design has been reviewed by the Ogunquit Historic Preservations Commission on several occasions.

1) **Scale of Building** – Is the scale of the building visually compatible with the site and neighborhood as to the relationship of the open spaces around it and the size of doors/windows/porches/balconies?

The Board unanimously agreed that it is.

2) **Height** – Is the height of the building visually compatible with the heights of the buildings in the neighborhood?

The Board unanimously agreed that it is.

3) **Proportion of Front Façade** – Is the relationship of the width to the height of the front façade visually compatible with that of its neighbors?

The Board unanimously agreed that it is.

4) **Relationship of Solids to Voids in Front Façade** – Is the pattern of solids and voids in the front façade visually compatible with that of its neighbors?

The Board unanimously agreed that it is.

5) **Proportions of Openings Within the Facility** – Is the relationship of the height of windows and doors to their width visually compatible with the architectural style of the building and with that of its neighbors?

The Board agreed 3:1 that it is (Mr. Hayes disagreed stating that the new bi-fold front door does not reflect the original design).

6) **Roof Shapes** – Is the shape and proportion of the roof visually compatible with the architectural style of the building and with those of neighboring buildings?

The Board unanimously agreed that it is.

7) **Relationship of Façade Materials** – Are the facades of a building, particularly the front façade, visually compatible with those of other buildings around it?

The Board agreed 3:1 that it is (Mr. Hayes disagreed stating that the new bi-fold front door does not reflect the original design. He also did not like the fence).

Mr. Gains stated that the new fence is the same as what was there before the fire. The new fence will be a wooden white picket fence with four inch gap between the pickets, exactly the same as what was there before. It will be 42” high per Zoning requirements.

8) **Relationship of Spaces to Buildings on the Street** – Has the rhythm of spaces to buildings been considered when determining visual compatibility, whether it is between buildings or between a building and the street?

The Board unanimously agreed that it has.

9) **Site Features** – Is the size, placement, and materials of walls, fences, signs, driveways, and parking areas visually compatible with the building and neighboring buildings?

The Board unanimously agreed that it is.

10) **Architectural, Historical or Neighborhood Significance** – Has the construction, reconstruction, maintenance, or moving of pre-1931 buildings been done in a manner which is visually compatible with the architectural, historical or neighborhood significance of buildings existing in 1930.

Mr. Hayes and Mr. MacLeod expressed concern about the use of the glass railings.

Mr. Gains stated that the original building had a huge garage door type canvas. The owner wanted something to block the wind for patrons on the upper deck. The glass railing would block the wind while maintaining the view of the river.

Mr. MacLeod stated that the glass railing doesn't look like a pre 1930 building.

Mr. Gains suggested using a baluster railing with canvas behind it, similar to what was there originally.

Mr. MacLeod agreed that this would look better, particularly on the west side of the building.

Mr. Gains agreed that the baluster railings will be all white in color and that they will go all the way around the 2nd floor deck.

Mr. Hayes asked if the window mullions would be on the outside of the windows. He reiterated that the bi-fold door does not look “historic”.

Mr. Gains responded that all of the windows on the property will be mullioned on the inside and the outside.

Mr. Heyland informed the Board that there were four changes which Harvey Wells agreed too.

Mr. Gains stated that the OHPC agreed to the use of the bi-fold door, they only asked to have it relocated.

Newell Perkins responded that the bi-fold doors have been a thorn in the side of everyone who has ever looked at this. The OHPC did not take it upon themselves to make substantial changes in anything that had been built, in order to give the Applicant the opportunity to work very hard to make the building as appealing and as much like the period building which was burned. Mr. Perkins personally agreed with Mr. Hayes that the bi-fold doors are inappropriate for this historic building.

Mr. Wilkos asked if the OHPC rendered an opinion of the bi-fold door.

Mr. Perkins responded that it did not.

Mr. Hayes added that whether or not the doors were already installed is not a concern of the Planning Board, the Board should consider the appropriateness of the design and not be concerned about whether it is already in place or not. He stated that he would rather see windows in that location instead of the door. He noted that this door is not one of the required means of egress

Mr. Heyland confirmed this.

