



Town of Ogunquit
Planning Board
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**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
MINUTES**

**DUNAWAY CENTER MAIN AUDITORIUM
March 12, 2018**

REGULAR BUSINESS MEETING

A. ROLL CALL – 6:00 P.M.

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

Also Present: Scott Heyland, Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES –

February 12, 2018 Regular Business Meeting

Mr. Hayes Moved to Approve the Minutes of the February 12, 2018 Regular Business Meeting as Amended.

HAYES/BEVINS 5:0 UNANIMOUS

February 26, 2018 Zoning Ordinance Amendment Workshop

Ms. Freedman Moved to Approve the Minutes of the February 26, 2018 Zoning Ordinance Amendment Workshop as Amended.

FREEDMAN/MACLEOD 5:0 UNANIMOUS

February 26, 2018 Public Hearings and Regular Business Meeting.

Mr. MacLeod Moved to Approve the Minutes of the February 26, 2018 Public Hearings and Regular Business Meeting as Amended.

MACLEOD/BEVINS 5:0 UNANIMOUS

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

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

F. UNFINISHED BUSINESS –

1. FINDINGS OF FACT FOR RIVERSIDE MOTEL AND HOTEL / GEOFFREY SCIMONE – 50 Riverside Lane – Map 3 Block 100-G – SGD2. Design and Site Plan Review for a post 1930 structure. Application to construct a family room over existing deck, a bathroom over existing porch, and exchange an existing deck for grade level patio with minor expansion. Approved on February 26, 2018

Mr. MacLeod Moved to Approve the Findings of Facts for the Riverside Motel and Hotel as Submitted.

MACLEOD/BEVINS 5:0 UNANIMOUS

G. NEW BUSINESS –

1. THE OGUNQUIT WINE CELLAR / ALEXANDRA HAIGHT – 59 Shore Road – Map 7 Block 115 – LBD. Site Plan Review Application for change of use from retail store to Type 3 Restaurant.

Ms. Haight, the Applicant, informed the Board that she is the owner of the Wine Cellar as well as the restaurant La Orilla which is next door and does not serve lunch. She spoke with the Health Department and the Department of Agriculture. The Wine Cellar has a Department of Agriculture License and under that license, as long as she has a two bay and hand washing sink, and as long as she uses the commercial kitchen for her cooking needs she may bring food to the Wine Cellar from La Orilla and put sandwiches together at the Wine Cellar. If The Wine Cellar's food sales exceed 50% of the income, she will have to install a mop sink and a new sink and apply for a State restaurant license.

Ms. Haight confirmed that there will be no seating; and this project is intended to be for take away food only. However, she does intend to put in a three bay sink just to cover her bases.

Mr. Wilkos reviewed Code Enforcement Officer Heyland's Submission Memo to the Board dated February 23, 2018 wherein he (Mr. Heyland) stated that:

“I have reviewed the application for the “Ogunquit Wine Cellar” and find the following submission requirements to be not applicable.

6.6.C.3.G Existing and Proposed: Utilities, Sewers, Water Mains, Culverts, Storm water Management On site or adjacent.

Reason- There are no new connections proposed.

6.6.C.3.H Existing and proposed two foot contours.

Reason- Site is currently developed with no changes proposed..

6.6.C.3.I Location of all wetlands, rivers, streams, brooks and other water bodies, natural features, on-site or adjacent

Reason- Site is currently developed

6.6.C.3.J High intensity soil survey.

Reason- Subject parcel is developed and served by public water and sewer.

6.6.C.3.L The boundaries of any flood hazard areas and the 100-year flood elevation.

Reason- The subject parcel is outside of the Flood Zone.

6.6.C.3.M A copy of any proposed deed restrictions intended to cover all or part of subject property.

Reason- There are no proposed deed restrictions.

6.6.C.3.N.i Sewer Service Area- A letter from the Sewer District stating the district has the capacity to collect and treat the waste water, review and approval of sewerage system design.

Reason- The addition to an existing structure does not increase capacity.

6.6.C.3.N.ii Outside sewer service area – Septic System Design by LSE or PE.

Reason- Subject parcel is served by public water and sewer.

6.6.C.3.O.iii Outside water service area – Evidence of adequate supply from well driller or hydrogeologist.

Reason- Subject parcel is served by Public Water and Sewer.

6.6.C.3.P Locations, names and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent

Reason- Project does not include expansion of building footprint. No infrastructure changes are proposed.

6.6.C.3.Q Width and location of any streets, public improvements, or open space shown upon the official map and in the Comprehensive Plan, if any within the site.

Reason- There are none within the site.

6.6.C.3.R Location of any open space to be preserved and a description of the proposed ownership, improvement and management.

Reason- There is no open space proposed to be preserved.

6.6.C.3.S Hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer outside of public water and sewer areas.

