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**OGUNQUIT PLANNING BOARD
PUBLIC HEARINGS and
REGULAR BUSINESS MEETING
MINUTES**

**DUNAWAY CENTER MAIN AUDITORIUM
SEPTEMBER 25, 2017**

PUBLIC HEARINGS

- 1. DUNELAWN CONDOMINIUM ASSOCIATION C/O BOB DIGENNARO – US Route One, Hoyts Lane, and River Road (Map 7 Block 79) General Business District 1 (GB1), Residential (R), and Shoreland Limited Residential (SLR). Design Review and Site Plan Review Application to reconstruct vehicle entrance off of US Route One, construct a vehicle and pedestrian gate, replace speed bump with speed table, add two (2) parking spaces, additional lighting and fences, and regrade drainage.**

Mr. Wilkos noted that the Board held a Site Visit earlier in the day.

John Lorden, the Applicants' representative addressed the Board and gave a brief summary of the proposed project as noted above.

Jason Corbin (268 Main Street – Map 7 Block 66) addressed the Board as a direct abutter. Mr. Corbin expressed concern that the location of the proposed fence, roadway, and parking spaces were not flagged for the Site Visit.

Mr. Corbin was also concerned that trees on his property be preserved. He asked the Board for a determination identifying who owns which trees in the area of the proposed fence. He also noted that the trees in the area are very old and important to the character of the area; he asked that they not be cut.

Mr. Corbin also asked for a more specific location of the proposed fence.

Mr. Lorden responded that the intent is to have the fence run along the edge of the driveway pavement; however he noted that the exact location of a fence isn't generally determined until the contractor begins work onsite; and the fence can be "field located". It does appear as if in one location the fence will run between two trees; and there is no intent to remove any of the trees.

Mr. Lorden reiterated that the exact location of the fence will be determined in the field when work begins, however the proposed location is approximately twelve (12) feet from the property line. He noted that they could put the fence anywhere on the Dunelawn property they like; however the intent is to have it run along the edge of the driveway. As the fence approaches the Abalonia's fence the Dunelawn fence will angle in to create an uninterrupted visual buffer.

Mr. Wilkos asked if anyone else wished to be heard. There being no one the Public Hearing was closed at 6:10 p.m.

2. NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) Limited Business District (LBD). Site Plan and Design Review for a pre 1930 structure. Application to convert from a Type 1 Restaurant to a Type 2 Restaurant, and the addition of a gas fire pit and patio area.

Matthew Wickert, Applicant, addressed the Board and summarized the project as described above.

Mr. Wilkos asked if anyone wished to speak for, or against, this application. There being no one the Public Hearing was closed at 6:12 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 (1st Alternate)

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

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES –

August 28, 2017 Public Hearings and Regular Business Meeting

Mr. Hayes Moved to Accept the Minutes of the August 28, 2017 Meeting as Submitted.

HAYES/FREEDMAN 5:0 UNANIMOUS

September 11, 2017 Site Visit

Mr. Hayes Moved to Accept the Minutes of the September 11, 2017 Site Visit as Submitted.

HAYES/MACLEOD 5:0 UNANIMOUS

September 11, 2017 Regular Business Meeting

**Mr. Hayes Moved to Accept the Minutes of the September 11, 2017 Meeting as Submitted.
HAYES/BEVINS 5:0 UNANIMOUS**

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

Mr. Wilkos asked if there was anyone who wished to address the Board on any matter not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

1. DUNELAWN CONDOMINIUM ASSOCIATION C/O BOB DIGENNARO – US Route One, Hoyts Lane, and River Road (Map 7 Block 79) General Business District 1 (GB1), Residential (R), and Shoreland Limited Residential (SLR). Design Review and Site Plan Review Application to reconstruct vehicle entrance off of US Route One, construct a vehicle and pedestrian gate, replace speed bump with speed table, add two (2) parking spaces, additional lighting and fences, and regrade drainage.

Mr. Lorden noted that there are a few items he intends to add to the plan:

1. The openings for the gates will be as determined by the Fire Chief.
2. The Dunelawn proposed fence will match the look of the Abalonia white vinyl fence as much as possible to maintain a similar appearance.
3. The entire proposed fence will be located on the Dunelawn property, which will be verified by the contractor in the field.

Mr. Lorden noted that he has received notification from the OHPC that no public hearing is required. He has also provided an Authorization Letter from the Dunelawn Condominium Association's President Ethel Such, noting that the proposed plans have been approved by the Dunelawn Board members.

Mr. Lorden also confirmed that neither the Ogunquit Police Chief nor Public Works Supervisor expressed any concerns with the proposed plans.

Mr. Wilkos asked for confirmation that during the Site Visit Mr. Lorden agreed not to cut down any trees.