Mr. Gains responded that when he went to the OHPC he asked them to consider the changes as a new application and not something which was already built. The original OHPC motion did not even contain a reference to the doors, they were concerned with shutters. The only request from the OHPC regarding the bi-fold doors was that they be shifted down on the building, which he cannot do for structural reasons.

Mr. Gains reiterated that in no way, shape, or form is he asking to have this reviewed as an “as built” application. He is asking to have it reviewed as a new project. He added that replacing the bi-fold doors will not achieve the same effect as the original deck. When those doors are open they will provide a completely open deck feeling, the same as the original building. He also stated that this door will have the same grill pattern as all the other doors and windows.

The Board reviewed a photograph of the original deck with the garage style door in the open position.

The Board agreed 3:1 that the construction, reconstruction, maintenance, or moving of pre-1931 buildings has been done in a manner which is visually compatible with the architectural, historical or neighborhood significance of buildings existing in 1930.

(Mr. Hayes disagreed stating that the new bi-fold front door does not reflect the original design).

Mr. MacLeod Moved to Approve the Application for BLUE WATER INN / LEONA M. LAPIERRE – 111 Beach Street – Map 7 Block 85 – Shoreland General 1 (SG1). Request to amend Design Review. Application to install window style different from that approved on November 8, 2015 with the following conditions:

- 1. Applicant adds flower boxes to the two picture windows on the front of the building;**
- 2. Proposed 2nd floor glass railing to be replaced with white baluster design;**

3. **Location of the folding door screen will remain as is for structural reasons;**
 4. **Exterior and interior grills are to be applied to all windows and doors.**
- MACLEOD/FREEDMAN 3:1 (Mr. Hayes Dissented).**

2. **10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4’x190’ fixed walkway and 5’x30’ pier connected to a 3’x26’ seasonal ramp and 10’x20’ float for access to the Ogunquit River; to serve both residences.**

Mr. Wilkos noted that a Public Hearing had been held earlier in the meeting.

Tim Forrester, Environmental Consultant with Eco Analysts, addressed the Board as the Applicant’s representative. Mr. Forrester asked to have the Site Visit on March 13th at 9:00 a.m. which will be low tide.

The Board agreed to this and the Site Visit was scheduled to take place on Monday March 13, 2017 at 9:00 a.m.

Attorney Harry Center addressed the Board on behalf of the Applicant. Attorney Center responded to points made during the public Hearing. He informed the Board that when they do their review they have to consider what is in the Ordinance and the documents which are in the application. Whether or not someone else has previously been denied a permit from the DEP or anyone else is irrelevant to the application which is currently before the Board.

This applicant has DEP, Army Corp of Engineers, Dept. of Marine Resources, and Inland Fisheries and Wildlife approvals. The Piping Plovers have been considered by the biologists and while he understands peoples’ concerns he asserted that unless the Board has an agency that tells the Board that this project is going to run adversely to that issue, the Board cannot use this as a basis for denial.

Regarding the Comprehensive Plan, Town Attorney Natalie Burns has advised the Board that the Comprehensive Plan is not to be used to deny an application for Site Review. References to the Comprehensive Plan have no place in the Board’s consideration of Site Plan Review. Unless it is a subdivision in a residential neighborhood the Board is not to use the Comprehensive Plan in its review.

Attorney Center agreed with earlier comments that the Board needs to follow the rules. He referred to one person who advised that if the application is approved the Applicant will have to suffer muttered comments; and if he has deep pockets he can have things his way. Attorney Center asked for this type of discourse to end. He asserted that this type of comment will not be before the Board when they review the plan and apply the standards for a wharf.

Attorney Center noted Attorney Sandra Guay’s letter regarding Bell vs. the Town of Wells; and the precedent that a property owner who abuts a waterway has the right to wharf out. It is a permitted use and a property right.

Mr. Forrester responded to comments made during the Public Hearing.

Regarding Mr. Perkins's comments that this project will sit "well into the channel of the river". Mr. Forrester, using photographs, illustrated that the float will be sitting on the flat during low tide. This makes it impossible for it to be in the channel during low tide.

