

**OGUNQUIT PLANNING BOARD
REGULAR BUSINESS MEETING
MARCH 11, 2013**

PUBLIC HEARINGS – 6:00 p.m.

1. JOHN ABBOTT / YOGT -259 Main Street – Map 7 Block 9.

John Abbott noted that he had reformatted the seating plan eliminating some of the seating. They are now proposing a total of eleven seats including interior and exterior seating.

Mr. Simpson asked if there was anyone who wished to be heard regarding this application. There was no one and the Public Hearing was closed.

2. CAYCE HOLDINGS LLC - 422 Main Street – Map 8 Block 24.

Muriel Freedman (81 Grasshopper Lane – Map 8 Block 29-8) addressed the Board with several questions. She began by saying that she is neither for, nor against this proposal.

She asked what happens to the water which will be captured by the proposed storm water management system.

She also asked if the Board will require a review of the stormwater management plan by a licensed hydrological engineer, as requested by the Conservation Commission.

Ms. Freedman noted that she was vicechair of the Planning Board when this property last came before the Board. She stated that it is illegal to park on a State road and back a vehicle out onto that State road.

Regarding the right-of-way (Map 8 Block 29-10), She asked if the right-of-way will have any impact on Maxwell Acres, and if the Applicants have any documentation which supports their right to use it.

Regarding the Cape Cod Burm, she asked for an explanation of how cars can pass over it.

Regarding the abutters list, Ms. Freedman asked why the owners of 8/29-1 and 2 did not receive notification.

Ms. Freedman asked if the buffer of trees at the rear of the property will remain.

Mike Horn, Chairman of the Conservation Commission expressed concern regarding the stormwater management retention plan. He referred to Section 6.6.C.3.S (*Hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer – outside of public water & sewer areas*) which requires a hydrological assessment conducted by a certified professional engineer. While Mr. Horn acknowledged that the submitted plans are complete and appear to be very professional, they do not contain the

seal of a certified professional engineer. Lacking that, the Board can only assume that the proposed plan will protect abutters who have a history of registered complaints regarding runoff from the subject property. He noted that the lot coverage regarding impervious surfaces, not including the structures, appears to be acceptable.

The Conservation Commission suggested pervious surfacing materials be used when the parking areas are resurfaced. Mr. Horn suggested this will help with minimizing runoff.

Mr. Horn expressed confusion regarding where the water containment features will be located on the property. He noted that this property is located very close to the river and there is already concern over the amounts of contaminants flowing off of the road and paved parking areas.

Doug Mayer, of the Conservation Commission, addressed the Board and noted that Section 6.6.C.3.Y states that the Board may waive the stormwater management plan when the proposal does not involve grading or when the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the site. He also recommended the use of pervious surfaces. He cited several local projects which have used pervious material to surface parking areas.

Mr. Simpson asked: if the Applicant agreed to use pervious material to surface the parking and driveways, would that alleviate the Commission's concerns over not having a licensed engineer's review?

Mr. Horn responded that Site Plan Review Standards require a licensed engineer's review.

Mr. Simpson asked if there was anyone else who wished to be heard. There was no one and the Public Hearing was closed.

**3. MIRANDA POLLARD / ~~FISH BOWL~~ MIRANDA'S (fka Gourmet Express)
– 53 Shore Road – Map 7 Block 114.**

Miranda Pollard displayed a revised plan; she also distributed paper copies to the Board. She again noted that it is impossible to see their restaurant from Shore Road and having seating in front of the building is very important to them.

Ms. Pollard also noted historical photographs of the building which show that there had been a picket fence there at one time. She listed other restaurants in town housed in pre-1930 structures which currently have outdoor seating and she confirmed that nothing on the building would be touched.

Sue Pollard noted that Gourmet Express currently has approval for 38 seats; they will be reducing that to 32 seats. She reiterated that their business can not be seen from the street.

Mr. Capone asked if the proposal includes fencing in the area.

Ms. Pollard responded that it does.

Mr. Renaud asked for the hours of operation.

Ms. Pollard responded that they are open from approximately 11:30 a.m. to 9:00 p.m. during the summer. Those hours decrease as the daylight hours shorten.

