OGUNQUIT PLANNING BOARD
PUBLIC HEARINGS and REGULAR BUSINESS MEETING
APRIL 22, 2013

PUBLIC HEARINGS

1. HARRY WINSTON REALTY / ANDREW MIGLIORINI – 237 Main Street – Map 7 Block 126.

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 6:05 p.m.

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

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

Dave Barton, representing the Ogunquit Historic Preservation Commission (OHPC), addressed the Board. Mr. Baron reiterated and stressed the depths of the Commission's objections and concerns regarding this application. He reminded everyone that the Commission was charged by the voters to protect what they consider precious. The Commission has considered the proposed project and has determined that this application involves substantial change with the structural addition of pavers, fencing, lighting, and the placement of dining furniture at the front of this historic dwelling. The Commission feels that this is not in keeping with the intent of the Historic Preservation Ordinance. He noted the creeping nature of the changes which started in the back of the building, and that the Commission considers this to be a very special property. The Commission would like to see this property kept with a clean silhouette, and the taking out of the front lawn and the introduction of umbrella tables and chairs there is inappropriate.

On behalf of the Ogunquit Historic Preservation Commission, Mr. Barton asked the Board to protect these types of historic properties and deny this application.

Mr. Yurko noted that the property on the opposite side of the right-of-way appears to have done everything that this applicant is now asking to do. Mr. Yurko asked Mr. Barton if it was agreeable for them to do it, why not this applicant?

Mr. Barton responded that no one asked the Commission for input regarding the first property. If they had been asked they would have given the same response they are giving now. He noted that this is a perfect example of the type of "creeping" the Commission is concerned about. At some point the Board has to put a stop to it.

Keith Patterson, attorney for abutter Frills and the other owners of the Sawyer House Condominium addressed the Board. He asked the Board to respond to his concerns as expressed in his letter to the Board dated April 12, 2013. Attorney Patterson noted that the Sewer District has categorized this application as a change of use from take out/delivery to seated service with alcohol. He reminded the Board that this change of use

is a result of creep of representation from the applicants and he suggested that the Board owes it to the process and the abutters to also recognize that this application now represents a significant change of use.

Attorney Patterson asked the Board to prepare a detailed plan of exactly what will be approved. He pointed out that there have been several plans submitted and modified during the course of this application and it is no longer clear what is being asked for. Furthermore he suggested that this application should go back and start over. He also suggested that it requires review by the Maine Historic Preservation Commission under 6.6.C.3.W. He noted that this standard is a requirement which may be waived but it is up to the applicant to request a waiver. Mr. Patterson pointed out that under Section 11 of the Zoning Ordinance this application should also include a Design Review.

Attorney Patterson suggested that the Applicant may object however the Applicant has created her own hardship; furthermore, it is his belief that this application should have had a full review all along and there is no question it requires one now. Regarding the pavers, he asserted that they must be pervious and that there must be no draining onto the Sawyer House property. He went on to point out that the final rendering, as submitted by the applicants, is unclear as to the location of the hostess booth and whether or not there will be more than one exit which may have an effect on the Sawyer House property.

Regarding the right-of-way which Frills asserts is extended to personal use of residency only, Attorney Patterson reminded the Board that it is incumbent upon the Applicant to show the extent of any use of that right-of-way. This is something she has failed to do. He noted that the Board must consider whether or not a nuisance or trespass will be created. He asked the Board to find specific facts for the criteria of Section 6.7 numbers 1 through 16, particularly number 15 that any potential nuisance (trespass) has been anticipated and mitigated.

Mr. Simpson noted that, when this application was first presented he had expressed his grave concerns regarding the historic nature of this building and he still agrees with Mr. Barton and the Historic Preservation Commission. He reminded everyone that when Title XI was passed it was specifically designed to “provide a legal framework within which the residents of the Town of Ogunquit can protect the historic architectural and cultural heritage of historically significant sites, landmarks, and structures in the community while accepting as appropriate compatible new construction”. Mr. Simpson added that, in conjunction with the creation of the Historic Ordinance, was the creation of the Historic Preservation Commission which is an advisory body and does not have the authority to approve or deny applications. That authority falls to the Planning Board and as such he, Mr. Simpson, views the Planning Board as the stewards of Title XI and these historic properties.

Mr. Simpson acknowledged that the Applicants have put a great deal of work into this application however his (Mr. Simpson’s) concern is that this structure was built in the 1700’s and the applicants’ proposal will significantly change the visual impact of the front of the building.