Comparing it to other projects which stick out 30', this project is the same. The only difference is a longer land based walkway. The pier and float will project out into the river similar to other existing docks/floats.

Regarding Mr. Perkins' comments that there are three existing docks in the river. Mr. Forrester used Google Earth and counted seven piers and twelve parcels that have some type of structure to the water, either stairs or floats.

Regarding the manner in which DEP granted its permit; Mr. Perkins' comments are completely speculative. This applicant applied for his permits in the correct manner, they were granted, and he has them. The permitting process is a rigorous review.

Responding to the comment that his project is in the Resource Protection Zone, of course it is everything along the coast is in Resource Protection, this project is a functionally water dependant use application; and it meets that standard.

Regarding the CONCOM comments regarding the EPA, they should have referred to the DEP. Mr. Forrester stated that the 1,188 square feet of shading is a secondary impact, it is not a direct impact, and there is no way to measure how much of an impact that actually is. This application has met the minimum standards that have been in place, and are utilized by every other agency.

Regarding the two foot draft of a boat mentioned in the NRPA Application. This number was used for the State in order for them to make their assessment. There is no reference to a motor or any boat other than the 21' tandem kayak.

Regarding winter storage of the ramp and float. The float will be stored on the end of the pier. The dock is called an Acu-Dock Float. The Applicant can walk down onto the float, remove the boards of the decking and store them wherever he likes. The float can be taken apart and carried up onto land. It will not be stored in the intertidal zone, which is a requirement of State and Federal Permits. The DEP is very specific regarding toxic materials. Any pressure treated materials must be cured on land for 21 days prior to installation, they will also be using Helix Anchors which go into the substrate and have stainless steel brackets on top of that. All the pressure treated lumber is above grade so it allows for ample sun exposure beyond the required 21 days. The deck boards are typically low grade CCA Lumber with the same standards, Cedar, or Epa which is a Brazilian hardwood and is somewhat more expensive, doesn't last as long, and is the least impacting.

Regarding the view shed, this plan is compatible with the view shed in the DEP standards which look at things from the resource back onto land, not from an abutter looking out to the view shed.

Comments were made regarding the proposed plan being less impacting than doing nothing at all. This is again a DEP process and not something before the Town. If no structure is built and people continue to trample the vegetation the result is a beaten down trail and boats and floats being stored in the Cordgrass. The plywood on the marsh will only be used during construction outside of the growing season. It will only be down during the installation of the Helix Anchors.

Mr. Kaufman's comment that change doesn't happen in Ogunquit is not relevant. This permit meets all the required standards and has received all the required permits.

Regarding Ms. Ross' comments about possible ice damage: the float and ramp will be removed during the winter/ice months. Mr. Forrester agreed that there is a possibility of ice up in the marsh however most of the significant ice is out in the body of the river. Also the Helix Anchors are designed to handle this. Mr. Forrester pointed out that there is an existing 4"x4" hand dug cedar post located at the mean high water mark which has been there since the 1960's, if ice was a problem this post would not have survived this long.

Mr. Hayes noted that Page 4 of the Applicant's Analysis mentions "occasionally a small powered boat will be used in the river when tide permits". He asked if this is the Applicant's boat.

Mr. Forrester responded that the Applicant doesn't own a boat at the moment, however it would be his right to have one in the future, or someone may choose to visit him with their boat. He added that it would be foolish to bring a large power boat into that portion of the river.

Mr. Hayes expressed concern that if the Applicant had a power boat he would have to bring in fuel and fill the tanks on the water; and there would be the danger of spills into a very sensitive area.

Mr. Forrester responded that nowhere in the application does it mention the word "motor" it only mentions the word "boat".

Mr. MacLeod referred to the Ordinance Article 9.15.C.4 which states that:

The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.

Mr. MacLeod asked Mr. Forrester for his opinion as to who makes the determination regarding the *existing conditions, use, and character of the area*.

Mr. Forrester responded that ultimately the determination is with the Board; however this facility is no larger than necessary to meet the project purpose. They are only proposing to extend out far enough to span the salt marsh and get the float into the sand where they need it to be. He argued that it is consistent with existing conditions, use, and character of the area because of the nearby Footbridge which spans the entire river and there are at least seven other structures and docks on the river.

