

**OGUNQUIT PLANNING BOARD MINUTES
PUBLIC HEARINGS and REGULAR BUSINESS MEETING
MARCH 28, 2011**

PUBLIC HEARINGS 6:00 p.m.

1. Amendment to Section 7 of the Ogunquit Zoning Ordinance to Allow Outside Sales of Live Lobsters by Commercial Lobstering License Holders in Designated Fisherman Parking Areas of Perkins Cove.

Mr. Yurko read the text of the amendment and asked if there was anyone who wished to be heard.

Fred Mayo, Perkins Cove Harbor Master addressed the Board and the Public. Mr. Mayo summarized that the intent of the amendment is “housekeeping”. Fishermen have been selling lobsters in Perkins Cove for years without knowing it was against the law. The proposed amendment will only allow them to legally continue to do what they are already doing. There is no intention to display signage or set up stands or permanent vehicles.

There was no one else who wished to be heard and the Public Hearing was closed at 6:02 p.m.

2. KENNEBUNK SAVINGS BANK – 142 Main Street – Map 6 Lot 24-25.

Michael Broadhead addressed the Board and the Public. Mr. Broadhead explained that the project includes the reconstruction of the existing vestibule and an extension of the foundation 2’6” from the old footprint in order to make it ADA compliant. They will also square off the existing drive up window in order to reposition the night drop to allow for in-vehicle deposits. This is a security measure to protect their patrons. They also intend to install four windows along the ramp wall to bring natural light into the building.

Robert Kane (61 School Street) addressed the Board. Mr. Kane is an abutter of the Bank and he contends that rainwater flows off the Bank property and impacts his property. He has asked Mr. Broadhead to install a stormwater runoff drainage system to protect him from excessive water.

Mr. Yurko asked if there was anyone else who wished to be heard. There was no one, and the Public Hearing was closed at 6:07 p.m.

REGULAR BUSINESS MEETING

A. ROLL CALL –

The roll was called with the following results:

Members Present: Richard Yurko, Vice Chairperson
 Hank Hokans
 Greg Titman
 Craig Capone

Mr. Hokans Moved to Excuse Chairman Tim Pinkham.

HOKANS/TITMAN 4/0 UNANIMOUS

Members Excused: Tim Pinkham, Chairperson

Also present: J.T. Lockman, SMRPC
Paul Lempicki, Code Enforcement Officer

B. MISSION STATEMENT - The Mission Statement was read into the record by Mr. Titman.

C. MINUTES – **March 14, 2011 Regular Business Meeting.**

**Mr. Hokans Moved to Accept the Minutes of the March 14, 2011 Meeting as Amended.
HOKANS/CAPONE 4/0 UNANIMOUS**

D. PUBLIC INPUT – None

E. UNFINISHED BUSINESS –

1. Proposed amendment to Section 7 of the Ogunquit Zoning Ordinance to Allow Outside Sales of Live Lobsters by Commercial Lobstering License Holders in Designated Fisherman Parking Areas of Perkins Cove (Draft 4).

Mr. Hokans Moved to Approve Draft 4 of the Proposed amendment to Section 7 of the Ogunquit Zoning Ordinance and to forward it to the Select Board with a request to present it to the voters at the June 2011 Town Meeting.

HOKANS/TITMAN 4/0 UNANIMOUS

2. KENNEBUNK SAVINGS BANK – 142 Main Street – Map 6 Lot 24-25 – Site Plan Review and Design Review for a post 1930 structure. Application to remodel entranceway for ADA compliance, redesign drive-up window and night-drop box, add four new windows, and remodel exterior wood clad.

Mr. Yurko noted that at the last meeting the Board requested the application be reviewed by the Ogunquit Historic Preservation Commission. This has been done and the Commission has submitted a memo to the Board indicating that it has no issues with the proposed plan.

Mr. Hokans asked if there was any reason to require a storm water drainage plan for this project. He asked if a storm water runoff problem might not fall under the jurisdiction of the Town.

Mr. Lempicki responded that he has received correspondence from Mr. Kane. He (Mr. Lempicki) conducted a site visit to the bank and he observed that water pumped out of the Bank's sump pump was running off the bank property and entering the Town's storm drainage system. Mr. Kane asserted that when the storm drain (catchbasin) becomes full it overflows and water impacts his property. Mr. Lempicki informed the Board that he has never seen water gather at that location in the way that Mr. Kane claims it does. If the catchbasin can not handle the quantity of water going into it, this is a problem for the Town to resolve and is not the fault of the Kennebunk Savings Bank. Mr. Lempicki asked the Director of Public Works to inspect the catch basin, he informed Mr. Lempicki that he did not see any problems other than that the basin required cleaning.

