



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

**DUNAWAY CENTER MAIN AUDITORIUM
JUNE 18, 2018**

PUBLIC HEARINGS

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

- 2. 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 was anyone who wished to speak for, or against this application. There being no one the Public Hearing was closed at 6:03 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 29, 2018 Public Hearing and Regular Business Meeting.**

**Mr. Hayes Moved to Accept the Minutes of the May 29, 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. 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, addition of a gas fire pit and patio area, and reconfiguration of parking area.

Mr. Wilkos noted that the Board held a Site Visit earlier in the day and that there was a Public Hearing at which no one spoke.

Mr. Feldman reviewed his supplemental Memo to the Board dated June 12, 2018 (*a copy of which will be maintained in the Applicant's Planning Board File*).

At this time the Board reviewed the Standards for Design Review Certification Approval with the following results:

A. Does this review involve a structure built prior to December 31, 1930?

The Board unanimously agreed that it does.

B. Review the specifics of the proposed application for compliance with Article 11.7.C of the Ogunquit Zoning Ordinance as follows:

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?

The Board unanimously agreed that it is; and that there will be no changes.

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

The Board unanimously agreed that this standard is not applicable to this proposal because the height is not proposed to be changed.

- 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?

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?

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?

The Board unanimously agreed that they are.

- 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?

The Board unanimously agreed that it is not changing and thus this standard is not applicable.

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

The Board unanimously agreed that they are.

- 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?

The Board unanimously agreed that it has.

- 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?

The Board unanimously agreed that they are.

- 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?

The Board unanimously agreed that it has.

**Mr. Hayes Moved to Approve Design Review for NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) LBD.
HAYES/BEVINS 5:0 UNANIMOUS**

At this time the Board reviewed the Standards for SITE PLAN REVIEW APPROVAL As outlined in Section 6.7 of the Ogunquit Zoning Ordinance with the following results:

A. Does this application involve a pre-1931 structure?

The Board unanimously agreed that it does.

Has the application been reviewed by the OHPC?

The Board unanimously agreed that it has.

Mr. Wilkos asked if Mr. Wickert agreed to all of the OHPC's recommendations.

Mr. Wickert confirmed that he has.

B. Has the Application been submitted for review by all Applicable Town Department Heads?

Mr. Heyland confirmed that it has.

C. The Planning Board shall review the specifics of the proposed application for compliance with Article 6.5 of the Ogunquit Zoning Ordinance as follows: The Board shall approve the above-noted application if the Applicant can prove that the proposed use or structure:

1. Will allow the orderly and reasonable use of adjacent properties.

The Board unanimously agreed that it will, because additional parking has been provided and there are no other significant changes.

2. Will not adversely affect the safety, the health and the welfare of the Town.

The Board unanimously agreed that it will not, because the parking will be safer with the newly configured parking space.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

The Board unanimously agreed that it will not, because there is minimal change in the number of

parking spaces and the change in the direction of onsite traffic flow will be safer.

4. Includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.

The Board unanimously agreed that due to the lack of major changes this standard does not apply.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

The Board unanimously agreed that they will not, because the fire pit is gas fueled, not wood burning.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

The Board unanimously agreed that it will not, because of the lack of significant changes.

7. The operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.

The Board unanimously agreed that it will not, because of the lack of significant changes; and the Applicant has eliminated any nuisance to public infrastructure with the reconfiguration of his onsite parking area.

8. Contains adequate, off-street parking in compliance with this Ordinance.

It was noted that the Applicant has requested a waiver of four parking spaces.

Mr. Wilkos reviewed the Applicant's Parking Waiver Request (*a copy of which will be maintained in the Applicant's Planning Board File*).

**Mr. MacLeod Moved to Waive Four (4) parking spaces as requested by the Applicant.
MACLEOD/HAYES 5:0 UNANIMOUS**

The Board unanimously agreed that, with the granting of the waiver of four parking spaces, it will.

9. Does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

Mr. MacLeod asked if the Fire Chief requires a remote gas kill switch, and if that would be complied with.

Mr. Heyland confirmed that it will be.

The Board unanimously agreed that it will not, because of the lack of significant changes and because of the use of the gas fire pit remote gas kill switch.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

The Board unanimously agreed that it will, because of approval of the OHPC; and the Applicant's agreement with the OHPC's recommendations.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

The Board unanimously agreed that it will, because it complies with the Zoning Ordinance for required setbacks and lot coverage.

12. Will be adequately screened and buffered from contiguous properties.

The Board unanimously agreed that it will, because of the new plantings adjacent to the abutter.

13. Will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.

The Board unanimously agreed that this standard is not applicable because is it not a subdivision.

14. Will provide for adequate pedestrian circulation.

The Board unanimously agreed that it will, because of the one way parking.

