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OGUNQUIT PLANNING BOARD  
PUBLIC HEARING and REGULAR BUSINESS MEETING  
MINUTES  
DUNAWAY CENTER MAIN AUDITORIUM  
MAY 8, 2017

**PUBLIC HEARING**

**JAMES HARTWELL – 309 Shore Road – Map 3 Block 17 – LB/OFR. Design Review for a post 1931 structure. Application to construct an addition to an existing structure on an existing foundation.**

Mr. Wilkos asked if there was anyone in the audience who wished to speak for, or against, this application. There being no one the Public Hearing was closed at 6:02 p.m.

**REGULAR BUSINESS MEETING**

**A. ROLL CALL –**

Members Present:      Steve Wilkos (Chair)  
                                 Rusty Hayes (Vice Chair)  
                                 Muriel Freedman  
                                 Jackie Bevins  
                                 Mark MacLeod  
                                 Priscilla Botsford (1<sup>st</sup> Alternate)

Also Present:            Scott Heyland, Code Enforcement Officer  
                                 Maryann Stacy, Recording Secretary

**B. PLEDGE OF ALLEGIANCE -**

**C. MISSION STATEMENT – The Planning Board Mission Statement was read by Ms. Botsford.**

**D. MINUTES – April 10, 2017 Regular Business Meeting.**

**Mr. Hayes Moved to Accept the Minutes of the April 10, 2017 Meeting as Submitted.  
HAYES/MACLEOD 4:0 (Ms. Bevins was not in attendance at the April 10, 2017 Meeting)**

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. **JAMES HARTWELL – 309 Shore Road – Map 3 Block 17 – LB/OFR. Design Review for a post 1931 structure. Application to construct an addition to an existing structure on an existing foundation.**

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

Mr. Hayes expressed concern about the use of the “home office” indicated on the plans. He noted that he reviewed the video from the April 10, 2017 Planning Board Meeting and the written Minutes from that meeting wherein Mr. Hartwell clearly said that the innkeeper has another business, specifically a webmaster business. At the April 10<sup>th</sup> meeting when Mr. Hayes asked Mr. Hartwell about it Mr. Hartwell changed his mind about that use.

Mr. Hayes noted that the way the plans are designed there is a separate entrance and area for the “home office” which appears to be set up for another business.

Mr. Hartwell responded that he mentioned that Eric, in his prior career was a webmaster. He is currently doing a lot of work for Mr. Hartwell preparing his (Hartwell House) new website. Any work Erik does is done at the office at the Hartwell House Inn. Mr. Hartwell agreed that the plans include a home office which is not stand alone but is connected to the interior of the home from a hallway. He did not want his previous statement to mislead the Board into thinking there would be any business there. This will be strictly a residence for his managers.

Mr. Hayes noted that Mr. Hartwell volunteered the information about the webmaster business even before anyone on the Board mentioned the home office.

Mr. Hartwell responded that he may have done so, however most people have a home office these days for personal reasons.

Mr. Hayes asked if the manager runs Ogunquit Barometer.

Mr. Hartwell agreed that he did and that he ran it out of the Hartwell House Office. It's only a website not a business.

Mr. Hayes stated that he isn't 100% clear.

Mr. Hartwell responded that there won't be any application for a business out of that home. He stressed again that there is no business out of that home.

Mr. Hayes responded that he still isn't 100% comfortable with that answer, only because Mr. Hartwell volunteered the information that there is another business running out of there.

Ms. Freedman referred to the April 10, 2017 Minutes which did indicate that the residence would contain an office which will also be used for a webmaster business. She suggested a condition of approval that no business will be run from that location.

Mr. Wilkos responded that the present application is for Design Review, not Site Plan Review. Any use of a business office would require Site Plan Review.

Mr. Heyland agreed and added that this application doesn't mention any type of business. He noted that the Board has to be comfortable that there will not be any type of secondary business use being conducted there.

Mr. Wilkos agreed that the Board needs to determine whether or not there will be a business office use. He pointed out that the Board cannot put a condition of approval on a Design Review for a business office use. Design Review is for the exterior of a building only.

Mr. Heyland added that should he wish to have a business run out of the building he would have to come before the Board for Site Plan Review for Change of Use.

Mr. Hayes asked about a business being run from a home office. A business that was completely online based, had no employees, no signage, and no patrons coming to the site.

