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**OGUNQUIT PLANNING BOARD  
PUBLIC HEARINGS and REGULAR BUSINESS MEETING  
MINUTES  
DUNAWAY CENTER MAIN AUDITORIUM  
JULY 24, 2017**

**PUBLIC HEARINGS 6:00 p.m.**

- 1. JACKIE & RON, LLC / ANGELO'S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review and Site Plan Review for a post 1930 structure. Application to construct outside pavilion and lawn games.**

Ms. Bevins recused herself and left the Board table. In Ms. Bevins' absence Ms. Botsford was moved up to full voting position for the length of this application hearing.

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

Jerry DeHart, Coastal General Construction, addressed the Board and the public as the Applicants' representative.

Mr. Dehart reviewed the proposed project and noted several key points:

The proposal includes an outside pavilion which will serve, food, soft drinks, and alcoholic beverages. It also includes the creation of an outside patio, fire pit, lawn games, and a relocation of the existing sign.

The Pavilion will be about 12'x20' and will be constructed with the same types of materials, and have a similar look as the existing restaurant. There will be gates that drop down and lock when the pavilion is not open.

Mr. DeHart displayed several artist conceptual drawings, prepared by Hiroko Lindsey, of what the space will look like. He noted that there will be no dogs or unsupervised children in the area.

Mr. DeHart noted that there have been several questions regarding the proposed "lawn games". Lawn games are NOT amplified they are similar to what someone would have at a barbeque at their home; he summarized the definition of lawn games as "an outdoor game that can be played

on a lawn; many types and variations of lawn games exist, which include games that use balls, throwing objects as their primary means of game play: croquet, bean bag, and bocce ball, horseshows, ladder toss, lawn darts, backyard golf, shuffleboard, scholf, horseshoes, bad mitten, Frisbees and other items thrown toward a container or another person.

Mr. DeHart noted that the subject property is located in the General Business District 2 (GBD2) which is defined in the Ogunquit Zoning Ordinance “To provide general retail sales, services and business space within the Town of Ogunquit in locations capable of conveniently servicing community wide and/or regional trade areas and oriented primarily to automobile access”. He went on to say that the Applicants’ Type 2 Restaurant has plenty of on-site parking.

He confirmed that there will be no canned or live music outside. He noted than any change to an approved application would require coming back before the Board; and going through the process again.

Mr. Dehart displayed a birds’ eye overview photograph of the property and surrounding area. He noted that a site visit earlier in the day clearly showed that the subject property is very well buffered from its residential neighbors to the west. He also reiterated that both the residences on Glen Avenue and the Applicants’ restaurant are in GBD2.

Mr. DeHart stated that the proposed plan is not an expansion. He confirmed that the Applicant is willing to install additional fencing similar to the existing black iron rail type fencing. He noted that abutting the Applicant’s restaurant there are three other restaurants in a row along with Ogunquit’s only gas station.

Mr. Wilkos invited members of the public to speak for, or against, this application. He noted that several members of the public were at the site visit earlier in the day.

Anthony Maniglia (46 Green Needle Lane) stated that he was at the site visit. He asked about the “moveable sign”.

Mr. DeHart responded that it will be a fixed sign; the same sign currently in place will be moved to the north end of the property.

Mr. Maniglia asked for a specific list of the “games” and expressed concern about safety. He asked about lights on the front of the property on Route One.

Mr. DeHart responded that the original drawings indicted lighting similar to what is in place for the outside dining. He has since realized that this type of lighting would allow light to travel outside the property line. Those light types have been replaced on the plan with “Dark Sky Lighting” and “downward shaded lighting” which will not travel beyond the property lines and will not effect abutters or vehicular traffic. He confirmed that the only front lighting will be for landscaping and that it will be downward shaded.

Mr. Maniglia expressed concern about noise in the area.

Joseph Palladino (7 Green Needle Lane) also expressed concern about noise. He asked about safety with the lawn games and the chance that balls or Frisbees will end up on Route 1. He

asked for the lawn games to be denied. He asked what the business hours will be and if there will be an extension beyond the current 9:00 p.m. closing of Angelo's.

Mr. DeHart responded that noise will conform to the same noise restrictions as everyone else in GBD2. He noted that there are other existing games along Route 1 and he doesn't see this project as producing more noise than that made by people in hotel swimming pools. He also noted that the GBD2 is set up for commercial use. The safety issue falls upon the business owner.

Mr. Heyland stated that the GBD2 noise restrictions begin at 9:00 p.m. If a business wanted to expand the approved hours of operation they would have to come back before the Board and a public hearing would be held.

Mr. DeHart confirmed that the outside activity would end at 9:00 p.m.

Mr. Palladino stated that the "pavilion" is really a "bar" and he asked if there were any regulations being bypassed by calling it a pavilion instead of calling it an outside bar.

Mr. Heyland responded that it would be treated the same.

Richard Tyler (52 Green Needle Lane) asked about the "reduction in area". He stated that there will be no reduction in area; the Applicants will only be using what is already there. He is also concerned about the hours of operation, the games, safety, and noise.

Leon Aronson (13 Green Needle Lane) sees everything at Angelo's. His concern is the noise coming from an "amusement park in front of a restaurant". His primary concern is noise, the safety of children running out onto Route 1 chasing Frisbees is secondary to his concern about noise for all the open hours; and what is going on at Linda Bean's which may be ok for the beach but may not be appropriate for uptown.

Madeline Franch (95 Hoyts Lane) sent an e-mail regarding the policy for outdoor entertainment. She referred to the Town's Business Ordinance Title 9 Section 301.44. Using partial definition Ms. Franch argued that lawn games can be considered to be "...any other amusement..." or "diversion or other activity with an entertainment value..."

Ms Franch also referred to Section 302.1 Special Amusement License which states (in part) that "...a Special Amusement License is required for all outdoor entertainment events and for any commercial facilities which offer one (1) time entertainment events..."

Ms. Franch suggested that this application is for outdoor entertainment; and the Applicant should be required to apply for a special entertainment license even if the facility already has an amusement license, which is restricted to inside a facility. These activities will continue into the night and would require a lot more lighting and produce a lot more noise. Anyone who has been to a barbeque where people are drinking and playing games knows how noisy it can be. Based on Chapter 3 the application for lawn games should be denied.

Patricia Sullivan (55 Glen Avenue) asked what games would be played; and will they be children's or adult games; and how will they be defined. She also asked if alcohol would be restricted to the pavilion or if patrons would be allowed to walk around with drinks.

Laurie Paucher (73 Glen Avenue – President of the Glen Avenue Homeowners Condominium Association) she noted that several homeowners were unable to be at this meeting; and that most of the homeowners have the same concerns. One concern is the use of the Glen Ave. driveway/curb cut at the rear of Angelo’s. She asked for the curb cut to remain unused except for emergencies. Commercial and patron vehicles should not be using a residential street like Glen Avenue to access Angelo’s. The primary concern is that the rear curb cut but be closed off.

Other homeowners are concerned about parking, hours, noise, lighting, and safety issues particularly distractions to drivers.

Frank Zito (37 Hickory Hill Lane) expressed concerns about the noise and the fire pit particularly with heavier drinking and sometimes singing. Traffic coming out of Green Needle Lane is already very bad, and this application will make things worse.