15. Anticipates and mitigates potential nuisance created by its location.

The Board unanimously agreed that it will, because all the parking is now on private property.

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

The Board unanimously agreed that it will, because the applicant has provided sufficient information to indicate that they have complied with all required standards.

Mr. Heyland noted that directional and exit only signage is not indicated on the site plan. He added that parking spaces 7 and 8 should be indicated as "residential use only".

Mr. Heyland suggested an additional notation on the site plan that confirms that the five parking spaces on Stearns Road are not a part of the approved plan.

**Mr. MacLeod Moved to Approve Site Plan Review for NORTHERN UNION / MATTHEW WICKERT – 261 Shore Road (Map 5 Block 15) LBD with the condition that an updated amended Site Plan be submitted which indicates:
The location of vehicle directional and “exit only” signage;
Parking spaces 7 and 8 are indicated as reserved for the onsite residence;
Parking spaces on Stearns Road are not included as part of the approved plan
MACLEOD/FREEDMAN 5:0 UNANIMOUS**

Mr. Heyland asked Mr. Wickert to provide an updated plan for the Board’s signature prior to the next Planning Board meeting.

Mr. Wickart agreed to do so.

2. 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 noted that a Public Hearing had been held earlier in the meeting and no one asked to be heard.

Mr. Heyland reviewed his Memo to the Board dated June 11, 2018 (*a copy of which will be maintained in the Applicant’s Planning Board file*).

At this time the Board reviewed the Standards for SITE PLAN REVIEW APPROVAL As outlined in Section 6.7 of the Ogunquit Zoning Ordinance with the following results:

A. Does this application involve a pre-1931 structure?

The Board unanimously agreed that it does not.

Has the application been reviewed by the OHPC?

The Board unanimously agreed that this is not applicable to a post 1930 building application.

B. Has the Application been submitted for review by all Applicable Town Department Heads?

Mr. Heyland confirmed that it has.

C. The Planning Board shall review the specifics of the proposed application for compliance with Article 6.5 of the Ogunquit Zoning Ordinance as follows: The Board shall approve the above-noted application if the Applicant can prove that the proposed use or structure:

1. Will allow the orderly and reasonable use of adjacent properties.

The Board unanimously agreed that it will, because there is adequate parking and the retail hours are only until 8:00 p.m.

2. Will not adversely affect the safety, the health and the welfare of the Town.

The Board unanimously agreed that it will not, because there are no significant changes between this new business and the previous business in that location.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

The Board unanimously agreed that it will not, because there will only be bicycle and scooters coming and going from the site.

4. Includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.

The Board unanimously agreed that due to the lack of major changes; and because the scooters are electric only, this standard does not apply.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

The Board unanimously agreed that it will, because the scooters are all electric.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

The Board unanimously agreed that it will not, because of the lack of significant exterior changes.

7. The operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.

The Board unanimously agreed that it will not, because there are no nearby recreational facilities.

8. Contains adequate, off-street parking in compliance with this Ordinance.

The Board unanimously agreed that it will, and referred back to the Code Enforcement Officer's June 11, 2018 Memo to the Board.

9. Does not create a hazard to life, limb or property because of fire, flood, erosion created

by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

The Board unanimously agreed that this standard is not applicable because there are no adjacent or nearby historic properties.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

The Board unanimously agreed that it will, because it complies with the Zoning Ordinance for required setbacks, parking, and lot coverage.

12. Will be adequately screened and buffered from contiguous properties.

The Board unanimously agreed that it will, because it is an existing storefront with no exterior changes.

13. Will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.

The Board unanimously agreed that this standard is not applicable because it is not part of a subdivision.

14. Will provide for adequate pedestrian circulation.

The Board unanimously agreed that it will, because of the onsite Trolley Stop

15. Anticipates and mitigates potential nuisance created by its location.

The Board unanimously agreed that this standard is not applicable, because it is an existing retail store with no exterior changes

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

The Board unanimously agreed that it will, because the applicant has provided sufficient information to indicate that they have complied with all required standards.

Ms. Freedman Moved to Approve the Application for JACK'S ELECTRIC SCOOTER SHOP / JOHN PALMACCI – 731 Main Street – Map 12 Block 10-A (Suite 1) – GBD2 with the following conditions:

1. **No outside sales or display of any products;**
2. **Any changes to the proposed operation must be brought back before the Planning Board for further review.**

FREEDMAN/HAYES 5:0 UNANIMOUS

3. **JONATHAN WEST / WEST BOARDINGHOUSE – 71 Main Street – Map 17 Block 37A – GBD2 – Site Plan and Design Review to construct a new sixteen (16) bed boardinghouse.**

Neil Rapoza from Civil Consultants addressed the Board and gave a brief summary overview of the proposed project. Mr. Rapoza noted three changes to the original application:

1. Addition of a bike rack;
2. Addition of a drainage swale at the rear of the property;
3. Submission of a Trip Generation Report.