Ms. Bevins asked if they intend to have waitress service, and if the restaurant currently has bathrooms.

Ms. Pollard responded that they will probably have two servers, and that they currently have bathrooms. She also noted their intention to do away with delivery service.

Ms. Bevins asked about the notation on the plan for “pick up”.

Ms. Pollard responded that currently customers order inside and come pick up the food when it is ready.

Mr. Simpson asked Mr. Feldman how the addition of wait service effects the application.

Mr. Feldman responded that he hasn't seen anything in the ordinance which effects the application because of the addition of wait service. DHHS will have to ensure that bathrooms are adequate for the number of seats.

Mr. Simpson asked if there was anyone in the audience who wished to be heard.

Keith Patterson, represents Frills, LLC, Sawyer House Condominium, Ogira LLC and Chris Caraviello which are all abutters to the north of the subject property.

Mr. Patterson asked that there be no impact on traffic over the right-of-way used for the restaurant area. This right of way was intended for use by a personal individual for personal use as granted in a 1955 deed which states that it is “subject to the right of Cora M. Hanscom her heirs and assigns to pass and repass over a small portion of said premises...”.

Mr. Patterson stated that currently Gourmet Express uses the right-of-way for access to their three table restaurant. Even this current use is an overburdening of the original 1955 easement which was intended for use by an individual in conjunction with residential use. What the Applicant proposes might double or triple the volume of foot traffic. He suggested that this increase will cause congestion and difficulties for all of the businesses trying to use that area, and he asked the Board to consider limiting the use of that portion of the right-of-way.

Mr. Patterson also pointed out that the subject property is within 250 feet of the river which triggers a mandatory review by the Maine Historic Preservation Commission.

Mr. Simpson noted that the proposal would take some of the existing seating and move it around to the front and sides and he asked if the seating along the side of the building would impact the right-of-way in any manner.

Mr. Patterson responded that there is a limited space where there might be tables however if the customers are walking down the right-of-way and entering the restaurant at the rear

of the property it will overburden the right-of-way. He suggested Miranda's utilize the southerly end of the right-of-way for customer flow. Mr. Patterson handed out a written summary of this statement (*a copy of which will be maintained in the applicant's file*).

Ms. Bevins asked about vehicle traffic.

Mr. Patterson responded that currently there is minimal vehicle traffic except for delivery trucks which generally enter to the south and exit to the north end of the right-of-way which is acceptable.

Ms. Bevins suggested Miranda's entrance be moved to the proposed brick area directly off of the Shore Road sidewalk.

Mr. Patterson agreed that this would reduce some foot traffic on the right-of-way however he noted the difficulty of controlling foot traffic.

Ms. Bevins asked if Frills and the other condominium owners own that right-of-way.

Mr. Patterson responded that yes, it is owned by Sawyer House Condominium, when it was granted there was an exception made for Cora Hanscom who owned the Seabell and the Dupont's property. Her daughter inherited the property and also benefited from the exception. The suggestion is that it was entirely personal and for residential use.

Mike Horn noted that if the property is within the 250 foot distance to the Shoreland Area then all of the impervious surfaces need to be counted toward lot coverage.

Muriel Freedman informed the Board that she was on the Planning Board when this original application was heard. She asked if Miranda intended to apply for a liquor license, and if so Ms. Freedman informed her she would have to fence in the whole area. She also noted that the original approval was for seating on the patio area only and she questions the use of 38 seats.

Ms. Pollard responded that they will be seeking a liquor license and they will be fencing in the area.

Debra DuPont addressed the Board on behalf of her parents, Gerald and Joan DuPont, who own properties at 14 Wharf Lane and 45 Shore Road. Ms. Dupont noted that the Duponts have no problems with there being a Type 3 take out restaurant there however during the 2009 review the Pollards stated that they did not intend to allow customers to use the picnic tables on the lawn, they did not intend to add additional tables, nor did they intend to seek a liquor license. The Board then imposed the condition that the Pollards only use the tables on the patio. Gourmet Express hours of operation at that time were 4:00 p.m. to 10:00 p.m. This changed as noted in the Violation of Site Plan Review letter from Mr. Lempicki dated August 17, 2012 wherein they were ordered to post signage indicating that seating be restricted to the patio area only. At that time there were only two or three tables on the patio which begs the question of where the Applicant came up with 32 or 38 seats.

