

**OGUNQUIT PLANNING BOARD MINUTES  
PUBLIC HEARING and REGULAR BUSINESS MEETING  
NOVEMBER 22, 2010**

**PUBLIC HEARING – 6:00 P.M.**

**JUDY DENNIS / BANDITO’S MEXICAN FOOD – 68 Shore Road – Map 6 Lot 69. Site Plan Review for a pre 1930 structure. Application for change of use from residential space to commercial restaurant space. Request to relocate one (1) window and install one (1) new door. Parking Waiver Request for five (5) parking spaces.**

Mr. Yurko asked if there was anyone in the audience who wished to speak for, or against, this application. There was no one and the Public Hearing was closed at 6:03 p.m.

**REGULAR BUSINESS MEETING – 6:03 p.m.**

**A. ROLL CALL –**

The roll was called with the following results:

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

Members Excused:    Tim Pinkham, Chairperson

**B. MISSION STATEMENT –** The Mission Statement was read by Mr. Yurko.

**C. MINUTES – November 8, 2010 Regular Business Meeting.**

The Minutes of the November 8, 2010 Meeting were Accepted as Submitted.

**D. PUBLIC INPUT –** None

**E. UNFINISHED BUSINESS –**

**1. JUDY DENNIS / BANDITO’S MEXICAN FOOD – 68 Shore Road – Map 6 Lot 69. Site Plan Review and Design Review for a pre 1930 structure. Application for change of use from residential space to commercial restaurant space. Request to relocate one (1) window and install one (1) new door. Parking Waiver Request for five (5) parking spaces.**

Mr. Hokans referred to Mr. Lockman’s November 5, 2010 Memo wherein he advised that this application does not require any parking waivers. Mr. Hokans asked if the Board agrees with Mr. Lockman’s assessment.

It was agreed by the Board that no parking waiver would be required of this application.

Mr. Yurko referred to Section 3.2.F which states that:

*“A legally existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the impact of the former use as determined by the Planning Board. The determination of appropriateness shall require written findings on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use....”*

Mr. Yurko suggested that the Board should hold discussions covering the nature of: 1) what is there now, and 2) what the Applicant proposes to change.

Ms. Dennis confirmed that she currently has a small restaurant of approximately 150 square feet, containing twelve seats. The seating will expand to 36 seats if the application is granted.

Mr. Yurko asked if the menu would also be expanded.

Ms. Dennis responded that they will be installing an NFPA-96 Hood System so that they can serve fried foods and make their own nacho chips. They do not intend to change the operation in any substantial way, they only want to expand what they already have.

Mr. Yurko asked how her patrons currently get to her restaurant.

Ms. Dennis responded that all her patrons come on foot, and that there are two large public parking lots within walking distance. She noted that her employees park in these public lots.

Mr. Yurko asked about the parking for the existing apartments.

Ms. Dennis responded that there is one parking space for each of the two apartments, plus there is one additional parking space. These three parking spaces will remain after the apartments have been removed.

Mr. Hokans asked if there is any take-out.

Ms. Dennis responded that she does not advertise as a take out restaurant however sometimes people come in and order food which they take away or eat outside. She does not serve food outside.

Mr. Yurko asked how many Adirondack chairs she has outside and if she intends to keep or expand them.

Ms. Dennis confirmed that she knows that outdoor dining is not allowed in the LBD. This past summer she had five tables outside her business and there were two additional tables outside her neighbor's business (Ogunquit Beach and Sports) for a total of seven tables.

Mr. Lempicki asked the Board to specify how many tables this applicant will be allowed.

The Board agreed that the number of tables allowed for use by this applicant should remain at five. The Board also acknowledged that Ms. Dennis has no control over the tables which her neighbor puts out.

Mr. Titman asked if Ms. Dennis agreed to comply with the list of requirements put forth by the Fire Chief in his October 28, 2010 Memo to the Board.

Ms. Dennis agreed that she would and noted that the Code Enforcement Officer won't allow her to open if she does not.

Mr. Hokans asked if the Board might limit hours of operation for the use of the outdoor tables.

Ms. Dennis responded that she currently closes at 9:00 p.m. and she does not have any definite plan to change this. However she can't guarantee that she won't change her mind at a later date.