Reason- Subject parcel is served by public water and sewer.

6.6.C.3.V Areas within or adjacent to the proposed site which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the Comprehensive Plan.

Reason- Subject parcel is currently developed.

6.6.C.3.W Historic Areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places , Ogunquit Historic Register, or have been identified in the Comprehensive Plan.

Reason- There are no changes to the existing site proposed.

6.6.C.3.X parking, driveway, street plans

Reason- There are none provided on the site

6.6.C.3.Y Storm water management plan

Reason- There are no changes to the existing site proposed.

6.6.C.3.Z Erosion and Sedimentation Control Plan.

Reason- There are no changes to the existing site proposed.

6.6.C.3.AA Location of any streets, public improvements or open space shown in the Comprehensive Plan or Capital Improvements Plan within the site.

Reason- There are none proposed within the site.

6.6.C.3.BB Parcels of land proposed to be dedicated to public use and the conditions of such dedication.

Reason- No land is being proposed to be dedicated.

6.6.C.3.CC Location/ method of Land Clearing and Construction Debris disposal.

Reason- No land clearing is proposed. Construction debris will be disposed of properly.

6.6.C.3.DD Cost Estimates for setting Performance Guarantees, pursuant to sec.4.8.

Reason- The project is on private property and does not propose any public infrastructure.

6.6.C.3.EE State or Federal permits.

DEP Site Law, DEP NRPA, DHHS, Army Corps, DOT

Reason- No permits from the listed agencies are required.

Ms. Freedman asked if Ms. Haight intends to serve soup; and how this will be done.

Ms. Haight responded that the soup will be cooked next door at La Orilla; and kept hot at the Wine Cellar on a steam table.

Mr. Wilkos asked if there will be any food preparation at the Wine Cellar.

Ms. Haight responded that the only preparation will be the assembling of sandwiches, and the wrapping and packaging of the food.

Ms. Freedman stated that she doesn't understand how soup will be prepared and served for takeout. It will have to be covered and if it's only for take away, say to the beach, people will have cold soup.

Ms. Haight responded that it's the same thing the Village Food Market does. Soup isn't going to be the main product; she only included it in case she wanted to make a seasonal soup.

Mr. Heyland suggested the Board review the checklist. He noted that Submission Items T and U involve traffic. The Applicant has requested a waiver for each of these two submission items.

Mr. Wilkos asked what the parking standards / requirements are for retail stores and restaurants.

Mr. Heyland responded that current use of the building requires one parking space for every 100 square feet. This property has no onsite parking and the required parking spaces have been waived. This proposed change of use is the same; one parking space for every 100 square feet of floor area. The Applicant is requesting waivers for the two parking/traffic submission requirements. He (Mr. Heyland) does not see any increase in traffic due to the proposed change of use. However, in order for the Board to find the application complete they will need to vote on the two waiver requests.

Ms. Haight reviewed her letter to the Board dated 2-22-18 (*a copy of which will be maintained in the Applicant's Planning Board file.*)

Mr. Heyland reiterated that the business requires one parking space for every 100 square feet of floor space.

Ms. Haight responded that she believes the store has about 200 square feet.

Mr. Heyland added that she probably would need two or three parking spaces.

Ms. Freedman noted that the Board has always waived parking for applications in this area of Town because of the nearby parking lots and trolley service, and the large amount of foot traffic.

Mr. MacLeod asked if there was a survey plan submitted.

Mr. Heyland responded that there was.

Ms. Bevins asked why there was no plan for the interior of the business.

Mr. Heyland responded that the Site Plan Submission Checklist only asks for a survey; however the Board may ask for additional information.

**Mr. MacLeod Moved to Waive Site Plan Submission Requirement Item 6.6.C.3.T because there are currently no parking spaces for this property and all the customers are driven by foot traffic from nearby hotels and the Town Obeds Parking Lot given that the business is one block from the downtown and beach area; and the Applicant does not predict that the proposed change of use will increase the normal vehicular traffic in this area in any way.
MACLEOD/HAYES 5:0 UNANIMOUS**

**Mr. MacLeod Moved to Waive Site Plan Submission Requirement Item 6.6.C.3.U because all the customers are driven by foot traffic from nearby hotels and the Town Obeds Parking Lot given that the business is one block from the downtown and beach area; and the Applicant does not predict that the proposed change of use will increase the normal vehicular traffic in this area in any way.
MACLEOD/HAYES 5:0 UNANIMOUS**

Mr. Heyland reviewed his Memo to the Board dated February 23, 2018 wherein he stated:

“Project description

Alexandra Haight, owner of the Ogunquit Wine Cellar located at 59 Shore Rd, is requesting a change of use from a Retail Establishment to a Restaurant Type 3. The property is located in the Limited Business District.