Newell Perkins (20 Fieldstone Lane) agreed with Ms. Franch’s comments and suggested that the ordinance requires outdoor events be approved each time an event occurs. He also suggested that there will be an issue with noise and distractions to drivers traveling in traffic on Route 1. People will be sitting in cars watching whatever games are going on. Mr. Perkins suggested substantial buffering along the Route 1 property line for noise and visual reduction. Mr. Perkins noted the existence of a historic property, built in 1905, which abuts Angelo’s. He provided an overview of the 1905 history.

David Hansen (Juniper Hill Inn 336 Main Street). Mr. Hansen noted that he had sent a letter to the Board. He expressed his desire for Angelo’s to be successful. He does have concerns about the noise, particularly because of the proximity to his hotel which is about 100’ away. He noted that the previous business at 355 Main Street produced noise which generated many complaints from his guests. He is concerned about noise coming from the pavilion and the lawn games. He asked for conditions of approval if this application is approved.

- Limit outdoor hours of operation to abide by the Municipal and Zoning Noise Ordinances to between 9:00 p.m. and 7:00 a.m.;
- Clearly define the nature of the lawn games and entertainment;
- Specify the lawn games;
- There be no live entertainment

Mr. Wilkos asked if there was anyone else who wished to speak for, or against the application. There being no one the Public Hearing was closed at 6:40 p.m.

**2. THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outdoor service.**

Mr. Evans stated that the application is to change from a Type 1 to a Type 2 Restaurant so that he can service patrons outside. The hours will be 11:00 a.m. to 9:00 p.m. There will be no games or outside entertainment or music.

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

Ken Holmes and Jason Corbin (115 Perkins Cove Road) Mr. Holmes asked the Board if they would accept a handout.

Mr. Wilkos asked what the handout contained. He noted that the Board does not normally accept handouts the night of a meeting.

Mr. Holmes agreed; and noted that the Board did accept an application regarding the number of seats there would be in the restaurant. He asked if that is something that sometimes gets waived. He suggested that his handouts would assist the Board with their analysis.

Ms. Freedman asked how many pages the handout contained. She noted that the Board generally only accepts handouts limited to a single page.

Mr. Holmes responded that there are five different sections. However he had no problem not handing them out, he could go on without them.

Ms. Freedman responded that she would have been happier if the Board had received the handout before the meeting.

Mr. Holmes stated that the application was approved for the 40 seats pending a separate application for the 40 seats. It is now for 60 seats, and Lee Jay Feldman from SMPDC stated that the Applicant couldn't go from 40 seats to 60 seats at this time.

Mr. Holmes noted that on the plan the back deck is indicated as being 18'x12' and he asked the Board to notice that the site plan says it is 16' not 12'. This is what is on the tax records and there is a sketch indicating such. It is 16' not 12' as represented. He added that the State Fire Marshal only allows one seat per 15 square feet; and according to Mr. Holmes' calculations this would allow for a maximum of 14 seats on the outside deck. In addition there are space requirements between each seat, and according to the 38' inside the building they are only allowed to have 16 seats inside.

Mr. Holmes asked the Board to follow the State of Maine Laws and if the Board does this they will see that it doesn't equal what is being applied for.

Mr. Holmes stated that a new restaurant cannot be approved without a sprinkler system. The previous restaurant was approved for a sandwich shop with certain restrictions, one of which was that there be no "grease laden foods". He noted that a building permit included a fryer. Mr. Holmes stated that the current applicant is not abiding by the restrictions. He called the Ogunquit Fire Inspector, who returned his call and informed him (Mr. Holmes) that he had never stepped foot in the building; and never has been asked to step foot in the building. He promised to get back to Mr. Holmes and it has been 4 months and still no response.

Mr. Wilkos noted that the Board's By-Laws state that the Board may accept information from an applicant at a meeting. He asked if the Board may accept material from an abutter at a Public Hearing.

Mr. Heyland responded that they can; it is up to the Board to determine whether or not it will have time to review and absorb the information.

Mr. Wilkos polled the Board members asking if they felt they should accept Mr. Holmes handouts.

Mr. Hayes stated that five pages is too much to absorb.

Mr. MacLeod agreed.

Ms. Freedman stated that if Mr. Holmes is going to review it she would like to have it in front of her.

Ms. Botsford agreed it would be helpful.

Mr. Wilkos expressed concern that while this is a public hearing, the speaker is presenting written material. He agreed with the option of accepting it.

Mr. Corbin distributed the packets of information.

Mr. Holmes reiterated what he had already gone over, now that the Board had the handouts.

As he continued Mr. Holmes expressed that he was surprised to see that no sprinkler system was required. Mr. Holmes reviewed a portion of a letter from the Code Enforcement Officer wherein Mr. Heyland stated that: *“I have spoken with Jason Evans about the requirements to be classified as a Type 1 Restaurant. His plan is to comply with those requirements. This restaurant will be different than his other establishment. He understands the conditions of the previous approval and will operate as required.”* Mr. Holmes stated that this is not currently the case.

Mr. Wilkos asked Mr. Heyland if the Fire Inspector is the same as the Fire Chief.

Mr. Heyland responded that he is not: Mark O’Brien is the Fire Chief and Bob Bernard is the Fire Inspector.

Mr. Hayes noted that the handout of five pages is now 11 pages.

Mr. Holmes responded that he said “five sections”. He stated that he is asking the Board to abide by ordinances and if he doesn’t reference them the Board will have to reference them on their own; and they can do that.

Mr. Hayes responded that it is unfair to hand out so much information at the meeting. It should have been submitted earlier so the Board would have time to review and digest it. It is also unfair to the Applicant for the Board to be handed all this information at a meeting.

Mr. Holmes responded that it is unfair for an application to be approved that is ineligible. He has the right to express his opinions and if they are long he apologizes but they are applicable. If he has a presentation the Board doesn’t need to take it into account however it does need to take his words into account. Again he reiterated that he doesn’t need to hand out his presentation

material. He has the right to express his opinion that this application should not be approved at this meeting. Mr. Holmes stated that the applicant had a longer time to prepare; he (Mr. Holmes) only had seven days to prepare his presentation after notification.

Mr. Wilkos asked if the Applicant was provided with a copy of all this new material.

Mr. Holmes responded “no absolutely not”.

Mr. Corbin continued to hand out the rest of Mr. Holmes’ material: Sections A, B, C, D, and E.

Mr. Holmes informed the Board that it is his opinion that this application should also be denied based upon a portion of Section 8.2 which states that “...*No unreasonable odor, dust or smoke shall be detectable beyond the property line...*” He noted that the Board should have held a site visit. He stated that there are no buffers in place and there should be as required by Section 8.3.

Mr. Holmes also stated that this application should be denied based upon Section 6.6.A.1 which states that: “*It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall not approve the application unless it makes written findings that the proposed use or structure:*

1. *will allow the orderly and reasonable use of adjacent properties;”*

Mr. Holmes noted that the Applicant’s patrons hang out on his (Mr. Holmes private property including his steps. Mr. Holmes played an audio of sound which he said he recorded from his bedroom; and which he purported to have come from the Applicant’s business. He also offered video of people eating and drinking on the beach.

