



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

**DUNAWAY CENTER MAIN AUDITORIUM
MAY 29, 2018**

PUBLIC HEARING

JUDITH DENNIS / BANDITO’S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 - Amended Site Plan Review for a post 1930 structure. Site Plan – Application to expand use from 49 (25 indoor and 24 outdoor) seats to 72 (30 indoor and 42 outdoor which includes 6 new Adirondack patio seats) seats.

Mr. Wilkos noted that the Board had held a site visit earlier in the day; and he asked if there was anyone who wished to speak for, or against, this application.

David Latulippe owner of Sea Chambers Motel and the Inn at Sea Chambers, which is the direct abutter of the subject property, addressed the Board.

Mr. Latulippe noted that, several years ago this applicant made a request before this Board to expand her business and hours of operation. At the time he was in the process of purchasing the Parsons Post Inn and a condition of that sale was the denial of her request to expand. The previous owner of the Parsons Post had long standing issues with Bandito’s and he was warned that if Bandito’s was allowed to expand their nighttime activity, it would negatively impact the Parson Post’s business. Upon the Planning Board’s unanimous denial of the applicant’s request to expand he went forward with the purchase of the Parsons Post Inn.

Mr. Latulippe noted that this applicant has never adhered to the original approval, and his business has been negatively impacted. The original approval was for twenty-two outside seats, a fire pit without any seats around it, and Adirondack chairs which were specifically not to be used for food and/or service. For years there have been seats around the fire pit, and the Adirondack chairs were designed with tables and this is the first place patrons sit. This is all fine during the daytime hours however it becomes a problem for his hotel guests during the nighttime hours and he, as the abutter, has been forced to become the enforcer of the original approval requirements.

Now this applicant is back before the Board asking to double the amount of seats. Mr. Latulippe noted that the inside seats are fine, and the daytime seating is fine. The problem for him begins after 9:00 p.m. when food service declines and the outside atmosphere becomes more like a bar. From 9:00 p.m. to about 11:00 p.m. when the Applicant is suppose to have cleared patrons out of the outside seating area, his phone begins to ring with complaints from his guests about the noise. He noted that very often Bandito's customers continue to sit and be served outside past the 11:00 p.m. cutoff time. He noted that Bandito's outside seating is only feet away from the property line. He pointed out that the Applicant is asking for over forty seats, in a very compact area which is feet away from several hotel rooms where his guests are trying to sleep.

Mr. Latulippe agreed that he would be fine with as many seats as the Applicant wants until 9:00 p.m. After 9:00 p.m. is when the problems begin and he has been forced to call the police.

Mr. Latulippe referred to the 2013 and 2016 Planning Board Meeting Minutes which imposed conditions of approval whereby the Applicant would cease seating and service as well as outside music after 10:00 p.m. and patrons must vacate the outside seating area by 11:00 p.m.

Mr. Latulippe informed the Board that he would be comfortable with the Applicant's expansion of seating if the conditions of approval included ceasing of service and seating at 9:00 p.m. and all outside seats vacated by 10:00 p.m. This would make Banditos more neighborly which up to now they have not been.

Gary Latulippe owner and Operating Manager of Sea Chambers informed the Board that Banditos negatively impacts his business. He has been forced to deal with complaints, comp rooms, and respond to negative social media comments regarding the noise from next door to his inn. He asked if this is what the Town wants on downtown Shore Road late at night? Intoxicated patrons around the fire pit, loud, and disruptive. He noted that this behavior has been documented, he suggested it would not be right to reward the bad behavior of a business that has a history of not abiding by the rules by letting them expand even more.

Kevin Dennis manager at Banditos responded that they are not looking to be an outside bar; and their kitchen closes at 10:00 p.m. Last year they asked for approval to have their customers remain outside until 11:00 p.m. and they were approved. They have not had any problems since then. Their customers have always been able to sit at the Adirondack chairs, all they are asking for now is to be able to have wait staff serve customers at those chairs.

Judy Dennis, owner of Bandito's stated that from 2012 to 2014 there was a woman who lived next door to Banditos who called the police every night at 11:00 p.m. even when there were no patrons sitting outside. Since this woman has been gone they have had no noise complaints from the police. She does not want to be a "bar" she wants to be a restaurant that has the same privileges and rights as every other business in the GBD2 District. She noted that she is the only one in the GBD with limited hours of operation. She noted that it is her business against another business; and she asked why the neighbor's business should have any more privileges than she does. She thinks the Town has been unfair to her. She is the only one in the whole town, in the GBD that has limited business hours. She reiterated that she hasn't had any police complaints against her for the last two years.

