

**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
AUGUST 27, 2012**

PUBLIC HEARINGS

1. PHILIP CAVARETTA / MEADOWMERE – 74 Main Street – Map 5 Block 4.

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application. There was no one and the Public Hearing was closed at 6:02 p.m.

2. CHOWDER'S CAFE – ROBERT H. VARAS – 117 Perkins Cove Road – Map 3 Block 75.

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

Ken Holmes (115 Perkins Cove Road – Map 3 Block 74A) addressed the Board. Mr. Holmes is a direct abutter to the Applicant's restaurant (Chowders).

Mr. Holmes asked if the Chowders' fire alarm system is required to be hooked up to the Central Station at the Fire House.

Mr. Lempicki responded that it is his understanding that it is connected.

Mrs. Varas confirmed that it is.

Mr. Holmes expressed concern over the issue of buffering between Chowders and his home next door. He provided handouts to the Board which illustrate that trash (napkins etc) has blown/migrated from the restaurant over onto his property, in addition there is a problem with outdoor lighting which shines directly into his home at 7x the legal maximum limit.

Mr. Holmes pointed out the large number of trash bags stored along the side of the building directly below his window, and stated that this has led to rats. This violates Sections 6.7A.4 and 6.7A.5 of the Zoning Ordinance.

Mr. Holmes also noted that the Applicant has placed chairs out on the beach behind the restaurant where customers are allowed to consume food and alcohol. He noted that the consumption of alcohol on a beach in Ogunquit is illegal.

In addition he has had problems with excessive noise late at night coming from the apartment over the restaurant. This violates Section 6.7A.6 of the Ordinance.

Mr. Holmes stated that these, and other, problems violate Article 6.7A.1 of the Ogunquit Zoning Ordinance which requires an "orderly and reasonable use of adjacent properties". He asked how he can adequately buffer on the beach when fencing is not allowed on the beach. He noted that there is a potential for problems when customers are allowed to take food and drink out onto the beach for consumption. Mr. Holmes pointed out that there are implications beyond his property, he suggested that other restaurants on the beach will follow Chowders' example of providing

seating on the beach. He suggested the requirement of a railing on the back deck preventing customers from taking food and drink off of the deck and out onto the beach.

Mr. Holmes informed the Board that he called the Department of Environmental Protection (DEP) and he was informed by them that a permit is required for restaurant seating on a beach. He asked if a DEP permit has been obtained in this case.

Mr. Lempicki responded that there is also a business under Mr. Holmes' residence and buffering is not required when two businesses abut. He also noted that he has informed Mr. Varas that the consumption of alcohol on the beach is illegal, and it will cease.

Mrs. Varas informed the Board that signs have been posted indicating that alcohol is not to leave the deck area.

Mr. Holms also pointed out that the ground level deck has been extended and the actual square footage does not match what is indicated on the diagrams provided with the Planning Board Application. He again asked that a railing be placed on the deck to prevent customers from taking food and drink off of the deck and out onto the beach.

Mr. Lempicki responded that in the Resource Protection District fences can only be four feet in height. He also noted that the deck is not high enough off of the ground to require that it be enclosed.

Mr. Holms again expressed his frustration that all of the above noted issues are hindering the reasonable use and enjoyment of his property. He noted that the photographs he distributed to the Board were taken within the last twenty four hours.

Mr. Yurko asked what Mr. Holmes' property is used for.

Mr. Holmes responded that the basement is a retail shop and the first floor is half retail and half residential, everything above that is his family's residence. He also noted that there is almost a zero lot line between these two properties.

Mr. Yurko asked who was there first.

Mr. Holmes responded that legally he was there first. He also pointed out that he was never notified when his neighbor received a liquor license. He noted that according to State Law abutters are supposed to be notified by certified mail when a restaurant applies for a liquor license.

Mr. Holmes asked if it is a violation for people to bring food out onto the beach.

Mr. Lempicki responded that it is a violation and he has spoken to Mr. Varas, and it has ceased.

Mr. Holmes responded that it has not ceased. It was happening as of yesterday.

Mr. Lempicki corrected himself, stating that eating on the beach is allowed but the consumption of alcohol is not allowed. There is no law against eating on the beach. He pointed out that people bring food and eat on the beach all the time.

Robert Varas responded that the bags in Mr. Holmes' photographs do not contain garbage, they are Clink bags that contain recyclable bottles and cans. He was out of town for a few days and the bags accumulated. Normally all bags and trash cans are stored on the other side of the building, they only ended up on Mr. Holmes' side because he (Mr. Varas) was out of town and there was no one to take them away. He also noted that trash is picked up every morning by Oceanside Rubbish.

Ms. Bevins stated that the abutters have had other problems when Mr. and Mrs. Varas are not there, and she asked if these other issues might be resolved.