Mr. Holmes stated that he wrote to the Town Manager and the Code Enforcement Officer regarding restaurant activity in the RP. Exhibit 23 indicates that they would meet to see that this issue is resolved. Mr. Holmes contacted the town both before The Trap opened and after they opened. The Trap is currently serving food on the outside of the building and they are presently eating and drinking on the beach.

Mr. Holmes wanted to know why this restaurant is being allowed to operate as a Type 2 Restaurant when it is still a Type 1.

Under Section E of his handouts Mr. Holmes stated that this is a non conforming building, with only a 20% building coverage ratio. Under Section 3.3 of the Zoning Ordinance the use of a structure which is less than the required setback from normal high water may not be changed to another use unless the Planning Board after receiving written application determines that this use will have no greater adverse impact on any adjacent property.

Mr. Holmes stated that he has shown that this business has a negative impact upon him.

Mr. Wilkos asked if there was anyone else who wished to be heard.

Mr. Evans responded that he hasn’t seen any of this material nor has he had any conversation with Mr. Holmes other than that they don’t like the chairs on the beach; which he (Mr. Evans) removed. He is not serving anything on the beach. He doesn’t know the time or date of Mr.

Holmes recording but The Trap is not open past 9:00 p.m. If there was someone having a good time on the deck in the middle of the afternoon, that's what the restaurant is there for.

Regarding the exhaust fan; it was approved by the Town, he has tried to do everything by the book and he is surprised that Mr. Holmes has so much negative input. Regarding the seating; he is applied for 40 seats and is willing to reconfigure the seating. These are all things he can address. He only wants to run a nice little business, well and within the Town guidelines. Changing from Type 1 to Type 2 won't effect the neighbors in any negative way.

Melissa Perkins address the Board. She is one of the family members who own the building. They had terrible tenants in that building for too long, and now Mr. Evans has presented a nice plan. Ms. Perkins stated that Mr. Holmes has given them a hard time from the start. Mr. Holmes complained about the previous tenants, and now Mr. Evans is trying to make the building and the business better. She stated that there is more to the relationship between Mr. Holmes and Mr. Corbin and the owners of the building than people know.

Mr. Corbin (115 Perkins Cove Road) responded that the past tenants of that property were a nightmare. He currently has issues which need to be addressed. He has purchased properties in Town in order to make the town a better place. But people drinking on the beach and making noise is unacceptable. Mr. Corbin stated that he went to California and when he returned there was a ventilation hood on the roof of the next door building. He never received a letter from the Town saying there's been a change of use. He looked at the front of the building and there was no certificate to tell him what was going on. He had to go to the Code Enforcement Office to find out. When a person does construction in Ogunquit they are required to put a building permit in the window; which was not there.

Mr. Corbin stated that when he doesn't get a letter from the Town of Ogunquit's Code Department letting him know what's going on he is concerned. He stated that the new vent system is outside his window and it is very loud. The Town needs to focus on the Ordinances. If a person is going to put a business in this town they need to abide by the ordinances and regulations of the Town.

Mr. Evans responded that he had a permit for the vent hood and the application said right on it that he wasn't required to post it. He hired someone to install it and they followed all the requirements, Mr. Corbin just didn't understand what they were doing.

Mr. Wilkos asked if there was anyone else who wished to be heard. There being no one the Public Hearing was closed at 7:11 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  
Lee Jay Feldman, SMPDC Town Planner  
Maryann Stacy, Recording Secretary

**B. PLEDGE OF ALLEGIANCE -**

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

**D. MINUTES – July 10, 2017 Site Visit, Public Hearing and Regular Business Meeting.**

**Mr. Hayes Moved to Accept the Minutes of the July 10, 2017 Site Visit as Amended.  
HAYES/FREEDMAN 5:0 UNANIMOUS (Ms. Botsford voted due to Ms. Bevins' absence  
from the  
Site Visit).**

**Mr. Hayes Moved to Accept the Minutes of the July 10, 2017 Public Hearing and Regular  
Business Meeting as Amended  
HAYES/BEVINS 5:0 UNANIMOUS**

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

Kirk Lavoie (17 Glen Avenue) asked about the process for notification of abutters. He reviewed a recent situation where several residents of Glen Avenue did not receive notification regarding the 355 Main Street Application. He questioned why each condominium association homeowner did not receive notification.

Mr. Heyland responded that the procedure is found in the Zoning Ordinance. When an application comes into the Land Use Office, a courtesy notice is sent to abutters. He noted that some condominium associations have 200 units or owners. For condominium associations the president is notified and told to inform each unit owner about the pending application. Mr. Heyland reiterated that this first notification letter is a courtesy

Regarding Public Hearing notification, abutters are notified within 10 days of that Hearing. In this case an error was made whereby the Condominium Association President was sent the incorrect form letter which did not inform her that the individual unit owners would not be notified.

It was agreed that the notification letters would be amended to avoid this problem in the future.

Mr. Heyland added that in this particular case the error was caught, and proper notification was made. The Board and the Land Use Office try to go above and beyond; and in this case it came back on us. He suggested it might be better to go back to a single notification ten days before the Public Hearing.

David Sullivan (59 Glen Avenue) stated that he was called out at the last Board meeting as perhaps challenging the integrity of the Board when what he is challenging is the integrity of the process. He did not receive individual notification, and only found out about the application

through Kirk Lavoie. He spoke with the Code Officer and the Recording Secretary. He had asked if the meeting would be postponed because of lack of notification and was informed that it would not. He asked if this was because the applicant was a Planning Board member. He thought everything was ok until he watched the meeting and heard his name called out as challenging the integrity of the Board. It is his opinion that everyone who abuts a restaurant putting in a bar would want to be notified if this was happening in their neighborhood.

Mr. Heyland asked the Recording Secretary if Mr. Sullivan was on the mailing list.

The Recording Secretary responded that he was and that she has no explanation as to why he did not receive notification.

**F. UNFINISHED BUSINESS –**

**1. JACKIE & RON, LLC / ANGELO’S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review and Site Plan Review for a post 1930 structure. Application to construct outside pavilion and lawn games.**

Ms. Bevins recused herself and left the Board table; and Ms. Botsford was moved up to full voting member.

Jerry DeHart reviewed the proposed project. In response to comments from abutters on the east side of Route 1. Mr. DeHart stated that things will close down at 9:00 p.m. he noted that the area under consideration is small which will restrict the types of games to be played. There will be no team sports or courts.

Mr. DeHart noted that the Applicants purchased a property in a business district. They did not go out to a residential neighborhood and apply to put in a restaurant. The GBD1, GBD2, and LBD are designed and zoned for businesses.

Mr. MacLeod noted the comment made by an abutter about an “amusement park”. He noted that there is a definition in the Ordinance regarding amusement centers and that this application doesn’t meet that definition.

Mr. DeHart agreed, that it does not.

Mr. MacLeod noted that the Code covers passive vs. active recreation. He asked for confirmation that this application involves passive recreation without any baseball diamond.

Mr. DeHart responded that this application involves passive recreation.

Mr. MacLeod asked Mr. Heyland if a permanent horseshoe pit with a structure makes the activity an “active recreation”. He noted that passive recreation is allowed in every zone in Town.

