



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

**DUNAWAY CENTER MAIN AUDITORIUM
May 13, 2019**

REGULAR BUSINESS MEETING

A. ROLL CALL –

Members Present: Rusty Hayes (Vice Chair)
Muriel Freedman
Mark MacLeod
Priscilla Botsford (1st Alternate)
Brian Aromando (2nd Alternate)

Members Excused: Steve Wilkos (Chair)
Jackie Bevins

Due to Mr. Wilkos' excused absence, Ms. Botsford was moved to full voting member status for the duration of this meeting.

Due to Ms. Bevins excused absence Mr. Aromando was moved to full voting member status for the duration of this meeting.

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – April 22, 2019

**Mr. MacLeod Moved to Accept the Minutes of the April 22, 2019 Meeting as Amended.
MACLEOD/BOTSFORD 5:0 UNANIMOUS**

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

Mr. Hayes asked if there was anyone who wished to be heard. There was no one.

F. UNFINISHED BUSINESS –

1. THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a pre 1930 structure. Change of Use from Type 1 to Type 2 Restaurant with outdoor service.

- **Originally Approved by Planning Board Granted on July 24, 2017.**
- **Rule 80B Complaint Appeal filed on September 8, 2017.**
- **Justice O’Neil Remanded the Application back to the Planning Board on August 21, 2018.**

Attorney Jim Katsiaficas addressed the Board as the Board’s attorney. He summarized that this case was sent back to the Planning Board from the Superior Court to make two determinations:

Change of use of the structure and whether it is more harmful as a Type 2 Restaurant than it would be as a Type 1 Restaurant.

Whether the change in use would create a hazard to limb life or property.

The Court felt there was insufficient information for it (the Court) to make a decision and sent the application back to the Planning Board for additional findings.

Mr. Katsiaficas stated for the record that both alternates (Ms. Botsford and Mr. Aromando) were both present at the April 8th Hearing, had the same information as Mr. Wilkos and Ms. Bevins would have, and could sit for this Hearing as full voting Board members.

Attorney Katsiaficas noted that he had provided Draft Findings of Fact to the Board, which the Board May use as a guide to work through the process.

Attorney Katsiaficas informed the Board that the actions for them to take at this meeting were to make decisions on the two matters noted above; and to declare findings which support these decisions.

Attorney Katsiaficas reviewed Section 3.3.H.4 of the Ogunquit Zoning Ordinance standards regarding the change of use of a non-conforming structure – in this case non-conforming as to the water setback.

Attorney Katsiaficas noted a report submitted from Northeast Civil Solutions (dated October 29, 2018) which in summary stated that as a Type 1 Restaurant people were already eating on the deck; and going to a Type 2 Restaurant means that patrons would now be served food on that deck. There would be no difference in impact on the: subject property, neighboring properties, or the water body (Atlantic Ocean).

Attorney Katsiaficas outlined Attorney Bannon’s counter argument that the difference between a Type 1 and Type 2 Restaurant, as defined in the OZO, is where the food is consumed, not the type of service.

The determination will be up to the Board to interpret the Ordinance and provide the findings of fact that support that interpretation.

Attorney Katsiaticas continued with a summary of the Town of Ogunquit's allowance for the consumption of food on decks by Type 1 Restaurants.

Mr. MacLeod stated that the defining language between Type 1 and a Type 2 Restaurants as defined in Article 2 of the OZO is almost identical; the difference is where food is marketed for consumption. One allows for the food to be served outside, while the other states that it may not be served outside.

Mr. MacLeod added that the other difference is promotion. Type 1 Restaurants are not to promote eating outside; and Type 2 is not to promote eating off the premises. The difference is where the food is served and where consumption is promoted.

Mr. MacLeod asserted that the change from a Type 1 Restaurant, where food is not served on the deck, to Type 2 Restaurant where food is served on the deck meets half of that definition. The other half is whether the restaurant is promoting the outside use, or not. Mr. MacLeod questioned whether providing tables on the deck promotes consumption of food there. He also noted that historically, many Type 1 restaurants in Ogunquit have provided tables for patrons to sit and eat.

Mr. MacLeod stated that it is his opinion that Attorney Bannon has interpreted the Ordinance, and Ogunquit's practices, incorrectly. He added that Attorney Bannon's opinions are not this Board's opinions.

Mr. MacLeod noted that the court is asking the Planning Board to make a determination as to whether the deck is the same size as it was in 2017; and whether the current occupancy load calculation is correct.

