



Town of Ogunquit
Planning Board
Post Office Box 875
Ogunquit, Maine 03907-0875

Tel: 207-646-9326

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

**DUNAWAY CENTER MAIN AUDITORIUM
APRIL 23, 2018**

PUBLIC HEARINGS

- 1. THE BEACH BASKET / LENOR GAUNYA – 22 Shore Road Unit 9 – Map 7 Block 118-9 – DBD – Site Plan and Design Review for pre 1930 Structure. Application for Change of Use from service nail salon to Type 3 Restaurant.**

Ms. Gaunya asked the Board to separate the outdoor seating plan from the request for a change of use, and deal with the outdoor seating plan at a later time.

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

- 2. ANN MCKEE – 632 Main Street – Map 3 Block 80-81-4 – GBD2 – Design Review for a pre 1930 Structure. Design Review to change window sizes and locations, add a front porch, change rear enclosed porch to two-story deck, remove shutters, and add siding.**

Mr. Wilkos asked if there was anyone who wished to speak for, or against this application. There was no one and the Public Hearing was closed at 6:04.

REGULAR BUSINESS MEETING

A. ROLL CALL – 6:00 P.M.

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

Members Excused: Jackie Bevins

Also Present: Scott Heyland, Code Enforcement Officer
Lee Jay Feldman, SMPDC

Mr. Wilkos noted that Ms. Botsford would be moved to full voting position due to Ms. Bevins' absence.

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – April 9, 2018 Public Hearing and Regular Business Meeting.

**Mr. Hayes Moved to Accept the Minutes of the April 9, 2018 Meeting as Amended.
HAYES/MACLEOD 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.

Peter Kahn (3 Tern Street) asked for an explanation of “contract/conditional zoning”.

Mr. Feldman responded that contract / conditional zoning permits a negotiation agreement between the municipality and a developer. He noted that the Ogunquit Zoning Ordinance allows for Contract/Conditional Zoning in the Farm District.

Mr. Heyland added that Article 1.9.F of the Ogunquit Zoning Ordinance provides a very good explanation of Contract /Conditional Zoning.

Mr. Kahn noted that the Planning Board stated that the protocol for the last Senior Housing Workshop was set by the Town Attorney. He asked for an explanation; and if the Town Attorney's statement might be published. He wants to know what the Town Attorney said.

Mr. Heyland responded that the Board was told by the Town Attorney that it may not discuss specific parcels of land, or projects, until there is an actual application before it. As of the date of the last workshop there was no application submitted and no application fees paid.

Mr. Wilkos added that he read the Town Attorney's e-mail verbatim.

Barbara Ferraro (36 Ocean Heights Lane) stated that it seems the Planning Board has already made some decisions regarding the proposal.

Mr. Wilkos corrected Ms. Ferraro; and he stated that the Planning Board has not made any decisions regarding the proposal.

Ms. Ferraro responded that she spoke to the Select Board about what she heard coming out of the Code Enforcement Office; and this is where she is getting her perceptions.

She asked if it would be more productive for her to go directly to the Zoning Board and ask about Contract Zoning.

Mr. Heyland responded that the Zoning Board doesn't have jurisdiction to hear her proposal. What is needed is an amendment to the Zoning Ordinance, which has to be worked through the Planning Board.

Ms. Ferraro asked if she should come before the Planning Board at the next meeting with a perspective and request the Board consider Contract Zoning.

Mr. Wilkos noted that the Board is going to schedule a second workshop.

Ms. Ferraro asked if they could "cut through" the workshop and instead come to the Board and talk about Contract Zoning for the particular property they are looking at.

Mr. Heyland reiterated that the Board may not discuss a specific property.

Mr. Feldman explained that there is a process for amending the Zoning Ordinance to change Contract Zoning language, which is currently only allowed in the Farm District for light industrial uses. The Planning Board needs to discuss, and come to a conclusion regarding, the questions of allowing: 1. Uses other than light industrial and 2. In areas other than the Farm District.

Once the Planning Board has reached a conclusion about amending the Zoning Ordinance they recommend any changes to the Select Board, who may or may not send that recommendation to the voters at a Town Meeting. There is a process which needs to occur and it includes workshops.

Mr. Wilkos added that the focus of the next workshop will be to discuss Mr. Feldman's Memo and any other options which may be available.

Ms. Ferraro asked what happens if the Planning Board decides not to amend the Ordinance.

Mr. Wilkos responded that this isn't the time to discuss that. He recommended waiting until after the next workshop, and seeing where things go.

Ms. Ferraro responded that she believes that the Board wants to see the project out in the Farm District; and her committee wants it to be "in town". She added that she will be asking for Contract Zoning for the particular parcel they are looking at.