Mr. Wilkos noted that the Ordinance defines “active recreation” as something that requires activities which require some degree of structural or mechanical components.

Mr. Heyland responded that ball fields and tennis courts may or may not be equal to sticking a pin in the ground for horseshoes. Setting up a removable croquet game is temporary. He added that whenever a business comes before the Select Board for a liquor license they almost always request an amusement license. A “Special Amusement License” is rarely issued by the Select Board and is used primarily onetime events like weddings. The Select Board generally issues 5 or 6 Special Amusement Licenses a year. Mr. Heyland noted that Amusement Licenses fall under the jurisdiction of the Select Board, not the Planning Board.

Mr. MacLeod asked if the addition of passive recreation would require an amendment to Angelo’s Amusement License.

Mr. Heyland responded that it would, in addition the new pavilion would require an amendment to the Liquor License.

Mr. DeHart stated that the Applicant is aware of both these things.

Ms. Botsford referred to a comment from the public which referenced Old Orchard Beach; and she asked if there is an example of the spirit of Ogunquit’s Ordinance and what it was designed to prohibit.

Mr. Heyland responded that the statement of “keeping the general aesthetic quality of the Town” is a general statement. He noted that it is important that as the Board reviews the performance standards of any activity that it meets all the standards. He suggested that whether or not a game of horseshoes is the same as Old Orchard Beach is subjective, and added that a Court probably wouldn’t agree that it is.

Ms. Botsford asked about projectiles being a safety issue and/or a distraction to drivers. She also asked if there would be televisions in the new pavilion.

Mr. DeHart responded that games are played up and down Route 1 in the GBD. He also added that there will be no televisions or canned music in the pavilion.

Mr. Wilkos asked about the nature of the lawn games.

Mr. DeHart reviewed a list of possible lawn games. He reiterated that there is a limited lawn area the Applicant has to work with; in addition the Town of Ogunquit does not currently have a list of games which are approved to be played by hotels, homeowners, and businesses in GBD1, GBD2, or LBD.

Mr. Wilkos reviewed Mr. Feldman’s July 21, 2017 Memo to the Board wherein Mr. Feldman stated that:

*“As part of the planning board’s review of this application to include The use of outside board games, the question has been recently asked, Where does the planning board have the authority to ask what those games are going to be? I would offer the following to consider:*

- *The application for Site Plan Review specifically includes the installation of Lawn Games under the Brief Description of Project header. This immediately*

*allows the planning board to ask what types of games are being proposed. I would also suggest that the plans are very clear as to the fact that the lawn games proposed are shown on a number of plans submitted for the record and planning board's review. By virtue of the fact that the applicant has offered this information opens the door for the planning board to ask these questions. You do not want for example the horseshoe pit and the corn hole game to turn into a volleyball court.*

- *I also believe that the planning board has a right to ask what these games will be based on **Article 6 section 6.7 Standards Applicable to Site Plan Review** which are listed on pages 69 and 70 of the zoning ordinance and require the board to make decisions that can effect a number of issues impacting the public such as noise, lights, screening and buffering, and especially #15 of the standards which states "anticipates and mitigates potential nuisances created by its location" in this case, its location would be where the lawn games are proposed.*
- *I would suggest based on this discussion that the applicant may also want to condition the plan approval on the lawn games being limited to one horse shoe pit and one corn hole game."*

Mr. DeHart responded that there was a pre-meeting meeting where he was asked to put something on a plan indicating types of games. Now that this has been done the Applicant is being subjected to a new set of rules. Regarding Mr. Feldman's memo Mr. Dehart added that as of yet no one has talked about volleyball.

Mr. DeHart referred to an e-mail to the Board from Patrick A. dated July 19, 2017, written two days before Mr. Feldman's memo to the Board. Mr. A's July 19, 2017 e-mail states in part "...if on the other hand, the applicant can substitute games such as beach volleyball within that area...". Mr. DeHart took exception to the fact that there was a meeting/discussion without the Applicant's participation. He also took exception to being instructed to include something on a plan, then being held to a new set of rules; and the holding of a discussion outside of the Planning Board.

Mr. Wilkos asked if the applicant would be willing to provide a list of games that will be played.

Mr. DeHart responded that they will.

Mr. Heyland added that when any application comes into his office he tries to gather as much information as possible. This is important because if he doesn't someone will come into his office asking "where in the approval does it say that they are allowed to do this, or that". For clarification purposes he asks for so much information, however he understands how in this case it has become an issue.

Mr. DeHart reiterated that he will provide a list of games, and the Board will decide what games are good and what games are bad for Route One.

Mr. MacLeod responded that the two words which came up most during the public hearing were "noise" and "safety". Regardless of Mr. Feldman's comments the Planning Board has a responsibility to the Town to review Item 15 of Article 6.7 of the Ordinance which states "Anticipates and mitigates potential nuisance created by its location". Mr. MacLeod stated that

these are his concerns regardless of Mr. Feldman's comments which he (Mr. MacLeod) was unaware of until tonight.

Mr. Wilkos reviewed some of the other concerns brought up during the public hearing. He began with noise and asked Mr. Heyland to respond.

Mr. Heyland responded that the Noise Ordinance is a police ordinance. It states that 9:00 p.m. to 7:00 a.m. is generally considered to be a "quiet time". However, anyone who has been in the downtown area at 1:00 a.m. knows how noisy it can be. The Board will have to be comfortable that this standard has been satisfied. The key is 9:00 p.m.

Mr. Wilkos asked what time the outdoor games will cease.

Mr. DeHart responded that in June the hours of operation may go until 9:00 p.m. because there is still daylight at that time; and there will be no artificial lighting for the games. However at the end of August when daylight ends earlier the games would have to cease earlier based upon lack of light.

The time frame is 9:00 p.m. because that's what is in the zone; and if the Applicant's wanted to extend that by adding artificial lighting they would have to come back before the Planning Board for an amendment.

Mr. MacLeod added that the Ordinance sets noise limits during the daytime as well as night when the noise levels are required to be less. People are within their right to complain about noise at noon if it exceeds the Code standards.

Mr. DeHart added that violations should be brought to the appropriate place, and he added that if complaints are brought to the Select Board, during liquor license reviews, they will respond.

Mr. Wilkos asked about lighting.

Mr. DeHart responded that the Applicants will abide by the Code, and above and beyond that they will be using Dark Sky Rated, down shielded lighting. There will be no lighting that goes off the property, or gets into vehicle drivers' eyes.

Mr. Heyland asked for the maximum height of a light post.

Mr. DeHart responded that the lighting posts will be used for walking on pathways and the fixtures will be below three feet, except within the pavilion.

Mr. Heyland noted the 9:00 p.m. end time for games, he asked if that applies to the pavilion or if the pavilion activity is independent of the games. He noted that in GBD2 they could legally serve until 1:00 a.m. and the Applicants could be coming before the Board asking for a 1:00 a.m. closing time.

Mr. DeHart responded that the Applicants objective is to create a fun outdoor atmosphere; they are not trying to create a "bar". The intent is to be family oriented.

Mr. DeHart stated that the games and pavilion will be shut down at 9:00 p.m.