**Mr. Hokans Moved to Approve the Application of JUDY DENNIS / BANDITO'S MEXICAN FOOD – 68 Shore Road – Map 6 Lot 69. Site Plan Review for a pre 1930 structure. Application for change of use from residential space to commercial restaurant space, per submitted plans, with the following conditions of approval:**

- 1. There shall be no outside service of food;**
  - 2. Applicant agrees to comply with all conditions as set by the Ogunquit Fire Chief in his October 28, 2010 memo to the Planning Board;**
  - 3. Applicant agrees to comply with all standards contained in section 3.2.F of the Ogunquit Zoning Ordinance;**
  - 4. There shall be no more than five (5) outside tables for use by patrons of this establishment.**
- HOKANS/TITMAN 4/0 UNANIMOUS**

**F. NEW BUSINESS –**

- 1. LAFAYETTE OGUNQUIT LLC / HUCKLEBERRY'S RESTAURANT/HOTEL – 135 Beach Street – Map 7 Lot 86. Dumpster Screening Waiver Request.**

Robert Dufort addressed the Board. Mr. Dufort summarized that he is requesting a waiver of the four foot fence height restriction, he also noted that he needs a waiver from the setback restrictions.

Mr. Yurko responded that the Ogunquit Zoning Ordinance restricts fences in the Shoreland General Development and the Shoreland Limited Residential Districts to a maximum height of four feet. However the Dumpster Ordinance requires fences be six feet. As a result of this conflict, this applicant requires a two foot waiver to increase the height of the dumpster screening fence from four to six feet.

Mr. Hokans suggested that the Planning Board might not have the jurisdiction to grant a waiver, and that the applicant may have to take his request to the Zoning Board of Appeals.

Mr. Yurko disagreed, and argued that one section of the Ordinance states that fencing in these districts may not be any higher than four feet, and another section of the Ordinance requires a six foot fence around dumpsters. Clearly the latter Section is the more restrictive in that it requires more on the part of the applicant, and the more restrictive section applies. It is up to the Planning Board to resolve this conflict.

Mr. Lockman confirmed Mr. Yurko's assertion and noted that this type of situation is covered in Section 1.5 of the Ordinance, which states that:

*“Whenever a provision of this Ordinance is in conflict with or is inconsistent with the requirements of any other lawfully adopted rules, regulations, statutes or ordinances, or with*

*any other provision within this Ordinance, the most restrictive or that imposing the higher standards shall govern”.*

Mr. Lockman also agreed that this application falls within the jurisdiction of the Planning Board and it is unnecessary for this applicant to go to the Zoning Board of Appeals.

Mr. Lempicki informed the Board that the dumpsters in question have been at the current location for at least fifteen years, and he confirmed that they are well over four feet in height. The dumpster height is one reason why the ordinance requires six foot fences for screening.

Mr. Yurko asked where the dumpsters will be located.

Mr. Dufort referred the Board to the site plans in their packets, he noted that dumpsters have been in this location for close to thirty years.

Mr. Titman suggested that this is the only location where these dumpsters could be located on this property.

Mr. Dufort agreed.

Mr. Hokans asked if the lilac bushes behind the dumpsters completely screen the dumpsters from the river.

Mr. Dufort agreed and confirmed that he wants to install fencing around the dumpsters and the grease trap so that they will not be visible from the road.

Mr. Hokans asked for confirmation that this application does not have to be sent to the ZBA.

Mr. Lempicki again confirmed that it does not require Zoning Board of Appeals involvement.

Mr. Yurko noted that he appeared before the Select Board and he was questioned at length about this topic. It is the intent of the Ordinance to allow some flexibility to property owners who have an existing dumpster and find it difficult, or impossible, to comply with setbacks and other ordinance requirements when they attempt to comply with the dumpster screening regulations.

Mr. Yurko informed the Board that the Code Enforcement Officer received an anonymous mailing which contained a series of old newspaper articles regarding this property. These articles imply that this applicant does not own the property where the dumpsters are located.

Mr. Yurko distributed copies of the newspaper articles to the other Board members.

Mr. Dufort suggested the Board and, or, Mr. Lempicki make a site visit and he offered to show them the surveyors pins and other markers which delineate the boundary. He informed the Board that he ran a rope from one boundary marker to another and this line is what he used to calculate the footage required for the setback waiver. He did not have a surveyor come in, but he did use old boundary markers.