Mr. Wilkos reviewed the Trip Generation Report and summarized that there do not appear to be any concerns or irregularities.

The Board reviewed the Site Plan Submission checklist and, with the following motion, found all submissions met:

Mr. MacLeod Moved to find the Application Complete for JONATHAN WEST / WEST BOARDINGHOUSE – 71 Main Street – Map 17 Block 37A – GBD2 – Site Plan and Design Review to construct a new sixteen (16) bed boardinghouse.

MACLEOD/BEVINS 5:0 UNANIMOUS

The Board scheduled a site visit to take place at 4:00 p.m. on July 9, 2018. The Applicant was instructed to flag proposed building corners, retention area, proposed paved area, and fifteen parking space locations.

The Board scheduled a Public Hearing to take place at 6:00 p.m. on July 9, 2018.

4. **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 news Adirondack patio seats) seats**

Mr. Wilkos noted recent correspondence dated June 8, 2018 from abutter, The Inn at Seachambers, owners requesting the Board reopen the public Hearing which was closed at the last meeting on May 29, 2018.

Mr. MacLeod asked if a Public Hearing has been reopened before.

Mr. Wilkos did not recall ever doing so; however he also does not recall the Board ever receiving a request to reopen a public hearing.

Mr. Heyland noted that the Board may reopen the public hearing.

Mr. Feldman agreed that the Board has the right to reopen the public hearing if the Board feels that it needs additional information which was not available to them at the initial Hearing.

Mr. Hayes added that after the close of the public hearing the abutter had asked to be heard and he was not allowed.

**Mr. Hayes Moved to reopen the Public Hearing for JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 - Amended Site Plan Review for a post 1930 structure based upon a request for a direct abutter.
HAYES/FREEDMAN 5:0 UNANIMOUS**

The Public Hearing was reopened at 6:52 p.m.

Keith Carpenter (54 Shore Road) addressed the Board. Mr. Carpenter stated that he wasn't available for the last meeting, he informed the Board that he has called the police, and walked into the Police Department, on several times, once at 11:30 p.m. and on another occasion at 12:30 a.m. because of noise. Mr. Carpenter noted that his next door neighbor is Five-O Restaurant, across the street from him are Brix and Brine and La Orilla, two other restaurants. He has never had any issue with any of them. Bandito's noise travels through the Inn at Seachambers over to his house on the corner of School Street and Shore Road. He agreed that his name may not show up multiple police reports however he didn't always give his name, he just asked the police to send someone to Bandito's.

Kevin Dennis, Manager at Banditos asked if this meeting was about adding serving seats or about noise level after a certain time. He stated that they aren't changing anything to do with hours of operation or outside music. They only want to convert existing front and side seats from take out to wait staff service seating' and he doesn't know how noise goes through a building.

Mr. Wilkos stated that the Applicant is applying for an expansion of seating.

Judith Dennis, owner of Banditos asked how Mr. Carpenter knows the noise is coming from Banditos. She stated that they aren't open at 11:00 p.m.

Mr. Carpenter responded that he walked over to the property at 11:30 at night and saw a person yelling out of a window. Often by the time police arrive the noise level has been reduced which doesn't mean it didn't happen. He reiterated that he knows the noise level is coming from Banditos.

David Latulippe, Manager at The Seachambers Inn reminded the Board that they have a checklist of standards they have to review including: orderly use of adjacent property. If the Carpenters across the street can hear noise from Bandito's his (Mr. Latulippe's) guest are sleeping twenty feet away. He has received repeated complaints. Another item on the checklist is "Disturbing emission of noise" and "Anticipate and Mitigate". At their 2013 Planning Board Hearing the Applicants purposely placed their seating on the property line abutting the Inn at

Seachambers. They could have placed the seating on the other side of their building which would have mitigated the noise issue. Mr. Latulippe stated that his business is being impacted and he doesn't feel the Applicants meet the standards of the Site Plan Review.

Gary Latulippe, owner of Seachambers informed the Board that he has video proof that the applicants lied at the last meeting. He has video of servers, including the Bandito's Manager, serving cocktails at the front Adirondack chairs. His video has clips from past Planning Board Meetings where the Applicant stated that they only use those chairs for take-out. The video also shows a waitress taking orders and Kevin Dennis delivering a margarita to the Adirondack chairs.

Kevin Dennis denied that he did that. He stated that it is his understanding that food could be delivered to the table as long as there is no order taken at the table and there is no exchange of money at the table. Customers come inside to order and pay and he can deliver the order and clean off the tables. That is what they told him he was able to do. Since the last Planning Board Meeting Mr. Heyland has stated that he did not tell Mr. Dennis that; and that they have to change the way they do things. Mr. Dennis added that Mr. Heyland told him that the patrons eating at those tables cannot be served on the regular plates and the food has to be served in plastic to-go containers. This will cause an issue for him because it will produce more trash; and he will have to put trash cans out there.