Mr. Simpson reviewed the ages of the structures in the immediate area of the subject property and he asserted that the structure at 53 Shore Road is the oldest building (c. 1760) in that area. Mr. Simpson reiterated that Ogunquit is a very unique town and the

voters clearly wanted to preserve the integrity of the historic buildings and it behooves the Planning Board to recognize what the voters have asked for when they approved the Historic Ordinance. He asked the Board members to consider whether or not this proposal changes the historical nature of this property. He argued that it does.

Mr. Simpson asked if there was anyone else who wished to be heard regarding this application. There was no one and the Public Hearing was closed at 6:18 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) Craig Capone Mark Renaud
Members Excused:	Jackie Bevins
Also Present:	Lee Jay Feldman, Senior Planner SMRPC Maryann Stacy, Recording Secretary

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT - Mr. Simpson read the Mission Statement.

D. MINUTES –

April 8, 2013

Mr. Yurko Moved to Accept the Minutes of the April 8, 2013 Meeting as Submitted.
YURKO/RENAUD 3/0 (Mr. Capone was excused from that meeting)

April 15, 2013 Miranda's Site Visit

Mr. Yurko Moved to Approve the Minutes of the April 15, 2013 Site Visit as Amended.
YURKO/RENAUD 3/0 ((Mr. Capone was excused from that meeting)

E. PUBLIC INPUT – None

F. UNFINISHED BUSINESS –

1. HARRY WINSTON REALTY / ANDREW MIGLIORINI – 237 Main Street – Map 7 Block 126 – Site Plan Review for a Change of Use for a pre 1930

structure. Change of use from nightclub to retail space with no exterior changes to the structure.

Mr. Simpson noted that a Public Hearing had been held and there were no comments.

Mr. Yurko confirmed that the proposed change of use will have no effect on the downtown business district and that there will be no changes to the exterior of the property.

Mr. Yurko Moved to Approve the Application for HARRY WINSTON REALTY / ANDREW MIGLIORINI – 237 Main Street – Map 7 Block 126.
YURKO/CAPONE 4/0 UNANIMOUS

2. 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. Yurko asked if the Applicant had any comments regarding anything which was said during the Public Hearing.

Sue and Miranda Pollard responded that they had nothing new to add to what has already been said over the past few weeks.

Mr. Yurko stated that the submittal of an amendment to a previously approved Site Plan is the action the Applicant was advised to take. At the time there was no Code Enforcement Officer to advise her and he does not take anything negative from that.

Also, to the extent that there needs to be a number of proceedings for a Site Plan / Change of Use, Mr. Yurko said this application has had a lot of proceedings, and he takes no negative inference from any of that either. He also pointed out that outside dining is a permitted use in the Downtown Business District and it is no surprise that the applicants would want to put seating in that area, however he is also concerned about the historic nature of the property particularly the type of fencing. He is also concerned about the activity level of the right-of-way in what is already a highly congested area.

Mr. Yurko expressed his desire that people on both sides of the issue show proper respect and consideration for each other. Finally, Mr. Yurko noted his concern regarding the Historic Preservation Commission's very forceful feelings regarding, what they refer to as, "creep" and he conceded their concern had merit.

Mr. Simpson noted for the record that the Planning Board has no jurisdiction over the Applicant's pending Liquor License Application. Liquor Licensing is the purview of the Select Board.

Mr. Renaud noted that prior to the site visit the Applicant was asked if there had been any changes to the property after the creation of the submitted survey and the response had been "no". However at the Site Visit it appeared as if there had been an expansion of the patio. He would have liked the Applicant to have been more forthcoming.

Mr. Yurko and Mr. Simpson agreed that they noted this as well.

Miranda Pollard responded that the extra bricks in front of the door, the previous area that is not on the original survey was done is a gravel area which was tracked into the restaurant or people tripped on the rocks.

Mr. Renaud also expressed his confusion as to exactly what the Applicant wants to do with the tables. He noted that the Board has multiple versions of the plan in front of them and he is unsure which version is the final version.

Sue Pollard responded that the last version was submitted when the Board asked where the tables were going to be placed.

Mr. Renaud noted that this plan has six tables in front and previous versions did not.

Sue Pollard asked if the number of tables matters if they use the same amount of chairs.

Mr. Simpson responded that it does. If there is an approval it will be very specific.

Sue Pollard responded that they will have thirty-two (32) seats.

Mr. Capone noted that he was not at the Site Visit however he pointed out that there is a tree that does not show on the plan, he also expressed confusion regarding the proposed fencing and whether it will be vinyl or wood.

Sue Pollard responded that they will use whatever the Board wants however vinyl is more easily maintained and there are other buildings in town which are older than hers which have vinyl.

Mr. Capone asked about the air conditioner and noted that it is not on the plan. He had noted that he was not at the site visit and he asked if there is sufficient room to walk and have tables in that area.