Mr. MacLeod noted that both the Applicant and Code Enforcement Officer have stated that it is the same deck with only a few repairs from storm damage. The second part is based upon the current Fire Chief's measurement of the deck and his calculation that it will seat twenty people.

There was discussion regarding the history of disagreement between the Applicant, the abutter, and the former Fire Chief over changes to the size of the deck. This Board agreed to abide by the latest measurement resulting from the Superior Court's order, and the current Fire Chief's calculations.

Ms. Botsford asked about the overall number of seats.

Mr. Heyland responded that the Applicant has twenty seats indoors and twenty seats on the deck; and that there is one bathroom, which meets the requirement for a restaurant with up to forty patrons.

Mr. MacLeod made a motion that the Ogunquit Planning Board finds, with regard to the dimensions of the outside deck at The Trap and its seating capacity, that the deck is

adequate to seat twenty persons safely per the Ogunquit Fire Chief's letter citing an inspection date of October 3, 2018.

MACLEOD/FREEDMAN 5:0 UNANIMOUS

Ms. Botsford suggested that most of the complaints made during testimony were really Code Enforcement issues.

Mr. Macleod Moved to conclude that based upon evidence given by the Ogunquit Fire Chief (in a letter citing an inspection on October 3, 2018 regarding seating capacity and occupancy of twenty persons as determined under NFPA 101 Life Safety Code), the Police Chief (in a letter dated June 30, 2017), Public Works Supervisor (in a letter dated June 28, 2017) the Planning Board concludes that the proposed Type 1 Restaurant Use and outdoor deck structure does not create a hazard to life, limb, or property because of fire, flood, or erosion created by reason of use or by the structures to be used thereon; and by the accessibility of the property or structures thereupon for convenient entry and operation for fire and other emergency apparatus or by the undue concentration of assemblage of persons upon such plot, the Planning Board concludes that the Application meets OZO Section 6.7.A.9.

MACLEOD/FREEDMAN 5:0 UNANIMOUS

Mr. MacLeod posed the following: regarding OZO Section 3.3.H.4 the Planning Board interprets the difference between Type 1 and Type 2 Restaurants as defined in Article 2 of the OZO to be that the only difference in the Ogunquit Land Use Ordinance definition between Type 1 and Type 2 is that Type 2 allows food to be served indoors or outdoors; and Type 1 should not promote consumption outside; and that Type 2 should not promote consumption off premises.

This statement is in response to the question of what is the difference between the zones.

Mr. MacLeod went on to say that Type 1 Restaurants' food shall only be served indoors and consumption shall not be promoted outdoors; Type 2 is where food can be served indoors or outdoors and consumption cannot be promoted off premises. The other sentences in the paragraphs are identical.

The essential difference is where consumption occurs and where they promote consumption.

Ms. Freedman noted that the OZO definition verbiage is "does not" not "should not".

Attorney Katsiaticas reviewed the definitions of Type 1 and Type 2 Restaurants in Article 2 of the OZO and he asked if the Board believes the essential issue is where food is consumed; or where service may occur.

Mr. MacLeod responded that the difference between the two is the promotion of where consumption occurs; not the actual consumption of food.

Mr. MacLeod proposed that: based upon the fact that:

1) The Conservation Commission approved the change of use;

- 2) A Civil Engineer concluded that there will be no increase in impact, because patrons were already sitting on the deck and the change from eating to eating with wait staff service would cause no greater impact;
- 3) The original application showed seating on the beach which has been removed, along with photos and promotion of those seats on FaceBook and the applicant's website;
- 4) The Chief of Police and Public Works Supervisor stated that they had no concerns about the change of use to a Type 2 Restaurant.

Based upon these four facts the Planning Board determines that the proposed change of use to a Type 2 Restaurant will have no greater adverse affect on public health, safety, erosion, sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access waters, natural beauty, flood plain management, archaeological and historical resources, and commercial fishing and maritime activity and other functionally water dependant uses than does the current Type 1 Restaurant Use. Therefore on the basis of these statements and documents, the Planning Board determines that the new Type 2 Restaurant Use will have no greater adverse impact on the water body, tributary stream or wetland or on the subject or adjacent properties or resources than the existing Type 1 Restaurant Use; and so concludes that the applicant meets Ogunquit Zoning Ordinance Section 3.3.H.4.