Mr. Dennis added that doing it that way he will have to call out order numbers for customers to come pick up their food. This will be even more of a disturbance to the neighbors.

Mr. Heyland responded that he has always held the position that restaurants that are not Type 2 can sell food; and if patrons end up sitting eating somewhere on the property that is not serving to people seated outdoors. He reviewed past Planning Board Meetings where he saw one of the applicants clearly say that they understood that they could not have wait staff around the Adirondack chairs.

Judy Dennis responded that since 2005 they have always had customers order and pay inside and she has always had servers take the food outside. Everyone knows she did it that way; and the previous Code Enforcement Officer told her it was ok. No one ever told her she wasn't allowed to do it that way.

Mr. Heyland responded that Mr. Lempicki is not here; and he (Mr. Heyland) thought he made it very clear.

Ms. Dennis added that she has little stands with pictures of the food on them so servers know where to deliver food. No one ever told her, until this year, that she couldn't deliver the food outside.

Mr. Hayes stated that he was the one who tabled this application at the last meeting. Since then he has reviewed all of the previous meetings and documentation.

When it was the Little Inn Ms. Dennis came before the Planning Board to change the use to retail. In 2005 she came back before the Board for a change of use to a commercial restaurant with only inside dining. Then she came back to the Board asking for outside dining. She was granted outside dining without outside service. In 2013 she submitted a Citizens Petition to have the zone line change so that her restaurant would now be part of the GBD1. As a result of the zone line change the lodging house next door was also moved to GBD1. Because her zoning designation changed she began serving outside and she came back before the Board for more seating. At that time Mr. Heyland said “why are you here? You’ve been serving out there and you shouldn’t have been” to which Ms. Dennis responded “I didn’t know that, I assumed that when the business district was changed I could serve out there.” Mr. Heyland informed her that this was not true, that she had to make an application; and she responded “I wasn’t aware of that”; and in 2013 she made an application. During that Hearing there was a discussion as to whether or not the Board had authority to place conditions on her approval.

Ms. Dennis interrupted to say that there was no discussion. She kept waiting for a discussion and it never happened.

Mr. Hayes responded that he watched the video and there was a lengthy discussion. It was determined that the Board did have authority to impose conditions. There was a motion to have the outside dining close at 9:30. This motion failed to pass. It was Ms. Dennis who said she would close at 10:00 p.m. and have everyone off the outside dining area by 11:00 p.m. That motion passed which is where she is today. Now she is back before the Board asking for more seats. She has been treated fairly by the Board.

Ms. Dennis responded that she hasn’t been treated fairly; she is the only one in the General Business District that has limited hours. Her business affects only one person, the Seachambers. Every restaurant in town is near a motel and they all have complaints about noise and their hours are not limited. She has tried to be a good neighbor to Seachambers, there haven’t been any police reports in the last two years. There is no proof that any noise comes from Bandito’s.

Ms. Freedman reviewed the 2013 minutes confirming the applicant agreed to limited hours of outside operation.

Gary Latulippe reiterated that this property has been a continuous problem since before he purchased the Parson’s Post Inn. He has been at every Planning Board meeting involving this applicant because there have been so many issues. He didn’t understand how Ms. Dennis could say that this is a new issue. His business doesn’t impact Bandito’s; her business impacts his business costing him money. He has had to comp \$200 rooms and he asked how many dinners she has had to comp because of his guests. His other neighbors: Brix and Brine, La Orilla, and Five-O have never caused a single issue and he hasn’t been to any Planning Board Meetings for any of them; he has been to every Planning Board Meeting regarding Banditos and for Ms. Dennis to say there hasn’t been anything for two years is untrue.

Mr. Wilkos asked what their video would show.

David Latulippe responded that it shows clips from past meetings indicating a fact pattern, and video of servers taking orders and delivering food to the front Adirondack Chairs. The applicant keeps saying they never serve outside, the video will clearly show that to be untrue. The Applicant has accused both the Latulippes and Mr. Carpenter and Mr. Heyland of lying; the video will show that the Applicant's do not follow the rules.

Regarding the noise Mr. Latulippe stated that the hotel office closes at 10:30 and they have a night manager on site. They don't always call the police; rather they try to deal with it and most of the complaints come to him in the morning from guests saying they couldn't sleep. By then it's too late to call the police.

Mr. Heyland added that the applicant is saying that she was unaware that she couldn't serve at the Adirondack Chairs. When she came before the Board to get permission to serve outside it was made very clear. The Applicant was successful in changing her zone to allow for outside dining and she assumed that the day after the vote she could begin outside service. He reminded her that she had to come before the Planning Board to ask for a change of use from a Type 1 to a Type 2 restaurant in order to be able to serve outside.

