

**OGUNQUIT PLANNING BOARD  
PUBLIC HEARING and REGULAR BUSINESS MEETING  
MARCH 26, 2012**

**PUBLIC HEARINGS**

**1. BRUNO, LOLA, PARIS / PIZZA NAPOLI – 667 Main Street - Map 12 Box 19-1.**

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. JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision – Preliminary Plan.**

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application.

Mr. Simpson noted that the Board had received a letter from an abutter who was unable to attend the Public Hearing and who asked that the letter be read aloud. The letter was from Robert and Barbara Kinsman, 14 Bittersweet Lane (Map 21 Block 7-5-632), and was dated December 6, 2011. Mr. Simpson noted that several of the concerns expressed in the letter had already been resolved by the Applicant. *(a copy of the Kinsman December 6, 2011 letter will be maintained in the Applicant's file).*

*"As a direct abutter of the proposed subdivision, I would like to request the Planning Board please require all future submitted plans for this project be full size (24 in. x 36 in.). Recently submitted revised plans were very small in scale and as a result there were two significant discrepancies which do not appear to have been noticed:*

- 1. The Fire Chief did not notice the change from the originally proposed cul-de-sac to a hammerhead design. In addition, the very small scale makes it difficult to determine the exact dimensions of the proposed turnaround.*
- 2. The reference to Tax Map 19, Lot 5 as being owned by "Kinsman", when in fact Tax Map 19 Block 5 is owned by the Maine Turnpike Authority. There is also a citation that there is "(No R.O.W.)". If this notation is referring to Kinsman there is in fact a R.O.W. to Lot 1. Book 2529 Page 108.*

*After careful consideration regarding potential liability, as well as the preservation of our pond and property we, the owners of Tax Map 21 Block 7 Lot 5 Unit 632 (14 Bittersweet Lane), have decided that we will allow our pond to be used as a source for a dry-hydrant to service the proposed subdivision. We have taken note of recent meetings where this option has been proposed and we want to make it clear that an agreement would need to be reached with the proposed developer and Robert & Barbara Kinsman in order to grant permission for our pond to be used as a water source.*

*Finally, the Applicant's representative has repeatedly stated that a Road Association would take possession of the Bittersweet Lane "right of way" prior to, or immediately after, Final Subdivision Approval is granted. As a direct abutter who will take part in this association I would like the Board to*

*strongly recommend to the Applicant that the Bittersweet Road Association take possession of the right-of-way prior to receiving Final Approval. Or in the alternative, make the Road Association Agreement implementation a condition of approval.”*

Ken Markley (the Applicant’s representative) agreed to look into the Kinsman’s outstanding concerns. Particularly the incorrect Map and Block citation for the Kinsman property and the incorrect citation that there is no right-of-way associated with the Kinsman’s parcel.

Mr. Simpson asked if an agreement had been reached between the Applicant and the Kinsmans to allow the Applicant to utilize the Kinsman’s pond as an emergency water source for the subdivision’s dry hydrant.

Mr. Markley responded that he has an agreement letter from Robert Kinsman.

Mr. Simpson noted that the Board can not make a road association agreement a condition prior to approval.

Mr. Lockman agreed, and added that the road association agreement begins when the subdivision plans are recorded at the Registry of Deeds.

Mr. Simpson asked Mr. Markley if there is any question of any abutters, on Bittersweet Lane, being full members of the road association.

Mr. Markley responded that with regard to maintenance, everyone can be a member of the association. The idea is that the association will be responsible for the maintenance of Bittersweet Lane.

Mr. Simpson asked if other residents, up to where the subdivision begins, would have equal voting rights.

Mr. Markley agreed and noted that it won’t be as if the residents who use the first third only have 1/3 of the voting rights. He noted that there will be residents out back who have the right to use the entire length of Bittersweet Lane, and other residents in the front who are only allowed to use a certain portion of Bittersweet Lane.