Attorney Katsiaficas reviewed the summary conclusions from the Northeast Civil Solutions report dated October 29, 2018 which the Board agreed supports its decision.

Mr. MacLeod Moved to Approve the Application for THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for Change of Use from Type 1 to Type 2 Restaurant with outdoor service; meets OZO Standard 3.3.H.4. MACLEOD/ FREEDMAN 5:0 UNANIMOUS

Attorney Katsiaficas informed that Board that he would draft the Findings of Fact and written Decision Form. At the next meeting the Board will only have to make the ultimate decision which would be to make the findings, make the decision that it does meet those, and to adopt this finding.

Mr. Aromando noted that Ogunquit is unique in that business owners have approximately three months to make their money for the year. If this applicant is forced to suspend service to his patrons on the deck; and next weekend it's 80 degrees and beautiful, that will be a huge loss to his income.

Jason Evans addressed the Board and noted that he was approved as a Type 2 Restaurant; that approval is on remand until this is decided upon; it is his understanding that he may continue to operate as a Type 2 Restaurant with full service on his deck.

It was acknowledged by Attorney Katsiaficas that the Applicant was approved to operate as a Type 2 Restaurant, no one has stayed the proceedings; and Mr. Evans may continue to operate as a Type 2.

Mr. Heyland agreed.

2. COSO ENTERPRISES LLC / DWAIN UNDERWOOD / BLACK BOAR INN – 277 Main Street – Map 7 Block 13-1 – GBD1 – Application to Amend a Previously Approved Site Plan. Request to add a Type 1 Restaurant, as an accessory use to an existing Type 3 Transient Accommodation – Inn.

Mr. Heyland informed the Board that he visited the Site with the 2005 Site Plan in hand; and confirmed that the parking arrangement on the ground has been restriped to match the 2005 Approved Plan. The Site Plan the Board received with this application now reflects the existing conditions on the ground.

Mr. Heyland noted that the Land Use Office received an e-mail at 4:50 p.m. this afternoon claiming that some of the condominium unit owners were not notified of the application. Mr. Heyland informed the Board that Land Use Office protocol for condominium associations is to notify the Association president who is responsible for notifying the individual owners in the complex. This application is a unique case in that the applicant is also the president of the association. It was assumed that the applicant/condominium association president would notify the members of the association and that appears not to have been done. Some of the association members are asking for a tabling of the application and a reopening of the Public Hearing.

Tim Stein, the Applicant's attorney, addressed the Board and informed them that he had reviewed the May 13, 2019 4:51 p.m. e-mail. He informed the Board that Mr. Blazejowski, who claims to be the Association Secretary; is not and has no standing to speak for the Association. In addition, this is a small association of only ten units and this e-mail represents a minority of the shareholder vote.

Mr. Stein stated that the comments made in the e-mail are not accurate; he asserted that the association members were aware of the pending Planning Board Application and that they had discussed it among themselves, via e-mail sent by Mr. Blazejowski, last week.

Mr. Stein reminded the Board that the Ogunquit business season is very short and Mr. Blazejowski's attempt to derail this application at the last minute is not valid. At the last Planning Board Meeting the only item left to be satisfied was compliance with the 2005 Parking Layout on that plan. That has been satisfied and confirmed by the Code Enforcement Officer. The author of the e-mail makes no assertion that Mr. Underwood is not in compliance with the Plan.

Mr. Stein asserted that the notification of association members is a condominium internal process and the Planning Board has no involvement with that. He asked the Board to move forward with approval of this application.

Ms. Botsford asked if they were notified.

Mr. Stein responded that the Association was notified.

Mr. Hayes confirmed that that Public Hearing Notice was advertised in the local newspaper, and was posted at the Ogunquit Town Hall, Post Office, online website, and cable TV Channel.

Mr. Stein argued that the proper venue for the author of the e-mail is the Condominium Association meetings not Planning Board Hearings.

Mr. Heyland agreed that the Board does not want to get involved in the inner workings of Condominium Associations.

Mr. Aromando noted that once the Land Use Office complies with what is in the OZO it has fulfilled its requirements. The e-mail is really about discourse between members of a condominium which isn't something the Planning Board should involve itself with. The Planning Board needs to abide by the language of the Ogunquit Zoning Ordinance.

Ms. Botsford argued that the letter sent to the applicant is not a letter to the Condominium Association.