Mr. Wilkos asked if there was anyone else who wished to speak for or against this application. There being no one the Public Hearing was closed at 6:15 p.m.

REGULAR BUSINESS MEETING

A. ROLL CALL – 6:00 P.M.

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

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

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – May 14, 2018 Regular Business Meeting.

**Mr. Hayes Moved to Accept the Minutes of the May 14, 2018 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 be heard on any matter not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

- 1. FINDINGS OF FACT FOR: THE BEACH BASKET / LENOR GAUNYA – 22 Shore Road Unit 9 – Map 7 Block 118-9 – DBD – Amended Site Plan and Design Review for pre 1930 Structure. Application for Change of Use from service nail salon to Type 3 Restaurant (*This application was Approved on May 14, 2018*).**

**Mr. Hayes Moved to Accept the Findings of Fact for THE BEACH BASKET / LENOR GAUNYA – 22 Shore Road Unit 9 – Map 7 Block 118-9 – DBD as Submitted.
HAYES/BEVINS 5:0 UNANIMOUS**

- 2. JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 - Amended Site Plan Review for a post 1930 structure. Site Plan**

Review – Application to expand use from 49 (25 indoor and 24 outdoor) seats to 72 (30 indoor and 42 outdoor which includes 6 new Adirondack patio seats) seats.

Mr. Wilkos noted that the Board held a Site Visit earlier in the afternoon, and that a Public Hearing had also been held earlier in the evening.

Ms. Freedman noted that the seating arrangement the Board saw at the Site Visit did not match the submitted seating plan and she asked why.

Mr. Heyland responded that it would be unfair to ask the applicant to purchase the extra tables and chairs with the potential of the application being denied. When the Applicant asked if he had to purchase the extra tables and chairs Mr. Heyland responded that he did not. He (Mr. Heyland) did not want a Town staff person to tell a business owner to spend money only to have their application denied.

Mr. Feldman noted that this discussion was held at the Site Visit; and the question is “are they showing the correct number of seats as proposed on the plan; not are the chairs arranged to match that plan”. The concern is the number of seats, not their position on the patio. He noted that tables and chairs are often rearranged to accommodate different sized parties.

Ms. Freedman asked about the fire pit seating. At the last meeting there were four chairs around the fire pit and the Applicant said patrons would eat off of the arms of the chairs or the edge of the fire pit. Now there are 8 chairs around the fire pit. She asked if the Applicant can have 8 or 10 seats around the fire pit.

Mr. Heyland reiterated that the Applicant can have the maximum number of allowed seats in that area. Too many chairs around the fire pit could become a life safety issue.

Ms. Freedman asked what made the difference between the last time when the Applicant was allowed 24 seats and now she is allowed 42 seats.

Mr. Heyland responded that the Applicant didn't ask for the maximum allowable seats last time. He and the Fire Chief have determined that the number of seats the Applicant is asking for will not exceed the maximum allowable seats for that area.

Mr. Wilkos asked for confirmation that the Applicant would be in compliance with 72 total seats (30 inside and 42 outside).

Mr. Heyland responded that they are. That request meets the Life Safety Code Standard for the number of seats for those spaces.

Mr. Wilkos asked if Fire Chief O'Brien had anything to add. He did not.

Mr. Hayes pointed out that the area in front is 160 square feet and the applicant is asking for six seats. He asked if that is allowable.

Mr. Heyland responded that they could probably ask for more than six seats. They could ask for ten seats in that area. The Applicant has only asked for six so that is all the Board is going to look at. If the Applicant were to put all 42 outside seats in the front lawn area there may be another controlling mechanism such as Design Review or Life Safety Standards.

Mr. Hayes asked if the Applicant can have more than six seats in that area under the Life Safety Code.

Mr. Heyland responded that they could have up to ten seats in that area. He added that seating is not required to meet setbacks.

Mr. MacLeod asked if Design Review would be required if the seating is rearranged.

Mr. Heyland responded that it might, it would depend on the level and type of change.

Mr. Hayes noted that the last time this Applicant came before the Planning Board she agreed to close at 9:00 p.m.