Restaurant Type 3 is an allowed Use in the LBD

Article 6- Planning Board

6.6 Procedures for Site Plan review:

All fees have been paid by the applicant.

Notifications have been made to all Departments.

Per (OZO 6.6.C.4) All applicable application submissions requirements have been submitted and reviewed and those that have been determined by the Code Enforcement Officer to be inapplicable have been indicated on the checklist and in a separate memo provided in your packet.

The Planning Board shall hold a public hearing on the site plan review application within 30 days of determining the application is complete.

The Board does have the option of scheduling a site visit if it feels necessary.

Review Standards

The following are applicable Performance Standards. There may be other Standards which require review.

8.3 Buffer Areas

The property abuts non residential uses on both sides.

8.10 Off Street Parking and Loading

The previous use as a Retail Establishment required the same number of Parking Spaces as a Restaurant Type 3. A waiver of the required parking was granted with the last approval.

9.13 Restaurants

- C. *Restroom facilities for the patrons shall be provided on the premises.
The applicant must indicate the restroom facilities.*

Conclusions-

After a review of the proposal, other than the restroom issue, I do not see anything which would conflict with the Zoning Ordinance.”

Mr. Heyland asked if there is an available restroom.

Ms. Haight responded that there is a restroom down a back hallway and behind the store area which she can make available to customers. Customers would have to pass through an emergency/fire doorway; and travel down a hallway to the bathroom.

Ms. Bevins again asked why the Board doesn't have an internal floor plan.

Mr. Heyland reiterated that it wasn't a required submission. The Board could request a floor plan, or it could schedule a site visit.

Ms. Bevins asked; if there is no seating how will the Applicant serve alcohol?

Ms. Haight responded that there will not be any seating and she does not, and will not, serve alcohol. She sells wine and craft beer in bottles. It will remain a retail store.

Mr. Heyland agreed that under the definition of a Type 3 restaurant the owner “may” serve alcohol.

Ms. Haight confirmed it will be similar to what the Village Food Market does. She will see retail alcohol. Customers may not consume it on the premises.

Mr. Heyland responded that just because the Ordinance definition says the business owner “may” do something doesn't mean that they will. If she wanted to prepare the sandwiches offsite and sell prepackaged food she wouldn't need to come before the Board. Because Ms. Haight plans to construct the sandwiches on site she has to have a food license.

Ms. Haight responded that the Department of Agriculture and the Health Department told her that both businesses are under the same LLC and the agriculture license covers her with her commercial kitchen in La Orilla.

Mr. Heyland suggested there may be a difference between the States requirements and the Town's requirements. It is his opinion that when customers come up to a counter and the business person builds a sandwich to order, that is a restaurant; and that food is being prepared. He agreed that there is a very fine line between retail and restaurant. He noted that Hannaford's isn't a restaurant however customers may get a hot meal there.

Ms. Botsford asked if the Village Food Market is a Type 3 Restaurant.

Mr. Heyland responded that they are; because they prepare food.

Mr. Hayes asked if this is the first Type 3 restaurant the Board has reviewed which does not have seating.

Mr. Heyland responded that he believes it is.

Mr. Hayes suggested that any approval could contain some conditions.

Ms. Haight reiterated that she was told by the State that she isn't a restaurant until her food sales exceed 50% of her overall sales; and she doesn't anticipate that ever happening.

Mr. Heyland suggested that the Town's requirements may be more restrictive than the State's. He again asked "if an ice-cream store is a restaurant or retail". He added that selling of cooked lobsters is a retail store according the State of Maine Law Court.

Ms. Haight summarized that customers will enter the store, there will be a menu on the wall. All the food will be cooked and sliced at La Orilla, then she will put the sandwiches together at the Wine Cellar.

Mr. Heyland asked why she doesn't prepare, and prepackage, the sandwiches at La Orilla and sell them at the Wine Cellar.

Ms. Haight responded that she already tried that and it wasn't successful. People want to special order; and customers want to see their sandwiches made to order.

The Board expressed confusion as to whether or not the proposed changes will create a restaurant; and if so will it be a Type 3, or if the business will remain retail.

Ms. Freedman reiterated that a Type 3 Restaurant allows for the serving of alcohol.

Ms. Haight responded that there will be no seating, and she does not intend to apply for a liquor license to serve alcohol.

Ms. Freedman suggested that she doesn't see this proposal as a Type 3 Restaurant, the Ordinance definition of which is:

“Restaurant, Type 3

An establishment where food and/or beverages (either alcoholic or nonalcoholic) are prepared and served to the public, which meets all of the following characteristics:

- (1) where food and/or beverages are served for consumption on or for takeout off the premises,*
- (2) where food and/or beverages are not served to pedestrians from an exterior opening or counter, nor to occupants in motor vehicles;*
- (3) where exterior loudspeakers are not used; and*
- (4) where alcoholic beverages may be served only within an enclosed area for on-premise consumption.”*

Mr. Wilkos asked for an opinion from the Town Attorney.