Mr. MacLeod responded that they aren't talking about the other structures and docks.

Mr. Forrester argued that the existing conditions include other docks on the river.

Mr. MacLeod responded that they are nowhere near this one. This location is at the widest point of the salt marsh along the river and there are no other piers or docks along that section of the river.

Mr. Forrester agreed.

Mr. MacLeod responded that the Ordinance says that the Planning Board has to make a decision based upon its opinion about the existing conditions of the area.

Mr. Forrester agreed.

Ms. Freedman asked about the 21' kayak. She also asked for confirmation that there are no motor boats.

Mr. Forrester responded that it is a tandem kayak and this length is common.

Attorney Center added that his comments about following the Ordinance were in reference to following the Ordinance vs. the Comprehensive Plan.

Mr. MacLeod asked: when the Planning Board is called upon to interpret an ordinance, where the ordinance puts the decision into the discretion of the Planning Board, where should the Board go for guidance in interpreting that ordinance?

Attorney Center responded that the Board will need to make a determination as to whether or not this application is: *no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.*

If the Board denies this application based upon this standard they will have to explain their decision in the Findings of Fact. In response the Applicant will reference the eight other docks and piers along the river.

Mr. MacLeod responded that Mr. Center just said that the Board is not allowed to consider previous applications' denials or approvals; and now he is saying the Board has to consider that as a past finding.

Attorney Center responded that if there had been a past denial the docks would not be in existence. He noted that it was Newell Perkins who said that twelve years ago he had applied for a dock and was denied. Attorney Center suggested that the Board can't consider someone who was denied twelve years ago.

Mr. MacLeod responded that neither can the Board consider someone who was approved forty years ago.

Attorney Center stated that the Board has to consider the character, use of the location.

Mr. MacLeod responded that the Board has to consider the character, use, and location of the point in question, not the entire Maine coastline.

Attorney Center agreed that the Board needs to consider this geographical area.

Mr. MacLeod responded that in the area adjacent to this bridge there are no other piers or docks so the point is moot.

Attorney Center responded that they would have to make a final determination as to what other piers are there.

Mr. MacLeod responded that the Board cannot consider them; and he asked if Attorney Center is saying they need to consider applications approved fifty years ago.

Attorney Center responded that he suggested the Board can't consider an application which was denied twelve years ago because that dock isn't there. They have to consider existing piers and docks as part of what's in the environment, the *existing conditions, use, and character of the area*.

Mr. MacLeod asked if they need to consider docks a mile away.

Attorney Center responded that will be up to the Board.

Mr. MacLeod responded that they will do a Site Walk and determine that.

Attorney Center asked if there was any other questions.

Mr. MacLeod responded "that's enough".

Mr. MacLeod Moved to Table the Application for 10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4'x190' fixed walkway and 5'x30' pier connected to a 3'x26' seasonal ramp and 10'x20' float for access to the Ogunquit River; to serve both residences.
MACLEOD/HAYES

Mr. Wilkos asked if there was any further discussion. There being none he called for a vote on Mr. Macleod's Motion:

Mr. MacLeod Moved to Table the Application for 10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4'x190' fixed walkway and 5'x30' pier connected to a 3'x26' seasonal ramp and 10'x20' float for access to the Ogunquit River; to serve both residences.

MACLEOD/HAYES 4:0 UNANIMOUS

Mr. Wilkos noted that the Site Visit would take place on March 13, 2017 at 9:00.

3. DAVID GIAURSSO – 655 Main Street – Map 13 Blocks 49&50 – GBD2 – Site Plan Review to “Add public parking use for when Angelina’s Restaurant is not open”.

Mr. Wilkos noted that a Public Hearing had been held earlier in the evening.

Geoff Aleva responded to the residents comments about traffic safety in the area. Mr. Aleva noted the improvements along the entire length of Route One particularly in this area which now has a center turn lane. Also, the solar powered illuminated crosswalk lights are now functional, and the Applicant has addressed the comments and suggestions in the past traffic review studies with regard to the flow of traffic into and out of the site.