Mr. Heyland agreed that it's a gray area; and he referred to Section 6.6.D.2 of the Zoning Ordinance which states that:

...Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.

Mr. Heyland confirmed that there are other mechanisms for abutters and other property owners to be notified: 2 newspaper postings, Agenda and Public Hearing Notices posted around Town, on the local cable TV channel, and Town Website.

Ms. Botsford stated that Mr. Aromando is saying that if that was done it's fine; however, she stated, that wasn't done.

Ms. Freedman pointed out that the e-mail came in at the last minute this afternoon; at 4:40 p.m.

Mr. Hayes agreed and noted that late submittals usually need to be approved by the Board before they are accepted; and that was not done with regard to this e-mail.

Mr. MacLeod noted an e-mail the Board received several weeks ago which confirms receipt of notification of the Public Hearing.

Mr. MacLeod Moved to proceed to the Site Plan Review checklist for approval or denial of COSO ENTERPRISES LLC / DWAIN UNDERWOOD / BLACK BOAR INN – 277 Main Street – Map 7 Block 13-1 – GBD1.
MACLEOD/AROMANDO

Mr. Hayes confirmed that the only outstanding requirement was the restriping of the parking area to match the approved 2005 Site Plan. That has been done and confirmed by the Code Enforcement Officer.

Mr. Hayes also confirmed that notification was appropriately made.

The Board members agreed; and Mr. Hayes called for a vote on Mr. MacLeod's motion.

Mr. MacLeod Moved to proceed to the Site Plan Review checklist for approval or denial of COSO ENTERPRISES LLC / DWAIN UNDERWOOD / BLACK BOAR INN – 277 Main Street – Map 7 Block 13-1 – GBD1. MACLEOD/AROMANDO 4:1 (Ms. Freedman dissenting)

The Board reviewed the standards of Approval as noted in Section 6.7 of the OZO and by unanimous agreement found all standards to be satisfied.

There was discussion as to whether or not the Applicant would be required to produce an updated Site Plan including a notation that a Type 1 Restaurant has been added to Unit 1 which is currently a commercial use.

Mr. Stein responded that no engineer is going to certify an updated plan that only includes the addition of an accessory Type 1 Restaurant to the Inn, when there have been changes made to many of the other buildings on the property. The 3 acre Plan would have to be entirely redone which places an undue financial burden on this one applicant.

Mr. Heyland agreed that this application is a simple change with no exterior alterations to the structure; and the Board might consider waiving this requirement.

Mr. Hayes asked if the Findings of Fact and Minutes would be sufficient for the Board's needs.

Mr. Heyland agreed that they would.

The Board unanimously agreed that as long as the information was included in the Board's Minutes, and noted in the Findings of Fact, the Applicant would not be required to submit an updated Site Plan.

Mr. MacLeod Moved to Approve the Application for COSO ENTERPRISES LLC / DWAIN UNDERWOOD / BLACK BOAR INN – 277 Main Street – Map 7 Block 13-1 – GBD1 – Application to Amend a Previously Approved Site Plan. Request to add a Type 1 Restaurant, as an accessory use to an existing Type 3 Transient Accommodation – Inn. MACLEOD/AROMANDO 5:0 UNANIMOUS

3. **FINDINGS OF FACT FOR DICAMILLO ASSOC. LLC / GRASSHOPPER INN – Tax Map 8 Block 40 – GBD2. Site Plan and Design Review Application to remove a single family dwelling; and construct a new 7 room Bed and Breakfast (TA2) with caretaker's unit.**

Mr. Heyland informed the Board that the updated plan had been submitted.

Mr. MacLeod Moved to Accept the Findings of Fact for DICAMILLO ASSOC. LLC / GRASSHOPPER INN – Tax Map 8 Block 40 – GBD2 as amended.

MACLEOD/AROMANDO 5:0 UNANIMOUS

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Mr. Hayes reminded the public that a workshop has been scheduled to take place on May 29, 2019 at 4:00 p.m. regarding residential growth and its impact on the Town.

Mr. Heyland agreed to prepare a report for the Board tracking growth; and the impact on services such as fire and police; and other factors.

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 7:55 p.m.
MACLEOD/BOTSFORD**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Town of Ogunquit
Planning Board
Recording Secretary

Approved as Amended: May 29, 2019

Note:

- *All Planning Board meetings are video archived, and may be viewed at any time, on the Town of Ogunquit's website at www.townofogunquit.org.*
- *These minutes are not a transcript.*