Mr. Hayes responded that there was no confusion, it was explained very carefully. He reminded the Board that when Mr. Wilkos asked Ms. Dennis if she read the Findings of Fact from her last Planning Board appearance she responded with "probably not".

Ms. Dennis responded that she read the Findings of Fact and there is no mention of service or hours of operation.

Mr. Heyland read from the Findings of Fact which state, in part, that there shall be no service of food at the Adirondack Chairs.

Ms. Dennis responded that they don't serve food out there. They only take the food out to customers there because they have always been allowed to do that.

Mr. Heyland responded that the delivery of the food to the tables is "service". He said that in 2013.

Kevin Dennis responded that two years ago Mr. Heyland told him that he could serve out there.

Mr. Heyland asked if Mr. Dennis is saying that he (Mr. Heyland) told Mr. Dennis that he could send wait staff out to those seats with drinks in their hand?

Mr. Dennis responded "yes".

Mr. Heyland stated that there is absolutely no way he would have said that. On more than one occasion the Applicants stood in front of the Board and agreed that they couldn't serve at those chairs; now they are trying to say that they didn't know that they could not serve there.

Mr. Wilkos asked what the video showing outside service has to do with the current application.

Mr. Heyland responded that evidence which illustrates a problem or shows excessive noise late at night might be helpful to the Board as it goes through the Site Plan Review Standards.

Gary Latulippe stated that the purpose of the video is to clearly show that the Applicants don't follow the rules. All he is asking is for them to be good neighbors. This restaurant is already a problem and the Board should not consider allowing them to double their seats which will only make the problem worse.

Ms. Bevins asked Mr. Latulippe what would be an ideal situation.

Gary Latulippe responded that the best situation was when they stopped outside service at 9:00 and everyone was off the outside seats by 10:00 p.m. There were no problems then. It was the Select Board which lifted that condition and the noise problems began again. There is no problem with the Adirondacks; the problem is the late night noise and the fact that the Applicants say things that are not true. He would like to see all service stop at 9:00 p.m. and all outside activity cease by 10:00 p.m.

Mr. Wilkos summarized that the current conditions of approval is for Bandito's to stop outside service at 10:00 p.m. and have the area cleared by 11:00 p.m.

Ms. Bevins noted that the Applicant is asking for additional outside seating; and she asked if the Board is making a decision about noise.

Mr. Wilkos stated that the Board has the authority to place conditions on its approval including the hours of operation.

Kevin Dennis asked if the meeting is about seating or hours.

Mr. Wilkos responded that they are intertwined; and a direct abutter has expressed several complaints about late hour noise. The applicant is asking the Board to allow him to expand from 49 to 72 seats. He asked if the Applicants would agree to the abutters' request to stop service at 9:00 p.m. and have the outside area cleared by 10:00 p.m. if he is allowed to expand from 49 to 72 seats.

Mr. Dennis responded "absolutely not".

Mr. Hayes reminded that Board that there was more than one abutter who complained.

At 7:27 Mr. Wilkos asked if anyone else wished to be heard. There being no one Mr. Wilkos closed the Public Hearing.

Ms. Freedman asked about the video.

Mr. Hayes responded that he feels the video might show that this applicant has been treated fairly and still continues to not follow the rules.

Mr. Wilkos summarized that when the conditions of operation required the Applicant's to stop serving at 9:00 and have the outside area cleared by 10:00 p.m. the abutter had not complaint. One year later the Select Board lifted that restriction allowing service to continue outside until 10:00 and the outside area to be cleared by 11:00 and the problems began to reoccur.

Ms. Dennis responded that she doesn't make a lot of noise. The abutters and the Planning Board are trying to limit her hours so she can't make money.

Mr. Wilkos responded that if there were no abutters complaining about the noise there wouldn't be any issue. He also pointed out that it was the Select Board, not just the Planning Board, who put restrictions on her hours. The Applicant is asking to double her outside seating and she already has an abutter who has complained about noise.

Ms. Dennis asked the Board to see if any other restaurant in town had restrictions on their hours of operation.

Ms. Bevins responded That Place has a restriction that they only serve outside until 9:00 p.m.

Ms. Dennis stated that every restaurant in town gets complaints about noise.

Ms. Bevins responded that the applicants are asking for an increase in seating and if you add more people you are going to make more noise.

Mr. Dennis responded that there won't be more people out there, it won't make a difference if they have wait staff service or take-out. The number of people will be the same. It's the same amount of people; it's only the service vs. take-out that they are asking for.

Mr. MacLeod disagreed; and stated that the Applicants' are asking for more seats.

