

**OGUNQUIT PLANNING BOARD  
REGULAR BUSINESS MEETING  
AUGUST 13, 2012**

**REGULAR BUSINESS MEETING**

**A. ROLL CALL –**

The Roll was called with the following results:

Members Present:     Don Simpson (Chair)  
                              Rich Yurko (Vice Chair)  
                              Jackie Bevins  
                              Craig Capone

Also Present:           J.T. Lockman, Town Planner, SMRPC  
                              Paul Lempicki, Code Enforcement Officer

**B. PLEDGE OF ALLEGIANCE -**

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

**D. MINUTES – July 9, 2012 Regular Business Meeting.**

**Ms. Bevins Moved to Accept the Minutes as Amended.  
BEVINS / YURKO 4/0 UNANIMOUS**

**E. PUBLIC INPUT –**

Newell Perkins (20 Fieldstone Lane, Map 8 Block 56-55) addressed the Board. Mr. Perkins reviewed the correspondence (dated July 27, 2012), which he sent to the Planning Board (*a copy of which will be attached to these minutes as part thereof*).

Mr. Simpson asked if Mr. Perkins is asking the Planning Board to draft language for the voters, giving them the option to change the Zoning Ordinance and allow off premises “open house” signs.

Mr. Perkins responded that he does not feel that changing the ordinance is the way to go. He suggested that the Select Board and the Voters should allow “open house” signs as part of the Town Ordinance, not the Zoning Ordinance. He is asking the Select Board to agree to the placement of “Open House” signs on public property.

Mr. Yurko informed Mr. Perkins that there are two ways this can happen:

1. Amend the Zoning Ordinance to permit “Open House” signs, with whatever restrictions are associated with that change;
2. Have the Select Board pass a temporary measure, or ask the voters to pass a permanent measure which would give the Select Board the authority to license and collect a fee for the placement of these signs. This would require amendments to the Zoning Ordinance and the

Select Board would have a full understanding of everything that would have to be changed, including references currently contained in the Zoning Ordinance.

Mr. Yurko suggested that the voters will not pass such an ordinance.

Mr. Perkins responded that all the necessary changes fall within the authority of the Select Board and that the Planning Board can only recognize those changes. The Planning Board does not have the authority to make such changes on its own.

Mr. Yurko noted that the only legislative body which really matters is the voters.

Mr. Simpson pointed out that there are several ways to make changes to the Zoning Ordinance:

1. Through the Planning Board which recommends changes to the Select Board which votes on the changes and presents them to the voters;
2. Prepare a petition and collect signatures from residents;
3. Have a member of the Select Board sponsor a change to the Ordinance.

Mr. Simpson also noted that it is unlikely a change such as this will be developed in time to meet the deadline for the November 2012 Town Meeting.

Mr. Perkins agreed that this type of change may take time.

Mr. Capone pointed out that houses located off main streets are often difficult for the public to find.

Ms. Bevins asked why this issue has been introduced at this particular time and why it has taken so long for it to be brought up.

Mr. Perkins responded that he has been able to put off sellers by telling them that Paul Lempicki does not allow it and will pick up the signs.

Mr. Simpson informed Mr. Perkins that Mr. Lempicki is the Code Enforcement Officer and his removal of off premises signs is part of his job of enforcing the Zoning Ordinance. He noted that another individual might some day hold that job and he asked Mr. Perkins to show the appropriate respect and refer to the position as the "Code Enforcement Officer" and not by the name of the person holding the job.

Mr. Perkins responded that it is not the Code Enforcement Officer's responsibility to enforce the Zoning Ordinance.

Mr. Lockman noted that this subject has come before the Planning Board on three other occasions. On those occasions he drafted language for the Board to review, and the question of allowing these types of signs never held promise and was dropped for lack of support each time.

Mr. Simpson asked if there were any other comments.

Thomas Nugent (50 Brookside Circle) addressed the Board. Mr. Nugent informed the Board that there are seven homes for sale in his neighborhood, which is located behind the Ogunquit Motel, and that no one knows they are there. They would like to put a small sign out on Route One

which states “Homes for Sale” with a directional arrow. They have been told that because they do not own the land the homes are on, or the land on Route One, they are not allowed to place the sign there even though the property owner has agreed. He stressed that he has been informed that they can not place their sign on Route One because they are renters. Mr. Nugent also noted that the sign they want to put up is a small unobtrusive sign, unlike other real estate signs he sees around town.