Miranda Pollard responded that she assumed that this was the intention of the site walk, to be there and see that this area looks smaller on the map, and when you are there you can see that there is room to walk.

Mr. Simpson noted that the Board members did look at that and it appeared as if there was enough room to walk around the air conditioner.

Bob Pollard responded that there is at least four feet between the air conditioner and the fence.

Mr. Yurko asked if anyone was going to make a motion.

Mr. Simpson noted that any motion has nothing personal to do with the applicants or the hard work they have put into this project.

Mr. Simpson Moved to Deny the Application based upon the Historic Preservation Commission's recommendations that this project would have a negative impact on a historical property.

Mr. Yurko seconded for discussion purposes.

Mr. Yurko agreed that the Applicant has done a great deal of work, however he noted that it is undeniable that putting chairs and tables and umbrellas, even if it is enclosed by a wooden picket fence, will change the visual look and feel in that area. It will diminish the Sea Bell which is something the Board is charged to protect. He did admit to being troubled because outdoor dining is allowed in that District and the Ordinance does not qualify that outdoor dining is allowed only for new buildings. He agreed that there are other older buildings in the area that have outdoor dining.

Mr. Renaud agreed with Mr. Yurko's concerns however he is bothered by the recent addition of the umbrellas. He did not feel that the addition of a wooden fence would harm the look of the property.

Mr. Capone agreed that the use of umbrellas would have a negative impact on the property. He also agreed that any fencing should be wood.

Mr. Renaud added that he is bothered by the number of tables in the front yard and the fact that it is a different plan than was originally submitted.

Mr. Simpson restated his Motion:

Mr. Simpson Moved to Deny the Application based upon the Historic Preservation Commission's recommendations that this project would have a negative impact on a historical property.
SIMPSON/YURKO 4/0 UNANIMOUS

Mr. Simpson informed the Applicants that they have the option to appeal the Board's decision.

Miranda Pollard responded by asking if the vote the Board took at the second meeting, regarding the "historicalness" of the building "goes out the window".

Mr. Simpson responded that the Board took no such vote, it was just a discussion.

Miranda Pollard reiterated that at the second meeting the Board voted that the "historicalness" aspect of the application was no longer a concern and that they would be moving on past that point.

Sue Pollard stated that it was a 4:0 vote. She expressed confusion that discussions with the Board did not reflect tonight's decision, and she stated the Mr. Simpson told her that "Miranda would not have a problem".

Mr. Simpson emphatically denied ever saying this. He reiterated that at the first meeting he made it very clear that he had concerns regarding the historical nature of this building.

Sue Pollard stated that this was true but then there was a 4:0 vote that the "historical part went away".

Mr. Simpson disagreed. He informed Ms. Pollard that the vote was to find the application complete and it had nothing to do with anything else. There was never any vote to approve or disapprove the application. He also noted that minutes of meetings are a matter of public record and she could review them.

Sue Pollard noted that another building on Shore Road that was built ten years before her's had brick pavings put in two years ago, she asked if that is OK.

Mr. Simpson noted that he can't respond to things that were done by past Boards.

Mr. Feldman confirmed that appeals from the Planning Board Decisions are taken to the Superior court. He asked for a five minute recess to confer privately with the Chairman.

(Five minute recess).

3. BUILDERS OF OGUNQUIT / JOHN MIXON – 5 Bourne Lane – Map 5 Block 35-A – Revised Subdivision Sketch Plan - Application to develop a seven (7) unit condominium/subdivision.

Rick Licht addressed the Board as the representative for Builders of Ogunquit. Mr. Licht summarized that the original plan included eight units. The revised plan is the result of input from the Public Hearing and the Town's attorney. The Applicant now agrees with the Town's definition of the Article 2 Definition of Net Residential Area as a lot that is part of a subdivision. They have subsequently re-looked at the net residential density calculations together with the Article 2 definition as oppose to the Subdivision 9.6 definition and they deducted from the 2.59 acres, the existing twenty-five foot right-of-way to the Playhouse, the internal streets and driveways of 16 feet and 22 foot two-way, storm drainage areas with a resulting net residential acreage of 89,900 square feet divided into the total gross area leaves them with a net residential density of 7.2 units. They are calling it seven (7) units based on 12,500 square feet per unit.

There are a few other minor differences: Mr. Lockman had previously stated that a sixteen foot loop road would be sufficient for one-way traffic. They are now proposing a sixteen foot loop access drive. In addition they proposed widening the access point off of Bourne Road to twenty-two feet up to the junction with the sixteen foot loop road. Thus they will have a twenty-two foot two-way road turning into a sixteen foot one-way loop road. They have confirmed the turning radius at key points with the Ogunquit Fire Department's Truck #30.