Ms. Dupont also noted that since that time additional tables have been added on the lawn behind Sea Chambers. During the summer these tables are often pushed together for

larger dinner parties, they are decorated and set up for dinner service. Flowers are put on the patio tables as well as the tables on the lawn.

Also, the original application did not anticipate lunch service.

Every year the Applicant's have violated the restrictions imposed upon them by the Planning Board in 2009 and no one appears to be policing this. In 2009 this was a take out restaurant with a couple of tables. One year after promising not to seek a liquor license the Applicants applied for a liquor license (this application was later withdrawn).

Ms. Dupont asked the Board to be mindful of the amount of foot traffic, noise, and trash which is generated. She also noted the increase in "cut through" foot traffic between the Frill's right-of-way and Wharf Lane which leads to the beach. She reiterated that the original approval intended that signage would keep Gourmet Express customers on the patio and curtail the use of the Sea Bell's tables on the lawn. Now the Pollards are setting up those tables on the lawn in anticipation of the dinner crowd.

Ms. Bevins asked if the Pollards are setting up on the Dupont's property.

Ms. Dupont responded that they are not. They are using tables on the Sea Chambers lawn behind the right-of-way.

Gary Latulip, owner of Sea Chambers responded that the tables on the lawn are owned by Sea Bell not Sea Chambers. Sea Chambers leases the Sea Bell Gallery for breakfast service. He stated that the Pollards have been excellent stewards of the property and they provide a nice service for his guests.

Ms. Bevins asked if his guests use the tables in the back.

Mr. Latullip responded that they use the tables on the patio, and he isn't sure if they use the tables on the lawn.

Graham Cookson addressed the Board as a customer/employee of Gourmet Express. He suggested they use someone standing out front to inform the public about the menu. He now does that. He expressed surprise at the statement that the restaurant is less than 250 feet from the water. He asked the Board to confirm this before it imposes a review by the Maine Historic Preservation Commission. He also noted that there is no current wait service at Gourmet Express.

Mr. Cookson noted that there isn't enough room along the side of the building to put a vehicle way in there. The right-of-way is currently used by both Gourmet Express and Frills delivery trucks, and the foot traffic is predominantly Frills customers by about 10:1.

Mr. Simpson read a letter into the record from abutter Keith Carpenter (*a copy of which will be maintained in the Applicant's file*).

Mr. Simpson asked if there was anyone else who wished to be heard. There was no one and the Public Hearing was closed.

Ms. Bevins Moved to Close the Public Hearings at 6:50 p.m.

BEVINS/CAPONE 4/0 UNANIMOUS

REGULAR BUSINESS MEETING

A. ROLL CALL –

The Roll was called with the following results:

Members Present: Don Simpson (Chair)
Craig Capone
Jackie Bevins
Mark Renaud

Members Excused: Rich Yurko (Vice Chair)

Also Present: Lee Jay Feldman, Senior Planner SMRPC
Maryann Stacy, Recording Secretary

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – February 25, 2013

Mr. Renaud Moved to Approve the Minutes of the February 25, 2013 Meeting as Amended.

RENAUD/BEVINS 3/0 (Mr. Capone abstained because he was not present for most the February 25th Meeting)

E. PUBLIC INPUT – None

F. UNFINISHED BUSINESS –

- 1. JOHN ABBOTT / YOGT -259 Main Street – Map 7 Block 9 – Site Plan Review Application for Change of Use for a pre 1930 structure. Application to convert retail space to an ice cream shop.**

Mr. Renaud recused himself due to a conflict of interest (he is a direct abutter to this applicant) and he left the auditorium.

Mr. Simpson informed the Applicant that the two outside benches, which the Applicant proposes, are not included in the count of seating as long as they are not restricted from public use in any way.

Mr. Capone Moved to Approve the Site Plan Review for JOHN ABBOTT / YOGT - 259 Main Street – Map 7 Block 9.