Mr. Yurko asked if there is anything in the application that could possible increase runoff from the site.

Mr. Lempicki responded by asking if the bank is responsible for the water which runs into the storm drain.

Mr. Yurko asked if the bank would be increasing impervious surfaces.

Mr. Lempicki responded that they will not.

Mr. Lockman added that this project does not include any proposed roof expansion or paving which would replace currently pervious areas. He added that he did not recommend sending this application for storm water review because there is no increase in impervious surfaces proposed in this application.

Mr. Hokans suggested Mr. Kane speak to the Town Manager to see if the Town can increase the capacity of the catch basin at that location.

Mr. Hokans asked if the siding on the Main Street side of the building will be vertical siding.

Ray Dulac, the Applicant's contractor, responded that it will be vertical siding which is what is there now. He noted that the rest of the building is shingled.

Mr. Titman asked how many new windows there will be.

Mr. Dulac responded that the single window which is there now will become four smaller windows.

Mr. Capone asked if the existing doors and windows in the vestibule will be reused and what color they will be.

Mr. Dulac responded that they will use new doors and windows and that they will be white.

Mr. Hokans Moved to Approve the Application for KENNEBUNK SAVINGS BANK – 142 Main Street – Map 6 Lot 24-25.

HOKANS/CAPONE 4/0 UNANIMOUS

- 3. 98 PROVENCE BISTRO / EVERETT MINK – 262 Shore Road – Map 5 Lot 28 – Site Plan Review and Design Review for a 1930 structure. Application for interior renovations to replace windows, expand dining capacity and kitchen area, improve fire safety and ADA requirements, expansion of parking area, improvement of drainage, landscaping and abutter buffering.**

Mr. Yurko noted that he had already recused himself from hearing this application. He called for a motion to appoint Mr. Hokans as Chair Pro Tem regarding this item.

Mr. Titman Moved to appoint Mr. Hokans as Chair for the duration of discussions of the application of 98 PROVENCE BISTRO / EVERETT MINK – 262 Shore Road – Map 5 Lot 28. TITMAN/CAPONE 3/0 (Mr. Yurko recused himself and left the room).

Carol Morrisette, the Applicant's representative, addressed the Board. Ms. Morrisette summarized that one of the primary objectives of the project is to maintain the quaint nature of the property and the neighborhood in general. In order to do this they intend to keep the scale small and reuse existing material. They will also use wood siding and wood windows, and they intend to improve the drainage as well as the buffering. Ms. Morrisette submitted a revised plan which included additions to the vegetative buffering and an elevation correction. She noted that she has met with some of the abutters and has

incorporated many of the things the abutters requested, particularly an increase in the vegetative buffers along the North and South property lines.

Ms. Morrisette noted that they will have twenty-six (26) parking spaces and will improve the drainage off of the parking area.

Mr. Hokans noted that he would appreciate plans which update the elevations, he also asked if there will be any changes in the water retention system.

Ms. Morrisette responded that there will be no changes to the water retention system.

**Mr. Titman Moved to Find the Application Complete for 98 PROVENCE BISTRO / EVERETT MINK – 262 Shore Road – Map 5 Lot 28.
TITMAN/CAPONE 3/0 UNANIMOUS.**

Mr. Hokans noted that the Public Hearing will take place on April 11, 2011 at 6:00 p.m.

Ms. Morrisette confirmed the date and time.

At this time Mr. Yurko resumed his position as Chair for the remainder of the meeting.

F. NEW BUSINESS –

1. 82 SHORE ROAD, LLC/WILD BLUEBERRY – 82 Shore Road – Map 6 Lot 67 – Site Plan Review and Design Review for a pre 1930 structure. Application to enclose an existing 10’x2’x37’8” deck to be used for indoor dining.

Kevin Kieler, Design Engineer from Brady-Built Sunrooms, addressed the Board. He noted that two years ago Ms. Grasso had requested permission to have outdoor dining on the deck and this request was denied. Subsequent to that meeting it was suggested that enclosing the deck might resolve the problem. Ms. Grasso wanted to use a product which was high quality and would beautify the building. He noted that the siding would be taken from the building to make it more compatible. Mr. Kieler assured the Board that the enclosed deck would not be heated and that Ms. Grasso has no intention of using it year round. It will be an enclosed area for use of dining overflow. They will use a double pane thermo insulated glass to control noise, which should reassure the abutters.