Mr. Aleva reminded the Board that a parking lot itself is not a traffic generator.

Mr. Wilkos reviewed the Fire Chief’s January 20, 2017 Memo to the Board:

I have reviewed the plans submitted for the above project dated 1-6-2017 and have the following comment:

The trolley stop is located in the crosswalk. This has created the hazard of the trolley parking on the crosswalk blocking the view for pedestrians trying to cross west to east and blocking them from getting in the crosswalk safely.

As recommended at the site walk last year, the trolley stop should be moved forward where the Angelina’s sign is. This should include bench and trolley stop sign be moved to this area.

A better suggestion is to move the trolley stop to just north of Pizza Napoli on the same side of the street. There already is a bump out of pavement on the side of the road. This is very close to the Milestone trolley stop and may need to be looked at on site.

Whatever the planning board decides is fine with me as long as it addresses the crosswalk issue.

Mr. Heyland agreed that the Town is working on relocating the trolley stop, and that this is out the Applicant’s control.

Mr. Heyland asked Mr. Aleva how delivery trucks for the restaurant will be handled.

Mr. Aleva responded that trucks currently park wherever they want, when the parking lot is in use the trucks will be pushed to the back where the loading doors are. There is a wider turn apron back there for vehicles to pass by the trucks when they are parked there. Also deliveries will occur early in the morning and people parking in the parking lot are anticipated to remain there for the entire day. In addition the location of the kiosk has been moved further into the site to prevent stacking of cars on Route One.

Also planters have been installed to narrow the entrance which will prevent cars from entering, turning around and trying to exit out of the entrance. The flow of traffic is one way in and out with vehicles entering, traveling around the back of the building and exiting at the exit to the south.

Mr. Heyland suggested that the parking spaces at the rear of the property, reserved for wait staff, could be left vacant for a period of time to allow for the trucks to navigate behind the building and out of the exit onto Route One.

Mr. Feldman suggested committing that the deliveries are made to the rear of the building. He also noted that Tom Errico the Town's traffic engineer suggested structures more permanent than the planters.

Mr. Aleva responded that the current plan has been narrowed to make it one way traffic.

Mr. Heyland suggested conditions of approval that no paid parking lot business will be conducted until the lot is appropriately striped, all signage is up, and everything else is in place.

Mr. Aleva agreed to put those notes on the plan.

Mr. MacLeod Moved to Approve the application for DAVID GIAURSSO – 655 Main Street – Map 13 Blocks 49&50 – GBD2 – Site Plan Review to Add public parking use for when Angelina's Restaurant is not open with the condition that the operation will not commence until all the appropriate signage and striping is in place.

MACLEOD/FREEDMAN 4:0 UNANIMOUS

- 4. RENATA MOON LLC dba THE PUFFIN INN – 433 Main Street - Map 14 Block 16 – GBD2. Design Review and Site Plan Review for a pre 1931 structure. Application to remove existing garage and replace it with a new structure: garage with two units and an owner's quarters above.**

Michael Tourangeau addressed the Board and provided a brief project summary. She noted that the only change is the downsizing of the structure. The current owner's suite in the main building will be moved to the new garage and that space will be used as office space. The new one car garage will retain the two guest rooms as well as the new owner's suite.

Mr. Wilkos reviewed the OHPC's Memo to the Planning Board. The OHPC accepted the plan with the addition of shutters on the new building to match those on the main building, also the use of the agreed upon faux barn door, and the addition of vegetative buffering at the rear of the property.

Ms. Tourangeau confirmed that she met with the OHPC and that she agreed to their recommendations.

Ms. Freedman noted that the Board does not have a floor plan for the main building.

Mr. Feldman read his March 2, 2017 Memo to the Board wherein he stated:

“Since the last time the applicant appeared in front of the planning board, the applicant has gone back to address the concerns raised.