Mr. Yurko expressed concern that the Planning Board was not the appropriate forum to determine who owns what. He also noted that 25 year old newspaper articles, which were submitted anonymously, will not affect his decision on this particular application. He recommended asking Mr. Lempicki to visit the site and confirm that the dumpster and the fencing are placed in the location indicated on the site plan.

Mr. Lempicki informed the Board that he did make a site visit to this property and he did see the survey pins as indicated on this applicant's plan.

Mr. Yurko noted that there will be no public hearing on this application, however he asked if there was anyone in the audience who wished to speak for, or against, this application. There was no one.

Mr. Titman asked if the open portion of the proposed fencing will be where the lilac bushes are, or where the building wall is located.

Mr. Dufort responded that the fencing will be open at both the building and the lilac bushes. No part of the dumpster will be seen from the street.

**Mr. Hokans Moved to Approve the Waiver Request of LAFAYETTE OGUNQUIT LLC / HUCKLEBERRY'S RESTAURANT/HOTEL – 135 Beach Street – Map 7 Lot 86. Dumpster Screening Waiver Request for a Six Foot Fence, per submitted plans.  
HOKANS/CAPONE 4/0 UNANIMOUS**

**2. PARADISE BY THE SEA – 174 Shore Road – Map 6 Lot 119. Request for one year extension of the December 10, 2010 project completion deadline. If granted the new project completion deadline will be December 10, 2011.**

Scott Edmunds, from the law firm of Bergen and Parkinson, spoke on behalf of the Applicant. Mr. Edmunds referred the Board to recent submissions by this applicant which contained evidence from Steven Weigel of Coldwell Banker, Weigel and Associates dated November 18, 2010.

Mr. Yurko informed Mr. Edmunds that the recording secretary did receive an e-mail from Mr. Kugler which contained an attached letter from Mr. Weigel. However it came in after the submittal deadline for this meeting had passed, and it has not yet been distributed to the Board members yet. Mr. Yurko asked if the Board members agreed to accept the letter. He noted that acceptance does not guarantee that the Board will consider this material necessarily.

The Board agreed to accept Mr. Weigel's letter and it was distributed to the members.

Mr. Yurko asked Mr. Edmunds to summarize exactly what the applicant is asking the Board to do.

Mr. Edmunds responded that they are asking for an extension of one year for the completing deadline under the current permits. This request is based upon Section 6.6.E.2.B and Section 11.12.B under the Special Circumstances provision.

Mr. Yurko asked if this was a subdivision plan.

Mr. Edmunds responded that it is a condominium plan.

Tom Emery with Stantek (fka Land Use Consultants LUC) addressed the Board. Mr. Emery was responsible for this project's permitting. This project went through Site Plan Review, Design Review, and Subdivision Review and has a recorded plan at the York County Registry of Deeds.

Mr. Lockman referred to the Minutes of the December 2007 meeting. Mr. Lockman suggested that this project has completed everything which was covered under Design Review Approval, and that the

approval motion states that the applicant would submit specific plans for each building when the designs were obtained.

Mr. Emery confirmed that everything has been constructed, with the exception that the Board would require Design Review for any structure visible from a public way. Mr. Emery noted that the internal road is a private way and the only public road is Shore Road. It is his understanding that the Board would want to review only the first building.

Mr. Lockman asked, if the infrastructure and landscaping are in place, and if the applicant has completed everything under the approved application. The Applicant has to come back before the Board with the building designs for a new Design Review. Mr. Lockman noted that the Subdivision Approval does not expire, and that the Design and Site Plan Approval were for the roadwork and grading and utilities, etc. and the applicant already has to come back to the Board for Design Review of the structures when the designs have been finalized. Mr. Lockman expressed confusion regarding exactly what is left undone which would be covered by a one year extension.

Mr. Yurko added that if the extension is not granted, the applicant would have to come back before the Board for Design Review of the buildings. He also asked “what is at issue under the requested extension request?”.

Mr. Hokans responded that the minutes from the December 10, 2007 meeting state that this project does not require further Subdivision Review however it does need to come back before the Board for Design Review.

Mr. Lockman summarized that the Applicant has built everything he submitted plans for, the only thing left undone is for the Applicant to come back before the Board for new Design Review of the buildings when he has new structural designs.