Mr. Yurko noted that if the deck is enclosed and used for additional dining, this will expand the area of the restaurant. Under Site Plan Review Rules this requires the Board to look at parking. Mr. Yurko noted that a parking analysis has not yet been done and before the Board can approve this application there will have to be a discussion of parking requirements. He suggested the Applicant apply for a parking waiver, which should be included in the Site Plan Review Application. Mr. Yurko suggested that a parking waiver may not be difficult to obtain. He noted the large public parking area behind the Applicant’s property as well as the proximity of a trolley stop.

Mr. Kieler suggested that a parking waiver already exists for this restaurant and he asked if they will need to request an additional one.

Mr. Yurko responded that parking waivers are determined by the amount of square footage of the restaurant. When they enclose something which is currently outside they will be increasing the square footage of the restaurant, thus a prior parking waiver may not be sufficient. The applicant will have to ask for an additional wavier.

Mr. Hokans asked about the memo from the Ogunquit Historic Preservation Commission.

Mr. Kieler responded that he was surprised by the OHPC's memo. He reminded the Board that while this building is a pre 1930 building it has undergone numerous renovations over the years. He has seen photographs of what the building looked like in 1930 and it in no way resembles the structure today. Mr. Kieler again noted that Ms. Grasso chose his product because of the quality and beauty of what they produce.

Mr. Yurko suggested that many applicants find it helpful to meet with the Historic Preservation Commission, he noted that this is not required but it is often useful.

Mr. Hokans suggested the Applicant may want to familiarize himself with Chapter 11 of the Town's Zoning Ordinance. He also noted that this application is not complete without the parking waiver request.

Mr. Yurko suggested they move to the Public Hearing and let the Applicant submit the parking waiver request prior to then.

Mr. Lockman responded that all that is needed is a total calculation of the square footage of the existing restaurant seating area and the proposed enclosed deck. There is a set number of parking spaces required for every 100 square feet of restaurant space. The applicant should determine how many parking spaces are required, and how many parking spaces they currently have, they should then ask for parking waivers for the difference.

Mr. Yurko added that there is a section of the Ordinance which deals with Parking Waivers. It outlines three criteria, which the applicant should review.

Mr. Kieler agreed to review the ordinance and file his request for a parking waiver.

**Mr. Hokans Move to Find the Application Complete for 82 SHORE ROAD, LLC/WILD BLUEBERRY – 82 Shore Road – Map 6 Lot 67 with the provision that the Applicant files a Parking Waiver Request prior to the Public Hearing.
HOKANS/TITMAN 4/0 UNANIMOUS**

Mr. Yurko noted that the Public Hearing on this application would take place on April 11, 2011 at 6:00 p.m. provided the Applicant submits the parking waiver request prior to that meeting.

2. OGUNQUIT MOTEL CORP/TIDEWATER RESORT – 724 Main Street – Map 11 Lot 6 – Request for one year extension for Design and Site Plan Review deadlines.

Mr. Yurko noted that the Board has received several letters from Mr. Lorusso's banks (Bank of America and Kennebunk Savings Bank) as well as a memo from Mr. Lockman dated 18 March 2011 which states that:

"I have reviewed the extension requests for the above captioned projects, in a letter dated March 14, 2011, from Steven Lorusso. As you may recall, the ordinance was amended at last year's town meeting, in order to allow for the extensions granted to this applicant, by action of this Board, taken on July 26, 2010.

Here is a summary of the relevant facts, as I see them, after reviewing the project files, and planning board minutes.

Tidewater Resort

Original approval, Design Review and Site Plan Review, May 11 2009.

Original commencement deadline, May 11, 2010

Original project completion deadline, May 11, 2011

First extension granted in 2010, with:

New commencement deadline, May 11, 2011, and

New project completion deadline, May 11, 2012.

Riverbrook Park and Sales/Ogunquit Plaza

Original approval, Design Review and Site Plan Review, April 14, 2008

Original commencement deadline, April 14, 2009

Original project completion deadline, April 14, 2010

First extension granted in 2009, with:

New commencement deadline, April 14, 2010, and

New project completion deadline, April 14, 2011.

Second extension granted in 2010, with:

New commencement deadline, April 14, 2011, and

New project completion deadline, April 14, 2012.

Neither of these projects has commenced as of this writing, and the commencement deadlines are fast approaching. .

The relevant sections of the Ogunquit Zoning Ordinance which apply, are the extension provisions found in section 6.6.E.2., (site plans) on page 67, and in section 11.12.B (design reviews) on page 159.