Mr. Wilkos referred to the Findings of Fact from May 23, 2016 wherein it was confirmed that there was a condition of approval that outdoor serving would not begin before 7:00 a.m. and no outdoor serving after 9:00 p.m.

Kevin Dennis responded that this condition was changed from 9:00 p.m. to 10:00 p.m.

Mr. Wilkos asked if that change was made by the Planning Board or the Select Board when the Applicant went before them for a Liquor License.

Mr. Dennis did not know.

Ms. Dennis added that at one time her hours were limited to 9:00 p.m. because of the neighbor's complaints. She (Ms. Dennis) came back last year and the hours were extended to 10:00 p.m. stop service and 11:00 p.m. all patrons must be out of the outside seating area. She believes it was the Select Board that made this change.

Mr. Heyland added that the more strict condition applies. If the Planning Board's condition of approval is more strict than the Select Board's then the Planning Board's condition applies and she will have to adhere to that.

Rick Dolliver addressed the Board as a resident, he was on the Planning Board for the 2016 decision which was an appeal from the 2013 Planning Board Decision. He was also on the Select Board when Banditos came to the Select Board last year for the renewal of their Liquor License. It is his understanding that the Select Board does not have the authority to change the hours of operation from a Planning Board Decision/Condition of Approval. The Select Board does not have the authority to overrule a Planning Board Decision regarding hours of operation.

Mr. Feldman added that Article 8.9 of the Noise Ordinance states that in the Business District the decibel level at the property line drops from 72db to 50db at 10:00 p.m.

Mr. Heyland confirmed that the Town owns a Decibel Meter; and it is up to the Code Enforcement Officer and the Police Department to take measurements depending on the time of day of the complaint.

Mr. Wilkos confirmed that with the previous conditions of approval, from May 2016, the exterior seating area was limited in size to no more than 600 square feet. The new proposal is for 804 square feet.

Mr. Heyland agreed; and added that this condition would need to be amended to include 804 square feet.

Mr. Wilkos asked if the Applicant was also requesting outside music. He noted that the 2016 Conditions of Approval prohibited outside music.

Ms. Dennis responded that she has always had outside music until 10:00 p.m. She never knew that she couldn't have outside music.

Mr. Heyland reviewed the minutes from a Planning Board Meeting on December 11, 2017 which was the beginning of this current application when it was tabled and no decision was made.

Mr. Heyland noted that the 2016 Application was denied which means that the 2013 Approval Conditions are what stand:

Mr. Yurko Moved to Approve the Application for Judith Dennis / Bandito's Mexican Grill – 68 Shore Road – Map 6 Block 69 with a 10:00 p.m. cut off time for outside service of food and/or beverages and a 10:00 p.m. cut off time for music of any type, also all patrons must have vacated the outside tables by 11:00 p.m. In addition, Adirondack chairs in front of the building are not considered to be part of this application and are not to be used for service of food or beverages.

YURKO/BEVINS 3:1 (Ms. Bevins Dissenting)

Mr. Dennis informed the Board that every meeting he has been to, he has been told that the outside music has to be turned off by 10:00, which he has done. This implies to him that he is allowed to have outside music. He added that there are signs in place which inform patrons “no alcohol beyond this point”.

Mr. Hayes agreed that he saw those signs. He also noted that he recalls Ms. Dennis being the one who agreed to close outside service at 9:00 p.m. so that she could get the approval for outside service.

Mr. Heyland asked the Applicant if she received a copy of the Findings of Fact and if she read them.

Ms. Dennis responded that she probably received them and she probably did not read them because she was at the meetings. She stated that she would never have agreed to close at 9:00 p.m.

Mr. Heyland asked what the 2016 application was for.

Mr. Wilkos responded that it was a request to expand outside dining hours past 11:00 p.m.

Ms. Freedman read from the 2016 Minutes which stated that: “the hours of operation will be 11:30 a.m. to 10:00 p.m. thus the Applicant not only agreed to but offered a self imposed condition of hours of outside operation”.

Mr. Heyland reiterated the 2013 approval and conditions:

*Mr. Yurko Moved to Approve the Application for Judith Dennis / Bandito’s Mexican Grill – 68 Shore Road – Map 6 Block 69 with a 10:00 p.m. cut off time for outside service of food and/or beverages and a 10:00 p.m. cut off time for music of any type, also all patrons must have vacated the outside tables by 11:00 p.m. In addition, Adirondack chairs in front of the building are not considered to be part of this application and are not to be used for service of food or beverages.
YURKO/BEVINS 3:1 (Ms. Bevins Dissenting)*

Mr. Heyland noted again that the 2016 application was denied, which makes it moot, and the conditions imposed in 2013 still stand pending a decision by the Board on the application currently before them.

