

OGUNQUIT PLANNING BOARD

PUBLIC HEARINGS and REGULAR BUSINESS MEETING JULY 8, 2013

PUBLIC HEARINGS

1. **Anthony & Lindee Payeur / A&L Flavors, Inc. – 731 Main Street – Map 12 Block 10-A.**

Mr. Simpson asked if there was anyone in the audience who wished to speak for, or against, this application. There was not and the Public Hearing was closed at 6:02 p.m.

2. **Tommy Ta / Frozo Cup – 20 Shore Road Unit 1A – Map 12 Block 10-A.**

Mr. Simpson asked if there was anyone in the audience who wished to speak for, or against, this application. There was not and the Public Hearing was closed at 6:04 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)
Mark Renaud
Jackie Bevins

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer
Lee Jay Feldman, Town Planner (SMRPC)
Maryann Stacy, Recording Secretary

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – June 24, 2013

Mr. Renaud Moved to Accept the Minutes of the June 24, 2013 Meeting as Submitted.

RENAUD/BEVINS 3:0 UNANIMOUS (Mr. Yurko Abstained due to his excused absence from the June 24, 2013 Meeting)

E. PUBLIC INPUT – None

F. UNFINISHED BUSINESS –

- 1. Anthony & Lindee Payeur / A&L Flavors, Inc. – 731 Main Street – Map 12 Block 10-A – Site Plan Review for Change of Use for a post 1930 structure, from retail space to ice cream shop (Restaurant Type 3).**

Mr. Yurko asked which unit this business will occupy.

Mr. Payeur responded that they will be in the unit where Liquid Dreams had been. The end unit closest to Route One.

Mr. Yurko Moved to Approve the Application for Anthony & Lindee Payeur / A&L Flavors, Inc. – 731 Main Street – Map 12 Block 10-A – Site Plan Review for Change of Use for a post 1930 structure, from retail space to ice cream shop (Restaurant Type 3).

YURKO/BEVINS 4:0 UNANIMOUS

- 2. Tommy Ta / Frozo Cup – 20 Shore Road Unit 1A – Map 12 Block 10-A - Site Plan Review for Change of Use for a pre 1930 structure, from retail space to frozen yogurt shop (Restaurant Type 3)**

Mr. Yurko asked where this business will be located.

Mr. Simpson responded that it will be in the unit that once held the sunglasses shop.

Mr. Heyland asked the applicant to confirm that this business will not be a franchise/chain restaurant.

The applicant's representative (Megan Kerry) confirmed that it is not.

Mr. Yurko Moved to Approve the Application for Tommy Ta / Frozo Cup – 20 Shore Road Unit 1A – Map 12 Block 10-A - Site Plan Review for Change of Use for a pre 1930 structure, from retail space to frozen yogurt shop (Restaurant Type 3)

YURKO/RENAUD 4:0 UNANIMOUS

G. NEW BUSINESS –

- 1. Judith Dennis / Bandito's Mexican Grill – 68 Shore Road – Map 6 Block 69 – Site Plan Review for a post 1930 structure. Application to landscape and flatten 7'x20' front yard area for outside dining with three (3) tables and nine (9) seats, for a Type 3 Restaurant.**

Mr. Simpson reviewed some issues which have come up over the last few years:

Mr. Simpson read from the Planning Board Minutes of July 6, 2005:
“RICHARD DENNIS – (The Little Inn) – 68 Shore Road (6/69) – Change of Use from Retail Space to Type 1 Restaurant.

A Motion was made and seconded to approve the change of use for Richard Dennis for a Type 1 restaurant at The Little Inn subject to the following:

- a) *There be no preparation of grease laden food without the installation of an NFPA 96 hood system; and*
- b) *There is a maximum seating capacity of twelve (12) patrons due to the lack of restroom facilities”.*

Mr. Simpson read from the Planning Board Meeting Minutes of November 8, 2010 –: *“JUDY DENNIS / BANDITO’S MEXICAN FOOD – 68 Shore Road – Map 6 Lot 69. Site Plan Review and Design Review for a pre 1930 structure. Application for change of use from residential space to commercial restaurant space. Request to relocate one (1) window and install one (1) new door. Parking Waiver Request for five (5) parking spaces.”*

“Ms. Dennis addressed the Board and informed the members that she is asking to convert the two existing apartments on the first floor and make them into additional kitchen and dining room space for her restaurant.”

“Mr. Yurko also noted that Ms. Dennis has several Adirondack chairs outside her restaurant. He reminded her that while outdoor seating is allowed in the Limited Business District, outdoor dining is not. He suggested that there may be questions raised at the Public Hearing about her use of these outdoor chairs and tables.”

“Mr. Yurko also asked if the Applicant had received a copy of the Fire Chief’s October 28, 2010 Memo, and if she agreed to comply with Chief Smith’s list of requirements.”

Mr. Simpson reviewed a letter, dated October 28, 2010, to the Applicant from the Ogunquit Fire Chief. He asked if all of the items outlined in that letter had been corrected.

Ms. Dennis confirmed that all of the items in that letter have been complied with.