In each case, a first, one-year extension of approvals is allowable by a simple written request. A second, additional one-year extension of approvals is allowable, only “upon a showing of special circumstances that are beyond the control of the applicant.”

Conclusions

- 1. The Tidewater Resort is eligible to ask the Board for an extension until May 11th, 2011. but no supporting documentation has been provided to help the Board make its determination of special circumstances, such as a letter from a bank or financial institution.*
- 2. Unfortunately, I do not see any way that the ordinance would permit any additional extensions to be granted on the Riverbrook Park/Ogunquit Plaza project at this time, even with the generous provisions passed at the last town meeting, as two one-year extensions have already been granted”.*

Mr. Yurko summarized Mr. Lockman’s position that both applications may be extended one time with very little showing and may be extended a second time with a showing of substantial special circumstances which are beyond the applicant’s control, however there is no provision for a third extension. Mr. Yurko pointed out that the Riverbrook application is requesting a third extension.

Steve Lorusso addressed the Board. Mr. Lorusso explained that he needs the requested extension for the same reasons he cited the last time he came before the Board. The Tidewater project received its first extension on July 27, 2010 and the reason he is requesting a second extension is because he is still unable to obtain funding due to the current economic climate. He is requesting a second extension on this project, which will bring the start deadline to May 11, 2012 and the completion deadline to May 11, 2013.

Mr. Titman confirmed that this will be the second extension for this project.

Mr. Hokans Moved to Approve a 2nd one year extension of the start and end dates for OGUNQUIT MOTEL CORP/TIDEWATER RESORT – 724 Main Street – Map 11 Lot 6, due to financial conditions.

HOKANS/CAPONE 4/0 UNANIMOUS

RIVERBROOK PARK AND SALES INC. – 731 Main Street – Map 12 Lot 10-A. Request for one year extension for Design and Site Plan Review deadlines.

Mr. Lorusso acknowledged that the Ogunquit Zoning Ordinance, as it is currently written, does not allow for a third extension of project start and completion dates, however given the current economic difficulties he is hoping that the Town would be willing to show some flexibility. He reminded the Board of the time and money already spent getting approval for this project.

Mr. Lorusso asked the Board to take a second look at the portion of the ordinance which restricts the number of possible extensions. He noted that there are many businesses in Ogunquit which are in the same position he is in and he would hope that the Town would do whatever it takes to assist them in this time of economic difficulties.

Mr. Yurko responded that while he appreciates Mr. Lorusso's situation, the Board's hands are tied. They are obligated to follow the ordinance as it is currently written. That being said, he would be willing to go back before the Select Board to request another change to this ordinance if the Planning Board votes to send this question to the Select Board.

Mr. Hokans asked Mr. Lockman to confirm that State Law governs what this Board can do regarding extensions of Site Plan Approvals.

Mr. Lockman responded that this is not true, under "home rule" Ogunquit could allow for more, or longer, extensions.

Mr. Lorusso pointed out that the primary focus of this particular rule is "a showing by the Applicant of a situation which is beyond the Applicant's control". He suggested that this is the basis for granting additional extensions and the very reason why this Board should ask for a loosening of the restrictions regarding the number of allowable extensions.

Mr. Yurko responded that this Board does not have the authority to grant Mr. LORUSSO request for a third extension. What Mr. Lorusso is asking this Board to do is to request the Select Board allow the question of another change to the ordinance to go before the voters, so that Mr. Lorusso may then come back for a third extension. If this type of change were implemented a project might potentially not begin for four years and, he pointed out, much can change in four years.

Mr. Lorusso again asked the Planning Board to send a request to the Select Board to reexamine the number of extensions which the Planning Board would be allowed to grant.

**Mr. Hokens Moved to NOT forward a request to change the ordinance to the Select Board.
HOKANS/TITMAN 4/0 UNANIMOUS**

Mr. Yurko noted that there is the possibility of a citizen's petition to the Select Board asking for a change to the Ordinance, and he suggested this Board might want to table Mr. Lorusso's request for an extension rather than outright denying it. This way Mr. Lorusso might revisit the request should a change to the ordinance occur in the future.

Mr. Lorusso agreed that this would be his preference.

**Mr. Titman Moved to Table this Request.
TITMAN/CAPONE 4/0 UNANIMOUS**

G. CODE ENFORCEMENT OFFICER BUSINESS – None

H. OTHER BUSINESS – None

I. ADJOURNMENT -

**Mr. Hokans Moved to Adjourn at 7:05 p.m.
HOKANS/CAPONE 4/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on April 11, 2011