Mr. Heyland responded that this type of business would be considered a Home Occupation and would not require Planning Board review. Home Occupation Permits are issued by the Code Office and do not come before the Board. Mr. Heyland reviewed the definition for a Home Occupation Business under Article 2 of the Zoning Ordinance, he also reviewed the standards for a Home Occupation Business under Article 9.7, and the zones in which it is allowed as noted on Table 702.1.

Mr. MacLeod asked if a change from residence to home occupancy business requires Site Plan Review.

Mr. Heyland responded that it does not. He again referred to Table 702.1 which indicates Code Officer Approval required for a Home Occupation Business.

Mr. Heyland added that without knowing what will go on in that office space he can't say whether or not it would require Planning Board or Code Officer approval.

Mr. Hartwell responded that nothing will go on there. There will be no business run out of that office. The application is just for a residence. "I have no intention of having another business conducted out of that house".

Mr. Hayes reminded the Applicant that, at the April 10, 2017 meeting he submitted a chronology of the history of that property which contained a statement which was somewhat misleading.

Mr. Hartwell responded that he only included that statement because he was required to.

Mr. Wilkos informed that Applicant that the Board is here for Design Review only. In the future if a home occupation business is put in there he will have to go to the Code Officer, if it is another type business he will have to come back to the Planning Board for Site Plan Review.

Ms. Botsford asked about the floor to floor heights as indicated at 7'10". She asked if there was a requirement for minimum ceiling height.

Mr. Heyland responded that a commercial application would be 8'.

Ms. Botsford asked if there would be a 7'4" ceiling height on the second floor.

Rob Carte the architect who designed the project responded that they had to link the new addition to the existing building. The ceiling height will be less than 8' which it can be for residential use.

Ms. Botsford asked if the overall height would be what is indicated on the plans.

Mr. Carte responded that it will, the height will be approximately 25'4"

Mr. Heyland responded that the overall height of the addition to the rear will be 25'4" measured from grade.

Mr. Carte agreed; and confirmed that all the ceiling heights in the addition will be at least 7' head height.

Mr. Heyland noted that this meets the standards for a residential use.

Mr. Heyland asked about the condition of the other building on this site. Mr. Heyland has received inquiries about the rot of the dormers and foundation. He noted that the last time Mr. Hartwell was before the Board he stated that he was working with the architect to renovate that building. He asked for the status of the repairs to this other building.

Mr. Hartwell responded the last tenant has moved out, and he wants the building empty. He has been working with Mr. Carte on a plan. He added that they have installed a rendering on the site showing what the remodel will look like. As soon as this current project is complete he will begin on the other building.

Mr. Heyland asked if that work will require Design Review.

Mr. Hartwell confirmed that it will.

Mr. Heyland asked for a timeframe.

Mr. Hartwell responded that as soon as the current project is complete which may not even happen this summer, he will begin on the other building. He stated that people can come look at the rendering on site.

Mr. Heyland responded that this other building is in real bad shape and is becoming an issue on Shore Road because of its condition. People are asking. He noted that the original Site Plan from the last project was repurposed for this current application. On that plan there is a notation that says that all buildings will be kept up and maintained in a satisfactory manner and kept in good condition. He noted that this is a reoccurring conversation; and it is of concern when the discussion is about a new building when the existing building is neglected.

Mr. Wilkos asked if this concern effects this current application.

Mr. Heyland responded that this is an issue for the Board to decide. He confirmed that the Thompson Green Plaza contains two separate buildings. The one under consideration as a residence and the other which contains staff housing and commercial units.

Mr. Heyland referred to the Design Review Submissions Checklist, specifically Item 11.6.8.1. he noted that he confirmed that a Site Plan was submitted, it is now up to the Board to determine whether that Site Plan is sufficient for the Board's needs.

Mr. Hayes noted that in the past there were discussions about the condition of the other building. He stated that Mr. Hartwell did repair the brick patio to level it off for safety. Mr. Hayes was surprised then this new application came in that it was not for the commercial building. He suggested that once again repairs to this deteriorating building are being postponed.

Mr. Hartwell disagreed. He stated that he has had the architect working on plans for both projects simultaneously, but he can only do one at a time. He noted that the infrastructure of that building has passed with regard to life safety issues.