Ms. Bevins asked about coffee shops.

Mr. Heyland responded that coffee shops, which sell muffins prepared off site, are considered to be retail. If the coffee shop makes the muffin onsite it becomes a restaurant. He added that seating isn't relevant to the Ordinance definition.

Ms. Bevins expressed concern that alcohol will be served and taken off site.

Mr. Heyland responded that this would not be allowed. He asked why the State requires a two bay and hand wash sink.

Ms. Haight responded that she needs the two bay sink to wash knives, and a hand sink to wash her hands.

Ms. Freedman stated that she is uncomfortable with the kitchen being in another building; as well as the sale of alcohol to people who can't bring it onto the beach.

The Board agreed to ask the Town Attorney to provide input regarding whether or not the proposed project is a restaurant or a retail store.

Mr. Heyland explained to the Board that it is his responsibility to interpret the ordinance. It is only the Zoning Board of Appeals which can tell him if he is right or wrong. He agreed that he would consult with the Town Attorney; and he stated that it is very clear to him that the proposed project will be a Type 3 Restaurant.

A majority of the Board determined that they would ask the Town Attorney whether the proposed project is a restaurant, or not.

Ms. Freedman Moved to Table the Application for THE OGUNQUIT WINE CELLAR / ALEXANDRA HAIGHT – 59 Shore Road – Map 7 Block 115 – LBD. Site Plan Review

**Application for change of use from retail store to Type 3 Restaurant pending input from the Town Attorney as to whether the proposed plan is, or is not, a restaurant.
FREEDMAN/HAYES 4:1 (Mr. MacLeod Dissenting)**

Mr. Heyland informed the Applicant that he would notify her as soon as he receives an opinion from the Town Attorney.

Mr. Hayes asked if the Board could have a diagram indicating where the bathroom is located. He suggested this might prevent the need for a site visit.

Ms. Haight agreed to provide a diagram.

2. LEANNE CUSIMANO / AMORE BREAKFAST – 87 Main Street – Map 6 Block 1 – GBD1 – Design Review Application to install five black and grey pinstripe awnings over windows on front of a pre 1931 structure.

Ms. Cusimano presented a sample of the proposed awning material. She noted that her new location is at the Admirals Inn on the corner of Agamenticus Road and Route One. She stated that the awnings are a trademark of her previous businesses. The awning will improve curb appeal, and help define the space of the restaurant.

Mr. Wilkos noted that the Ogunquit Historic Preservation Commission reviewed, and approved, the proposed awnings.

Mr. MacLeod asked if these will be temporary awnings which don't count toward setbacks.

Mr. Heyland confirmed that they are.

At this time the Board reviewed the Design Review requirements as outlined in Article 11.7.C of the Ogunquit Zoning Ordinance and found all items submitted:

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

By a show of hands the Board unanimously agreed that it is.

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

By a show of hands the Board unanimously agreed that it is.

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

By a show of hands the Board unanimously agreed that it is.

4) **Relationship of Solids to Voids in Front Façade** – Is the pattern of solids and

voids in the front façade visually compatible with that of its neighbors?

By a show of hands the Board unanimously agreed that it is.

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

By a show of hands the Board unanimously agreed that it is.

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

By a show of hands the Board unanimously agreed that it is.

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

By a show of hands the Board unanimously agreed that this is not applicable.

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

By a show of hands the Board unanimously agreed that it is.

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

By a show of hands the Board unanimously agreed that it is not applicable.

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

By a show of hands the Board unanimously agreed that it is.

Mr. Hayes Moved to Approve the Design Review for LEANNE CUSIMANO / AMORE BREAKFAST – 87 Main Street – Map 6 Block 1 – GBD1 – Design Review Application to install five black and grey pinstripe awnings over windows on front of a pre 1931 structure. HAYES/BEVINS 5:0 UNANIMOUS

~~3. JASON EVENS / THE TRAP – 117 Perkins Cove Road – Map 3 Block 75 – SGD2. Application to Amend a Previously Approved Site Plan Condition of Approval requiring the Applicant to install materials to screen a roof exhaust fan from the abutter. Original Plan Approved on July 24, 2017.~~

Mr. Wilkos noted that this application had been tabled at the Applicant's request.

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland reminded the Board that they had an upcoming workshop with the Town Attorney on March 19th from 5:00 to 7:00 p.m.

Mr. Wilkos noted that the Board and the Town Attorney will review Site Plan and Design Review Protocol, as well as the Planning Board By-Laws.

I. OTHER BUSINESS – None

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 7:20 p.m.
MACLEOD/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Accepted March 26, 2018