Mr. Simpson noted that a Public Hearing had been held on November 22, 2010. He reviewed the Findings of Fact for that application and he cited the deciding motion as *“Mr. Hokans Moved to Approve the Application of JUDY DENNIS / BANDITO’S MEXICAN FOOD – 68 Shore Road – Map 6 Lot 69. Site Plan Review for a pre 1930 structure. Application for change of use from residential space to commercial restaurant space, per submitted plans, with the following conditions of approval:*

1. *There shall be no outside service of food or sales;*
2. *Applicant agrees to comply with all conditions as set by the Ogunquit Fire Chief in his October 28, 2010 memo to the Planning Board;*
3. *Applicant agrees to comply with all standards contained in section 3.2.F of the Ogunquit Zoning Ordinance;*
4. *There shall be no more than the current five (5) outside tables for informal use by patrons of this establishment.*

HOKANS/TITMAN 4/0 UNANIMOUS”

Mr. Simpson asked if the Applicant was in compliance with condition number 1.

Ms. Dennis admitted that at one time she was not complying with that condition however as of this meeting she is complying.

Mr. Simpson asked her to confirm that there is currently no outside sale or service of food.

Ms. Dennis responded that there is outside service of food because the voters changed her property to a business district.

Mr. Simpson agreed that the district boundry line has been moved and the Applicants' property, which was originally in the Limited Business District (LBD), is now in the General Business District 1(GBD1), however he pointed out that the applicant did not come before the Board to have the conditions of use changed. He asked her how long she has been serving outside.

Ms. Dennis responded – since the vote passed on June 11th. She was not aware that she had to come back before the Board. She is before the Board now because she wants to install a patio in the front yard.

Mr. Simpson asked if she has put tables and chairs out front yet.

Ms. Dennis responded that she has not put any tables and chairs out front, nor has she served anyone out there.

Mr. Simpson again pointed out that the Applicant has tables and chairs on the side of the building where she is currently selling and serving food, in violation of the previous Planning Board Decision.

Ms. Dennis responded that given the outcome of the town meeting and the moving of the district line, she thought it was ok to serve out there, she was unaware that she had to come back before the Board for permission to serve at the tables on the side of the building.

Mr. Simpson reviewed a letter which was sent to the Applicant on August 24, 2012 from the Ogunquit Code Officer:

“This Office has received a complaint that Bandito’s Restaurant is serving food to customers who are seated outside at tables and lawn chairs. I have been further advised that this has been going on for some time on a daily basis. Town employees at the Fire Station have also observed, and confirmed this activity.

Please be advised that because Bandito’s is located in the Limited Business District (LBD) it does not have the right to serve customers outside. You were verbally informed of this restriction when you came before the Planning Board for your Change of Use/Site Plan Review. Should this violation continue I shall be forced to ask the Town Manager to take legal action against you.”

Mr. Simpson asked what happened after she received this letter.

Ms. Dennis responded that she stopped.

Mr. Simpson asked Mr. Heyland to outline the process which Ms. Dennis should have followed after the June 2013 Town Meeting so that she could legally serve food outdoors.

Mr. Heyland responded that the zone change doesn't mean she has automatic permission to serve at outside tables. Even though outside service is allowed in GBD1, outdoor seating and serving of food still has to come before the Planning Board for approval. Because of the zone change she is now allowed to ask the Board for that approval to have outdoor dining/service whereas before, in the LBD, she didn't have the ability to even ask for it.

Ms. Dennis again responded that she didn't know this.

Mr. Heyland suggested that the diagram submitted by the applicant may not illustrate the total number of seating.

Ms. Dennis responded that the newly submitted diagram shows more seating than they currently have. Right now they have a total of five tables outside with 29 seats outside, and 28 seats inside for a total of 45 seats.

Mr. Yurko responded that 29 and 28 equals 57 not 45. He asked Ms. Dennis to confirm the total number of seats she has now.

Ms. Dennis responded that she has 45 seats now, 28 inside and 17 outside.

Mr. Yurko asked for confirmation of exactly what the applicant is asking for.

Ms. Dennis responded that they are asking for three additional tables out front.

Kevin Dennis distributed a revised site plan which replaces the diagram which was included in the original application packet.

Mr. Yurko noted that what the applicant says she has now is not what the Planning Board approved.

Ms. Dennis responded that they told her "at the meeting that the outside tables were not anything because she couldn't serve people out there, so she didn't have to put down the tables".

Mr. Yurko noted that the Board approved five tables for informal seating only.

Ms. Dennis responded that the five tables were for people bringing their food out to eat but they didn't have to be registered or approved or anything.

Mr. Simpson asked how many tables she currently has to the right side of the building.

Ms. Dennis responded that she has five but she wants six.

Mr. Simpson noted that the submitted plan shows five plus the fire pit. He thought there was six plus the fire pit.

Ms. Bevins asked how many seats there are.

Mr. Dennis responded that there are three small tables with two or three seats each and there are three large tables with four to six seats, and seats around the fire pit which don't count.

Mr. Simpson asked if they are serving people around the fire pit.

Ms. Dennis responded that they are however they were told by the "liquor license man" that these aren't considered to be tables.