The applicant has redesigned the garage and units proposed in the new separate building. The two rental units are now 462 square feet in size which meets the code requirements, the applicant has also eliminated the kitchen appliances making the unit a living unit. The plans now shown 1 King size bed in the units rather than having two beds in a unit. In order to address these issues the applicant has shrunk the overall size of the building from 28x66 (1848 square feet) to 28x50 (1400, 1564 with the proposed deck) square feet, a significant decrease from the original; application. With the elimination of the existing building that is proposed to be replaced with the new structure the net increase in square footage to this structure is 701 square feet and does not include the proposed 180 square foot shed on the other side of the property. The building proposed is 14' in height in a zone that allows 35'. Since the applicant revised the building, the Historic Preservation Commission has again reviewed the plans and the comments have been included as part of your packet. Staff has not seen the comments at the time of writing this memo however, if there are any recommendations from the OHPC they should be included as conditions of approval.

There were several items the board requested at the last meeting which includes:

- 1) Existing lot coverage and proposed lot coverage to be on the plan;*
- 2) Floor plan of the main building;*
- 3) A note added to the plan indicating the number of units in the main building and in the new building.*

Note 7 of the revised plan set shows the Existing and proposed lot coverage at 15.9% where 30% is allowed

Unless I am missing something, I see no note indicating the number of units on the property and it was my recollection that no more than 9 are allowed which did not include the living quarters for the owner. In conjunction with that, I have not seen a floor plan showing the existing structure and # of units laid out in the building.

The applicant has provided 15 parking spaces including one space in the garage which satisfies the parking requirements a moped space area and a check-in parking space.

As proposed conditions of approval I would suggest the following:

- 1. The applicant be required to meet all OHPC recommendations;*
- 2. The applicant provide a written statement to the fact that there will only be 9 rental units on the property. This shall be required prior to the issuance of a building permit."*

Mr. Wilkos noted that there are two missing items:

- 1. The written agreement that there will only be a total of nine rooms;*
- 2. Current and proposed floor plans.*

Ms. Tourangeau responded that she has those items and didn't realize she needed to have them for tonight's meeting.

Mr. Heyland added that these things are needed for the file so that any future owners will know that they cannot have more than nine rooms.

Mr. Hayes asked if the applicants will stake out/flag the location of the new building and parking areas.

Ms. Tourengau asked if the Board would be willing to wait until March 27th for the Site Visit and next meeting.

Mr. Heyland asked Ms. Tourangeau to stake out the proposed building, the building in the rear and the parking area. He noted that the Board will want to tour the inside of the building. He stated that they need to have floor plans of all three floors of the main building, and that she can draw the plans herself as long as they are clear.

Ms. Freedman informed the applicant that she will need to have everything submitted, to the Land Use Office, prior to March 20th.

The Board scheduled a Site Visit which will take place at 3:00 p.m. on Monday March 27, 2017. The Board also scheduled a Public Hearing for March 27, 2017 at 6:00 p.m.

**Mr. Hayes Moved to Table the Application for RENATA MOON LLC dba THE PUFFIN INN – 433 Main Street - Map 14 Block 16 – GBD2. Design Review and Site Plan Review for a pre 1931 structure. Application to remove existing garage and replace it with a new structure: garage with two units and an owner’s quarters above.
HAYES/MACLEOD 4:0 UNANIMOUS**

G. NEW BUSINESS –

1. ALMOST FAMOUS TATTOO AND PIERCING / AARON KARP – 731 Main Street Unit 101 – GBD2 – Map 12 Block 10-A. Site Plan Review for a post 1930 structure. Application for change of use from office space to service tattoo and body piercing and jewelry retail.

Aaron Karp, owner of Almost Famous Tattoo and Piercing addressed the Board. Mr. Karp summarized that it will be a small studio with two artists and one woman who does the piercing. He will only take clients by appointment and it is his intention to be open Wednesday through Saturday year round.

Mr. Karp informed the Board that he has received letters from people saying they don’t want a Tattoo Parlor here, however he reminded people that this isn’t like the 1950’s tattoo places with bikers and the associated problems.

Mr. Heyland reviewed his February 6, 2017 Memo to the Board wherein he suggested the application could be found complete and moved on to Public Hearing.

Mr. MacLeod asked if this shop is part of a chain.