Mr. Lempicki acknowledged that the signs were placed off premises and the Zoning Ordinance does say that off premises signs are not permitted.

Mr. Yurko suggested that it seems as if renters should have the same rights as property owners. However he acknowledged that he is not certain of this.

Mr. Simpson took Mr. Nugent’s telephone number and assured him that he (Mr. Simpson) would personally look into this and get back to Mr. Nugent.

**F. UNFINISHED BUSINESS –**

**1. THE EGG AND I – 501 Main Street – Map 8 Block 4 – Dumpster Screening Waiver Request.**

Bob Appis addressed the Board. Mr. Appis reiterated that he has appeared before this Board twice (April 23 and May 14) regarding this waiver request. He had a representative from the Maine Department of Labor, who was recommended by OSHA, look at the property and he agreed that moving the dumpster to the dirt parking lot across King’s Lane would pose a safety hazard for employees emptying trash. They also agreed that the dumpster’s current location is the best location.

Mr. Appis again asked for a waiver from the Dumpster Screening Requirement and stated that he wants to leave the dumpster where it is currently located.

Mr. Simpson noted that the Police Chief agreed that any fencing of the dumpsters in their current location would pose a safety hazard as well as a line of site problem for traffic entering and leaving that parking area. She did not have safety concerns about relocating the dumpster to the dirt parking area across King’s Lane.

Mr. Yurko noted that it appears from the survey that the dumpsters are not currently located on Mr. Appis’ property. They are located on the roadway, which is State or Town property. Mr. Yurko suggested that the Board might have a problem granting a waiver for property which Mr. Appis does not own. Mr. Yurko also noted that there appears to be parking spaces on the property where the dumpster could be relocated and fenced in. He acknowledged that doing this Mr. Appis would lose a couple of parking spaces, however this is what other businesses in Town have had to do. He asked why Mr. Appis shouldn’t have to do the same thing.

Mr. Appis responded that if he were to move the dumpsters they would be directly outside of a window where customers are seated. He suggested that it may be unreasonable to ask any business to place dumpsters in such a location whereby customers lose the view of woods and are forced to look at dumpsters. He also asked the Board to show him that relocating dumpsters and losing parking spaces has been the norm.

Mr. Yurko pointed out that there are other locations where the dumpsters could be placed where customers would not have to look at them. He noted that Mr. Appis also utilizes the parking lot across Rt One for customer parking and this does not seem to be a safety concern.

Mr. Simpson asked Mr. Lempicki if the loss of two or three parking spaces would pose a problem for this business with regard to the parking requirements.

Mr. Lempicki responded that they have more than enough parking spaces to comply with Ordinance requirements.

Mr. Capone pointed out that moving the dumpsters to many of the alternative locations might pose a problem for abutters who may not want dumpsters immediately next to their homes and might prefer to have the dumpsters unfenced and left where they currently are.

Mr. Simpson noted that these are not huge dumpsters, they are small trash containers.

Mr. Appis agreed and noted that these dumpsters have been in their current location for over thirty years and they have never been a problem.

Ms. Bevins pointed out that the ordinance was created for everyone, and other businesses have complied even though they may not have wanted to, some even had to give up parking spaces. However she agreed that moving them near the windows is not a viable suggestion.

Asked what he wanted to do, Mr. Appis said that he wanted a waiver. The Chair asked if any Board member wished to so move. No Board member moved to approve a waiver.

Mr. Yurko reiterated that Mr. Appis does not own the property where the dumpsters are currently located.

Mr. Simpson noted that the Board can not tell Mr. Appis what to do or where to locate the dumpsters, the Board can only grant or deny the fencing waiver request.

Mr. Appis suggested he might get some suggestions from a fencing company.

Mr. Lempicki noted that he can't issue a fence permit if Mr. Appis doesn't own the property.