CAPONE/BEVINS 3/0 UNANIMOUS (Mr. Renaud recused himself)

Mr. Renaud rejoined the meeting.

2. CAYCE HOLDINGS LLC - 422 Main Street – Map 8 Block 24 – Site Plan Review and Design Review Application for a post 1930 structure. Application to remodel parking layout, create new driveway, implement stormwater management structures and modify landscaping, and modify existing residential structure.

Mr. Simpson stated that in retrospect the Board probably should not have found this application complete. He noted that, as pointed out by abutters and the Conservation Commission the Applicant is required to provide a Storm Water Management Plan certified by a licensed professional engineer. He asked Mr. Wood if there were any plans to provide that.

Mr. Wood responded that he would like to describe the proposed storm water management system and then see if the Board would be willing to waive this requirement.

Mr. Simpson reviewed a letter which the Board received from abutter Ms. Boulier who owns the right-of-way leading to Maxwell Acres (Map 8 Block 29-10) (*a copy of which will be maintained in the Applicants' file*). Ms. Boulier expressed concern that the Applicants be aware that they do not have permission to utilize the right-of-way.

Mr. Wood reiterated that the applicant's objective is to improve the property and bring the site into conformance.

Regarding the right-of-way, it is currently used as a pedestrian walkway and by the water department. The Applicants do not have any intention of anyone generating traffic from the Cayce property onto the right-of-way. He noted that the deed states that it can be considered to be a right-of-way.

Regarding the drainage from the site. Mr. Wood displayed several site plans and technical drawings. He noted that there is little slope from the north to south axis for the property, in addition much of the water flowing from Route One does flow over the right-of-way. The proposed system will capture the water from Route One and the parking area.

Mr. Wood displayed technical drawings of the Cape Cod Berm to illustrate how vehicles will travel over it. He noted that there is a 4.5 inch rise which will be reduced after the roadway is surfaced. The Applicants will level off the area behind the berm. Water will flow away from the road where it will be redirected by the berm to the south and into a receiving sump where solids will filter out and water will flow into a dry stone-bed below the sidewalk, and finally into a 2nd sump on the other end.

Regarding pervious surfacing, winter road treatment (sand) on the road clogs the porous asphalt. The proposed system is better because it will precipitate out suspended solids and funnel water into a holding area which is surrounded by a bed of wood chips which when they break down create a peat layer which in turn grabs contaminants and fixes them allowing bacteria to break them down.

Mr. Wood also noted that the soils at this site are category 7 which do not hold water; there is no water table here. Water flows directly down through the soil. The proposed

system will not capture then disburse water it will capture and treat before disbursal, which, in the big picture, is healthier.

Regarding the Cape Cod Burm. Vehicles easily travel up and over it.

Mr. Wood confirmed that the trees in the back of the property will remain. However the tree in the front of the property will be removed and replaced with additional plantings at a later time.

Mr. Wood reiterated that regarding the right-of-way, the Applicants do not currently use that property, they are not looking for rights to use the property, and they do not intend to use it.

Another proposal is to include an ADA space as well. The Applicants want to include a one car garage however they do not want to impose something which is visually unattractive, to accomplish this the profile of the garage will be very low.

Mr. Wood noted that this property does have a residential use next to a commercial use. In order to protect the residence's privacy several windows will be removed. They will also create a firewall between the two sides of the building. Architecturally the building will be remodeled with an eye to energy efficiency and to mimic surrounding buildings.

Regarding the landscaping: the applicants want to install a vinyl post and rail fence so that the building will be visible from the street. Rain water generated from the roof of the house, which is not captured in the rain gardens to the south, will be captured in the earth burm and infiltrated into the soils.

Mr. Simpson noted that the new exterior design is very complimentary. He asked for comments from the Conservation Commission regarding the requirement for a storm water management plan.

Mr. Horn responded that while the Commission is very approving of the submitted plan the Site Plan Review Standards require a plan be reviewed by a certified licensed professional engineer. He noted the requirement that the sumps be cleaned out every spring and fall and he asked that the Code Enforcement Officer be notified at every cleaning.

