

**OGUNQUIT PLANNING BOARD
PUBLIC HEARING and REGULAR BUSINESS MEETING
MARCH 12, 2012**

PUBLIC HEARINGS – 6:00 p.m.

1. LIQUID DREAMS / MARK ANASTAS – 696 Main Street - Map 10 Block 5.

Mr. Simpson 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. 173 MAIN STREET – 173 Main Street – Map 6 Block 14.

Mr. Simpson asked if there was anyone who wished to speak for, or against this application. There being no one the Public Hearing was closed at 6:04 p.m.

REGULAR BUSINESS MEETING

A. ROLL CALL – 6:05 p.m.

The Roll was called with the following results:

Members Present: Don Simpson (Chair)
 Robert Coles (Vice Chair)
 Craig Capone
 Jackie Bevins

Also Present: J.T. Lockman, Southern Maine Regional Planning Commission
 Paul Lempicki, Ogunquit Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT - The Mission Statement was read by Mr. Capone.

D. MINUTES – February 27, 2012 Public Hearing and Regular Business Meeting.

Mr. Coles Moved to Approve the Minutes of the February 27, 2012 Meeting and Public Hearing as Submitted.

COLES/CAPONE 4/0 UNANIMOUS

E. PUBLIC INPUT –

Mr. Simpson asked if there was anyone who wished to be heard on a matter which was not on the agenda. There was no one.

F. UNFINISHED BUSINESS –

1. **Findings of Fact for AMI-O / ANCHORAGE BY THE SEA – 125 Shore Road (Map 6 Block 74). Approved on February 27, 2012.**

**Mr. Capone Moved to Approve the Findings of Fact for AMI-O / ANCHORAGE BY THE SEA – 125 Shore Road (Map 6 Block 74) as Submitted.
CAPONE/COLES 4/0 UNANIMOUS**

2. **LIQUID DREAMS / MARK ANASTAS – 696 Main Street - Map 10 Block 5 – Site Plan Review for a post 1930 structure. Application for change of use from restaurant to retail surf shop.**

Mr. Simpson noted that a Public Hearing had been held.

Mr. Lockman pointed out that Town Staff had no open issues with this application as presented.

At this time the Board reviewed the Site Plan Review Checklist.

**Mr. Coles Moved to Accept the Site Plan Review for LIQUID DREAMS / MARK ANASTAS – 696 Main Street - Map 10 Block 5.
COLES/CAPONE 4/0 UNANIMOUS**

3. **173 MAIN STREET – 173 Main Street – Map 6 Block 14 – Design Review and Site Plan Review for a post 1930 structure. Application to add a 230 square foot addition to right side of building for use as an ATM, ADA bathroom, and storage area.**

Ms. Bevins informed the Board that she has a conflict of interest and as such she recused herself and left the room for the duration of discussions regarding this application.

Jerry Dehart addressed the Board as the Applicant's representative. Mr. Dehart gave a brief overview of the proposed project. He noted the addition on the north side of the building which will be used for the ADA restroom and the ATM machine. There will not be any other changes to the previously approved plans except the elimination of the proposed second floor.

Mr. Simpson noted the discussion of the ATM at the February 27th meeting. He noted that the Board has further discussed ATM machines and outside sales at a series of Ordinance Review Workshops. The general consensus is that the "outside sales and services" ordinance does not apply to bank ATM machines. Mr. Simpson asked the Board members for their opinion as to whether or not ATM machines fall under the Town Ordinances' outside sales and services restrictions:

Mr. Coles responded that in his opinion, getting money, free of charge, from an outside ATM machine does not constitute outside sales.

Mr. Capone agreed with Mr. Coles.

Mr. Simpson noted that while he is respectful of Mr. Lockman's and Mr. Lempicki's input, he also does not believe that the use of ATM machines constitutes outside sales and services. With that in mind, as the Board Members review the Site Plan and Design Review applications they will do so with the agreement that the ATM machine is acceptable.

Mr. Lempicki responded that the Board does not have the authority to make changes to the Zoning Ordinance. He reminded the Board that they have his letter to the Applicant denying the ATM machine installation and the only Board with the authority to overturn his decision is the Zoning Board of Appeals.

Mr. Lockman confirmed that the Board might approve something which the Code Enforcement Officer views as a problem. In that situation the Code Enforcement Officer may hold up the permit, whereupon the Applicant may appeal to the Zoning Board of Appeals which will resolve the conflict. Mr. Lockman added that Mr. Lempicki's concern is that the proposed ATM machine is not enclosed within a vestibule nor is it located in such a way as to not be visible from the street.

Mr. Dehart agreed that the Planning Board might approve the application, and that Mr. Lempicki can make the applicant go to the Zoning Board of Appeals for the AMT machine. However at the recent workshop it was evident that the members of the Zoning Board agreed that the ATM machine does not fall within the scope of the outside sales ordinance restrictions. Mr. DeHart informed the Board that the applicant is willing to go to the Zoning Board however it is his position that this constitutes an unnecessary waste of the applicant's time and money.