Mr. Dennis argued that he could put even more take-out type seats outside than he is asking for. He could have 30 people out there eating and drinking if he wanted; but he isn't asking to do that.

Mr. Heyland confirmed that drinks may be consumed at the take out or waiting area seats while people wait for their tables. What Mr. Dennis seems to be saying is that if he wanted to assemble a bunch of loose chairs on the front of that property there would be people just milling around after they come outside with their takeout food and drinks. At some point too many chairs would trigger the need for a Design Review and a review of occupancy limits.

Mr. Heyland added that waiting area seats are not part of the "seating/dining" calculations.

Mr. Dennis added that they could have as many seats as they want out front for the waiting area. What he is attempting to do is: 1. Create better service for his customers 2. Have better control over the customers who are carrying food and drinks out to the chairs that are currently labeled as "take out seating". Having service to those areas would allow him to have a better eye on his customers and allow the customers to have a safer experience 3. This will correct the problem of

customers overcrowding in the bar area where they order their takeout food and drinks. This overcrowding can be a safety hazard.

Mr. Dennis stated that currently those seats are for takeout customers only; all he wants to do is change them to wait staff service seats.

Mr. Heyland added that they are also asking for an increase in the number of seats.

Mr. Dennis responded that the seats are there; they are takeout seats at the moment.

Mr. Heyland asked Mr. Dennis how many seats are currently on the outside patio.

Mr. Dennis responded that there are 24 for serving.

Ms. Dennis added that there are 8 on the front patio and 8 at the fire pit which are not counted as “serving seats”. All she wants is to have those designated as “serving seats” instead of having customers come in and order. The seats are already there.

Mr. Heyland agreed that most restaurants have a certain number of seats which are “unregulated seats” where customers can wait for a table and have a drink while they wait. He suggested that if this problem persists it may be the Select Board that needs to control their hours through the Liquor Licensing process.

Mr. Dennis responded that they have not had any complaints. He has been very nice to his neighbors and he has no complaints.

Mr. Heyland responded that the neighbors showed up at this meeting with a different opinion.

Mr. Wilkos summarized that at the moment there are some seats outside which have wait staff service and some seats outside which are “accessory seats” where customers can wait for a service table or consume takeout food or drinks. He asked if there are currently 42 seats outside.

Mr. Dennis responded that there are probably less right now, probably 35. He is asking for 42 outdoor seats for service seats.

Mr. MacLeod reiterated that the Application currently before them is to expand the use of 42 to 79 seats and adding 18 new outdoor seats including the 6 Adirondack and the seats around the fire pit. When the Board reviews the application it is required to go through the Zoning Ordinance Site Plan Approval Checklist which asks several specific questions about the effect on neighbors. So far, and every time Bandito’s has come before the Select Board and /or the Planning Board there have been neighbors who have come and complained about noise. Every response the Applicants have had to that has been to disregard the neighbors’ complaints. He has to give some credibility to what the neighbors are saying because they wouldn’t be here if it didn’t impact them. He added that at 10:00 p.m. the Noise Ordinance says the levels can be no higher than 50dbs. No one is complaining about the noise before 10:00 p.m.

Mr. Dennis responded that he doesn't have a full restaurant, in service outside at 10:00 p.m.

Mr. MacLeod noted that there has been enough noise that three neighbors have complained either to the police, the Select Board, or the Planning Board on multiple occasions; and the Applicants' response to that has always been "no we're not noisy" or "we don't have a problem". And yet the neighbors continue to come to the Town saying they have a problem with the noise.

Mr. Dennis responded "that's because they personally don't like us". That there has to be some written proof of the noise. He asked if the noise level has ever been measured. He stated that the "neighbors were crazy and they didn't like us and they repeatedly called the police on purpose".

Mr. MacLeod reiterated that Mr. Dennis is completely discounting the neighbors' statements and giving them no credibility.

Mr. Dennis asked "where is the proof".

Mr. Wilkos asked if the Applicant would be willing to go with only expanding the indoor seats and leaving the outdoor seat count as it currently is.

Mr. Dennis responded that he can't expand indoor seats.

Mr. Wilkos reminded the Applicant that he is asking to expand the indoor seating from 25 to 30.

Mr. Dennis responded that "no".

Mr. Wilkos again asked how many seats there currently are outside.

Ms. Dennis responded "42" which she corrected to 39 with 16 seats for takeout and waiting area seats. The people are already there it isn't going to do anything about the noise. She tries to control the noise. They stop the music at 10:00 p.m.

Mr. Mr. Wilkos asked what the Applicant would propose to correct the noise issue.

Mr. Dennis responded that the neighbor should come to him to talk about it. They have never once come to him to talk about it. They have never sent or called police on Bandito's. The abutters could call the police or call the Code Enforcement to come with a sound meter.