Mr. Lorden responded that there is no intent to remove any trees; however he would not want that to be a condition of approval. It will depend on conditions they encounter at the time the fence is installed.

Mr. Wilkos pointed out that the Planning Board may impose a condition of approval that no trees may be cut down.

Mr. MacLeod responded that if the Board says “no trees may come down” and it is later determined that a tree needs to be removed for safety reasons the Applicant should have some room to do so.

Mr. Feldman suggested that if the Board includes a condition of approval that no trees be removed and the Applicant determines he needs to remove trees he should be required to come back to the Planning Board for an amendment to the approval. He also noted that current fence installation practices are such that they can install the fence without damaging the trees’ root systems and endangering the health of the trees.

Ms. Freedman asked why the trees aren’t indicated on the Site Plan; and how the Board knows the trees are on the Dunelawn property.

Mr. Lorden responded that the existing fence is on the Abalonia/Dunelawn property line; and the trees are well on the Dunelawn side of the line. When the Dunelawn fence is installed most of the trees will be on the Abalonia side of the new fence.

Mr. Heyland asked: what happens if one of those trees needs to be taken down for safety reasons? Can the Applicant never cut down those trees because of a Planning Board Condition of Approval? When does the timeframe end? Two years? Five years?....

Mr. Hayes asked about having a survey produced which indicates where each of the trees is located.

Mr. Feldman responded that between the State DOT project’s survey and the Applicant’s Site Plan the boundary is very well established. The PK Nail was set by the DOT and there is a granite monument at the back of the property; that line is well established. The Board might ask the surveyor to visit the property and indicate the location of certain trees and the proposed fence line.

Mr. Hayes stated that if there are property markers in place there should be no problem running a line to clearly show the property line and which side the trees fall on.

Mr. Heyland added that once the property boundary line is established the Applicant only has to place the fence on Dunelawn’s property. He (Mr. Heyland) issues many fence permits and the rule is that the fence needs to be on the owner’s property. Regarding the trees the Applicant could be asked to make every effort to avoid the trees even if it means breaking up the fence sections. If there is a tree which has to come down the Applicant could come back to the Board for that.

Ms. Bevins suggested the Applicant might come back with an amended Site Plan which clearly indicates the location of the trees and the proposed fence.

Mr. Heyland reiterated that if the Applicant can accomplish the location of the fence without disturbing any of the trees they could be granted approval. The fence can go anywhere on the Dunelawn property. The proposed fence location is approximately nine (9) feet from the property line which gives them plenty of room to make adjustments to the location. This isn’t a case

where the fence is being placed directly along the property line and there are trees in between the two.

Mr. MacLeod noted Mr. Corbin's comment that there is no indication on the plan where the fence ends at the west end.

Mr. Feldman responded that Traffic Standards require twelve (12) feet; this project proposes fifty-five (55) feet. Well beyond the requirement. He agreed that this information should be included on the plans.

Mr. Wilkos summarized that the Board would like to see the following information on a revised Site Plan:

- Location of the trees;
- Location of the fence;
- Confirmation of the property line;
- Confirm where the fence will end in relation to Route One.

Mr. Heyland suggested the Applicant would have to come back before the Board if, in the future, they want to remove any of the trees. Mr. Heyland confirmed that the exact location of the fence can't be determined until the fence company begins installation of the fence. If the installer runs into some form of obstruction the fence may have to be moved a few inches. The intention is to keep the fence on the Dunelawn property and to avoid the trees. If the fence installer determines he has to remove a tree the Applicant would have to come back to the Planning Board.

The Board discussed the possibility of voting on the plan without the fence; and determined this was not the preferable approach.

Mr. Hayes suggested the Board determine that no trees are to be cut; and if it becomes necessary to remove a tree to install the fence they would have to come back to the Board.

Mr. Heyland also informed the Board that if the Applicant hadn't included the fence as part of the Planning Board Application he (Mr. Heyland) could issue a fence permit without Planning Board involvement. Fences and Signs are exempt from the Design Review Process.

Ms. Freedman asked if the Applicant could decide not to put up the fence.

Mr. Feldman responded that if the fence is approved as part of the plan the Applicant has to put it up, if they decide not to put up the fence they have to come back before the Board.

Mr. Wilkos stressed the importance of the Board having an accurate Site Plan.

Mr. Hayes noted that the application form says the gate is for vehicle and pedestrian access, however the cut sheet states the gate is for vehicle access only. He asked if there are one or two gates.

Mr. Lorden responded that the vehicle gate is a mechanical gate and there is a second pedestrian gate and walkway to the side of the vehicle gate.