The Decision from the 2016 Application was as follows:

*Mr. Simpson Moved to Deny the Application for JUDY DENNIS/BANDITO’S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 – Application for an Amendment to a Site Plan Approved on July 29, 2013. Request to expand outside dining hours past 11:00 p.m.
SIMPSON/HAYES 5:0 UNANIMOUS*

Mr. Heyland reminded everyone that Banditos was changed from LBD to GBD in 2013. When this occurred Ms. Dennis was required to come before the Planning Board with a request for outside seating. It was this application, in 2013, which resulted in the approval and associated conditions which stand today; and which she is currently seeking to amend.

Ms. Bevins noted that there were a few police calls which were substantiated.

Mr. Wilkos pointed out that some of the calls were rescue and many of the calls were unsubstantiated by the police. During 2017 there was only a single substantiated police disturbance call.

Mr. Dennis informed the Board that he was the initiating caller on that incident; when an intoxicated patron was refused service.

Mr. Hayes Moved to Table the Application pending submission of minutes of meetings and Findings of Fact so that the Board may determine what was approved; and where things stand.
HAYES

Mr. Feldman noted that once a Motion to Table has been made there may be no discussion and the Board must call for a vote.

Mr. Feldman asked exactly what the Board wants for “research”.

Ms. Freedman responded that she would like the decision from 2013.

Mr. Wilkos called for a 2nd and a vote to Mr. Hayes’ motion to Table.

Mr. Hayes Moved to Table the Application pending submission of minutes of meetings and Findings of Fact so that the Board may determine what was approved; and where things stand.

HAYES/BEVINS 5:0 UNANIMOUS

Mr. Heyland informed the Applicant that because the Application has been tabled she has approved use of 24 indoor seats and 24 outdoor seats per the 2013 Planning Board Approved Plan. Hours of operation are 11:30 a.m. to 10:00 p.m. and the outside tables must be cleared and cleaned up by 11:00 p.m. He acknowledged that the Adirondack chairs out front may be used for patrons to sit and eat but the Applicant may not have wait staff service at those seats.

Mr. Heyland noted that at the site visit there was more than 24 outside seats. He informed the Applicant that she would have to reduce the number of outside seats to 24. He also pointed out that outside music needs to be turned off at 10:00 p.m.

Ms. Dennis acknowledged that the Adirondack chairs were for take-out customers only and that she would reduce the outside number of seats to 24 and that the outside music would be turned off by 10:00 p.m.

3. NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) LBD. Site Plan and Design Review for a pre1930 structure. Application to convert from a Type 1 Restaurant to a Type 2 Restaurant, the addition of a gas fire pit and patio area, the reconfiguration of parking areas, and request for parking waivers.

Mr. Feldman reviewed his May 8, 2018 Memo to the Board noting that there have been no major changes since he drafted that memo (*a copy of Mr. Feldman’s Memo will be maintained in the Applicant’s Planning Board File*). Mr. Feldman suggested that all the outside seating be added to the “Final Plan” and that a signature block be added to the Final Plan for the Board members to sign.

Mr. Feldman suggested the Board may want to draft a memo to the Town Manager confirming that the most recent survey has indicated that the Applicant’s parking spaces on Stearns Road are on Town owned land and that there will be no further parking in that area. This is due to liability issues.

Mr. Wilkos reviewed the Ogunquit Historic Preservation Commission's May 16, 2018 Memo to the Board.

It was determined that this application had been found complete by the Board on October 23, 2017.

The Board scheduled a Site Visit to take place on June 18, 2018 at 4:30 p.m. The Board will review the redesigned parking.

Mr. Heyland asked that all the parking and buffered areas be flagged on site and that a Final Plan including the new outside seating and parking restrictions on Stearns Road be produced. Mr. Heyland asked for the inclusion of a Table of Notes on the Final Plan.

Mr. Wickert noted that he purchased the property in January 2018. Several trees have since been removed. He added that the parking areas will be paved post Board Approval. He agreed to have a Final Plan one week prior to the Site Visit.