Ms. Freedman asked about the outdoor chairs and game equipment when the restaurant closes.

Mr. DeHart responded that they will be stored in the pavilion at night. He added that the “conceptual drawings” include lawn chairs which may or may not be used. He reminded everyone that these drawings are conceptual.

Mr. Wilkos asked about safety.

Mr. DeHart responded that in the end the business owners are responsible for the safety of what happens on their property. He added that there is a certain amount of responsibility that parents have for their children and a responsibility that individuals have for themselves.

Mr. Wilkos asked about the Glen Avenue access.

Mr. Heyland responded that this rear access and road were there long before those homes. The Fire Chief was consulted and he (Chief O’Brien) has no issues with closing that access. The property is sufficiently accessed by two curb cuts off of Route 1.

Mr. DeHart responded that the Applicants will not entertain a request to remove or close off the Glen Avenue access. The Applicants’ restaurant and other businesses that rear onto Glen Avenue have been receiving deliveries from that road for years. He added that this Glen Avenue curb cut/entrance was approved by the Planning Board during a previous application.

Mr. Wilkos asked if there is a boundary for the serving of alcohol.

Mr. DeHart responded that the boundary is the patio. He added that they are open to putting up a fence which might help with the safety issue as well.

Mr. Heyland asked where the fence would be located.

Mr. DeHart responded that it could go around the patio or around the entire perimeter of the lawn.

Mr. Wilkos asked if there is a decibel level or noise allowed.

Mr. Heyland responded that the standards are in Section 8.6 of the Municipal and the Zoning Ordinance. He noted that it extends the allowable outdoor time use to 10:00 p.m. He added that he has a sound meter which he uses to respond to complaints.

Mr. Wilkos asked about the number of requested seating.

Mr. DeHart responded that the seating levels are determined by the Fire Department. Because this application will have to go back before the Select Board for an expansion of the alcohol consumption area, the Fire Department will make an inspection and determine the occupancy load for the area in question.

Mr. Heyland agreed; and added that this application involves an exchange of seats between the existing seating arrangement and the new plan. He noted that there will actually be a reduction in the number of overall seats. Thus there is no trigger of parking or traffic. He (Mr. Heyland) did a historical analysis of the property and determined that even with the current proposal the seating numbers are less than for the previous usage.

Mr. DeHart again confirmed that there will be no lighting for the games, nor will there be any sounds, beeps, or horns. Also, lighting will not effect abutters or traffic.

Ms. Botsford asked if the Amusement Ordinance was not within the Planning Board's purview.

Mr. Heyland confirmed that those licenses are issued by the Select Board.

Mr. MacLeod asked if there would be any change in traffic from the original restaurant.

Mr. DeHart responded that there would be less.

Mr. Heyland summarized that the change will be equal or less than the original number of seats. The decrease in seating negates the need for a parking or traffic study.

Mr. MacLeod Moved to go forward with the Design and Site Plan Reviews for JACKIE & RON, LLC / ANGELO'S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review and Site Plan Review for a post 1930 structure. Application to construct an outside pavilion and lawn games. 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 go forward with the Design and Site Plan Reviews for JACKIE & RON, LLC / ANGELO'S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review and Site Plan Review for a post 1930 structure. Application to construct an outside pavilion and lawn games. MACLEOD/HAYES 5:0 UNANIMOUS (Ms. Botsford voted due to Ms. Bevins' recusal)**

At this time the Board reviewed the Design Review Standards under Article 11.7.C of the Ogunquit Zoning Ordinance and; based upon the Applicants' submissions and comments made at the meetings the Board found all required standards to have been met, with some conditions for approval.

Mr. Hayes Moved to Approve the Design Review for JACKIE & RON, LLC / ANGELO'S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review for a post 1930 structure. Application to construct an outside pavilion and lawn games. HAYES/MACLEOD

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

**Mr. Hayes Moved to Approve the Design Review for JACKIE & RON, LLC / ANGELO'S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review for a post 1930 structure. Application to construct an outside pavilion and lawn games. HAYES/MACLEOD 5:0 UNANIMOUS (Ms. Botsford voted due to Ms. Bevins' recusal)**

At this time the Board reviewed the Site Plan Review Standards under Article 6.5 and 6.7 of the Ogunquit Zoning Ordinance; and based upon the Applicants' submissions and comments made at the meetings the Board found all required standards to have been met with some conditions for approval.

Regarding Item 1 the Board agreed that it would be satisfied subject to conditions of approval.

Regarding Item 2 the Board agreed it would be satisfied subject to the Applicant providing a list of games to be used.

Mr. DeHart agreed to do so.

Regarding Item 5 Mr. Wilkos asked if the fire pit will give off smoke.

Mr. DeHart responded that it will be a propane fire pit.

Regarding Item 6 the Board agreed it would be satisfied if the outdoor games and pavilion activity are closed by 9:00 p.m.

Regarding Item 12 Mr. Heyland noted that buffering applies to abutting residential uses. He noted that there are residential uses abutting the subject property however, they are already very heavily buffered with vegetation.

The Board agreed that Item 12 would be satisfied as long as the existing vegetative buffering is not removed, particularly along the Glen Avenue side of the property.

Regarding Item 13 Mr. DeHart confirmed that there is a storm basin where runoff collects, in addition there will be grass surrounding the new patio area.

The Board agreed that Item 13 would be satisfied.

Regarding Item 15 the Board agreed that this item is satisfied as long as:

- The Noise Ordinance is abided by;
- The Board agrees upon the list of lawn games submitted by the Applicants;
- Fencing and landscaping will contain patrons with alcohol

Regarding Item 16 the Board agreed that this item is satisfied with conditions of approval.

Mr. DeHart listed the proposed lawn games:

Horseshoes  
Lawn Darts  
Ladder Toss

Corn Hole  
Can Jam  
Trash Can Frisbee  
Bocce  
Croquet  
Back Yard Gold  
Shuffleboard  
Scholf  
Badmitten  
Catch  
Frisbee  
Ball Toss  
Tetherball  
Washers  
Whiffleball  
Ladder Golf  
Lawn Twister  
Toss  
Volley ball

Ms. Freedman asked how many games will be played on the lawn.

Mr. DeHart responded that there is only so much space; not all games will be played at one time, there will be four games going on at any one time.

Mr. Heyland responded that shuffleboard has a hard surface with hard concrete.

Mr. DeHart responded that shuffleboard would be removed from the list.

Mr. Heyland noted that it appears as if the games listed all have equipment which can be removed and stored away during the night.

Mr. DeHart agreed.

Ms. Freedman expressed her concern regarding flying objects and asked for them to be eliminated.

Ms. Botsford expressed concern regarding volley ball.

Mr. DeHart responded that Volley Ball is off the list.

Mr. Wilkos asked the Board to review each game one at a time.

Mr. DeHart explained each game's components and objective and the Board found each one acceptable, or not:

Horseshoes – The Board agreed this game was acceptable.

Lawn Darts – The Board agreed this game was acceptable.