Mr. MacLeod stated that it sounds as if the Applicants are putting it on their neighbors to enforce the Sound Ordinance; when the Applicants should be monitoring it. He reminded Mr. Dennis that the Board has received testimony from three people that Bandito's is not complying with the Ordinance or their 2013 conditions of approval.

Mr. Heyland added that after 10:00 p.m. the Ordinance says the noise level may not exceed 50 decibels.

Mr. Hayes asked what the Board's options are.

Mr. Feldman responded that the Board could:

1. Deny the Application;
2. Approve the Application with conditions which could include limiting the hours of operation which then becomes a Code Enforcement issue;
3. Approve the Application as proposed.

Mr. Wilkos asked who enforces the post 10:00 p.m. decibel reading.

Mr. Heyland responded that it would be his office or the police. He confirmed that the Town Does have a decibel meter which would need to be sent out for calibration. He added that 50 Decibels is low and with the noise downtown it could become problematic. He added that the Select Board put a 10:00 quiet limit on outdoor seating. Since then the 10:00 p.m. timeframe was changed to 11:00 and that is when the complaints began again.

Mr. Wilkos summarized that originally the conditions of approval were for the ceasing of outdoor service at 9:00 p.m. and all outdoor activity needed to cease by 10:00 p.m. The indoor seating could continue to the regular closing time.

Ms. Dennis reiterated that the complaints were from one woman, Laura, who is gone.

Mr. Heyland reminded the Applicants that Laura may be gone but there are three new neighbors who are at this meeting voicing complaints.

The Applicants both stated that the neighbors haven't called the police or ever come to them with their complaints.

Mr. Dennis suggested the Code Enforcement Officer get decibel readings and things will go from there.

Mr. Heyland asked what the Applicant's will do if the readings show that the noise level exceeds the Ordinance limits.

Mr. Dennis responded that if the readings are over they will come back and talk about it.

Mr. Hayes suggested that the Board might table the Application until Mr. Heyland can get the decibel readings.

Both Applicants reiterated that they aren't asking for more people outside, they are only asking for the existing seats which are currently for takeout use only to have wait staff service.

Ms. Botsford suggested that if the Applicants are only asking to have wait staff service at the existing seats it won't change the noise level. However if there is an increase in the number of outside seats, the noise level will increase. The Board might deny the application of an increase

in seating and approve wait staff service at the seats which are there now. She asked how many total seats Banditos currently has outside.

Mr. Wilkos asked if there are currently 35 outdoor seats.

Mr. Hayes suggested that the Applicant's don't know how many seats they currently have outside. He noted that Mr. Dennis says one thing and his mother (Ms. Dennis) says another thing.

Mr. Dennis responded that there are 24 plus 6 plus 8.

Mr. Wilkos stated that the Board is trying to be fair to the Applicants as well as the abutters. He asked again what the Applicants are willing to do to help resolve the neighbors' complaints about the noise levels.

Mr. Dennis stated that he will get a decibel reader and keep the noise level below 50 and if the neighbors still have a problem they can call him or the police. He reiterated that everyone is off the outside seating area by 11:00 p.m.

Mr. Feldman added that the Board might table the application and allow the Code Enforcement Officer to spot check Banditos at night and bring the readings back to the Board by late summer or early fall. This will give the Board accurate information that indicates what the decibel levels are.

Ms. Dennis asked if any other restaurant in town has noise level checks. She reiterated that she is only asking for service at the seats that she already has.

Mr. Dennis responded that he doesn't want to have an entire summer's worth of plastic garbage to throw away.

Ms. Freedman agreed with Mr. Feldman; and she added that the Code Enforcement Officer's decibel meter has been used by the Police Department in the past.

Mr. Hayes asked if the meter requires training to use it.

Mr. Heyland responded that he will be sure that he has the correct equipment, that he knows how to use it, that it's accurate, and he will do it right.

Mr. Dennis added that there are I-Phone Apps which do the same thing. He added that if the Board tables the application there will be more time with the crowd inside the bar which is a safety hazard.

Mr. Heyland asked if the Applicants understand that they are responsible for the crowd inside and all safety aspects.

Mr. Dennis responded that he knows it is his responsibility. He suggested the Board move ahead and Mr. Heyland do his spot check and if Bandito's is found to be in violation of the noise ordinance he can give them a ticket and they can revisit the issue.

Mr. MacLeod reminded the Applicants that the Board has Ordinance Standards which must all be met in order for the Board to approve an application. At this point it doesn't appear as if the Board could approve; and that seems to be what Mr. Dennis is trying to avoid.

Mr. Dennis agreed; and agreed to the 30 day decibel meter spot checks.

Ms. Freedman Moved to Table the Application for JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 to allow the Code Enforcement Office and/or Police Department to spot check decibel levels. To begin when the equipment has been calibrated.