Mr. Capone asked who designed the storm water plan.

Mr. Wood responded that he did.

Mr. Capone asked if the property currently slopes exactly as needed for the proposed work. He also noted the location of the sump at the south eastern corner which is against trees.

Mr. Wood responded that the property does slope exactly as needed, and that there is enough distance between the trees and the sump so that there will not be any damage to the arborvitaes. He also noted that the wood chips are not visible at the surface. They surround the stone bed and act as a filter for the dry bed which is the stone.

Mr. Capone asked how long the wood chips will last.

Mr. Wood responded that once they decay they form a peat which acts to assist in breaking down the contaminants.

Mr. Feldman responded that the State's 500 Impact Development Design Standards call for replacement of that material. Every several years it has to be dug up and replaced with new media.

Mr. Wood asked if Mr. Feldman feels the system would work if the woodchips were not used at all.

Mr. Feldman responded that the wood chips are the most important part of the process however they do need to be replaced every several years. He also noted that he would prefer to have a third party review of the system by a licensed professional engineer.

Mr. Wood asked if this would be something usually required of a residential property.

Mr. Simpson responded that it is.

Mr. Simpson stated that he would like to have a review by a certified engineer.

Ms. Bevins reminded everyone that this property also has a commercial component.

Mr. Wood asked the Board to consider the project in components, and look at the building component first and leave the stormwater plan until later.

The Board members unanimously agreed to request a third party review of the storm water plan.

Mr. Simpson noted that he received material from the Town Manager regarding the DOT plans for the Route One paving and sidewalk installation. He asked Mr. Feldman to review this material.

Mr. Feldman stated that it is his opinion that a full boundary survey will be needed and he recommended that it be done. He noted that the right-of-way is noted on the DOT plans and he took these plans and overlaid them over Mr. Wood's plans and discovered that it appears that if the Applicant is not going to impact the right-of-way there is currently 10 feet of the right-of-way that extends onto property that the applicants are currently using. What is left, for them to access the rear of the property, is approximately ten feet which makes it difficult to access the rear of the site.

Mr. Feldman also noted that the DOT plans indicate that they will not be using a Cape Cod Berm/Curb. They will be using a vertical curb with a 7 inch reveal on it which is not mountable. Furthermore the curbs are proposed to be granite vertical curbs and will include a 5.5 foot sidewalk in front of the property. The new curb line will break at the right-of-way, and again at the midway point through the proposed front parking, and thirdly at the Omelet Factory parking area.

Mr. Feldman agreed that backing out onto Route One is illegal and he would recommend giving up the Route One front parking spaces. He also pointed out that nothing is “grandfathered” when an applicant comes before the Board for Site Plan Review.

It was noted that the application shows 9 parking spaces on the commercial side of the property. The Zoning Ordinance require 11 spaces however the two restaurants which utilize this parking area have opposing hours of operation and can easily share the parking spaces. Mr. Feldman recommended the Board waive the parking standard and allow the Applicants to have 11 spaces: 9 for the commercial and two for residential.

Regarding the impervious pavement, Mr. Feldman noted the State DEP 500 Storm Water Standards has a low impact development series in it and he recommended the Applicants take another look at it.

Mr. Wood responded that Anderson Livingston did prepare a certified plot plan for the Applicants. He asked the Board to allow the Applicants to come back with a site plan and for the Board to consider the architectural piece separate from the Storm Water Plans.

Mr. Simpson asked about the Applicant’s reaction to the Fire Chief’s March 3, 2013 Memo to the Board.

Mr. Wood responded that there are certain percentages of construction which would trigger full sprinklering requirements. This would put a significant financial burden on a preexisting condition and the Applicants want to look into it some more.

Mr. Simpson suggested Mr. Wood speak with the Fire Chief.

Mr. Wood asked what would happen if the applicants withdrew the application and just left things the way they are. Then no one wins. He noted that there is a financial impediment in forcing a sprinkler system upon them. The Applicants did recently install a new Ansell System and a new hood system in the restaurant.

Ms. Bevins stated that everyone is being asked to put in the sprinkler systems if they are doing renovations.