Ms. Freedman Moved to Table the Application for DUNELAWN CONDOMINIUM ASSOCIATION C/O BOB DIGENNARO – US Route One, Hoyts Lane, and River Road (Map 7 Block 79) General Business District 1 (GB1), Residential (R), and Shoreland Limited Residential (SLR) until submission of a revised Site Plan indicating the following:

- Location of trees in the area of the proposed fence;
- Location and length of the fence;
- The openings for the gates will be as determined by the Fire Chief;
- The Dunelawn proposed fence will match the look of the Abalonia white vinyl fence as much as possible to maintain a similar appearance;
- The entire proposed fence will be located on the Dunelawn property, which will be verified by the contractor in the field.

FREEDMAN/HAYES

Mr. Wilkos called for discussion. After a brief review of the material the Board voted on Ms. Freedman's Motion:

Ms. Freedman Moved to Table the Application for DUNELAWN CONDOMINIUM ASSOCIATION C/O BOB DIGENNARO – US Route One, Hoyts Lane, and River Road (Map 7 Block 79) General Business District 1 (GB1), Residential (R), and Shoreland Limited Residential (SLR) until submission of a revised Site Plan indicating the following:

- **Location of trees in the area of the proposed fence;**
- **Location and length of the fence;**
- **The openings for the gates will be as determined by the Fire Chief;**
- **The Dunelawn proposed fence will match the look of the Abalonia white vinyl fence as much as possible to maintain a similar appearance;**
- **The entire proposed fence will be located on the Dunelawn property, which will be verified by the contractor in the field.**

FREEDMAN/HAYES 3:2 (Mr. MacLeod and Ms. Bevins Dissenting)

2. NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) Limited Business District (LBD). Site Plan and Design Review for a pre 1930 structure. Application to convert from a Type 1 Restaurant to a Type 2 Restaurant, and the addition of a gas fire pit and patio area.

Mr. Wilkos noted that the Board held a Public Hearing earlier in the evening and no one spoke for, or against, this application.

Mr. Wilkos asked Mr. Feldman for his comments.

Mr. Feldman responded that he was asked to review the parking issues. He referred to Section 8.10.D.8 and 9 of the Ogunquit Zoning Ordinance. Mr. Feldman noted that the Applicant needs to add two (2) parking spaces to accommodate the proposed expansion. He added that if the Applicant provides the Board sufficient information relevant to any of the standards required to grant a waiver, the Board may waive a number of parking spaces.

Mr. Wilkos summarized that this applicant has to request a waiver and needs to meet one, or more, of the standards in Section 8.10.D.8 and/or 9. The Board may request additional

information from the Applicant to support the requested waiver; and the waiver request has to be in writing.

Mr. Wilkos asked Mr. Wickert if he wanted to request a waiver.

Mr. Wickert responded that in his application (page 5) he addressed Section 8.10.D.b; and he stated that he has fourteen parking spaces. He stated that at the last meeting it was discussed at length that he has fourteen parking spaces which is more than what he is required to have with the expansion. He reiterated that on Page 5 of his application he stated that he is not seeking a waiver: and he did provide additional information as to the nearby trolley stop and parking lot. He stated that he needs ten (10) parking spaces for the existing interior of ten thousand (10,000) square feet; and two (2) for the proposed outdoor expansion of two hundred and forty (24) square feet for a total of twelve (12) parking spaces for the restaurant use.

Mr. Heyland stated that there are concerns that the current conditions and configuration of the existing parking layout may not be able to meet the standards of the Ordinance. When an applicant requires two additional parking spaces, even though they may be existing in a gravel lot, the Ordinance requires the lot meet the standards of the ordinance. This situation begs discussion regarding whether or not the parking layout is a nonconforming condition and if the required two more parking spaces exacerbates that nonconforming condition. The question is “what are the Applicant’s options”. Mr. Heyland asked “even if a waiver is granted, does this current application open up the existing conditions for review?”

Mr. Wilkos asked Mr. Feldman if this applicant requires a parking waiver.

Mr. Feldman responded that he apparently does not.

Mr. Heyland asked the Applicant to review the parking layout. He (Mr. Heyland) noted that it is his understanding that there are currently fourteen parking spaces. He understood that there are: 12 required for the restaurant use, 2 required for the residence, and 1 for the commercial space.

Mr. Wickert responded that the 1 commercial space is shared between Marathon Real Estate and his restaurant. The real estate office closes at 5:00 p.m. and his restaurant opens at 5:00 p.m.

Mr. Heyland stated that the Board will have to authorize a dual use for the single parking space shared by the restaurant and the commercial space. He confirmed that the ordinance does allow for this type of sharing. The Board will have to identify the specific space and identify the times of use by each party. This leaves the fourteen parking spaces which he is concerned do not meet the standards of Off Street Parking and Loading as noted in Article 8.10 of the Zoning Ordinance: surfaces, backing out onto a main road where the ordinance limits this to no more than four vehicles backing out onto a street. He added that there are other standards which relate to the Applicant’s most recently submitted parking plan.