FREEDMAN

Mr. Hayes asked how long the tabling would last. He suggested 30 days.

Mr. Feldman agreed that during the 30 day time period Mr. Heyland will spot check Banditos with the meter. If it is discovered that there are violations the Board will have to discuss it when the Application comes off the table.

Mr. Hayes again asked “exactly how many seats there are in the outside seating area?” He noted that there seems to be some confusion about this. He asked for a number.

Mr. MacLeod responded that the site plan indicates 24 seats on 6 tables, 6 Adirondack chairs on the front patio area; and some unclear number of seats around the fire pit.

Mr. Hayes asked for confirmation that there are 4 seats in the bar area; not 6.

Mr. Dennis responded “correct”.

Mr. MacLeod added that all of the drawings indicate four seats around the fire pit.

Mr. Dennis responded that they currently have 8; however it doesn't matter how many they have. If a chair is moved from a table to the fire pit that's fine.

Mr. Heyland responded it is, as long as there is no wait staff service at it.

Mr. Hayes added that when the application comes back before the Board he wants the abutters to be able to present any additional information they may have.

Mr. Feldman responded that this will be up to the Board; and should be decided at that time.

Mr. Wilkos called for a 2nd to Ms. Freedman's Motion. He noted that the application would be tabled for 30 days and the Code Enforcement Officer will monitor the noise level periodically

after 10:00 p.m. and will report back to the Planning Board. This application will probably come back before the Board at the end of July.

Ms. Freedman Moved to Table the Application for JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 to allow the Code Enforcement Office and/or Police Department to spot check decibel levels. To begin when the equipment has been calibrated.

FREEDMAN/MACLEOD

Mr. Wilkos called for a vote:

Ms. Freedman Moved to Table the Application for JUDITH DENNIS / BANDITO'S MEXICAN GRILL – 68 Shore Road – Map 6 Block 69 – GBD1 to allow the Code Enforcement Office and/or Police Department to spot check decibel levels. To begin when the equipment has been calibrated.

FREEDMAN/MACLEOD 4:1 (Ms. Bevins Dissenting)

Mr. Dennis asked how many takeout seats he may have around the fire pit and the Adirondack chairs.

Mr. Wilkos suggested Mr. Dennis meet with the Code Enforcement Officer.

Mr. Dennis responded that he doesn't trust that, because last time Mr. Heyland told him something that he now denies saying.

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

1. Proposed Ordinance Amendment to allow small cell installation on Ocean Avenue.

Scott Anderson addressed the Board reminding them that the Board approved a few small cells. They have one remain cell to be installed at the North Beach which is in the resource protection district (RPD).

He noted that the Zoning Ordinance has three definitions:

1. Wireless tower
2. Wireless Antenna
3. Central Services

He thought they might be able apply for the North Beach small cell under Wireless Antenna or Central Services. He and the Code Enforcement Officer have since determined that they cannot.

The question he is presenting to the Board is whether the Town would be agreeable to amending the Ordinance to allow for the installation of small cell antenna at the North Beach Parking Lot. He agreed that the Town may want to retain the prohibition against wireless towers in that zone; it may want to consider allowing the low impact installation of these small cell wireless antennas.

Mr. Anderson added that they had looked at the Sewer District property which is outside Resource Protection however it was determined that this area would not work. They are currently looking at an area slightly north of the Sewer District. He confirmed that they are only looking at the North Beach area, not the Main Beach. There may be other areas in Town which may benefit from these small cells however at this time they are only looking at North Beach. He pointed out that the Police Department and Visitor Services are also looking for service in other parts of town.

Ms. Botsford asked if there are any State or Federal Guidelines the Board needs to consider; and if other towns in the area have installed them.

Mr. Feldman responded that they have been installed in Kennebunk.

Mr. Anderson added that his request impacts the Town's Zoning Land Use Table. Changing the Ordinance to allow for small cells, which are antenna without towers and are installed on existing telephone poles, in the Resource Protection District would still prohibit the installation of towers.

Mr. Anderson agreed that the Town wouldn't want to put towers in the Resource Protection Zone. What's unique about these small cell antennas is that they are installed on something already there. He noted that these are relatively small "footprint" projects.

Mr. Feldman informed the Board that it would be a small change to the Ordinance which would allow for these small cell antennas under Essential Service or to the Land Use Table. These changes would need voter approval. He agreed to draft some sample language for the Board to review.

Ms. Botsford asked for additional information, other than what has been provided by Verizon, for the voters to review. She asked for independent data to back up proposed Ordinance changes.

Mr. Anderson agreed to provide additional research data and ordinance models from other towns.

Mr. Feldman agreed to submit sample ordinance language prior to the next meeting

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 8:50 p.m.
MACLEOD/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Approved on July 9, 2018