Mr. Heyland noted that Mr. Hartwell has been put on record that the other building needs to be attended to .

It was confirmed that the review involves a pre 1930 structure. The building was constructed in 1750 and will have a rear wall altered to accommodate the new addition.

Mr. Wilkos reviewed a memo to the Board from the Ogunquit Historic Preservation Commission which voted to approve the proposed plans.

At this time the Board reviewed the standards under Article 11.7.C and found all standards to have been satisfied.

Mr. MacLeod Moved to Approve the Application for JAMES HARTWELL – 309 Shore Road – Map 3 Block 17 – LB/OFR. Design Review for a post 1931 structure. Application to construct an addition to an existing structure on an existing foundation.  
MACLEOD/FREEDMAN

Mr. Wilkos called for discussion regarding Mr. Macleod's motion. There being none he called for a vote:

**Mr. MacLeod Moved to Approve the Application for JAMES HARTWELL – 309 Shore Road – Map 3 Block 17 – LB/OFR. Design Review for a post 1931 structure. Application to construct an addition to an existing structure on an existing foundation. MACLEOD/FREEDMAN 5:0 UNANIMOUS**

**G. NEW BUSINESS –**

**1. RUPERT REALTY LLC / ROOST CAFÉ AND BISTRO – Map 5 Block 28 – LB. Site Plan Review for a post 1930 structure. Application for change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outside dining.**

Aldo Vallecillo addressed the Board. Mr. Vallecillo explained that they want to serve customers outside. They will not be constructing a patio at this time and the outdoor tables will be on the grass.

Mr. Heyland reviewed his April 21, 2017 Memo to the Board wherein he stated:

“The following are applicable sections of the Ogunquit Zoning Ordinance. This is not an all inclusive list.

ARTICLE 6 – PLANNING BOARD

6.6 Procedures for Site Plan Review:

All fees have been paid by the applicant.

Notifications have been made to all Town Departments.

All application submission requirements have been submitted and reviewed and those that have been determined by the Code Enforcement Officer to be inapplicable have been indicated on the checklist.

The applicant has requested waivers under 6.6.C.3.T & 6.6.C.3.U (Traffic impact analysis) which the Board will have to make a determination on. Although not a submission requirement, the applicant has also requested a waiver of the additional parking spaces.

Letters from the Ogunquit Sewer District and the Kennebunk, Kennebunkport and Wells Water District have been submitted.

A Deed showing right, title and interest in the property is also included in the application.

ARTICLE 7 – DISTRICT REGULATIONS

7.2 Land Use

Type 2 Restaurant is an allowed Use with Site Plan Review Approval from the Planning Board within the Limited Business District with the following limitations:

*(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).*

#### 8.7 Lighting

The applicant should describe the intended lighting for the outdoor area and confirm it meets the requirements of this section.

#### 8.10. Off Street Parking and Loading

The total floor area of the existing indoor seating is 2200 which requires 22 spaces. The proposed 23x26 outdoor seating area requires an additional 6 spaces. The new total number of spaces required is 28. The Site plan that was presented indicates 24 spaces provided.

The parking waiver request states they have 35 spaces available.

The Applicant needs to explain the current parking arrangement and if the layout of the lot is consistent with the approved plan.

#### 8.13 Traffic Impacts and Street Access Control.

The applicant has asked for a waiver of a Traffic impact analysis. The Board should review the Waiver request for more information.

Submission of a traffic impact analysis shall not be waived for proposed projects or expansions of existing projects requiring 30 or more parking spaces or projected to generate more than 150 vehicle trips per day. Again, the total number of parking spaces required including the outdoor seating is 28.

#### Recommendations and Conclusion:

The applicant has not proposed any material changes to the exterior of the building. If and when changes are proposed the applicant must come before the Board under the Design Review approval process.

The planning Board could consider finding the Site Plan Application complete and schedule a Public Hearing or Schedule a Site Walk to review the proposal.”

Regarding the discrepancy in the parking space counts. Mr. Vallecillo stated that the Site Plan was prepared by the prior owner when the parking area was only gravel. He has since had the parking lot striped.

Mr. Heyland asked the Applicant to confirm that the parking conforms to the Ordinance requirements for spacing, isle widths, etc.

Mr. Vallecillo responded “yes”.