Mr. Wilkos summarized that this is a new application before the Board and the Applicant may be required to meet the current Ordinance standards. Once an application comes before the Board it opens up the entire site for review.

Mr. Feldman noted that Section 8.10.A.1.b of the Ordinance states that:

“Parking areas with more than four parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.” Mr. Feldman suggested the Board require the Applicant to address that issue.

Mr. Wickert reiterated that the current parking layout consists of: 7 in the paved parking area off of Stearns Road, 4 available for the restaurant, and an additional 2 for the residential unit (which are not counted in the overall 14 spaces), and 3 more parking spaces off Ledge Road. He noted that this property abuts three roads (1 main road and 2 secondary roads).

Mr. Wilkos asked how many overall parking spaces the property has.

Mr. Wickert responded that there are 16 including the two residential spaces which are stacked. What he is showing on his plan are those spaces dedicated for a Type 2 Restaurant.

Mr. Wilkos confirmed that Section 8.10 applies to all the parking spaces; and he noted there are more than 4 parking spaces on this site. He asked if the Applicant’s parking spaces are arranged so that it is not necessary for vehicles to back out onto the street.

Mr. Wickert responded that they are not; and there is no physical way to arrange them that way because of the layout of the property.

Mr. Wilkos noted that the Applicant does not meet that standard of the Ordinance.

Mr. Feldman asked if the trees behind the building could be clear-cut and the parking behind the building be expanded to provide additional parking.

Mr. Bevins stated that the recently provided site plan is not a survey and there are no measurements.

Mr. Heyland responded that the plan is scaled 1”=20’. He added that there is limited information on the plan; and he is unsure if they meet the required 9’x18.5’ dimensional size for parking stalls.

Mr. Wilkos noted that the Applicant has submitted what appears to be a parking plan and not a site plan.

Mr. Heyland reviewed the requirements for a “Site Plan” and he added that it is up to the Board to inform the Applicant about what it wants included on the Plan.

Ms. Bevins again asked for additional information regarding the parking.

Mr. Wickert referred the Board to the initially submitted plan, which was deemed acceptable by the Board. He noted that plan shows the Type 2 conversion with the deck. At the last meeting he was asked to provide information as to the locations of the parking areas he photographed. He noted that the recently submitted plan is not intended to be the site plan, it is supplemental information the Board asked for at the last meeting. It is only intended to show where the parking areas are located on the property.

Mr. Hayes asked where the residential parking spaces are located; and where the residence entrance is located.

Mr. Wickert responded that the two residential parking spaces are off of Stearns Road and the entrance to the apartment is at the rear and about the middle of the building.

Mr. Hayes asked for the dimensions of the deck where outside dining will take place.

Mr. Wickert responded that it is 11.6 x21 as indicated on the site plan. It is demarked by a step on the left side and the start of the handicapped ramp on the other side. He measured to the railing on the deck, the actual area which may be used for dining.

Mr. Heyland responded that the Town Tax Card indicates that the deck is slightly different but that may be because the measurement extended past the railing and included stairs and ramp.

Ms. Freedman asked if the handicapped parking space needs to be larger than regular parking spaces.

Mr. Heyland responded that typically it should have an area for exiting the vehicle, however this application involves an existing condition and existing parking spaces which have already been painted and marked. He added that this is part of the subject under consideration. Does this current application open up a review of the entire site, including any nonconformities that may exist in the current parking configuration? He reminded the Board that you can't exacerbate/aggravate an existing nonconforming condition.

Mr. Feldman added that everything is open to discussion.

Ms. Freedman asked if the existing parking spaces are legal size.

Mr. Heyland responded that he did not know.

Ms. Botsford asked about a waiver.

Mr. Heyland responded that the Board may waive the number of spaces; however it may not waive a dimensional standard.

Ms. Botsford asked if the Applicant could obtain a waiver and reduce the number of parking spaces which meet Code and the other spaces are just bonus spaces, the Applicant could come back to the Board with that waiver request.

Mr. Feldman responded that might be possible as long as he can satisfy one of the standards in Section 8.10 to the Board's satisfaction.

Mr. Wilkos asked if Section 8.10.A.1.b could be waived.

Mr. Feldman responded that he does not believe that standard may be waived.

Ms. Botsford added that the Applicant could reduce those spaces to 4 and that would be allowed.

The Board agreed that a Site Visit would be helpful.

Mr. Hayes noted that the Board received a very brief note from the OHPC. He asked what happened at the OHPC meeting with the Applicant.

Mr. Wickert responded that the meeting lasted about 3 minutes. He provided the OHPC with a copy of the application which was submitted to the Planning Board.