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

Mr. Wilkos stated that: **GET WRITE UP FROM SCOTT**

F. UNFINISHED BUSINESS –

- 1. FINDINGS OF FACT 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.**

**Mr. Hayes Moved to Accept the Findings of Fact as Amended.
HAYES/MACLEOD 5:0 UNANIMOUS**

- 2. THE BEACH BASKET / LENOR GAUNYA – 22 Shore Road Unit 9 – Map 7 Block 118-9 – DBD – Site Plan and Design Review for pre 1930 Structure. Application for Change of Use from service nail salon to Type 3 Restaurant.**

Mr. Wilkos noted that the Board held a Site Visit at the property earlier in the day. He added that the Applicant has requested the Board remove the outside seating portion of the application. Mr. Wilkos asked Mr. Heyland if the Board requires a revised application.

Mr. Feldman responded that the Board might: 1) table the application, have the applicant revise the plan and resubmit it. 2) Approve the application as submitted with a condition that the outside seating not be included and require the Applicant to provide the Code Enforcement Office a revised plan before they are allowed to open for business; or 3) Table the application until the Applicant provides proof of right-title-and interest / permission from the abutting property owner to utilize that portion of the outside seating which is not on the Applicant's property.

Ms. Freedman asked if the Applicant would have to come back to the Board for the outside seating.

Mr. Feldman responded that they would.

The Board came to a consensus that they would not be comfortable with a conditional approval in this case. The Board wanted a revised application with revised drawings. The approval would be cleaner with revised drawings.

**Mr. MacLeod Moved to Table the Application for THE BEACH BASKET / LENOR GAUNYA – 22 Shore Road Unit 9 – Map 7 Block 118-9 – DBD – Site Plan and Design Review for pre 1930 Structure. Application for Change of Use from service nail salon to Type 3 Restaurant pending submittal of revised plans which do not include outside seating.
MACLEOD/HAYES 5:0 UNANIMOUS**

Ms. Gaunya agreed and added that if she is able to get legal permission from the abutter to use the outside patio area she will provide that document. If she is unable to obtain this permission she will submit revised plans removing the outside seating.

Mr. Wilkos confirmed that if she is able to obtain authorization from the abutter to use the patio area; she would not need to amend her application or site plan.

3. ANN MCKEE – 632 Main Street – Map 3 Block 80-81-4 – GBD2 – Design Review for a pre 1930 Structure. Design Review to change window sizes and locations, add a front porch, change rear enclosed porch to two-story deck, remove shutters, and add siding.

Mr. Heyland summarized that the survey indicated a 40' right-of-way on the south side of the property. The proposed work will encroach into that right-of-way. According to the Town Attorney, Note #13 on the Survey prohibits any footprint expansion. In an April 20, 2018 e-mail Attorney Costigan stated *“I have reviewed the boundary plan provided, particularly the reference to Note 13. The court decision in Note 13 made it clear that the building could only be expanded upward and that no additional protrusions within the right of way are permitted. The applicant therefore does not have right, title or interest to add a covered deck within the right-of-way.”*

Mr. Heyland stated that if the Applicant can provide documentation / approval from the Land Trust (who holds title to the right-of-way) that they have no problem with the proposal, the application may move forward.

Mike Connell summarized that part of the plan is to remove the rear deck's roof and walls, and replace that deck with first and second floor decks in the same location and of the same size. There will be no expansion of the building's rear footprint.

Mr. Heyland stated that he did not ask the Town Attorney about the rear porch/deck because the work will remain within the existing footprint.

Mr. MacLeod reviewed Note 13 which states, in part, that *“in the Decision Adler is permitted to maintain, repair, and upwardly expand the residence according to its original footprint subject only to the porch which extends into the right-of-way.”* Mr. MacLeod agreed that the proposed rear decking conforms to Note 13.

Ms. Botsford asked when the Judgment was made; and if the existing porch was part of the building at that time.

Mr. Connell stated that he felt it was.

Mr. Heyland agreed that the survey the Board was given is a current survey. He does not know if a survey done at the time of the 1995 Law Court Case would show the rear porch.

Mr. Hayes responded that he would be comfortable if the Town Attorney agreed that the proposed rear decking is allowable. He noted that his concern is for the Applicant. This property already had one structure which had to be removed when it was constructed within the right-of-way and he doesn't want to see that happen again.

Mr. Connell agreed that the Town Attorney will find that the rear porch was part of the original structure. Regarding the proposed front porch he agreed that he will get a legal document from Great Works Regional Land Trust giving permission for the construction of the front deck in the right-of-way. They have told him that they have no problem with the front and rear of the building; their only concern was the south side portion of the property.