Mr. Karp responded that it is not. He is the business owner.

Mr. Heyland noted that before he opens Mr. Karp will have to obtain the necessary licensing from DHHS.

Mr. Karp agreed, and stated that he has already been in contact with the State inspector.

The Board reviewed the Site Plan Review Submissions Checklist and found the application to be complete with the following motion:

Mr. MacLeod Moved to Find the Application Complete for ALMOST FAMOUS TATTOO AND PIERCING / AARON KARP – 731 Main Street Unit 101 – GBD2 – Map 12 Block 10-A. Site Plan Review for a post 1930 structure. Application for change of use from office space to service tattoo and body piercing and jewelry retail, and to schedule a Public Hearing.

MACLEOD/HAYES 4:0 UNANIMOUS

Mr. Wilkos informed the Applicant that the Public Hearing for this application would take place on March 13, 2017 at 6:00 p.m.

2. FAIRPOINT COMMUNICATIONS – 488 Main Street (Map 8 Block 8), 622 Main Street (Map 9 Block 82), and 714 Main Street (Map 10 Block 1) - all GBD2. Application to install three wireless small cell antennas and related equipment on existing utility poles.

Mr. Wilkos informed the Board that one of the proposed cell antennas will be located on a pole directly in front of his house. He stated that he feels he can make a fair and impartial decision and asked the Board members for their opinions.

Everyone agreed that he could.

Scott Anderson from Verizon Wireless provided a brief summary of the proposed project. He noted that usually this type of project would involve construction of large towers. These small cells are common in Massachusetts and Connecticut where they are used to provide capacity upgrade in areas where there is a lot of cell phone activity, particularly for data use. They can be located inside tunnels, movie theaters, shopping malls, on light poles; and telephone poles.

The cells consist of two main components: a four foot tall single antenna mounted on the top of the pole. Both CMP and Fairpoint require attachments to the poles be placed 48” above the top wires and 31” below the bottom wires. Thus the equipment boxes go down lower on the pole and the antenna goes on top and these are hooked into the electric and fiber network. There are no ground equipment or generators. They are currently pursuing projects in Kennebunk, Kennebunkport, and Scarborough.

Mr. Wilkos asked how big the boxes are.

Mr. Anderson responded that the schematics are in the application, and the boxes are about 2' wide x 2' tall x 2' thick.

Mr. Wilkos asked if they are currently in use anywhere else in Maine.

Ben Maddon, from Tilson responded that he is unaware of any in Maine; however they are being used in Massachusetts.

Mr. Feldman added that this is a new technology and there are some concerns about it. There has been a slow down on approving these in other towns. Mr. Feldman suggested he have the opportunity to sit down with counsel and the Applicants.

Mr. Feldman proposed the Board table this application and allow him (Mr. Feldman) to meet with the Town Attorney, and the application.

Mr. Anderson asked what the issues would be.

Mr. Feldman responded that in other cases the cells were placed on private poles. The Board can't just approve attachments to poles belonging to public utilities that are in the public right of way. Allowing a private company to put another type of utility pole in the public right of way is a concern. He suggested the Board take this application slowly and explore all the issues.

Mr. Anderson agreed and suggested he and Mr. Maddon work with the Town, Mr. Feldman, and the Town Attorney to work out the issues. He would like to help move this process along.

Mr. Wilkos asked if this is a new technology.

Mr. Anderson responded that it is not new, however it is not common in Maine yet.

Mr. Wilkos asked if there have been studies done on safety.

Mr. Anderson responded that they are subject to all radio frequency requirements. He agreed to provide information about the health concerns raised in other places.

Mr. Feldman expressed his concern with permitting rather than health issues.

Mr. Anderson added that some of these small cells have been installed in church steeple towers and clock towers etc.

Mr. MacLeod asked if the Applicant can provide photographs of the cells in place on a pole.

Mr. Anderson agreed, and he asked who his contact person would be.

Mr. Heyland responded that Mr. Anderson should contact his office.

Mr. Hayes noted the poor cell reception in parts of Ogunquit, he asked if one might be hidden inside the cupola down on the Main Beach bathroom.