Mr. Simpson asked for confirmation that all of the residents who live on Bittersweet Lane, in front of the subdivision, will be members of the road association in terms of maintenance of that road.

Mr. Markley agreed that they will be encouraged to be full members.

Mr. Lockman informed the Board that the Applicant will be required to submit a full set of Homeowners Association Documents at the Final Stage. These will be prepared by the Applicant’s attorney, however the Board might request the Town’s attorney review them as well.

Mr. Simpson noted a follow-up letter from the Kinsman’s dated March 26, 2012 which he also read into the record: *(a copy of the Kinsman March 26, 2012 letter will be maintained in the Applicant’s file).*

*“As a direct abutter of the proposed subdivision, we would like the Planning Board to strongly recommend to the Applicant that language be included in The Road Association Agreement stating that; all property owners who utilize Bittersweet Lane to access his/her/their property shall share in full and equal rights to that roadway/right-of-way.”*

Mr. Lockman noted that this issue, as to the apportionment of rights to travel on the road and any ownership rights, should be addressed in the forthcoming Road Association documents. It would be inappropriate for the Board to instruct the Applicant as to assignment of rights to those property owners who are outside of the subdivision.

Mr. Simpson agreed but added that every resident has the right to have his/her opinions heard.

Mr. Simpson noted that there are several waiver requests pending which the Board will act upon. Any waivers which the Board grants must be recorded at the York County Registry of Deeds. This may be accomplished by noting the waivers on the final plans, or by the Board issuing Certificates of Waiver.

Mr. Markley responded that he will see that the waivers are noted on the Final Plans which will be filed with the Registry of Deeds.

Mr. Lockman agreed it would be best if the waivers are noted on the face of the final plans.

Mr. Horn, Chairman of the Ogunquit Conservation Commission informed the Board that the Commission agrees with the granting of waivers from the requirements for a soil test and the hydrogeologic assessment, with the provision that the Applicant provide an effective storm water runoff plan for the total development. Mr. Horn commended the Applicant on the design of the roadway for this project which has been constructed in such a way as to significantly reduce the amount of water runoff.

Mr. Markley responded that Alex Ross has completed the storm water runoff plans, and the proposed design will utilize the wetlands as a recharge for runoff.

Mr. Simpson asked if there was anyone else who wished to be heard. There was no one and the Public Hearing was closed at 6:15 p.m.

### **REGULAR BUSINESS MEETING**

#### **A. ROLL CALL –**

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. Coles.

#### **D. MINUTES – March 12, 2012 Public Hearings and Regular Business Meeting.**

**Mr. Capone Moved to Approve the Minutes of the March 12, 2012 Public Hearings and Meeting.  
CAPONE/COLES 4/0 UNANIMOUS**

E. **PUBLIC INPUT** – None

F. **UNFINISHED BUSINESS** –

1. **Findings of Fact for:**

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

**Mr. Coles Moved to Approve the Findings of Fact for LIQUID DREAMS / MARK ANASTAS – 696 Main Street - Map 10 Block 5.  
COLES/BEVINS 4/0 UNANIMOUS**

b. **173 MAIN STREET – 173 Main Street – Map 6 Block 14.**

**Mr. Capone Moved to Approve the Findings of Fact for 173 MAIN STREET – 173 Main Street – Map 6 Block 14.**

**CAPONE/COLES 3/0 UNANIMOUS**

**(Due to a conflict Ms. Bevins recused herself from participating in this application).**

2. **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.

The Board reviewed the Site Plan and Design Review Requirements Checklists and found all requirements satisfied.