Mrs. Varas responded that they have adjusted the outside light at least a dozen times and the harassment from the abutters continues. She noted that the light is there to illuminate the stairs leading up to the residence above Chowders and has nothing to do with the issue before the Board.

Mr. Yurko asked if they have someone who comes onto the property to check for pests.

Mr. Varas responded that they do not, and they have never seen any pests.

Mr. Yurko asked if the chairs off of the back deck are for customers waiting for a table.

Mr. Varas responded that this is the case and that he was unaware that it was illegal for customers to consume alcohol out there. He has now posted signs indicating that no alcohol is to leave the deck, it was also noted that they serve very little alcohol and they only serve beer and wine.

Mr. Yurko asked what the hours of operation are.

Mr. Varas responded that they are open 11:00 a.m. to 9:00 p.m.

Mr. Yurko asked if the deck has been extended.

Mr. Varas responded that the ground floor deck was extended many years ago. The deck Mr. Holmes referred to is the deck off of the upstairs apartment and has nothing to do with the restaurant.

Mr. Simpson confirmed that the property where the beach chairs are located is the Applicant's property.

Mrs. Varas confirmed that it is their property and that they also own the Blue Willow which abuts Chowders, and that there is one residence above the Blue Willow shops.

Mr. Capone asked if the beach chairs might be moved down in front of the Blue Willow.

Mrs. Varas asked "what's the point?"

Mr. Simpson responded that moving the chairs would not cause the Applicants a hardship, and it might alleviate some of Mr. Holmes' problems.

Mr. Yurko asked if the Applicant has any intention of serving food at tables out on the beach.

Mrs. Varas responded that they do not, they do not have any waitress service. Customers order and pick up their food inside and take it out to the tables on the patio and deck to eat.

Mr. Lempicki confirmed that there are no outside sales and services in that zone.

Ms. Bevins asked when the bottles are picked up.

Mr. Varas responded that he takes the bottles away every few days, the only reason there were so many bags this time is because he was out of town.

Mr. Simpson suggested that in the future, if Mr. Varas is going to be away, he make arrangements for someone to cover for him.

Ms. Bevins asked if the Applicants and the Abutters can't get together and resolve some of the problems they seem to be having.

Mrs. Varas agreed that they will try.

Mr. Holmes responded that they are still having problems with the Applicants, particularly the light shining into his home. When he asked them to adjust the light or lower it, the Applicants' son added two more lights and began construction projects at 2:00 a.m. He again reiterated that if there is no appropriate barrier on the beach the Applicant should not be allowed to have customers bring food on the beach.

Mr. Lempicki informed the Board that he will take a light meter to the property and get the issue of the light resolved. He also noted that insurance requirements demand that the stairway be lighted.

Mr. Holmes asked why the light can't be turned off at a certain time, or turned on and off when the stairs are in use.

Mr. Simpson asked if there was anyone else who wished to be heard. There was no one and the Public Hearing was closed at 6:38 p.m.

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: Paul Lempicki, Code Enforcement Officer

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – August 13, 2012 Regular Business Meeting.

**Mr. Yurko Moved to Approve the Minutes from the August 13, 2012 Meeting as Amended.
YURKO/BEVINS 4/0 UNANIMOUS**

E. PUBLIC INPUT – None

F. UNFINISHED 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. Simpson noted that at the August 13th meeting it was determined that there was a small issue with setback requirements. Revised plans were subsequently submitted. The Town Planner reviewed the new plans and determined that the problem had been resolved.

Mr. Cavaretta addressed the Board and confirmed that the pool and deck were pulled back in order to meet the twenty foot setback requirements.

Mr. Yurko asked about markings on the plans which seem to indicate planters or fence posts, he noted that one of them appears to extend marginally into the setback.

Mr. Lempicki responded that fences and planters do not have to meet setbacks, so there is no problem.

Mr. Simpson noted that the pool has been shortened to accommodate the setbacks.

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

Mr. Yurko Moved to Approve the Site Plan for 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.

YURKO/CAPONE 4/0 UNANIMOUS

Mr. Yurko Moved to Approve Design Review for 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.

YURKO/BEVINS 4/0 UNANIMOUS

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. Lempicki asked for confirmation from the Applicants and the Abutters that any recommendations he makes will be complied with by all parties.

Both the Applicants and the abutters agreed.

Jason Corbin addressed the Board. Mr. Corbin also lives at 115 Perkins Cove Road. He noted that the Applicants do not live in the Cove, and are not on site during the night and winter when he and his family are having problems with noise and light and other nuisances.

Mr. Lempicki responded that if there are problems with noise they should call the Police and if there are Code violations they should call him. He noted that if the problems continue the Applicant's business license can be revoked.