Mr. Wickert stated that OHPC Chairman Sumner Nystead stated to the Applicant that the landscaping had already been done; and the OHPC doesn't want to get into a situation where they make applicants make changes after the fact. The OHPC moved to make no comment to the Board.

Mr. Wilkos reviewed the OHPC Memo to the Board:

"A motion was made by Sumner Nystedt, that although Article 11 and Title 11 state that the OHPC has oversight in the landscaping and use of surrounding grounds of a pre-1930's structure, we defer any findings for this application to The Ogunquit Planning Board due to the completed nature of the project.

The motion was seconded by Newell Perkins.

IT WAS AGREED UPON: 5 YES 0 NO".

Mr. Wilkos interpreted this comment from the OHPC as their saying this is an after the fact application.

Mr. Heyland agreed.

Mr. Hayes responded that he sees the OHPC as being unhappy that they were presented with an after the fact application, when they have jurisdiction over pre 1930 structures and grounds. He went on to say that he has a problem when applicants come before the Board for things that have already been done and expect the Board to rubber stamp the approval.

Mr. Wilkos agreed that one of his major problems is with after the fact applications.

Mr. Wickert responded that in 2015 he submitted a plan to the Code Officer which showed replacement of blacktop walkways with paver walkways and landscaping and he was told that because it was a replacement of something that was existing, with something more visually appealing it wouldn't be a Planning Board issue and wouldn't need to go before the Board. At that time the Code Officer told him that he definitely would need to go to the Board for a fire pit. When Mr. Wickert spoke with the Code Officer about expanding to a Type 2 status he removed one walkway and replaced it with sod. His intent was not to come to the Board after the fact for a "rubber stamp". His intent was to follow the spirit of his conversation with the Code Officer at the time he opened the restaurant.

Mr. Wickert went on to say that it was his understanding that he is before the Board to talk about a gas fire pit and now he is hearing about a patio of crushed stone. He reviewed every line of the Zoning Ordinance and attempted to make sure he followed the spirit of the Ordinance, he

produces something that improves the visual aesthetic and appeal of the property, and doesn't fly in the face of any organization. He can only go off of conversations he has had as to what is, and isn't, allowed.

Mr. Heyland agreed that about two years ago he had a conversation with Mr. Wickert about changes to the front of the building. The key words are "replacement of something that was existing" i.e. replacing the asphalt walkway with pavers. This is the only thing he would have said was outside the scope of the need for Design Review.

Before the Board today are the: gas fire pit, gravel patio, and additional landscaping which are not things he would have said do not need Planning Board review.

Mr. MacLeod summarized that this is an existing building with existing parking; however the application is to expand the use of the property which requires additional parking. This Board has an obligation under the Ordinance to make sure that the parking meets Code requirements. If the parking layout is now on the table it should meet what the Code requires.

Mr. MacLeod also noted that the lighting on the proposed serving area is illegal under the ordinance and he hasn't seen a new proposal to replace it. The only drawing the Board has indicates an illegal string of lights which needs to be removed.

Mr. Wickert responded that he was told that if the lights were attached to a cable it would not be considered a "string of lights" and he has made that modification. He is also looking at additional lighting with covers so that they cannot be seen from the street even though they will only have 11 watt bulbs.

Mr. Wilkos asked if the Applicant had provided drawings or photographs illustrating the new lighting.

Mr. Wickert responded that he had not; they are in the photographs he submitted at the last meeting.

Ms. Freedman responded that the photographs show strings of lights.

Mr. Wickert stated that he was told at the last meeting that if there is an overhead cable system and the lights are attached to that it would no longer be considered to be a "string of lights".

Mr. Heyland responded that he recalls Ms. Botsford suggested some alternative, which was never approved by the Board. He also expressed confusion as to exactly what Mr. Wickert is describing.

Mr. Wilkos informed the Applicant that the "cable system" was only a suggestion put forth by the Board's alternate member. It was never voted on, or approved by the Board.

Mr. Hayes added that a cable system of lights is not putting a string of lights on a cable.

Mr. Wickert responded that he didn't see a definition of "cable system of lights" in the Ordinance. He added that as an alternative he can put posts up and install additional outside lighting which he is happy to do.

Mr. Wilkos informed the Applicant that he will have to submit a revised plan which reflects the new lighting plan.

Mr. Heyland added that he will also have to provide a picture of the light fixture with the hood, it should also include how high off the ground it will be; and if it will be downward lighting and if it is "Dark Sky Rated".

Mr. Wickert asked if this involves the "foot clause" in the ordinance, because that applies to residential abutters and he doesn't have any residential abutter who will be effected by the lights.

Mr. Heyland agreed and added that the Board, and the Ordinance, are primarily concerned with the elements of the bulbs being exposed to motorists and passer-bys.