Mr. Wilkos informed Mr. Connell that he needs to provide: 1) proof that the rear porch was part of the original structure; 2) a letter of approval from the Land Trust regarding the proposed front porch; and 3) revised elevation drawings should he be unable to obtain one, or both, of the previously noted documents.

Mr. Heyland agreed to consult with the Town Attorney regarding the proposed rear porch being part of the original building footprint at the time of the Law Court's decision.

Mr. Connell agreed to let the Land Use Office know when he is ready to come back before the Board.

Mr. MacLeod Moved to Table the Application for ANN MCKEE – 632 Main Street – Map 3 Block 80-81-4 – GBD2 – Design Review for a pre 1930 Structure. Design Review to change window sizes and locations, add a front porch, change rear enclosed porch to two-story deck, remove shutters, and add siding pending input from the Town Attorney regarding the proposed rear decking and receipt of a letter of authorization from the Great Works Regional Land Trust regarding the proposed new front porch.
MACLEOD/HAYES 5:0 UNANIMOUS

Mr. Heyland reminded Mr. Connell that if he is unable to obtain authorization from the Land Trust, and/or if the Town Attorney determines that the existing rear porch was not part of the original footprint at the time of the Law Court Decision he (Mr. Connell) will also have to provide a revised site plan and elevation drawings.

Mr. Connell agreed.

4. JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 - Site Plan Review for a post 1930 structure. Site Plan Review – Application to expand use from 49 (25 indoor and 24 outdoor) seats to 55 (25 indoor and 30 outdoor) seats. (This application was tabled by the Board on 12-11-2017)

Ms. Dennis asked the Board to discuss the issue of noise complaints.

Mr. Wilkos responded that this meeting is to determine application completeness. The question of noise will be discussed later in the process; after the application has been determined to be complete.

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

Regarding Site Plan Review Submission Item 6.6.C.3.A - Mr. MacLeod noted that the site plan submitted by the Applicant does not agree with her submitted application form. The original application requested 25 seats indoors and 30 seats outdoors; and the April 9th plan Ms. Dennis submitted indicates 37 indoors and 35 outdoors; and he can't tell if there is more seating indicated on the front brickwork area. He sees over 70 seats indicated on the drawing. The application's supporting material is incorrect.

The Board determined that the difference between the application and the supporting documentation is substantial.

Mr. Heyland referred to his memo dated November 30, 2017 wherein he noted 28 seats indoors, 20 seats outdoors, and 6 additional seats at the Adirondack chairs. The plan submitted by Ms. Dennis on April 9, 2018 isn't even close to those numbers. He asked Ms. Dennis to explain the proposed seating arrangement.

Ms. Dennis responded that she met with Chief Mark O'Brien; and they determined the square footage. She stated that he told her what she is allowed to have based upon the square footage of the property.

Mr. Heyland referred to Chief O'Brien's memo to the Board dated April 6, 2018 (*a copy of which is maintained in the Applicant's Planning Board File*). Chief O'Brien stated that the applicant is asking to expand from 49 seats to 55 seats.

Ms. Dennis responded that this number was changed after she met with Chief O'Brien.

Mr. Heyland summarized that there is a discrepancy between Ms. Dennis' application, plan/drawing, and Chief O'Brien's memo.

Ms. Freedman added that she counted the seats as indicated on the Applicant's April 9, 2018 site plan: she counts 37 indoor seats including the bar stools, 44 outdoor seats counting the Adirondack chairs in the front; for a total of 81 seats.

Mr. Hayes agreed that he counted and came up with the same numbers.

Mr. Wilkos asked Ms. Dennis if the site plan she submitted on April 9, 2018 is accurate.

Ms. Dennis responded that it is; according to Chief O'Brien that is what she is allowed to have, based upon the square footage.

Mr. MacLeod added that Chief O'Brien's memo says 66 seats and the Board is counting 81 seats; and the application is for 55 seats.

Ms. Dennis responded that she changed it after she met with Chief O'Brien because she wanted to have as many seats as possible.

Mr. Wilkos asked if the application is for 55 seats (25 indoors and 30 outdoors).

Ms. Dennis responded that whatever she gave the Board on the plan is what she is going for.

Mr. Wilkos asked if the application is for 55 seats, he held up the April 9, 2018 Site Plan and asked if that was for 55 seats.

Ms. Dennis responded that it is.

Ms. Freedman reiterated that the plan indicates 81 seats, not 55.

Mr. Wilkos asked if Ms. Denis had a plan indicating 55 seats.