Ladder Toss – The Board agreed this game was acceptable.  
Corn Hole – The Board agreed this game was acceptable.  
Can Jam – The Board agreed that they did not want this game and Mr. DeHart removed it from the list.  
Trash Can Frisbee - The Board agreed that they did not want this game and Mr. DeHart removed it from the list.  
Bocce– The Board agreed this game was acceptable.  
Croquet– The Board agreed this game was acceptable.  
Back Yard Gold – No one knew what this game was and Mr. DeHart removed it from the list.  
Shuffleboard- Mr. DeHart removed this from the list.  
Scholf - The Board agreed this game was acceptable.  
Badmitten - The Board agreed this game was acceptable.  
Lawn Bowling- The Board agreed this game was acceptable.  
Catch- The Board agreed that they did not want catch with any type of ball, including Nerf balls and Mr. DeHart removed it from the list.  
Frisbee - The Board agreed that they did not want this game and Mr. DeHart removed it from the list.  
Tetherball - The Board agreed this game was acceptable.

Mr. DeHart confirmed that no game component will be permanent, nothing will be left outside.

Washers - The Board agreed this game was acceptable.  
Whiffleball - The Board agreed that they did not want catch with any type of ball, and Mr. DeHart removed it from the list.  
Ladder Golf - The Board agreed that they did not want this game and Mr. DeHart removed it from the list.  
Lawn Twister -The Board agreed this game was acceptable.  
Toss - The Board agreed that they did not want this game and Mr. DeHart removed it from the list.  
Volley ball - The Board agreed that they did not want this game and Mr. DeHart removed it from the list.

Mr. MacLeod responded that the issue of games is before the Board as part of this application. He added that some flying objects are different than other flying objects: such as Frisbees and footballs and horseshoes or bocce. His concern is about Route 1 where a Frisbee might fly out and hit a vehicle.

Mr. DeHart responded that the only reason the lawn games were included was because the Applicant was asked to include them. He noted that this Applicant sits on the Planning Board and as such is being subject to overly stringent review.

Mr. Wilkos responded that every applicant is treated the same.

Mr. Wilkos asked if Mr. Feldman's comments; and the comments from the public and the Board have all be addressed. The Board agreed that they had.

The Board reviewed possible conditions of approval:

- There will be a stonewall and evergreen plantings along Route One; as well as fencing matching the existing black fencing, with intermittent 32” tall evergreen plantings around the sides of the lawn area as is indicated on the submitted plans.
- The Applicant will abide by the Ogunquit Zoning Noise Ordinance and the Municipal Noise Ordinance.
- Lighting will be low Dark Sky compliant which will not effect abutters or vehicular traffic on Route One.
- Operation for the lawn games will end at 9:00 p.m. Service at the pavilion will cease at 9:00 p.m. and the pavilion area will be vacated by 10:00 p.m.
- Only the following games will be played; and there will be only four games in play at any one time:

Horseshoes  
 Lawn Darts  
 Ladder Toss  
 Corn Hole  
 Bocce  
 Croquet  
 Scolf  
 Bad mitten  
 Lawn Bowling  
 Tether Ball  
 Washers  
 Lawn Twister

Mr. MacLeod Moved to Approve the Application for JACKIE & RON, LLC / ANGELO’S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review and Site Plan Review for a post 1930 structure. Application to construct an outside pavilion and lawn games with the following Conditions of Approval:

- There will be a stonewall and evergreen plantings along Route One; as well as fencing matching the existing black fencing, with intermittent 32” tall evergreen plantings around the sides of the lawn area as is indicated on the submitted plans.
- The Applicant will abide by the Ogunquit Zoning Noise Ordinance and the Municipal Noise Ordinance.
- Lighting will be low Dark Sky compliant which will not effect abutters or vehicular traffic on Route One.
- Operation for the lawn games will end at 9:00 p.m. Service at the pavilion will cease at 9:00 p.m. and the pavilion area will be vacated by 10:00 p.m.

- Only the following games will be played; and there will be only four games in play at any one time:

Horseshoes  
Lawn Darts  
Ladder Toss  
Corn Hole  
Bocce  
Croquet  
Scolf  
Bad mitten  
Lawn Bowling  
Tether Ball  
Washers  
Lawn Twister  
MACLEOD/FREEDMAN

Mr. Wilkos called for discussion on Mr. MacLeod's Motion.

Mr. Hayes asked if the list of games for this application applies to everyone on Route One.

Mr. Heyland responded that it does not. There is only one application before the Board and if another applicant comes before the Board with games requests; that new application will be evaluated on its own merits.

Mr. DeHart confirmed that the Applicants will abide by the Fire Chief's request to have a turn off valve at the fire pit for emergencies. He also confirmed that the agreed upon fencing will delineate the area of alcohol consumption.

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 Approve the Application for JACKIE & RON, LLC / ANGELO'S – 355 Main Street – Map 7 Block 29 – GBD2 – Design Review and Site Plan Review for a post 1930 structure. Application to construct an outside pavilion and lawn games with the following Conditions of Approval:**

- **There will be a stonewall and evergreen plantings along Route One; as well as fencing matching the existing black fencing, with intermittent 32" tall evergreen plantings around the sides of the lawn area as it is indicated on the submitted plans.**
- **The Applicant will abide by the Ogunquit Zoning Noise Ordinance and the Municipal Noise Ordinance.**
- **Lighting will be low Dark Sky compliant which will not effect abutters or vehicular traffic on Route One.**

- **Operation for the lawn games will end at 9:00 p.m. Service at the pavilion will cease at 9:00 p.m. and the pavilion area will be vacated by 10:00 p.m.**
- **Only the following games will be played; and there will be only four games in play at any one time:**

**Horseshoes**

**Lawn Darts**

**Ladder Toss**

**Corn Hole**

**Bocce**

**Croquet**

**Scolf**

**Bad mitten**

**Lawn Bowling**

**Tether Ball**

**Washers**

**Lawn Twister**

**MACLEOD/FREEDMAN 5:0 UNANIMOUS (Ms. Botsford voted due to Ms. Bevins' recusal)**

**2. THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outdoor service.**

Jason Evans summarized that the restaurant is in The Perkins Cove Business District, it is currently a Type 1 Restaurant and he is asking to be a Type 2 Restaurant. He noted that there are a lot of existing Type 2 Restaurants with outside seating, dining, and service in the PCBD. The hours will be 11:00 a.m. to 9:00 p.m. No entertainment or outside music. He plans to run a quiet business. Mr. Evans noted that he has operated his other restaurant in Perkins Cove for over twenty years and has never had any problems or complaints for noise, disorderly conduct, safety issues, or other problems of that nature. He intends to run The Trap the same way.

Having a Type 2 restaurant gives him a bit more flexibility over the service end and more control over the outside spaces; particularly with regard to the service of alcohol.

The Trap has been inspected by all required officials from the Town and the State: Code Enforcement, Fire Inspector, State Health Inspector, State Fire Marshall, State Liquor License Inspector, etc. They all looked at the property and everything has been done totally by the book.

Mr. Wilkos asked Mr. Heyland to respond to the comments made during the Public Hearing.

Mr. Heyland responded that it is his opinion that the large amount of information, accusations, and allegations put before the Board at this meeting were intentionally submitted at this meeting so the Board would not have enough time to properly review it all.

The Town Tax Card indicates that the deck is 18'x12', he is unsure if the actual field measurement is less. He would have to confirm that on the site. The comment was that the deck is 16'x12' not 18'x12'.