Mr. Heyland asked why they wouldn’t make 35 spaces instead of only 24.

Mr. Vallecillo responded that he didn’t know, he added that he has two handicapped spaces where before there was only one.

Mr. Wilkos asked for the total number of parking spaces.

Mr. Vallecillo responded that the lot is striped for 31 and that they can put 4 more cars along the driveway on the other side of the property for a total of 35.

Mr. Heyland referred two items to the Board: 6.6.C.3.T and 6.6.C.3.U. Both involve the question of whether or not the Board will require a traffic impact analysis. He noted that the total number of parking spaces where the Board cannot grant a waiver is 28. This project does not meet that threshold, which means the Board may grant a waiver for those two items.

Mr. Wilkos asked if there were not 31 parking spaces.

Mr. Heyland responded that the requirement is 28 and the Board can't really penalize the Applicant for having 3 extra spaces.

Ms. Freedman noted that the letter submitted by the Applicant indicates there are 35 parking spaces. She asked for clarification. She added that the parking layout on the submitted Site Plan isn't even their plan. She asked if the seating is the way it is indicated on the plan.

Mr. Vallecillo responded "yes".

Mr. Wilkos noted that this is an application for Site Plan Review; and he asked how many parking spaces are indicated on the submitted Site Plan.

Ms. Freedman responded that it only shows 24 parking spaces including one handicapped space.

Mr. Vallecillo stated that the striped parking area contains 31 parking spaces, there are an additional 4 spaces which are not striped on the other side of the building. He added that the submitted Site Plan is not accurate as to what is currently on the ground.

Mr. Wilkos suggested that in order to find the application complete the Board needs to have an accurate Site Plan.

Mr. Hayes suggested a Site Visit and Mr. Vallecillo agreed.

Mr. Heyland stated that the Applicant may not have to hire a surveyor or an engineer, however the site plan does have to be scaled 1 to 20 square feet depicting the parking and location of buildings etc. He agreed that the hiring of an engineer is expensive.

Mr. Wilkos agreed that the Board does not want to impose an additional cost on the Applicant, however this paperwork is archived and needs to reflect what is actually on site.

Mr. Vallecillo responded that the Site Plan was done five years ago, before they owned the property, and the Land Use Office didn't have a copy. He had to contact the architect to produce it and get a copy himself.

Ms. Freedman asked about the outside lighting.

Mr. Vallecillo responded that he only intended to use table top lights.

Mr. Heyland suggested that there has to be enough illumination to keep people safe from falling. He asked if the tables will be on a grass surface.

Mr. Vallecillo confirmed that they will.

Ms. Freedman asked if the parking spaces will be clearly marked.

Mr. Vallecillo responded that they are striped and clearly marked.

Mr. Wilkos asked about the impact of this application.

Mr. Heyland responded that they are looking at an additional 6 parking spaces, however they are looking at required 28 parking spaces and the Applicant has indicated that they have at least 31.

Mr. MacLeod asked if the Board could move forward pending submission of an accurate Site Plan.

It was agreed that the Applicant would submit a revised and accurate Site Plan to the Land Use Office before May 15<sup>th</sup> so that the Board would have it in their packets for the may 22<sup>nd</sup> meeting.

Mr. Wilkos asked if the Applicant can get an accurate site plan, including the parking layout, within seven days.

Mr. Vallecillo responded that they can.

At this time the Board reviewed the Site Plan Submission Checklist.

It was agreed that the submitted Site Plan is not accurate however the Applicant will submit an accurate and updated plan within seven days and if he fails to do that the Application will be tabled.

The Board agreed with Mr. Heyland's recommended waivers and found the application complete pending the submission of the updated Site Plan. The Board also agreed to revisit the question of a traffic analysis after the public hearing.

Mr. MacLeod Moved to Find the Application Complete for RUPERT REALTY LLC / ROOST CAFÉ AND BISTRO – Map 5 Block 28 – LB. Site Plan Review for a post 1930 structure. Application for change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outside dining.

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 Find the Application Complete for RUPERT REALTY LLC / ROOST CAFÉ AND BISTRO – Map 5 Block 28 – LB. Site Plan Review for a post 1930**

**structure. Application for change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outside dining.**

**MACLEOD/HAYES 5:0 UNANIMOUS**

The Board scheduled a Site Visit for this Application for May 22, 2017 at 3:00 p.m.