Mr. Simpson agreed and suggested Mr. Appis and Mr. Lempicki again walk the property and attempt to come up with an alternative location for the dumpsters where they could be fenced in on Mr. Appis' property.

There was some discussion regarding the various types of trash receptacles which Mr. Appis might use in place of the dumpsters he currently utilizes.

**Mr. Yurko Moved to Table this Waiver Request pending another review of the property by the Code Enforcement Officer and Mr. Appis, and the submittal of a plan to either fence or relocate and fence the dumpsters.**

**YURKO/CAPONE 4/0 UNANIMOUS**

**G. NEW BUSINESS –**

**1. PHILIP CAVARETTA / MEADOWMERE – 74 Main Street – Map 5 Block 4 – Site Plan Review and Design Review for a post 1930 structure. Application to rebuild existing pool to include handicapped accessibility.**

Mr. Yurko asked for confirmation that the only action the Board will take at this time is to find the application incomplete, or complete and schedule a Public Hearing.

Mr. Simpson agreed.

Mr. Lockman noted that there is a small setback problem with this application. He agreed that it is a small problem however the setback requirements are very clear.

Adam Schoenhardt is the architect who is working on this project. He was not sure why the original pool was built in a triangular shape. They are asking to remove this pool and put in a new pool which they can make ADA compliant. He also noted that they want to widen the deck area so that pool furniture can be placed in such a way as to allow people to pass between the furniture and the pool in a safe manner. For aesthetic reasons they also want to have the new pool more closely follow the lines of the building.

Mr. Schoenhardt referred the Board to the submitted plans in order to demonstrate the landscaping and pool and deck design.

Mr. Lempicki asked what the front street setback will be.

Mr. Schoenhardt responded that the average will go from 18.5 to 25 feet from the street.

Mr. Simpson noted that the proposed plan does not run parallel to the street. He noted that the Board is not interested in averages, they need to know the closest point of the proposed new pool to the street.

Mr. Schoenhardt responded that the new pool deck will have a distance of 18.5 feet from the street and not the required 20 feet. He agreed that they could reconfigure the pool back to the required 20 feet.

Mr. Lempicki suggested they might reduce the deck size on the street side and increase the deck side on the other side of the pool.

Mr. Cavaretta responded that they need space for the steps leading up to the pool and that they want to keep the wider deck space for the safe passage of people and wheelchairs coming and going to the handicapped lift. He also noted that the proposed plan is more compliant than the existing pool.

Mr. Lockman noted that setback requirements are difficult and that the Planning Board has been sued in the past, and lost, when it gave an applicant a break on small setback violations. Mr. Lockman noted that the original pool designer may have designed the triangular pool so that it would comply with the then existing Zoning Ordinance. He informed the applicant that if they are taking out the existing pool and putting in another pool they need to meet current setback

requirements, and if they can not do this they have to go to the Zoning Board of Appeals and request a variance.

Mr. Yurko pointed out that the amount of land which violates the setback is very small and only includes landscaping and a small portion of the deck. He suggested that any request to the Zoning Board of Appeals for a variance will not pass and it might be simpler for the Applicant to revise the plans and meet the twenty foot setback.

Mr. Schoenhardt agreed.

Mr. Lockman informed the Applicant that he needs to consider two lines: the first line is twenty feet from the street and this area must be green space and have plants growing in it. The second line is the twenty foot to ten foot area where there can be no structures. This area may contain parking areas, walkways, or patios as long as they are not raised more than three inches above grade.

Mr. Schoenhardt admitted that the problem was his misunderstanding and that he can correct it.

Mr. Cavaretta pointed out that the deck is existing now in the space from twenty to thirty feet. The new pool will meet the setbacks. They will be replacing what is currently there for the deck which is at ground level.

Mr. Lockman responded that the Ordinance states that if it's three inches or less above grade it doesn't count and it can be built within the twenty to thirty foot setback. If they raise it above three inches they need to push it back behind the thirty foot setback.

Mr. Cavaretta confirmed that they will not be changing the elevation.

Mr. Lockman continued that if they do not change the elevation then the deck area can exist between the twenty and thirty foot setbacks.

Ms. Bevins asked: if the rebuilding of the pool is due to handicapped accessibility requirements doesn't that negate the need to comply with Town setback requirements.