Mr. Simpson again recommended the Applicant speak with the Fire Chief regarding the matter of the sprinkler system.

Mr. Wood asked: if the sprinkler system is required on the residential side of the building if there is a firewall in place?

Mr. Feldman responded that Mr. Wood should call the State Fire Marshall’s Office.

Mr. Wood asked what the next step will be after they meet with the Fire Chief.

Mr. Simpson responded that the board might approve the Design Review for the building renovations however that would be subject to the applicant receiving the Fire Chief’s approval. The issue of parking and storm water management could be tabled without bias.

Mr. Wood conferred with the Applicants. He returned to say that the Fire Alarm System with the annunciators and strobes would be amenable to the Applicants and they would move forward on that accordingly. They will meet with the Fire Chief regarding the sprinkler requirement.

Mr. Capone Moved to approve Design Review for CAYCE HOLDINGS LLC - 422 Main Street – Map 8 Block 24 for the structural remodeling pending approval of the Fire Chief. The issues of stormwater management and parking to be tabled without bias.

CAPONE/BEVINS 4/0 UNANIMOUS

- 3. MIRANDA POLLARD / ~~FISH BOWL~~ MIRANDA'S (fka Gourmet Express) – 53 Shore Road – Map 7 Block 114. Request for Amendment to Site Plan Approval for a pre 1930 structure. Site Plan Application for Change of Use granted on May 11, 2009.**

Mr. Simpson reiterated that this building was built in 1760 and he shares the concerns of the Historic Preservation Commission.

Ms. Pollard responded that originally they did not have any intention of applying for a liquor license, however business is down and they need to do something. Also, in 2009 when she received initial approval there were only two pizza restaurants in town, now there are seven. Regarding the question of trash, trash is kept inside until it is taken off site. The tables out on the lawn have been there for over twenty years.

Ms. Pollard questioned the issue of increased traffic. She noted that she currently has permission for 38 seats and she will be reducing that down to 32 seats so traffic should not increase.

It is also her intention that the proposed plan will improve the appearance of the building, and responding to Mr. Carpenter's concerns she noted that his house is in the GBD1 which is a business district and that is something you just have to deal with when you choose to live in a business district. She also disagreed with Attorney Patterson that her business is within 250 of the water, and she stated that the Fire Department employees eat at her restaurant every day and if there had been any issues she is sure they would have said something by now. Ms. Pollard stressed that she has never had wait service, sometimes her husband will deliver food so that she doesn't have to yell out names.

Mr. Simpson asked Mr. Horn if the 250 foot distance from the water is an issue.

Mr. Horn responded that the distance is measured from the structure to the high water mark and it should be measured.

Regarding delivery service. Both Gourmet Express (Miranda's) and Frills receive delivery from the same providers and there have never been any problems.

Mr. Simpson asked Mr. Feldman if adding wait service is considered a "change of use".

Mr. Feldman responded that Gourmet Express is currently Type 3 restaurant and that will not change by adding wait service, in his opinion it does not constitute a “change of use”.

Mr. Simpson noted that the granting of approval for one application does not prohibit the applicant from coming back to make changes. He again asked the Board members for their opinions of the Historic Preservation Commission’s comments.

Ms. Pollard responded that her proposal will help to preserve the look and feel of Ogunquit. She stressed that her plan will keep with the look of the building.

Ms. Bevins brought up the question of lot coverage.

Mr. Simpson asked if the pavers would be pervious.

Mr. Horn responded that pervious material would be the Commission’s preference

Bob Pollard responded that the area will be brick paved which is somewhat porous and rain water filtration shouldn’t be an issue.

Ms. Bevins stated that she believes there is a problem with the right-of-way and she asked if the applicant might be agreeable to putting the entrance to her business through the front of the proposed fence directly off of the sidewalk on Shore Road.

Ms. Pollard agreed that this is something they would consider. She noted that the distance from the building to the edge of the right-of-way is approximately 12 feet.

Mr. Simpson asked if she intends to put up a fence along the edge of the right-of-way.

Ms. Pollard responded that they will.