**Mr. Capone Moved to Approve the Design Review for 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.**

**CAPONE/COLES 4/0 UNANIMOUS**

**Mr. Coles Moved to Approve the Site Plan for 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.**

**COLES/CAPONE 4/0 UNANIMOUS**

3. **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.**

**Discussion to include, but not be limited to:**

**1. Request for three (3) waivers from Street Design Standards under Section 10.3.2 of the Ogunquit Subdivision regulations:**

**a. Pavement Width Requirement;**

**b. Gravel Shoulder Width Requirement;**

**c. Radial Cul-de-sac to be replaced with a Hammerhead Cul-de-sac;**

**2. Request for Waiver from High Intensity Soil Survey;**

**3. Request for Waiver from Hydrogeologic Assessment;**

**4. Establishment of Performance Guarantee Amount;**

**5. Confirmation of culvert repairs/installation for Bittersweet Lane and Sonoma Woods Lane;**

## 6. Design of Well and Septic system locations.

Mr. Simpson suggested the Board begin by taking action on the two submission waiver requests and the three requests for waivers of standards.

He reviewed the three standard waiver requests:

a. Pavement Width Requirement of twenty (20) feet. Request is to reduce this to eighteen (18) feet;  
**Mr. Capone Moved to Grant the Requested Pavement Width Requirement Waiver reducing the pavement width from twenty (20) feet to eighteen (18) feet of gravel.**  
**CAPONE/COLES 4/0 UNANIMOUS**

b. Gravel Shoulder Width Requirement of three (3) feet on each side of the roadway. Request is to reduce this requirement to one (1) foot on each side;  
**Mr. Coles Moved to Grant the Requested Gravel Shoulder Width Waiver from the required three (3) feet on each side to one (1) foot on each side.**  
**COLES/ CAPONE 4/0 UNANIMOUS**

c. Radial Cul-de-sac to be replaced with a Hammerhead Cul-de-sac;  
**Mr. Capone Moved to Grant the Requested Waiver to Replace the standard Radial Cul-de-sac with a Hammerhead Cul-de-sac.**  
**CAPONE/ COLES 4/0 UNANIMOUS**

Mr. Simpson noted that the Ogunquit Fire Chief has agreed with this request for the use of a Hammerhead Cul-de-sac.

Mr. Simpson noted that there are also two application submission waiver requests, and that the Code Enforcement Officer and the Conservation Commission have both agreed that neither of these submissions is necessary in this case.

a. Request for Waiver of application submission for a High Intensity Soil Survey;  
**Mr. Coles Moved to Grant the Requested Waiver from the requirement for a High Intensity Soil Survey.**  
**COLES/CAPONE 4/0 UNANIMOUS**

b. Request for Waiver of application submission for a Hydrogeologic Assessment;  
**Mr. Capone Moved to Grant the Requested Waiver from the Requirement for a Hydrogeologic Assessment.**  
**CAPONE/COLES 4/0 UNANIMOUS**

Mr. Simpson noted that the Board is also required to approve a Performance Guarantee Amount. He reviewed Section 10.9.1 of the Ogunquit Subdivision Regulations, which states that:

*Pursuant to the procedures set forth in section 7.1.11, prior to the time of the approval of the final plan application, the applicant shall tender either a certified check payable to the Town, or other such surety or performance bond payable to the Town in the amount of one hundred (100) percent of the cost of streets, and completing all grading, paving, storm drainage and utilities specified in the application.*

Mr. Simpson stated that the Applicant has submitted a cost estimate of \$30,015.00. He also noted that the Applicant may submit either a Certified Check or a Performance Bond, and he asked Mr. Lockman what the practice has been in the past.

Mr. Lockman responded that this it is the Applicant's choice. Some people obtain a letter of credit from their bank, others get an insurance performance bond from an insurance company, or the applicant can write out a check to the Town which the Town will hold.

Mr. Markley asked how the applicant will get some of the money back as the improvements are put in.

Mr. Lockman responded that the applicant can propose to phase in the improvements and ask for the bond to be released in stages.

**Mr. Coles Moved to Accept the Performance Guarantee amount of \$30,015.00 for JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision – Preliminary Plan Application for a Ten (10) Lot Subdivision of 18.4 Acres in the Farm District.  
COLES/BEVINS 4/0 UNANIMOUS**

Mr. Simpson noted that the next item on the agenda is the confirmation of culvert repairs/installation for Bittersweet Lane and Sonoma Woods Lane.