Mr. Wickert responded that the lights are set back well off of the road and the bulbs themselves are 11 watt incandescent bulbs which are less than you would have in your oven. He noted that he drives around town at night and sees lots of lights. He added that the lights he is now looking at are posts with hanging lanterns, and to have solar powered down lights on the steps.

Mr. Wilkos confirmed that the Applicant would need to come back to the Board with a revised plan showing the changes in the proposed lighting, including the Code Officer's earlier list of items: a picture of the light fixture with the hood, information as to how high off the ground it will be; and if it will be downward lighting, and if it is "Dark Sky Rated".

Mr. Wilkos returned to the subject of parking. He asked for confirmation that if the Applicant can't satisfy the conditions of Section 8.10.A.1.b of the Ordinance, the application cannot be approved.

Mr. Feldman agreed that this is how he interprets it.

Mr. Wilkos stated that the Applicant would need to change the parking layout.

Mr. Wickert suggested a site visit so that the Board can see that the rear of the property has a rock wall and ledge-rock. The grade from Ledge to Stearns Roads is steep; and it is not possible without major ledge removal as well as the removal of all the trees which currently provide a buffer to the rear abutter. The change in elevation from Stearns Road to Ledge Road is very steep.

Mr. MacLeod asked about the Applicant going to the Zoning Board of Appeals.

Mr. Heyland responded that if that were to happen the Planning Board would table the application pending the granting of a variance by the Zoning Board of Appeals.

Ms. Botsford asked about the difference between a waiver and a variance.

Mr. Heyland summarized the question as: if the Applicant can find five parking spaces on his lot which meet all the Ordinance standards, could the Planning Board waive the remaining seven parking spaces? The answer would be yes, as long as the Applicant can provide information the Board is comfortable with regarding the standards under Section 8.10.A.1.b.

Ms. Botsford suggested the Applicant might begin to explore this alternative as a back-up plan.

Mr. Heyland agreed and added that the Applicant would need to inform the Board that he is going to pursue this well ahead of a meeting date.

Mr. Wilkos asked what the five parking spaces have to do with anything.

Mr. Heyland responded that this is just an example. The existing parking arrangement doesn't work, there are more than four vehicles which need to back out onto a public street, there are gravel areas which probably don't meet the required six inch depth, etc. If the applicant reevaluates the individual parking spaces and identified how many spaces would meet the standards he might request a waiver for the remaining spaces which do not meet the standards. He cautioned the Board not to plan the parking for the Applicant; it is up to the Applicant to present a proposed plan to the Board; and not the other way around.

Mr. Feldman responded that the Board may waive the number of parking spaces but not the parking standards. A variance is an entirely different thing granted by the Zoning Board of Appeals.

Ms. Freedman noted that scheduling a Site Visit earlier would allow the Applicant time to process comments made at that time and prepare material for inclusion in the Board's packets.

Mr. Hayes suggested the Board needs to confirm that the existing parking spaces are legal size.

Mr. Wickert summarized that there are two separate applications before the Board: Site Plan for change of use from Type 1 to Type 2 Restaurant, and a Design Review for the fire pit, patio, etc. he noted that there is still time this season to utilize the Type 2 outdoor dining and he would begin to do so as soon as he could get approval. He acknowledged that when an application comes before the Board it opens the entire property to the current code; his concern is that he might end up in a situation where he loses his parking or Debbie Marathon loses her parking space.

**Mr. MacLeod Moved to Table the Application for NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) Limited Business District (LBD). Site Plan and Design Review for a pre 1930 structure pending a Site Visit.
MACLEOD/BEVINS 5:0 UNANIMOUS**

The Board scheduled a Site Visit to take place on October 2, 2017 at 4:00 p.m.

Mr. Wilkos informed the applicant that he would have to have any submittals into the Land Use Office before October 13, 2017.

Mr. Heyland asked if the Board wanted the Applicant to flag anything specific.

The Board agreed that they will see everything they need to see without any flagging

3. **ANN MCKEE – 632 MAIN STREET – Map 9 Block 80-81-4 – General Business District 2 (GBD2). Design Review for a pre-1930 structure. Application to remodel and repair: windows, siding, and roofing. Add a new front entry with roof, remove one front door and balance front window locations, add sliding door to rear of building, and change rear porch with two decks.**

Michael Connell addressed the Board as the Applicant's representative. Mr. Connell summarized the project as noted above. Mr. Connell informed the Board that there is one change to the plan and that is that the Applicant no longer intends to make any changes to the rear decks.

Mr. Heyland summarized that the existing left front entry way will be removed and replaced with windows. The entrance way on the right will be replaced with a one-for-one replacement with no expansion from the original. Also, per the Ogunquit Historic Preservation Commission (OHPC) recommendation the lattice work on the right entryway will not be included.