Mr. Emery responded that the Applicant never agreed to come back for a new Design Review. As part of the Design Review Permit he agreed to present the plans for the unit which will be visible from Shore Road. The applicant does have a Design Review Permit, and the completion for that permit expires on December 10, 2010.

Mr. Lockman asked if the applicant had applied for Design Review Approval for a specific building which will be visible from a public way.

Mr. Emery responded that the Design Review Permit also dealt with the issue of demolition of historic buildings and under that portion of the Design Review they have demolished the guest house, which is what triggered the beginning of the Design Review Permit. They have already requested one extension of the completion deadline, and are now requesting a second extension of the completion deadline.

Mr. Edmunds summarized that they are requesting a one year extension to complete the project, under the granted permit.

Mr. Yurko asked if they include the completion of the all the buildings under their interpretation of “complete”.

Mr. Edmunds responded that this is his understanding.

Mr. Yurko noted that this is not a particularly deep site and it is his understanding that all of the proposed structures will be visible from Shore Road. He expressed concern that there are no sitting Board members who were on the Board at the time this application was heard.

Mr. Emery responded that he was involved in this application from the beginning. This project involves single family condominiums, and the Board's primary concern, at the time, was the assurance that the buildings be of an aesthetic quality acceptable to the Board. To that end, Mr. and Mrs. Griffen have retained Architect William Ross Designs whose designs are in the Board's current packets. Mr. Emery believes that these designs are of extremely high quality.

Mr. Hokans asked if these designs have been approved by the Board.

Mr. Lockman responded that it was his memory that no house designs were submitted to the Board. He again stated that it is his belief that there is nothing left undone under the current approval and that no extension is required. Everything under the approved plan has been completed except for the building plans which were never submitted. These house plans require a separate Design Review, which is what the applicant promised to submit. All this applicant needs to do is come back before the Board when he has designs for the structures.

Mr. Yurko noted that this applicant has already received one completion deadline extension. This second extension request requires special circumstances of something beyond the applicant's control. The Applicant is basing this second request on his assertion that the current economy does not support the sale of these houses, yet he has offered no proof that he has actually attempted to sell the homes and has been unable to do so.

Mr. Yurko noted that the only extension of this type granted by the Board was for a project which no bank was willing to finance, and that applicant submitted a refusal letter from the bank to support this assertion. Mr. Yurko expressed his concern that a "soft market" may not be enough to support a second extension request. He noted that the market was not "soft" when the application was granted and if the Applicant had moved more quickly an extension may not have been necessary.

Mr. Hokans stated that when the Board approves a subdivision, which includes structures, those structures are part of the subdivision, and as such it is his belief that this applicant requires a completion deadline extension.

Mr. Lempicki asked about the accessory buildings: pool, cabana, etc. Mr. Lempicki has seen the plans and he has no concerns about the quality of this project, however he agrees with Mr. Hokans that an extension is required.

Mr. Yurko suggested tabling this application pending a review of the status of this project. He would like to know what the previous Board approved, what has been completed, and if there is in fact a need for an extension. If it is determined that there is a need for an extension then the Board can debate the merits of the request.

Mr. Hokans asked if the plans, filed with the Registry, indicate the locations of the structures.

Mr. Emery responded that they do.

Mr. Hokans responded that if the plans indicate the location of the foundation footprints, then they are part of the approved subdivision plans and as such will require an extension of the completion deadline.

Mr. Edmunds asked for confirmation that the Board is saying that there is a question as to whether or not an extension is necessary because the underlying infrastructure has been completed.

Mr. Emery responded that everything that is part of the public elements: roadway, utilities, lighting, landscaping, and perimeter fencing are all in place. The only things not in place are the condominiums, the pool, and the cabana.

Mr. Yurko summarized that this Board knows that this project has received: subdivision approval, Site Plan Review Approval, and Design Review Approval. This Board does not know what the Design Review encompassed. The minutes seem to reflect that the Applicant is required to come back with the individual house designs, perhaps it also includes the design review of the common elements such as the pool area and the cabana. But the Board needs to fully understand what they are being asked to extend.

Mr. Yurko asked the Town Planner and the Code Enforcement Officer to review this project, and allow the applicant to respond to their summarization.

Mr. Emery responded that they are asking for a second one year extension.

Mr. Titman asked if there will be any problem hearing this application after the December 10, 2010 deadline has passed.

Mr. Yurko responded that there is not. The application was submitted to the Board prior to the deadline.