Regarding the comment that the Fire Inspector has never been there; Mr. Heyland responded that he (Mr. Heyland) has been there multiple times and on at least two occasions he was accompanied by more than one person from the Fire Department, the Fire Chief and/or Fire Inspector.

Regarding the comments about the seating requirements, the amounts of seating, and isle width requirements. The local Fire Chief is the entity with jurisdiction over how many seats are allowed in certain spaces.

Mr. Heyland noted that there was a condition of no grease laden food which was placed upon a sandwich shop that predated this application. In January of 2017 he issued a permit for a contractor to install a hood system on the subject property. It is located in a business district, it is a restaurant in operation; the approval at that time was for a Type 1 Restaurant. He noted that it is typical to issue a hood vent permit without Planning Board approval. He asked the Applicant if he currently cooks grease laden food.

Mr. Evans responded that he has one small fryer and cooks: light fried calamari, tempura shrimp, and crab cakes; no french fries or onion rings.

Regarding the comment that there be "no greater impact"; Mr. Heyland argued that with the change to a Type 2 Restaurant; the presence of wait staff outside will give the Applicant better control over what occurs outside. Outdoor service staff can monitor and help control problems such as noise and drinking.

Mr. Heyland responded to the comment that there was no Building Permit card displayed. The first time he (Mr. Heyland) went out to the site he confirmed the orange Building Permit card in the front window which may, or may not, have included the hood system.

Mr. Heyland reviewed Zoning Ordinance Article 1.3.D.3 which states, in part, that "Shoreland General Development Districts, Ogunquit Beach, and Perkins Cove, the General Development Districts include the following types of existing intensely developed areas: areas of two or more continuous acres devoted to commercial or intensive recreational activities or a mix of such activities, included but not limited to the following: areas devoted to lodging, restaurant, retail trade; and service activities, or other commercial activities, and areas devoted to intensive recreational development and activities such as, but not limited to, trails and public beaches, areas otherwise discernible as having patterns of intensive commercial recreational uses"

Mr. Heyland noted that unfortunately there are residential uses in the cove which have to live with this. He added that the abutters who spoke live on a property which holds two commercial uses in addition to their residence, including a coffee shop on the lowest level of their building.

Mr. Heyland added that this may not be everything, the abutters handed out 82 pages of information at this meeting.

Mr. Wilkos reviewed a memo to the Board from Mr. Feldman SMPDC dated July 17, 2017. Mr. Wilkos noted that Mr. Feldman may not have received the current plan for 40 seats. He asked Mr. Evans if the current application is for 40 seats.

Mr. Evans confirmed that it is.

Mr. Wilkos confirmed that with the 40 seat application there is no need for an additional bathroom.

Ms. Freedman asked for confirmation that no one sits on the beach area with food or drink.

Mr. Evans responded that he has removed the chairs which were on the beach. There are no chairs on the beach at this time.

It was noted that the photos on the website still show the chairs on the beach.

Mr. Evans responded that there may be photos on the internet which have yet to be removed. He added that currently there are no chairs on the beach and if chairs were ever put on the beach there would be no food or alcohol on the beach as per the Resource Protection Rules.

Mr. Wilkos noted that the current plan still shows the Adirondack chairs on the beach.

Mr. Evans responded that those chairs have been moved to the front patio. Currently there is no plan to move them back to the beach.

He stressed that he does not want to give up access to the beach on behalf of the landlord who may want to use the beach.

Mr. Hayes asked if there are any residential units in this building.

Mr. Evans responded that there is one apartment.

Mr. Hayes asked if the residents or landlord would be allowed to put the chairs on the beach and have a drink there. He suggested the residents should be allowed to have a drink on the beach if they want.

Mr. Heyland responded by holding up a photograph provided earlier by an abutter showing people sitting on the beach. Mr. Heyland noted that it might be a picture of the resident and his family, there is no proof that the people in the photograph were customers of the restaurant, or if it is the landlord or resident.

Mr. Evans stressed that he monitors the traffic on the beach, and he doesn't want any alcohol beyond the deck.

Mr. Hayes stated that the Applicant has no control over what a resident does on the beach.

Mr. Heyland summarized that the Board cannot hold the Applicant responsible for the owners inability to use the property. If the owners want to go to the site and play Frisbee on the beach,

they can do so. It is a privately owned property with a residential use attached to it. The only thing the Board is looking at is the commercial piece.

Mr. Wilkos reiterated that the six Adirondack chairs have been moved from the beach to the front patio.

Mr. MacLeod stated that if the restaurant is providing the seating they are providing it for their customers. If the resident is providing it, they are providing it for their personal use. He asked for any indication of the restaurant seating on the beach to come off the website.

Mr. Evans agreed to remove what he has control over.

Mr. Wilkos asked for a revised plan indicating the removal of the six Adirondack chairs on the beach.

Mr. Evans agreed to do so as long as it does not forfeit the rights of the landlord or apartment resident.

Mr. Hayes and Mr. Wilkos both confirmed that this discussion is for the commercial use of the beach only and will not effect the landlord's or resident's rights to use the beach.

Ms. Botsford asked if the Applicant has to remove the fryer.

Mr. Heyland responded that for the benefit of the abutter, the Board could limit the use of the fryer to the current use.

Mr. MacLeod asked about the noise and odors coming from the vent outside the abutters' bedroom window.

Ms. Botsford responded that the Applicant wouldn't need the vent if he got rid of the fryer.

Mr. Evans noted that they still need the vent for the sauté station and grill.

Mr. Heyland confirmed that a primary part of the need for a vent is to evacuate heat from the kitchen space. He added that there had been an earlier issue with the setback requirement, and the hood and equipment had to be moved to meet the 10' setback requirement. The current installation meets the NFPA 96 Commercial Hood Ventilation Installation Code.

Mr. Wilkos asked Mr. Heyland what conditions of approval he recommends.

Mr. Heyland responded:

The nonfrying of food other than that which is already being produced;  
The use of the beach area is limited to the residential use of the property and not the commercial use.

Mr. Wilkos noted that a previous approval for Chowders Café contained a few conditions:

- Trash must be removed daily;
- No Clink Bags to be stored between the Applicant's building and that of the abutter;

Mr. Evans agreed to both conditions.

At this time the Board reviewed the Site Plan Review Standards as noted in Article 6.7 of the Ogunquit Zoning Ordinance.

Regarding Item 1:

The abutter shouted from the audience that the Board should consider Section 3.3.

Mr. Wilkos stated that the Public Hearing was closed; and this portion of the meeting is for Board discussion only. The Board would not respond to comments shouted from the audience.

Mr. Macleod expressed concern about the 82 pages the Board received from an abutter at the Public Hearing.

Ms. Botsford reminded the Board that the question involves the orderly and reasonable use of adjacent properties.

Mr. Wilkos responded that conditions of approval will restrict the use of the existing frying to what is currently being produced; and the restriction of beach use to residential use only.

Mr. MacLeod asked about fire safety and if the Applicant is required to have sprinklers in the building.