Mr. Lockman reminded the Board that this item falls under the umbrella of things the Board wants the Applicant to handle prior to Final Approval.

Mr. Markley responded that the engineer, the contractor, and the abutters have all looked at the culverts in question and everyone is in agreement as to how they will be fixed, and that this should be completed prior to the final approval.

Regarding the wells and septic systems, Mr. Markley informed the Board that the most recent drawings show that each lot in the subdivision will have a septic system and a well which will be located over one hundred feet (100') from the septic.

Mr. Capone asked for confirmation that the intent is not to show exactly where the systems will be located but rather where they may be located, and that the Applicant will not be obligated to precisely follow these locations.

Mr. Markley confirmed this adding that the locations indicated on the plans are approximate.

Mr. Lockman asked if there is a notation explaining this.

Mr. Markley responded that the notation indicates the locations are "approximate".

Mr. Lockman summarized that the Board now needs to approve the Preliminary Plan, which will give the applicant the "go-ahead" to prepare the Final Plans.

**Mr. Coles Moved to Approve the Preliminary Plan for 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.  
COLES/BEVINS 4/0 UNANIMOUS**

**G. NEW BUSINESS –**

**1. COVE HOUSE COFFEE / RUSS THIBEAULT – 178 Main Street – Map 6 Block 40C – Site Plan Review for a post 1930 structure. Change of Use from retail shop to Type 3 Restaurant.**

Michael Roberge, Project Manager for the Applicant addressed the Board. Mr. Roberge introduced Amy Thibeault who will be managing the business. The proposal is to open a coffee shop with Panini sandwiches. There will be no cooking on the premises. They will have baked goods, coffee, salads, and sandwiches.

Mr. Coles asked if the applicant had an elevation indicating what the business will look like from the front and sides.

Mr. Roberge responded that they did not submit elevations, however there will not be any changes made to the building other than the installation of sewer and water lines and the addition of the patio on the south side of the building, also the doors will have crash bars added.

Mr. Lockman noted that the reason the Applicant is required to submit a Site Plan Review is because of the change of use of the building from a retail bike shop to a restaurant. Any change of use requires Site Plan Review. He also noted that because this property is in the Downtown Business District there is no parking requirement. In addition the structure is not being enlarged. As a result there are no open zoning issues.

Mr. Lockman noted that there had been some initial concern that because this building once held a garage there may have been some ground contamination, however this question has been resolved and does not pose an issue.

Mr. Coles pointed out that a “deck” is considered to be a structure and it is difficult, without an elevation, to anticipate what it will look like from the Post Office side of the building.

Mr. Lockman responded that there is some confusion due to the fact that the Applicant’s plans indicate a “deck” when in fact it will be a “patio” which will be surrounded by a stone wall approximately three to four feet in height. This wall will serve the purpose of preventing cars from hitting people sitting on the patio.

Ms. Bevins noted that the “patio” appears to extend to the property line between the Coffee Shop and the Post Office, and that the Post Office has a post barrier along that line. This post barrier will interfere with customers attempting to enter or exit the Coffee Shop’s patio by way of the south entrance.

Mr. Simpson agreed and pointed out that customers will have to cross over the Post Office property to enter or exit the patio from the south entranceway. The Post Office may not allow this. Mr. Simpson also noted that there are no dimensions on the plans for the patio area.

Mr. Coles asked if the stone wall around the patio is more than three inches tall.

Mr. Roberge responded that the stone wall will be 3 ½ feet tall. It will need to be that tall in order to stop any vehicles which might injure customers sitting on the patio.

Mr. Lockman added that if the stone wall acts as a fence it is not required to meet setbacks. Structures are required to meet setbacks, however fences are not considered to be “structures”. In addition, fences may be located right up to, or at, the property line.

Ms. Bevins noted that in order to enter the patio by way of the south patio entrance, customers will have to cross over private property, i.e. the post office's parking lot.