The Board agreed that they need to have a clearer understanding of the project status and whether or not any extension is necessary.

Shelby Boudreau, a representative of Mr. Griffin, asked the Board if Design Review will be needed for all of the houses. Will the applicant have to submit four plans for Design Review, and is there a deadline for all four condominiums?

Mr. Yurko responded that the Board only wants to know: what was approved, what has been completed, and what needs to be completed under the initial approval. The Board may determine that no house designs have been approved.

Ms. Boudreau acknowledged that the house designs still require Design Review approval, she asked for confirmation of the time limit for those design submittals.

Mr. Yurko responded that the clock starts ticking when they submit the plans for Design Review, and that there is no deadline for submitting those plans.

**Mr. Hokans Moved to Table the PARADISE BY THE SEA – 174 Shore Road – Map 6 Lot 119. Request for one year extension of the December 10, 2010 project completion deadline, to the next Planning Board Meeting.**

**HOKANS/TITMAN 4/0 UNANIMOUS**

**3. GEOFFREY SCIMONE / RIVERSIDE MOTEL – 50 Riverside Lane – Map 3 Lot 100-G. Waiver Request. Application to waive Site Plan Review.**

Jerry DeHart, the Applicant's representative, informed the Board that the Applicant is withdrawing the Waiver Request.

**4. GEOFFREY SCIMONE / RIVERSIDE MOTEL – 50 Riverside Lane – Map 3 Lot 100-G. Site Plan Review for a post 1930 structure. Application to move owner’s apartment to the 2<sup>nd</sup> floor of an existing single story structure.**

Jerry DeHart informed the Board that they are asking the Board to find this application complete and schedule a Public Hearing.

Mr. Yurko summarized that this property contains several buildings, and that this applicant is seeking to add a second story to the office building, which will be used as an owner’s apartment. This will change the use of part of the first floor in that it will expand the office and/or breakfast space. Mr. Yurko noted that this application was heard by the Zoning Board of Appeals, whose decision, dated November 5, 2010, required the Applicant to submit a Site Plan Review.

Mr. DeHart responded that The Riverside Motel was granted a building permit in September, which was appealed by an abutter. The Zoning Board of Appeals upheld the Code Enforcement Officer’s issuance of the building permit with the condition that the project undergo a Site Plan Review.

Mr. Lockman noted that the Zoning Board of Appeals discussed the 30% Rule and whether or not it applies to this case. Mr. Lockman confirmed that the 30% Rule only applies when the building is in violation of a water setback. When the building is in violation of the property line setback the 30% Volume Increase Rule does not apply.

Mr. Yurko agreed that this building is more than 75 feet from the water and as such the 30% Rule does not apply.

Mr. Titman asked if the outside stairs effect lot coverage or property line setback.

Mr. DeHart responded that these stairs are a second means of egress and are a life safety issue, as such they do not fall within the setback or lot coverage restrictions.

Mr. Lempicki agreed.

Mr. Lockman suggested that this application may be headed for an appeal, and the Board may want to consider conducting a Design Review as well as a Site Plan Review.

Mr. DeHart responded that if Design Review isn’t necessary, the Applicant prefers not to have one. This project is already well behind schedule and the Applicant needs to have the construction complete in time for a spring opening.

Mr. Yurko agreed that no Design Review is required.

**Mr. Titman Moved to Find the Application Complete for SCIMONE / RIVERSIDE MOTEL – 50 Riverside Lane – Map 3 Lot 100-G. Site Plan Review for a post 1930 structure. Application to move owner’s apartment to the 2<sup>nd</sup> floor of an existing single story structure.  
TITMAN/CAPONE 4/0 UNANIMOUS**

This Application was scheduled for a Public Hearing on December 13, 2010 at 6:00 p.m.

Mr. DeHart confirmed the date and time.

**G. CODE ENFORCEMENT OFFICER BUSINESS –**

Mr. Lempicki suggested the Board might want to schedule a Site Visit regarding the dumpster application.

**H. OTHER BUSINESS – None**

**I. ADJOURNMENT -**

**Mr. Hokans Moved to Adjourn at 7:20 p.m.  
HOKANS/CAPONE 4/0 UNANIMOUS**

Respectfully Submitted

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Maryann Stacy  
Recording Secretary

*Accepted on December 13, 2010*