Mr. Wilkos informed the Applicant that the Board will want to look at the parking layout and number of parking spaces.

Mr. Pinkham asked if he had to submit the paperwork with the redefinition of the parking lines.

Mr. Wilkos confirmed this and informed Mr. Pinkham that it would need to be submitted to the Land Use Office before May 15<sup>th</sup>.

Mr. Hayes asked if the Board would also look at the inside of the building.

Ms. Freedman reiterated the Board's interest in the outdoor seating and parking layouts.

Mr. Pinkham agreed that the Board could come inside but stressed that he didn't see why they needed too.

Mr. Heyland responded that as commercial properties expand and develop the Board needs to have an idea of the number of seats and where they are located.

Mr. Pinkham stated that the application is only for a change of use.

Mr. Heyland responded that the number of seats dictates things like parking and bathrooms. The overall amount of seats is important for the Board to look at.

Mr. Pinkham stated that they are approved for 180 interior seats. They have met all the life safety code requirements. They do not have 180 seats inside the facility, they are adding approximately 30 outside seats and they have approximately 150 seats inside. They will end up being 4 or 5 seats less than the 180 they are allowed.

Mr. Heyland responded that this is very good information but the Board has the right to confirm it and look at the entire property. It is important for the record for the Board to confirm seating layout and numbers.

Ms. Freedman asked if the outside seating would be set up so the Board can see it.

Mr. Vallecillo agreed that it will.

The Board scheduled a Public Hearing for May 22, 2017 at 6:00 p.m.

**H. CODE ENFORCEMENT OFFICER BUSINESS –**

**1. Discussion of Legalization of Recreational Use of Marijuana Workshop.**

Mr. Wilkos noted that the Board held a Workshop earlier in the evening and only three residents were in attendance. He noted that the Select Board turned down a retail marijuana moratorium and the Code Officer and the Planning Board took it upon themselves to hold this workshop. This lack of attendance by the public seems to indicate a lack of interest in this topic.

The Board scheduled a second workshop on this same subject to take place on May 22, 2017 at 4:00 p.m. and the Chairman asked the public to please attend and provide feedback on this question.

Mr. Wilkos next asked Mr. Heyland to respond to questions about the work being done at Café Prago.

Mr. Heyland responded that more than one contractor was involved in this project. The first contractor was only replacing the patio surface for safety reasons. It was not a structural alteration requiring a Building Permit, which would have triggered Design Review.

The second piece of this project was a new awning. Mr. Heyland reviewed photographs. The awning currently in place is going to be replaced with a new one. The important thing is that it will be a replacement of existing awning materials of a different type, and of the same size. Some people have suggested that there has been some expansion. Mr. Heyland noted that by standing on the patio today you can see the outer limits of the wall that was the wall of the patio which was there last year. There is no expansion at all. In addition there was no new seating ordered for this space.

The one issue he had was the installation of a storm door which was not there in the past. This door will be removed and replaced with the original fabric. The railing system was removed to be repainted and repaired. The current wood railings are temporary for safety reasons and the original railings will be returned.

Mr. Heyland informed the owner that he should remove the storm door. The only thing that is new is the surface of the patio which he did not consider to be a structure. Should something change the owner will have to come back and perhaps come before the Board.

Ms. Freedman asked about the door in the back and the plastic enclosures.

Mr. Heyland responded that the plastic enclosures are temporary. They are rolled up during nice weather and unrolled down during inclement weather. He added that the door in the back was there before and that there was some type of storage there. He agreed that when the project is complete he will review all the changes.

Mr. Heyland suggested that the replacement of the flooring was initiated by the owner's insurance company. Also the steps which were added are part of the Life Safety Code and are exempt from review.

**I. OTHER BUSINESS –**

Mr. Wilkos reminded the audience that there will be a 2<sup>nd</sup> workshop regarding Discussion of Legalization of Recreational Use of Marijuana. This will take place on May 22, 2017 at 4:00 p.m.

He also noted that there is still one open 2<sup>nd</sup> Alternate seat on the Board.

**J. ADJOURNMENT -**

**Mr. Hayes Moved to Adjourn at 7:45 p.m.  
HAYES/BEVINS 5:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy

Planning Board Recording Secretary