Mr. Lempicki restated that it is not within the Planning Board's authority to change the Zoning Ordinance.

Mr. Simpson again responded that the Planning Board is not attempting to make any changes to the ordinance.

Mr. Coles stated that the Ordinance does not specifically say that ATM machines constitute outside sales, and it is within the Planning Board's authority to interpret the ordinance.

Mr. Lockman responded that after the Planning Board has approved a Site Plan or Design Review, the Code Enforcement Officer has the authority to refuse to issue a Building Permit if he believes that the Board has made a mistake and that the approved plan violates the Town's Ordinance. This action, on the part of the Code Enforcement Officer, is an appealable action and may be taken to the Zoning Board of Appeals for a final decision.

Mr. Simpson asked for the Board members input as to whether or not they should proceed to the Site Plan and Design Review, given that the Code Enforcement Officer has stated that he will not abide by the Board's decision should they approve the inclusion of the ATM machine.

Mr. DeHart stated that he would take the issue of the ATM machine to the Zoning Board and he asked the Planning Board to proceed with Site Plan and Design Review.

Mr. Capone and Mr. Coles agreed to proceed.

At this time the Board reviewed Site Plan and Design Review checklist and found all standards acceptable.

Mr. Coles Moved to Approve Site Plan and Design Review for 173 MAIN STREET – 173 Main Street – Map 6 Block 14 – Design Review and Site Plan Review for a post 1930 structure. Application to add a 230 square foot addition to right side of building for use as an ATM, ADA bathroom, and storage area. COLES/CAPONE 4/0 UNANIMOUS

Mr. Coles noted for the record that this action leaves a "bad taste in his mouth". He feels as if the Board is "spinning its wheels" given that the Board's decision won't matter when the Code Enforcement Officer refuses to grant the building permit for a project the Board just approved.

G. NEW BUSINESS –

1. BRUNO, LOLA, PARIS / PIZZA NAPOLI – 667 Main Street - Map 12 Box 19-1. Design Review and Site Plan Review for a post 1930 structure. Application to add a 10'x15' addition onto an existing deck for outside dining.

Jerry Dehart addressed the Board as the Applicant's representative. Mr. DeHart gave a brief overview of the proposed project. He noted for the record that the Applicant is willing to abide by all of the Fire Chief's recommendations.

Mr. Lockman noted that the proposed project does not change the parking requirements.

Ms. Bevins asked Mr. Lockman to explain his parking calculations.

Mr. Lockman responded that parking requirements are based on the square footage of the public areas of the restaurant (not including the foot preparation and storage areas). In this instance the area of the existing public area equals 771 square feet, with the addition of the proposed deck expansion the square footage will be 921 square feet. 921 divided by 100 equals 9.21, rounded up it comes out to 10, which means that the parking requirement for this business is 10 parking spaces. Pizza Napoli currently has 11 parking spaces.

Ms. Bevins responded that her calculations indicate that they only need seven spaces.

Mr. Lockman responded that the configuration of the dining room is not a perfect square which changes the outcome of the square footage calculations. He added that this restaurant was measured three separate times to determine square footage.

Mr. Simpson asked Mr. Dehart to provide the Board with a letter confirming that the Applicant will abide by all of the Fire Chief's recommendations.

**Mr. Coles Moved to Find the Application Complete for BRUNO, LOLA, PARIS / PIZZA NAPOLI – 667 Main Street - Map 12 Box 19-1.
COLES/CAPONE 4/0 UNANIMOUS**

Mr. Simpson informed Mr. DeHart that the Public Hearing for this Application would take place on March 26, 2012 at 6:00 p.m.

Mr. Dehart confirmed the date and time.

2. JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision – Preliminary Plan Application. Ten (10) Lot Subdivision of 18.4 Acres in the Farm District. Sketch Plan Approved on November 28, 2011.

Ken Markley addressed the Board as the Applicant's representative. Mr. Markley noted that they have incorporated all of the Board's recommendations in the new plans. They also included all of Mr. Lockman's suggestions as well as the notations for the dry hydrant which included a small 15'x17' parking lane for the fire truck to use when filling up at the dry hydrant. This was at the request of the Fire Chief.

Mr. Markley also noted the inclusion of requests for waivers for the hydrogeologic survey and the high intensity soil survey. He noted that Mr. Lempicki agreed with him that these studies are unnecessary for this particular project.