Mr. Yurko asked how wide the internal loop was on the old plan and what it is now.

Mr. Licht responded that it was originally proposed to be eighteen (18) feet and the current proposal is for sixteen (16) feet. A reduction of two (2) feet.

Another modification of the plan includes the existing summer porch which is currently part of the existing house. Mr. Mixon now proposes retaining the summer porch which will be used as a community building for residents.

Mr. Yurko asked if the Applicant is ready for a site visit.

Mr. Licht responded that they are ready any time.

The Board scheduled a Site Visit for May 6, 2013 at 5:00 p.m. and the Applicant agreed

Mr. Yurko pointed out that the public is welcome to attend however conversation is restricted between the Board and the Applicant.

Mr. Simpson noted that for the formal application the Applicant needs to submit a topographical survey.

Mr. Licht confirmed that they would have that.

Mr. Yurko confirmed that the applicant will come back before the Board for approval of the Sketch Plan on May 13, 2013

Mr. Feldman asked Mr. Licht if they have had anyone from environmental out to look for vernal pools or wetlands, and if the Applicant is convinced that his net residential calculations will be good pending possible wetlands and/or vernal pools etc.

Mr. Licht responded that the DEP was on site some time ago. There is a small wetland area and the ravine that leads to the river.

Regarding the net residential density, they have taken into account everything they can think of and erred on the side of caution.

Mr. Mixon confirmed that he has marked the corners of the buildings and he measured everything.

Mr. Simpson asked if there is a written report from the DEP.

Mr. Mixon responded that the DEP came out at the request of George Wilson (Realtor) on behalf of Mr. Russell and George was only provided with a letter. Mr. Mixon agreed to submit a copy to the Land Use Office.

Mr. Capone asked the Applicant to more clearly delineate the property boundaries and road ways on the drawing, which Mr. Licht did.

Mr. Mixon informed the Board that he has begun conversations with Peter Lewis from the Playhouse regarding combining access to ensure that everyone has access for emergency vehicles etc.

Mr. Feldman asked if the Applicant will bring a boundary plan to the Site Visit.

Mr. Licht agreed.

Mr. Feldman noted that Mr. Licht made reference to conversations between the Applicant's attorney and the Town attorney regarding the Net Residential Calculations. He asked if there have been any such conversations regarding the issue of access.

Mr. Mixon responded that there was a letter from the Town Attorney to the Board about the issues of whether this was a lot of record in need of frontage, if the right-of-way could be used for access, and the net residential calculations. These issues have been discussed between the Town Attorney and Mr. Mixon's attorney (John Bannon).

Mr. Feldman expressed concern as to whether or not the "driveway" from Bourne Lane to the loop road is considered a driveway or a local street.

Mr. Mixon responded that this issue has been discussed for years. He referred to the Glenn Avenue property and he reminded everyone that at the last election the driveway standards were voted out.

Mr. Licht expressed his belief that these are both "streets".

Mr. Mixon noted that it doesn't meet the definition of "driveway" because it serves four properties.

G. <u>NEW BUSINESS</u> – None

H. <u>CODE ENFORCEMENT OFFICER BUSINESS</u> – None

I. <u>OTHER BUSINESS</u> –

Revisions to Amendments to Sections 6.6 and 8.13 of the Ogunquit Zoning Ordinance.

Mr. Simpson noted that there are no substantive changes to what was submitted to the Select Board. There were however several "housekeeping" changes. Other than those small changes it is the same document which was submitted to the Select Board with some reformatting of the paragraphs. However the Planning Board still needs to vote to submit the revised document to the Select Board.

Mr. Yurko summarized that the proposal is a change to the Traffic Ordinance. With the current Traffic Ordinance, as it exists now, the Board can not approve any proposed building in Ogunquit. With the proposed change the Board can consider approving new construction.

Mr. Yurko Moved to Approve the edited version from Attorney Pat Scully and to send it to the Select Board with recommendation that it be included in the June Warrant.
YURKO/CAPONE 4/0 UNANIMOUS

Mr. Yurko noted that when the Planning Board approves an application there is no follow-up. The Board does not then go out and review what they approved. He suggested that in the future the Board might select projects and review them post construction and consider whether or not the Board's decisions were sound.

J. <u>ADJOURNMENT</u> -

Mr. Yurko Moved to Adjourn at 7:10 p.m.
YURKO/RENAUD 4/0 UNANIMOUS

Respectfully Submitted

Maryann L Stacy

Maryann Stacy
Town of Ogunquit
Recording Secretary

Approved as Amended on May 13, 2013