Mr. Lockman responded that in this case it does not because if that was the only thing the applicant was attempting to do he could reduce the size of the pool or relocate it to meet setbacks. If he could prove that there is no way to comply without meeting setbacks anywhere else on the property, and that he would lose money otherwise, then he could get a variance.

Mr. Yurko noted that the nonconforming structure portion of the Ordinance clearly states that relocating the pool would require conformance with all setback requirements.

Mr. Schoenhardt agreed to redesign and resubmit the design plans.

**Mr. Yurko Moved to find the application complete and schedule the public hearing for August 27, 2012 providing the Applicant submits a revised plan before August 20, 2012. YURKO/BEVINS 4/0 UNANIMOUS**

Mr. Cavaretta agreed and acknowledged the Hearing date.

**2. CHOWDER'S CAFE – ROBERT H. VARAS – 117 Perkins Cove Road – Map 3 Block 75 – Change of Use/Site Plan Review for a pre 1930 structure. Change of Use from retail shop to Type 1 Restaurant.**

Mr. Simpson noted that this application is somewhat unusual in that the restaurant is already complete.

Mr. Lempicki responded he made a mistake and that is the reason this change-of-use did not come before the Planning Board when the restaurant originally opened.

Mr. Varas addressed the Board as the owner of Chowders.

Mr. Simpson asked if there is a requirement for the submission of a detailed property survey for all Site Plan Reviews.

Mr. Lockman responded that there is not in this case because nothing about the property or building is changing. The only thing required is the seating chart, which has already been submitted, and perhaps clarification for dumpster location.

Ms. Bevins noted that there are no measurements on the seating chart.

Mr. Lempicki confirmed that the floor space has not changed and that the Applicant has been informed that there can not be any cooking of grease laden foods and that there can not be any outside sales or services. The property has been inspected by the Fire Chief who has submitted a memo to the Board.

Mr. Simpson noted that the Fire Chief has raised a concern regarding the second floor residence.

Mr. Varas responded that the alarm system is tied in upstairs and downstairs.

Ms. Bevins asked if the Applicant has a liquor license.

Mr. Varas responded that they have a beer and wine license.

Ms. Bevins again asked for full measurements for the entire building on the seating chart.

Mr. Varas agreed to submit a more detailed plan.

**Mr. Yurko Moved to find the application complete and schedule a public hearing for August 27, 2012 providing the Applicant submits a more detailed seating chart prior to August 20, 2012.**

**YURKO/CAPONE 4/0 UNANIMOUS**

Mr. Varas confirmed the date and time of the Hearing and that he would submit the updated seating chart.

**H. CODE ENFORCEMENT OFFICER BUSINESS –**

1. **Correspondence from Newell Perkins, dated July 27, 2012.**

*See discussion noted above.*

**I. OTHER BUSINESS –**

1. **Election of Officers: Chairperson and Vice Chairperson.**

**Mr. Yurko Nominated Mr. Simpson for the position of Chairman. Ms. Bevins seconded the nomination. Mr. Simpson was elected Chairman 3/0 (Mr. Simpson abstained).**

**Mr. Simpson Nominated Mr. Yurko for the position of Vice Chairman. Mr. Capone seconded the nomination. Mr. Yurko was elected Vice Chairman 3/0 (Mr. Yurko abstained).**

2. **Acceptance of Planning Board By-Laws.**

Mr. Yurko asked if there have been any changes to the By-Laws since 2011.

Mr. Simpson confirmed that there have not.

**Mr. Yurko Moved to Reaffirm the Planning Board By-Laws.  
YURKO/BEVINS 4/0 UNANIMOUS**

3. **Acceptance of Planning Board Mission Statement.**

**Mr. Yurko Moved to Reaffirm the Planning Board Mission Statement.  
YURKO/CAPONE 4/0 UNANIMOUS**

**J. ADJOURNMENT -**

**Ms. Bevins Moved to Adjourn at 7:25 p.m.  
BEVINS/YURKO 4/0 UNANIMOUS**

Respectfully Submitted

---

Maryann Stacy  
Town of Ogunquit  
Planning Board  
Recording Secretary

Approved on August 27, 2012