Mr. Heyland responded that the State Fire Marshal Rule only requires the installation of a sprinkler system if there is a major (more than 50%) renovation to the structure. That does not apply in this case. Also, this is a question the Fire Chief has authority over; and in his memo Chief O'Brien did not recommend sprinklers be installed.

Mr. Wilkos noted for the record that Article 3.3 deals with non-conforming structures.

Mr. Heyland added that with the presence of wait staff there will be greater control over what takes place on the deck and the beach areas. The deck tables have been out there for years. The previous business allowed patrons to leave the inside and go out there. The current application seeks to solidify this applicant's right to serve out there. In his (Mr. Heyland's) opinion this application does not make things worse. Mr. Heyland agreed with the abutters that the previous business was a nightmare however the current business is neatly and cleanly run and having wait staff on the rear deck will help control problems.

Ms. Botsford asked if there would not be dining outside if it was a Type 1 Restaurant.

Mr. Heyland confirmed this to be the case; and added that the current use of the property is a Type 1 use which only allows for serving of patrons indoors. He noted that all over town there are some outdoor seating areas affiliated with Type 1 Restaurants where people end up outside

with food on their own. There isn't serving but people end up there. It probably starts out as a waiting area where patrons sit waiting for a table and ends up becoming an outside eating area.

Ms. Botsford suggested it may be as noisy being a Type 1 as a Type 2.

Mr. Heyland responded it might be worse without an outdoor wait staff. He added that patrons should not wait for tables on the beach. This could be argued to be an extension of the commercial operations. However, this does not apply to the property owners and/or a person occupying the onsite residence who can sit on the beach with food or beverages. As in all cases the responsibility is with the business management.

Mr. MacLeod asked for confirmation that the deck has not been expanded.

Mr. Heyland responded that it is the same size as when Mr. Perkins replaced/repaired it in 1988. He reiterated that the occupancy load for the deck is determined by the Fire Chief who has set it at 20 seats.

Mr. Wilkos asked if there have been any police complaints.

Mr. Evens responded that there have been no complaints for his original restaurant (The Lobster Shack) or for The Trap.

The Board agreed that Item 1 would be satisfied subject to conditions of approval.

Regarding Item 4 the Board agreed that it would be satisfied subject to conditions of approval for daily trash removal.

Regarding Item 5

Mr. MacLeod asked about the noise and odors from the vent system.

Mr. Heyland responded that the discussion involves an existing fan and it won't be any noisier if the business is a Type 2.

Mr. Heyland asked about hours of operation, which would determine when the fan may or may not be running.

Mr. Evans responded that the hours of operating are from 11:00 a.m. to 9:00 p.m. and the fan is generally turned off by 9:05 p.m.

Regarding Item 5 the Board agreed that it would be satisfied subject to conditions of approval.

Regarding Item 12

Mr. Heyland stated that in Perkins Cove there is a zero lot line setback.

Mr. MacLeod asked if there was any way to buffer the fan, he suggested it could be screened so that the abutter looking out a window might see some type of fence instead of a fan.

Mr. Heyland responded that there may be. Sometimes people use latticework, screening or a solid façade on one side. He suggested some sort of cedar shake or false façade which would help buffer noise as well as appearance.

Mr. Wilkos stated that this could be some type of condition of approval.

Mr. Evans responded that he would consider screening the fan.

Regarding Item 15 the Board agreed that it would be satisfied subject to conditions of approval.

The Board determined that all other standards under Section 6.7 were determined to be satisfied.

Mr. Heyland noted that the question of “grease laden food” was not one of the original conditions.

Ms. Botsford stated that, regarding the fryer, in order to do this the Board would have to bring it back to what it was originally.

Mr. Heyland responded that this is a new review. There were three conditions in the previous approval, and "no grease laden food" was not one of them. It was discussed at that time but never made it to the conclusions or Findings of Fact. This Board can create its own conditions.

The Board reviewed possible conditions of approval.

- Fryer will be limited to the current use as vegetable oil frying of tempura seafood and crab cakes. And there will be no increase in size of frying equipment.
- The Applicant will provide a revised site plan indicating the removal of the Adirondack chairs from the beach. The Beach is limited to residential use only
- The Applicant will remove trash every day.
- No Clink bags will be stored between the subject property and the abutting properties.
- Hours of operation will be 11:00 a.m. to 9:00 p.m.
- Applicant will install materials to screen the exhaust fan from the abutter.

Mr. Hayes suggested the fan company might be able to change the RPM's to reduce the noise factor.

Mr. MacLeod Moved to Approve the Application for THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outdoor service with the following conditions:

- Fryer will be limited to the current use as vegetable oil frying of tempura seafood and crab cakes. And there will be no increase in size of frying equipment.

- The Applicant will provide a revised site plan indicating the removal of the Adirondack chairs from the beach. The Beach is limited to residential use only
- The Applicant will remove trash every day.
- No Clink bags will be stored between the subject property and the abutting properties.
- Hours of operation will be 11:00 a.m. to 9:00 p.m.
- Applicant will install materials to screen the exhaust fan from the abutter.

MACLEOD/BEVINS

Mr. Wilkos called for discussion of Mr. MacLeod’s Motion. There being none he called for a vote:

**Mr. MacLeod Moved to Approve the Application for THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outdoor service with the following conditions:**

- **Fryer will be limited to the current use as vegetable oil frying of tempura seafood and crab cakes. And there will be no increase in size of frying equipment.**
- **The Applicant will provide a revised site plan indicating the removal of the Adirondack chairs from the beach. The Beach is limited to residential use only**
- **The Applicant will remove trash every day.**
- **No Clink bags will be stored between the subject property and the abutting properties.**
- **Hours of operation will be 11:00 a.m. to 9:00 p.m.**
- **Applicant will install materials to screen the exhaust fan from the abutter.**

MACLEOD/BEVINS 5:0 UNANIMOUS

**G. NEW BUSINESS – None**

**H. CODE ENFORCEMENT OFFICER BUSINESS –**

**1. Discussion regarding An Ordinance to Amend Ogunquit Zoning Ordinance Article 7 Section 7.2.G Land Use Controls: Retail Marijuana Prohibition.**

Mr. Heyland reviewed the proposed language and asked the Board to schedule a Public Hearing:

*Note: The symbol of " \* \* \* \* " indicates that there is missing text that will remain unchanged, which has been left out of this document for the purpose of brevity. Underlines indicate proposed*

*language to add, and strikeouts indicate proposed removals of language.*

G. Retail Marijuana Prohibition

For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, as either a principal use or an accessory use, are expressly prohibited in Ogunquit.

No person or organization shall develop or operate a business that engages in retail sales of marijuana or any retail marijuana-product, both as defined by 7 M.R.S.A. § 2442.

~~Mr. Heyland informed the Board~~ that this language has been reviewed and approved by the Town Attorney.

The Board scheduled a Public Hearing to take place on August 28, 2017 at 6:00 p.m.

I. ~~OTHER BUSINESS~~ – None

J. ADJOURNMENT –

**Mr. Macleod Moved to Adjourn at 9:58 p.m.  
MACLEOD/HAYES 5:0 UNANIMOUS**

Respectfully Submitted  
*Maryann Stacy*  
Maryann Stacy  
Ogunquit Planning Board  
Recording Secretary

*Approved on August 14, 2017*