Mr. Heyland also confirmed that the existing right rear door will be removed and replaced with two windows. Mr. Heyland confirmed that he is comfortable that there will be no expansion on the project. This project involves a façade change of primarily windows and doors, and the removal of the left front entrance.

Mr. Wilkos reviewed the OHPC Memo to the Board

"The hearing is to amend a previously approved construction plan by The OHPC from May 10th 2017. Due to a need for speeding up the process by the owner and contractor, several modifications have been made for the first phase of the renovation project. We believe these changes will not significantly alter the existing structure.

We have made several changes to the five agreed upon proposals (page 2) of the May 10th 2017 Meeting.

It should now read as follows:

1. *All new windows will be 2 over 1 double hung.*
2. *The siding shall be white cedar shingle, natural finish.*
3. *The West elevation to be built as drawn, with the addition (if necessary) of a temporary freeze board running along the first floor level to separate the new first floor shingles from the older ones on the second floor level. The plans call for the residing of the entire side, either in the first phase or by the second phase of the project.*
4. *The North side shall have a set of look-a-like French doors on the right of the elevation, visible from Riverbank Rd.*
5. *Shutters on the West or Main Street side of the building are to be replaced with an appropriate style similar to the existing ones currently on the building. The color to be determined by the applicant.*

VOTE TAKEN ON THE MOTION: 5 yes 0 NO"

Mr. Heyland referred to item 5, and asked if there will be shutters added to the plan.

Mr. Connell confirmed that shutters will be installed on the front (Route One) side of the building. He added that a freeze board will be added to the front and right side of the house.

Mr. Wilkos asked for an explanation of a “freeze board”.

Mr. Heyland responded that it is an architectural detail that visually breaks up a wall, usually between the first and second floors.

Mr. Connell added that it will be a horizontal white ten inch band running across the front and right side of the building.

Ms. Botsford noted that the right side elevation doesn't show the side of the front entranceway.

Mr. Heyland responded that he is OK with that because it is clearly shown on the front elevation, and he will confirm that the new entrance is the same size as the original.

Mr. Heyland asked if the windows on the 2nd floor will be changed.

Mr. Connell responded that they will be changed but not at this time. That will be phase II.

Mr. Heyland explained that even a nonconforming building may be replaced with no expansion due to dilapidated condition, or destruction by fire or weather.

Mr. MacLeod added that this would be similar to the Blue Water Inn which was destroyed by fire.

Mr. Heyland summarized that if this applicant applied for a building permit to remove this dilapidated building and replace it with a new exact replicate he (Mr. Heyland) could issue a building permit without any Planning Board involvement. The reason it is before the Board is because of the proposed changes to the façade. The solids to voids is being changed. He agreed that this is an after the fact application and added that the front entrance had to be removed before coming to the Board because of its condition being a safety hazard.

Mr. Hayes noted that the OHPC didn't comment on the left doorway's removal and the Applicant's plans to not replace it. He also asked about the comment that about “*Due to a need for speeding up the process by the owner and contractor*”.

Mr. Connell responded that the OHPC has looked at the original plans and the revised plans indicating the removal of the left front entrance and they were OK with it.

Ms. Botsford again asked for an explanation about the reconstruction of a nonconforming structure.

Mr. Heyland responded that in situations where a structure is dilapidated and rotted and in a condition which is irreversible, it is almost equal to destruction by fire. It is the Code Enforcement Officer's call to interpret Ordinance language, not the Planning Board's. In this case the entrance ways were so rotted they were almost falling off the building.

Mr. Heyland also informed the Board that he had received an authorization from the Beach Plum Condominium Association

The Board determined that a Public Hearing should be held due to the structure being a pre 1931 building.

Mr. MacLeod Moved to Table the Application for ANN MCKEE – 632 MAIN STREET – Map 9 Block 80-81-4 – General Business District 2 (GBD2). Design Review for a pre-1930 structure.

MACLEOD/BEVINS 5:0 UNANIMOUS

A Public Hearing was scheduled to take place on October 23, 2017 at 6:00.

The Board determined that no site visit was needed.

G. NEW BUSINESS –

- 1. JONATHAN BOURNE / OCEAN ACRES MOTEL – 676 Main Street (Map 10 Block 10) General Business District 2 (GBD2). Design Review for a post 1930 structure. Application to demolish single story structure and replace it with a new 26’x34’ single story structure.**

Mr. Bourne addressed the Board. He noted that this building was constructed in the 1960’s. The Planning Board allowed him to keep that building which contains two units to house help in the summer. This is the building he wants to demolish, move about 8’ to meet setbacks, and construct a similar building. The new building will have the same number of bedrooms and bathrooms. The only change to the appearance will be that the new building will have two additional windows.