The Board scheduled a Public Hearing for June 18, 2018 at 6:00 p.m.

**Mr. MacLeod Moved to Table the Application for NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) LBD.
MACLEOD/HAYES 5:0 UNANIMOUS**

G. NEW BUSINESS –

1. JACK'S ELECTRIC SCOOTER SHOP / JOHN PALMACCI – 731 Main Street – Map 12 Block 10-A (Suite 1) – GBD2. Site Plan Review for Change of Use from Insurance Agency to Retail Use in a post 1930 structure.

Mr. Wilkos asked if there were any waiver requests.

Mr. Heyland responded that there were not. He noted that he found Submission Items T and U would require waiver requests because he did not find them to be "Not Applicable" however he acknowledged that he made an error when signing off on the Submission Requirement Form and that he should have indicated Submission Items T and U as "Not Applicable" and not requiring a waiver. He agreed to provide an updated memo to the Board indicating that the Applicant will not require any increase in parking demand. The previous use's parking requirements were met and there will not be any change or increase which will require an increase in parking or a traffic study. He added that the traffic amounts for the proposed use will not be any different than the amounts for the previous use. It is a currently developed store front whose parking was established back in the 1980's, and it has plenty of parking. This particular store only requires about six parking spaces, which is what was required by the previous use.

Mr. MacLeod noted that the proposed use will be the rental of vehicles which will be leaving and entering the property.

Mr. Palmacci responded that the State of Maine DOT classifies these scooters as light electrical vehicles . They are limited to 20 mph and are classified by the DMV as a bicycle. They can legally be ridden in the bike lane and are not classified as a car. They are classified the same as a bicycle.

Mr. Feldman added that the proposed business is going into an existing plaza. The Plaza has been reviewed in the past and has been confirmed to have the necessary parking spaces to service the entire plaza. He doesn't see that anything would be gained by requiring a traffic impact, or trip generation study.

Ms. Bevins suggested that a traffic study was probably conducted back when the plaza was originally built.

Mr. Heyland responded that he doubts that there will be anything in the file from the 1980's however he agreed to check. He acknowledge that the plaza is still a trolley stop.

Ms. Freedman asked if the scooters will be kept inside and how many there will be.

Mr. Palmacci responded that they will all be kept inside the shop, he will have about twenty scooters and they will be for sale and for rent.

Ms. Freedman asked if some of the parking spaces belong to the Riverbrook Park.

Mr. Heyland responded that he doubts that they are for Riverbrook Park, and that there are a few residential units above the plaza. The parking spaces Ms. Freedman is looking at were created after the plaza as surplus parking.

Ms. Freedman asked if people renting scooters might leave their cars at the plaza.

Mr. Palmacci responded that he believes that his patrons will primarily use the trolley and come from local hotels; and that people will be walking to his business rather than driving.

Mr. Hayes stated that his quick count identifies 67 parking spaces.

Mr. MacLeod asked if the Board can find the Application complete given that the Submission Checklist indicates required waivers for T and U.

Mr. Heyland responded that he is verbally stating that Items T and U are Not Applicable. He added that he has done this in his memo to the Board and provided his reasons for this determination.

The Board agreed that Mr. Heyland's verbal assertion is sufficient, particularly since it is backed up in his memo to the Board.

Mr. Hayes moved to Find the Application Complete for JACK'S ELECTRIC SCOOTER SHOP / JOHN PALMACCI – 731 Main Street – Map 12 Block 10-A (Suite 1) – GBD2.

HAYES/BEVINS

Mr. Wilkos called for any additional discussion. There being none he called for a vote on Mr. Hayes' Motion:

**Mr. Hayes moved to Find the Application Complete for JACK'S ELECTRIC SCOOTER SHOP / JOHN PALMACCI – 731 Main Street – Map 12 Block 10-A (Suite 1) – GBD2.
HAYES/BEVINS 5:0 UNANIMOUS**

The Board Scheduled a Public Hearing which will take place at 6:00 p.m. on June 18, 2018

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Mr. MacLeod asked if the Town owned a sound meter and if it has ever been used.

Mr. Heyland responded that he believes it does. He added that it needs to be calibrated on a regular basis. He added that the Police Department responds to noise complaints.

J. ADJOURNMENT –

**Ms. Freedman Moved to Adjourn at 8:05 p.m.
FREEDMAN/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Approved on June 18, 2018