Mr. Corbin responded that there have been four separate incidents where the police had to be called in the middle of the night. He stated for the record that if the noise and lighting nuisances do not cease, or are not handled by the Town, he (Mr. Corbin) will push to have the Applicant's license revoked. He reminded the Board that the dispute over the light has been going on since April.

Mr. Lempicki responded that he can not use Mr. Corbin's light meter.

Mr. Corbin responded that the Town should invest in a working light meter.

Mr. Yurko reminded everyone that the Public Hearing has been closed.

Mr. Simpson asked Mr. Varas what timeframe the restaurant is open.

Mr. Varas responded that the restaurant is open from mid May to mid October, and when the restaurant is open he is there daily. His son, who lives above the restaurant, is there when he is not.

Mr. Lempicki asked Mr. Varas to confirm that he will impress upon his son that the noise and light problems have to stop.

Mr. Varas confirmed that he would.

Mr. Yurko stated that there are many issues which have come up, some of which do not fall within the Planning Board's jurisdiction. He suggested that these neighbors do not get along and as a result they sometimes act in a manner which is less than helpful. Mr. Yurko expressed understanding for both the abutter and the applicant's positions and he hoped that everyone might dial things back a little and quietly and calmly deal with the situation.

The Board reviewed the Site Plan Checklist.

Mr. Yurko noted that he has questions about several items on the checklist: Specifically items 1, 6, 11, 12, and 15 (*a copy of the checklist will be maintained in the applicant's file for reference*). He noted that this property is, and has been, a commercial property for some time, and that it has also included a residence. He excludes some of the abutters' complaints due to the fact that the residence above the restaurant is not a part of the commercial entity and thus is not included in the change of use.

Mr. Yurko noted that within the dimensions of the property the business has sufficient space to do what it does. The problem is that there are no setbacks and that it sits directly adjacent to its neighbor. If the applicant were to apply today to build this building, and open this business, the Board would have a great deal to say, however the building and the business already exist which somewhat limits the Board's options.

Mr. Yurko noted that many of the problems expressed by the abutters do not seem to relate to the operation of the restaurant but rather appear to be with the apartment above it. However, the complaints that do concern the restaurant appear to be with the seating out on the beach, and Item 15 of the checklist "Anticipates and mitigates potential nuisance created by its location." Mr. Yurko expressed his belief that this is one area where the Applicants can do a better job. The Applicants must realize that they have a business as well as a residence next door to them and act accordingly.

Mr. Yurko reminded everyone that the approval of an application does not mean that the applicant can do whatever he wants. He must comply with all ordinances and there are remedies for inappropriate lights or noise. It was also argued that if there is going to be anything on the beach it must be buffered, which can not be done because there can not be any construction on the beach. Mr. Yurko suggested that the beach seating must be used only for customers waiting for a table and not as a place for the consumption of food. He also asked the parties to meet with the Code Enforcement Officer and attempt to resolve the remaining issues.

Mr. Simpson agreed and suggested that daily trash pickup and the relocating of the chairs and prohibiting of alcohol on the beach be conditions of approval.

Mr. Capone agreed and suggested that signage be posted that no food or beverages may be consumed in the beach chairs and that the chairs be moved further away from the abutters.

Mr. Yurko asked how often the Clink bags are removed.

Mr. Varas responded that he takes the bags away every three or four days, and the garbage is picked up every morning.

Mr. Yurko Moved to Approve the Site Plan for 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 with the following conditions:

- 1. The Applicant agrees that trash will be picked up on a daily basis;**
- 2. The Applicant agrees that the beach chairs will be moved closer to the Blue Willow and that he will post a sign indicating that no alcohol is allowed on the beach;**

3. The Applicant will not store any Clink bags between his building and that of the abutter at 115 Perkins Cove Road.

YURKO/CAPONE 4/0 UNANIMOUS

Mr. Yurko also noted that he anticipates the parties will meet with the Code Enforcement Officer to resolve the other issues not covered by this Hearing.

Mr. Simpson stressed upon Mr. Varas that he must make his son understand the obligations he has to the abutters.

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Lempicki informed the Board that he has met with the owner of the Egg and I who has agreed to relocate, and enclose, his dumpsters. As a result, this matter has been resolved and will not be coming back before the Board.

Mr. Lempicki also noted that due to the weather many dumpsters have begun to smell, however as the temperatures cool this problem should resolve itself.

I. OTHER BUSINESS –

Mr. Simpson noted that there are no new Applications and as a result the meeting scheduled for September 10th will be cancelled and the next regularly scheduled Planning Board Meeting will take place on September 24th.

J. ADJOURNMENT -

Mr. Yurko Moved to Adjourn at 7:21 p.m.

YURKO/ BEVINS 4/0 UNANIMOUS

Respectfully Submitted

Maryann Stacy
Town Of Ogunquit
Planning Board
Recording Secretary

Approved on September 24, 2012.