Mr. Markley stated that in order to reduce the environmental impact, the amount of storm water generated by the proposed cluster subdivision they are requesting the following waivers from the Town's Subdivision regulations:

1. Under the Street Design Standards, Section 10.3.2, the standard is a 20' pavement. The Applicant is proposing an 18' width of gravel.
2. Under the B standard requiring 3' wide gravel shoulder, the applicant is proposing 1' wide gravel shoulders on both sides which will result in 20' wide roadway.
3. The standard for the Cul-de-sac is a radial cul-de-sac, the applicant is proposing a hammerhead cul-de-sac, which has been approved by the Fire Department and the Police Department.

Mr. Markley reminded the Board that at the last meeting to discuss this application the Board took a straw poll which indicated a positive response to all three requests. He also noted that by granting the above waiver requests it will allow for less soil disturbance and more wooded area in a natural state. This will reduce storm water runoff, reduce traffic speed, and improve the area

Mr. Markley noted that the following waivers were deemed not applicable by the Code Enforcement Officer:

1. A High Intensity Soil Survey by a Certified Soil Scientist;
2. Hydrogeological Assessment prepared by a Certified Geologist or Engineer.

This is based upon their assertion that the limited information provided by these studies would not effect the design of the project.

Mr. Markley informed the Board that the construction estimates are approximately \$30,000 and the applicant is willing to bond them to ensure that the necessary improvements are done.

The new street will be named Sonoma Lane, this will need approval from the Post Office and the Town's E-911 Addressing Officer prior to the Final Approval.

Deed restrictions were submitted and are acceptable. There is also an agreement with Robert Kinsman (14 Bittersweet Lane – Map 21 Block 7-5-632) to have an access to construct and maintain the dry hydrant which is coming from his (Mr. Kinsman's) pond.

The limits of clearing have not been shown on the most recent plan however they can be included in the notes.

Mr. Markley introduced Civil Engineer Alex Ross who prepared the Stormwater and Erosion Control Plan for this project.

Mr. Simpson asked how many waivers the applicant will be requesting.

Mr. Markley responded that there are five total waiver requests (three street standard waivers and two submission waivers).

Mr. Simpson asked when the waiver approval should take place.

Mr. Lockman responded that the first thing the Board has to do is find the Preliminary Plan Application complete, which it appears to be at this point. The Board then decides if it wants to hold a Public Hearing at this stage. At the point where the Board determines approval it should also set the bonding

amount and give suggestions as to what the applicant should do for Final, and take action on the waiver requests. All of this needs to be done at the Preliminary Plan Stage so that the Applicant knows exactly what will be required for the Final Plan.

Regarding the Waivers, Mr. Lockman noted that the Conservation Commission has expressed support for the three street standard waiver requests.

Mr. Capone informed the Board that he was approached by an abutter who expressed concerns and would like to be heard, perhaps at a Public Hearing. This abutter's concerns involve water runoff and the adequacy of the existing culverts.

Mr. Coles agreed that a Public Hearing is a good idea.

Ms. Bevins agreed.

Mr. Simpson also agreed.

Mr. Coles noted that the memo from the Conservation Commission referenced language for the deed restrictions or covenants, he does not see that and he asked if it was the Applicant's intention to do this. Mr. Coles also asked: when/if the deed restriction and covenants are put in place, who will police them?

Mr. Lockman responded that at the Final Stage the applicant will be required to provide the Board with an entire homeowners association set of documents. When there is a private road and open space the policing comes from within and there has to be faith that the homeowners will police each other. The only other alternative is to turn the road over to the Town which is an unpopular action.

Mr. Simpson asked if the Board should request the Conservation Commission's input on the waivers regarding:

1. A High Intensity Soil Survey by a Certified Soil Scientist;
2. Hydrogeological Assessment prepared by a Certified Geologist or Engineer.

Mr. Lockman agreed that they could.

Mr. Simpson requested input from the Conservation Commission regarding the two waiver requests noted above.

Mr. Capone asked about the soil profiles, some of which indicate that they are not adequate for septic. However there appears to be room on each site for a septic system. He asked Mr. Markley to confirm this.

Mr. Markley agreed.

Mr. Lockman acknowledged that he had the same thought. He agreed with Mr. Markley that a hydrogeologic survey may be overkill in this instance, however the alternative might be that the Applicant could set up well exclusion areas and septic sites to show where each site would be located.

Mr. Markley responded that he is reluctant to do this given that the exact configuration of the homes has not been confirmed. As long as the septic/well locations can be somewhat flexible he would be happy to designate "approximate" locations.

The Board members agreed that it is reasonable to designate approximate locations for the wells and septic systems.

**Mr. Capone Moved to Find the Preliminary Plan Application Complete and to Schedule the Public Hearing for this application for March 26, 2012 at 6:00 p.m.
CAPONE/COLES 4/0 UNANIMOUS**

Mr. Markley confirmed the date and time of the Public Hearing. He also asked for a copy of the letter from the Conservation Commission regarding the proposed deed restrictions.

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS – None

J. ADJOURNMENT -

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

Respectfully Submitted

Maryann Stacy
Ogunquit Planning Board
Recording Secretary