Mr. Lockman suggested the applicant get a letter from the Post Office indicating that they have no objection to the plans. The alternative might be to remove the south patio entrance. Customers can still access the patio from the interior of the shop or from the front of the patio.

Mr. Simpson asked if the Board should request revised/updated plans which include dimensions of the patio, and elevations illustrating the proposed appearance of the shop and patio areas.

Mr. Lockman asked if there would be any changes to windows or doors.

Mr. Roberge responded that there will not be any changes to the exterior of the building.

Mr. Capone added that he does not see any need for elevations. The patio is simply a ground level patio enclosed by a 3 ½ foot high stone wall.

Mr. Lempicki agreed, he added that this will be a Type 3 Restaurant which will not have an NFPA-98 Hood System. This means they will not be allowed to have any fried or grease laden foods such as what would be prepared in a fryolator or on a grill.

Mr. Roberge responded that they only intend to serve baked goods, salads, and cold sandwiches.

Mr. Simpson asked about building access.

Mr. Lempicki responded that the Life Safety Code requires two means of egress which they have.

Mr. Coles asked about the "deck" in front of the shop.

Ms. Thibeault responded that they may remove the "floating deck and bench" on the front of the building.

Mr. Coles agreed with Mr. Simpson that an elevation would be appropriate. He noted that the Town has always shown a concern about what things look like particularly in a public way.

Mr. Simpson asked the Applicant to provide an updated plan which includes:

- a) dimensions of the patio area;
- b) a letter from the Ogunquit Postmaster granting permission for Coffee Shop patrons to cross over Post Office property in order to gain access to the side patio entrance for the business;
- c) change the term "deck" to "patio" on the plans.

Mr. Simpson noted that there is a letter from the Fire Chief indicating five issues which need to be resolved.

Mr. Roberge responded that he has a copy of the Fire Chief's letter and all of the issues will be complied with.

Mr. Lempicki agreed that he would see that everything is done.

Mr. Roberge confirmed that the "patio area" will be at ground level and will not be a "deck".

The Board agreed that no elevation would be required.

**Ms. Bevins Moved to Find the Application Complete for COVE HOUSE COFFEE / RUSS THIBEAULT – 178 Main Street – Map 6 Block 40C – Site Plan Review for a post 1930 structure. Change of Use from retail shop to Type 3 Restaurant, and to schedule a Public Hearing for April 9, 2012 said motion is contingent upon the Applicant submitting revised plans before 2:30 on April 2, 2012.**

**BEVINS/CAPONE 4/0 UNANIMOUS**

**2. PERKINS COVE LOBSTER POUND / WAYNE PERKINS – 324 Shore Road – Map 3 Block 4-5 – Design Review and Site Plan Review for a post 1930 structure, Change of Use from residence to retail lobster pound.**

Wayne Perkins addressed the Board. Mr. Perkins summarized that he is seeking to convert an existing garage, which is attached to a residence, into a lobster pound to sell live lobsters.

Mr. Simpson asked if the fence, to the right of the driveway, is located at the property line.

Mr. Perkins responded that it is very near to the property line. Most of the property to the right of the driveway is his property, and there is sufficient area for vehicles to enter, park, turn around, and exit.

Mr. Coles asked if they will sell cooked lobster, or only live lobster.

Mr. Perkins responded that they will begin by selling only live lobster, however if customers request cooked lobster they will cook them as well.

Mr. Coles asked if this would change the application.

Mr. Lempicki responded that it would not. Mr. Perkins would have to install a fan to vent the steam but that would be the only thing he would be required to do. However if smells became an issue for the neighbors he (Mr. Lempicki) would intervene.

Mr. Lempicki added that cooking lobsters is an accessory use for a lobster pound and would not be considered to be a change of use. Thus the applicant would not have to come back before the Board if he decided to cook lobsters.

Mr. Lockman agreed.