Ms. Dennis responded that she has the same plan the Board has and she didn't count the seats.

Mr. MacLeod reiterated that Chief O'Brien's memo to the Board stated that the applicant may have a total of 66 seats.

Mr. Wilkos again asked Ms. Dennis exactly what she is asking for.

Ms. Dennis responded: 34 outside and 37 inside; which she immediately changed to 57 outside seats.

Ms. Wilkos summarized that Ms. Dennis is saying that she is asking for 37 seats inside and 57 seats outside. He noted that on her application she asked for 55 total seats. He asked if she is amending her application.

Ms. Dennis responded that she is, based upon her meeting with Chief O'Brien.

Mr. Wilkos asked if the Board has received an amended application.

Mr. Heyland responded that it has not.

Ms. Dennis stated that she has 1,149 square feet outside; and she is allowed 15 square feet per person. She is asking for 37 seats inside and 57 seats outside.

Mr. MacLeod responded that this brings the seating up to 94 seats.

Ms. Dennis reiterated that she is allowed 15 square feet per person.

Mr. Heyland asked who wrote the square footage numbers on the April 9, 2018 Site plan.

Ms. Dennis responded that she did; after she and Chief O'Brien measured.

Mr. Heyland referred back to Chief O'Brien's memo wherein he stated that the Applicant would be allowed 66 seats.

Mr. Wilkos asked what the Board needs for application completeness.

Mr. Heyland responded that they would need a more detailed plan showing square feet and how many seats will be in each of the separate areas.

Ms. Botsford and Mr. MacLeod both stated that their photocopies of the site plan are very dark and difficult to read.

Mr. MacLeod reiterated that the original application asked for an increase from 49 (25 indoor and 24 outdoor) seats to 55 (25 indoor and 30 outdoor) seats; and now the discussion is for somewhere between 70 and 90 seats vs. the original application for 55 seats.

Ms. Dennis responded that she is going by what Chief O'Brien told her she could have.

Mr. Wilkos again asked exactly how many seats the Applicant is asking for.

Ms. Dennis responded that she is asking for what is on the plan; and she added that she hadn't count the seats.

Mr. Wilkos asked Ms. Dennis to provide a better site plan, with each seat numbered.

Mr. Heyland added that the plan should also include two sets of numbers: existing seating breakdown and proposed seating breakdown.

Ms. Freedman asked how many bathrooms there are and if there are sinks in the bathrooms. She noted that there are no sinks indicated on the plan.

Ms. Dennis responded that there will be three bathrooms and they all have sinks. She will include the sinks on the new drawing.

The Board reviewed the remainder of the Site Plan Review Submission Requirements and, based upon the change in the number of seats, the Board determined that two revised waiver requests were required:

- Submission Item 6.6.C.3.T – An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.
- Submission Item 6.6.C.3.U – A traffic impact analysis, prepared by a registered Professional Engineer with experience in traffic engineering.

Mr. MacLeod Moved to Table the Application for JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 - Site Plan Review for a post 1930 structure. Site Plan Review – Application to expand use from 49 (25 indoor and 24 outdoor) seats to 55 (25 indoor and 30 outdoor) seats. (This application was tabled by the Board on 12-11-2017) pending submittal of a revised Site Plan and two submission waivers as noted during this meeting's discussions.

MACLEOD/HAYES 5:0 UNANIMOUS

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland noted that there will be a Public Hearing on April 24, 2018 at 6:00 p.m. regarding the proposed amendments to the Zoning Ordinance.

I. OTHER BUSINESS –

1. Review, Amend, and Accept Planning Board By-Laws.

**Mr. Hayes Moved to Accept the Planning Board By-Laws as Amended.
HAYES/MACLEOD 5:0 UNANIMOUS**

2. Review new Planning Board Application Submission and Scheduling Protocol.

Mr. Heyland and the Recording Secretary summarized the changes in the Planning Board Application submission process. In the future there will be no “deadline” for submitting applications. Applicants will initially meet with the Code Enforcement Officer to review the application packet. The applicant will next meet with the Code Enforcement Officer and the Planning Board Chair for a final review of the application packet. After this 2nd meeting the applicant makes and submits fifteen copies of the application packets; and the Land Use Office Staff will schedule the application to go before the Planning Board at the next, two weeks out, Planning Board Meeting.

3. Schedule 2nd Senior Community Housing Workshop.

The Planning Board scheduled a 2nd workshop, to take place at 4:00 p.m. on May 14, 2018. Mr. Wilkos confirmed that the public would be given the opportunity to be heard.

J. ADJOURNMENT -

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

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Approved on May 14, 2018