Mr. Pollard responded that he measured the distance from the edge of the building to the edge of the pavement on the right-of-way and it is 10.5 feet. There is more than enough room for small tables and a walkway.

Mr. Simpson asked if the applicant would be agreeable to submitting a revised plan showing the walkway, the changes in the table set up, and the fence.

Mr. Pollard asked if the fence has to extend all the way around the entire perimeter of the seating area, or if they can use landscaping techniques (large rocks and vegetative plantings) to delineate the seating area.

Mr. Simpson asked Mr. Feldman if a picket fence will satisfy the Ordinance regarding safety for the patrons.

Mr. Feldman responded that obviously a picket fence will not stop a car from driving over the sidewalk and into the tables. However a picket fence would clearly delineate that there is a separation there.

Mr. Simpson agreed that it appears as if it would be OK.

Mr. Pollard noted that Black Sushi on Route One uses moveable barriers.

Mr. Simpson again asked the Board members if they have any issue with the Historic Preservation Commission's recommendations.

Mr. Renaud responded that he does have some concerns however the proposed plan is very attractive and he likes it.

Ms. Bevins asked about the vehicle traffic using the right-of-way.

Ms. Pollard responded that there is no problem with delivery trucks, most vehicle traffic uses the south side of the right-of-way.

Mr. Capone asked if there is any question regarding the edge of the right-of-way, he asked if there isn't a survey.

Mr. Feldman responded that he was going to suggest a survey, he also asked for a deed. He noted that there was an agreement between two people and he asked if it had been extinguished.

Mr. Patterson responded that the easement is only available to the extent of the easement, how much it can be used is dictated by what is granted and this appears to have been granted to an individual for her personal and residential use, and it is passed down for personal and residential use, not 3, 6, or 9 tables.

Mr. Simpson asked Mr. Patterson: if the applicant can demonstrate they have the space and that?

Mr. Patterson responded that it would alleviate his concerns. His concern is that when there were a few tables out back some customers walked down the right-of-way, now if it is tripled or quadrupled in size there will be a lot more volume using that right-of-way. He acknowledged that the Frills foot traffic may be 10:1 but that isn't relevant, the relevant volume is non-Frills foot traffic.

Mr. Feldman asked; if the applicant can demonstrate that her customers will walk down the side of her property and not within the easement will it not be an issue?

Mr. Patterson responded that it will not be. He assumes they will use the Shore Road entrance or the southerly entrance.

Mike, owner of Frills asked why she can't put her tables on the other side of the building and use her own side of the street.

Ms. Pollard responded that this isn't really an option, there are parking spaces on the south side of the building which are used by other businesses and a residence.

Mr. Simpson instructed the Applicant that she should submit a revised plan illustrating the new seating / entrance plan, she should also submit a survey which documents that they have enough room to do what they want to do.

Mr. Simpson again asked for the Board members input regarding the Historic Preservation Commission's concerns.

The Board members agreed that they have no problem with the proposed plan for tables in front of the building.

Mr. Renaud noted that they have not clarified the question of the distance to the water.

Mr. Patterson responded that the question is whether it is 250 feet from the property or 250 feet from the improvement. He agreed that while it is clearly within 250 feet of the property line, it may not be within 250 feet of the building.

Mr. Mayer, Conservation Commission confirmed that the Ordinance calls for the determination of the horizontal distance from the upland boundary of the wetland to the corner of the structure.

Ms. Bevins Moved to Table the Application for MIRANDA POLLARD / ~~FISH BOWL~~ MIRANDA'S (fka Gourmet Express) – 53 Shore Road – Map 7 Block 114.

G. NEW BUSINESS –

Mr. Simpson confirmed the date for the Site Visit to American Pride Subdivision on Bourne Lane. This Site Visit will take place on Saturday March 23rd at 1:00. He noted that the public is welcome to attend however this is not a Public Hearing and the public may not be given the opportunity to be heard.

H. CODE ENFORCEMENT OFFICER BUSINESS –

I. OTHER BUSINESS –

J. ADJOURNMENT -

**Ms. Bevins Moved to Adjourn at 8:20 p.m.
BEVINS/CAPONE 4/0 UNANIMOUS.**

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on March 25 2013