Mr. Heyland summarized that the existing structure is a sixty year old, ranch style, single story, vinyl sided building. This application is before the Board because the Ordinance requires a Design Certificate for the demolition of any pre 1930 building in “The District”.

The Board determined that no Public Hearing or Site Visit would be needed.

The Board reviewed the standards under Article 11.7.C of the Ogunquit Zoning Ordinance and found all standards to be satisfied.

Mr. Hayes Moved to Approve the Design Review for JONATHAN BOURNE / OCEAN ACRES MOTEL – 676 Main Street (Map 10 Block 10) General Business District 2 (GBD2). Design Review for a post 1930 structure. Application to demolish single story structure and replace it with a new 26’x34’ single story structure.
HAYES/BEVINS

Mr. Wilkos called for discussion. There being none he called for a vote on Mr. Hayes’ motion:

Mr. Hayes Moved to Approve the Design Review for JONATHAN BOURNE / OCEAN ACRES MOTEL – 676 Main Street (Map 10 Block 10) General Business District 2 (GBD2).

**Design Review for a post 1930 structure. Application to demolish single story structure and replace it with a new 26'x34' single story structure.
HAYES/BEVINS 5:0 UNANIMOUS**

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland referenced copies of several letters he included in the Board Members' packets. These are copies of letters which were sent out to business owners who were using illegal strings of lights. He wanted the Board to see how he deals with these types of violations.

Mr. Heyland informed the Board that the proposed Shoreland Zoning amendment did not pass the Select Board's recommendation and will not be included on the November Town Meeting Warrant. There was some public input at the final Public Hearing which may have caused some confusion. He suggested additional workshops, perhaps with the Select Board, to help people understand the changes.

Mr. Wilkos noted that the Planning Board held a workshop and a Public Hearing on this matter and no one attended either the workshop or the Hearing. It was also mentioned several times during meetings that anyone with questions about the proposed Shoreland Zoning Ordinance could meet with the Code Officer to talk about the changes.

Mr. Wilkos also noted that at the Select Board Public Hearing there was a comment made that some of the Planning Board members stated that they did not read the proposed Shoreland Zoning Ordinance. Mr. Wilkos stated that no statement was ever made that a Planning Board Member did not read the material. One Board member stated that there was a lot of material to review and digest; and he/she did not read the entire document.

I. OTHER BUSINESS –

Ms. Freedman asked Mr. Heyland what response he received from the violation letters he sent out.

Mr. Heyland responded that most of the businesses correct the violation. He revisits the properties to confirm that they have complied. He agreed that most people comply; there are very few businesses which refuse.

Mr. Hayes expressed his displeasure regarding after the fact applications. He suggested the Board hold a workshop to discuss how best to handle these situations. There are too many applicants coming before the OHPC and the Planning Board after the work has been done. Mr. Hayes has been accused of being too tough; however he feels everyone needs to be treated the same, and it isn't fair to those applicants who follow the proper procedures and rules.

Mr. Hayes stressed that ignorance of the law is no excuse. He suggested that applicants who do the work before they come to the Code Officer or the Planning Board might be required to remove the changes and bring the property back to the original condition and then file an application just like everyone who follows proper procedure. He acknowledged it would be expensive for the applicant however it would expedite things and save the Town the cost of attorney fees and court action. The Town needs to put some teeth in the process.

Mr. Heyland suggested a fine system might be put in place in the Ordinance.

The Board agreed that it is a serious problem and something needs to be done.

Mr. Hayes suggested a workshop so the Board could get input from residents and business owners.

Mr. Wilkos asked how the Code Officer deals with violations.

Mr. Heyland responded that for things like strings of lights he sends a violation notice, followed by legal action; and the possible imposition of a fine which is set by the Court. He agreed that this process is time consuming and may be costly to the Town.

When work is being done which requires Planning Board Approval he (Mr. Heyland) issues a Stop Work Order, informs the applicant that the Board may require him to remove any changes, and brings the application to the Board. He agreed that the Board might discuss a fine system for these types of after the fact applications.

Mr. Wilkos asked Mr. Heyland to find out if the Board may legally refused to hear an after the fact application. Refuse to put it on the agenda?

Mr. Heyland agreed to do so; and he added that any such changes would require changes to the ordinance language.

The Board scheduled a workshop to discuss After the Fact Applications to take place on November 13, 2017 at 4:00 p.m.

The Board also reminded everyone that they would be holding a Workshop regarding Outdoor Wood Burning Fire Pits on October 23, 2017 at 4:00 p.m.

J. ADJOURNMENT –

**Mr. Hayes Moved to Adjourn at 8:45 pm.
HAYES/MACLEOD 5:0 UNANIMOUS**

Respectfully Submitted
Maryann Stacy
Maryann Stacy
Ogunquit Planning Board
Recording Secretary

Approved on October 23, 2017