Mr. Anderson agreed and added that the cells can be placed on street lights, all kinds of utility poles, on buildings, and other locations. The application is very broad, however the cells need to be close to where the most use is.

Mr. MacLeod asked for the criteria for where these cells are located.

Mr. Anderson responded that they look for areas where additional coverage is necessary, or where there are high levels of use which require a boost to existing coverage, however they don't want to have overlapping coverage, they want to fill gaps in reception.

Mr. Hayes noted that these cells are not allowed in the Resource Protection Zones. He suggested that this is unfortunate because they may be needed in places like the beach and Perkins Cove. He asked if there was some way to make an exception to the ordinance.

Mr. Heyland responded that according to the Ogunquit Zoning Ordinance Table of Land Uses they are not permitted in these areas and he would be very reluctant to attempt to circumvent the Ordinance. It would require a change to the Ordinance which would need to go before the voters.

Mr. Heyland added that the placement of these cells within a building or inside a cupola may be a gray area. He would need to look into it more closely.

Mr. MacLeod Moved to Table the Application for FAIRPOINT COMMUNICATIONS – 488 Main Street (Map 8 Block 8), 622 Main Street (Map 9 Block 82), and 714 Main Street (Map 10 Block 1) - all GBD2. Application to install three wireless small cell antennas and related equipment on existing utility poles.

MACLEOD/HAYES 4:0 UNANIMOUS

H. CODE ENFORCEMENT OFFICER BUSINESS –

Planning Board Action: Discussion of proposed language.

(Note: Language proposed to be inserted is indicated by underlining.)

Article 2 – Definitions – “Bureau” and “Forest Management Activities”

Table 702.1 – Land Uses for “Forest Management Activities” and “Timber Harvesting”, and associated notation regarding “Reviewing Authority”

Article 9.21 – Forest Management Activities.

Mr. Heyland summarized that the proposed changes are to bring the Town Ordinance into line with the State.

Article 2 – Definitions:

Vending or Buyer Operated Retail Device

...pay telephones, and automated multispace parking meters, are exempted from this definition, and therefore are not regulated by section 9.19.

Mr. Heyland noted that definition has been adjusted to exclude the automated multispace parking meters so that the Town Ordinance won't contradict itself.

Article 8.7.D and E - Lighting

D. All lighting shall be steady and not contain any intermittent or flashing light source, excluding traffic control devices.

E. These guidelines shall apply to all residential and non-residential properties.

Mr. Heyland stated that the proposed changes are a result of the workshop held by the board. He added that the one thing which is not included is the requirement for downward facing sign lights. After reviewing existing sign lighting he came to the conclusion that most of the lights are upward facing and to make the business owners change them all would create a financial hardship. He also discovered that the upward facing lights do not pose as much of an issue as originally anticipated.

I. OTHER BUSINESS –

Mr. Wilkos asked if there was any other business.

Ms. Freedman asked if the next workshop would make it to the June 2017 ballot.

Mr. Heyland responded that due to the requirements for workshops, public hearings, language crafting and submission to the Select Board it will not be possible to have this issue ready for the June Town Meeting.

Mr. Wilkos informed the public that members of the Planning Board received an anonymous letter. He asked Mr. MacLeod to review the three proper ways to contact the Planning Board.

Mr. MacLeod stated:

1. Use the “contact the Planning Board” link on the Town Website.
2. Send an e-mail to the Land Use Office without cc'ing any of the Board members and the Administrative Assistant will forward the e-mail to the Planning Board Chair.
3. Hand deliver, or mail, a hard copy letter to the Land Use Office and the Administrative Assistant will forward the e-mail to the Planning Board Chair.

While this may seem inconsequential there are legal ramifications behind this request. Any Planning Board member who engages with the public regarding an active application even in the smallest way might be asked to recuse him/her self from hearing that application. This is an important issue and the Board has had difficulties in the past.

J. ADJOURNMENT -

**Mr. Hayes Moved to Adjourn at 10:06 p.m.
HAYES/MACLEOD 4:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Planning Board Recording Secretary

Approved on March 13, 2017