Mr. Capone asked if the definition of “lobster pound” includes the serving and eating of lobsters on the premises.

Mr. Lempicki responded that it does not. This application is for retail use only which does not allow for the consumption of the lobsters on site.

**Ms. Bevins Moved to Find the Application Complete for PERKINS COVE LOBSTER POUND / WAYNE PERKINS – 324 Shore Road – Map 3 Block 4-5 – Design Review and Site Plan Review for a post 1930 structure, Change of Use from residence to retail lobster pound, and to schedule a Public Hearing for April 9, 2012.**

**BEVINS/CAPONE 4/0 UNANIMOUS**

Mr. Perkins confirmed that he would be available for the April 9, 2012 Public Hearing.

**H. CODE ENFORCEMENT OFFICER BUSINESS – None**

**I. OTHER BUSINESS –**

- 1. Final discussion regarding proposed changes to the Ogunquit Zoning Ordinance and vote to send said changes to the Select Board with a request to be included on the ballot at the next appropriate Town Meeting.**

Mr. Simpson noted that the Planning Board held a series of workshops, in conjunction with the Zoning Board of Appeals, to discuss proposed amendments to the Ogunquit Zoning Ordinance. Most of the proposed changes are intended to simplify or clarify the existing ordinances.

Mr. Coles asked if the Board has to hold a Public Hearing.

Mr. Lockman responded that that Planning Board may hold a Public Hearing, however due to pending deadlines the Board may ask the Select Board to hold the Public Hearing instead.

Mr. Simpson noted that he received a last minute suggestion from the Chairman of the Board of Appeals regarding Article 9 Section 9.19. While Mr. Simpson understands Mr. Smith's concerns he (Mr. Simpson) did not feel that these minor suggestions warrant changes to the final document. Mr. Simpson added that any delay might jeopardize the chances of having this material on the warrant for the next Town Meeting.

Mr. Lockman responded that Mr. Smith's concern is that ATM machines must meet all setbacks. However the proposed amendment requires ATM machines be attached to a building and as such they would automatically be required to meet setbacks.

It was noted that the proposed changes are contained in two separate documents. Mr. Simpson agreed to combine the two drafts into a single document prior to submittal to the Select Board.

The Board agreed to this proposal.

Mr. Horn, Conservation Commission Chair, noted for the record that the Board of Appeals Chairman's suggestions were referred to the Town Planner who commented on them.

**Mr. Coles Moved to Approve the proposed changes to the Ogunquit Zoning Ordinances and to submit them to the Select Board as a single document, along with a request that said proposed changes be included on the warrant for the June 2012 Town Meeting, and to request the Select Board hold the required Public Hearing.**

**COLES/BEVINS 4/0 UNANIMOUS**

On another matter, Mr. Simpson informed the Board that he had a suggestion which he felt would help expedite the process for Site Plan and Design Review.

The established procedure is for the Chairman to review each standard of the Site Plan Review Checklist and the Design Review Checklist for each application.

Mr. Simpson suggested providing each Board member with a copy of the checklist which he/she might review prior to the meeting in order to determine if there are any issues which might impact the application.

At meeting the Chairman will ask if anyone has any issues with the checklist standards, similar to the way the Board currently reviews minutes and Findings of Fact.

Mr. Lockman expressed concern that there is a danger that the Board not “rubber stamp” applications or depend too much on Town staff. The Board needs to be careful to reach its own independent conclusions.

Mr. Coles stated that the Chairman is not asking that the checklist be filled out beforehand, only that the Board members review them prior to the meeting.

Mr. Lockman agreed that this would be fine.

The Board members all agreed with the Chairman’s proposal.

**J. ADJOURNMENT -**

**Mr. Capone Moved to Adjourn at 7:30 p.m.  
CAPONE/COLES 4/0 UNANIMOUS**

Respectfully Submitted

---

Maryann Stacy  
Ogunquit Planning Board  
Recording Secretary

*Approved on April 9, 2012*