Mr. Simpson asked; if customers are being served at the fire pit is it considered to be a table?

Mr. Yurko responded that it may not be a "table" however it may be closer to a bar or counter where customers are served.

Mr. Heyland added that the threshold is whether or not a waitperson takes an order and serves beverages or food to a customer seated at the fire pit. If so, then it becomes outdoor seating and is included in the seating count.

Mr. Feldman noted that Ogunquit has its own Zoning Ordinances which may be different from the State liquor license process. He suggested the Board needs to get a clear handle on the exact number of seats. He noted that there are implications for bathroom requirements which are triggered by the number of seats and he referred to his memo to the Board dated 8 July 2013. He suggested the Applicants meet with the Code Enforcement Officer and develop a clear plan for the number and layout of the tables and chairs both inside and outside.

Mr. Simpson agreed.

Mr. Yurko stressed to the applicant that when the Board approves a plan that plan will have a number of tables and a number of seats and that is what the applicants will have to comply with and they can not add more seats to accommodate a large dinner party. This is to safeguard the neighbors and so the Town will know how many people will be there.

Ms. Bevins asked if the Adirondack chairs count as seating.

Mr. Dennis responded that they intend to remove the Adirondack chairs.

Ms. Dennis asked what she has to do to be able to serve food outside right now.

Mr. Simpson suggested they table the application and that the applicant should come back with a modified application clearly showing the seating layout including the exact number of tables and chairs. He suggested she meet with the Code Officer to work this out.

Ms. Dennis responded that she thought she had already done that.

Mr. Heyland responded that he has two plans which are both unclear as to the number of seats etc. He informed the applicant that this is important because when a restaurant gets over a certain number of seats it moves into a different occupancy classification for Life Safety Codes etc. He stressed that the Board needs to definitely know how many people will be in the restaurant.

Mr. Yurko suggested that if the application is tabled now the next meeting is July 22nd which puts the applicant at August 12th for her public hearing and possible approval. He noted that by then the summer is half over. He suggested that if the applicant can get a revised plan in to the Code Officer by the end of this week the Board might hold a Public Hearing at the July 22nd meeting.

Ms. Dennis responded that she was approved for whatever she has now and the only reason she is before the Board now is because the Liquor Licensing man from Augusta told her she can not serve alcohol in the Adirondack chairs out front, but that she can serve liquor in a table setting. She suggested she would keep it at the number of tables she had at the beginning.

Mr. Yurko reminded her that she can't serve outside yet.

Mr. Feldman suggested caution against finding the application complete at this meeting when there has already been a violation. He suggested giving the applicant 24 hours to submit a revised plan and having the Board set a special meeting to determine completeness, and then schedule the Public Hearing for a later date.

Mr. Simpson stressed to the applicants that until the application is granted there can be no service of food or beverages at the existing outside tables.

Kevin Dennis asked if there is any way to move things along as quickly as possible.

Mr. Yurko summarized that without any action by the Board the Applicant can continue to serve customers inside, they can continue to allow customers to purchase food inside and consume it outside including liquor.

Mr. Heyland suggested that if alcohol is being consumed outside, the Town requests some form of containment or fencing around the seating area.

Mr. Yurko also noted that employees can go outside to clean up after customers.

Mr. Dennis suggested that if they don't have outside service they will have to have a microphone to announce when orders are ready.

Mr. Heyland responded that outside microphones are not allowed in that district. He noted that the applicants can verbally call out order numbers or let the customers know that their food is ready.

Mr. Yurko suggested the Board schedule a special meeting for Friday July 12th and if the application is found complete the Public Hearing can be scheduled for July 29th.

It was noted that there are no new applications for the July 22nd meeting and if a meeting is scheduled for July 29th then the July 22nd meeting might be cancelled.

Ms. Bevins asked about the fire pit. She noted that Parsons Post Guest House is directly next door. She is concerned about the smoke and the noise and its impact on the guests at the Parson's Post. She asked about the hours of operation.

Mr. Dennis responded that they typically stop serving around 11:00 p.m.

Mr. Yurko recommended restraint regarding the closing hours, given the proximity of the guest house next door.

Mr. Simpson noted that when the applicant was approached by the Code Enforcement Officer in August of 2012 it was as a result of a letter written to him by the Parson's Post Inn. Parsons Post was concerned about the serving of food and alcohol outside, excess noise, and cigarette and fire pit smoke. Mr. Simpson suggested these may be issues which come up at the Public Hearing.

It was agreed that the Board would hold a special meeting on Friday July 12th to determine completeness, and that the Board would cancel the July 22nd meeting, and reschedule it for July 29th.

Mr. Yurko Moved to Table this Application until Friday July 12, 2013 at which time the Board will hold a special meeting to determine application completeness, and if the application is found to be complete the Board will schedule a Public Hearing.

Mr. Simpson informed the Board that he may not be available for the Friday Special Meeting and he asked for confirmation that there would be a quorum in his absence.

It was confirmed that Board members: Bevins, Yurko, and Renaud would all be available for the Friday July 12th meeting.

Mr. Yurko informed the Applicants that should Mr. Simpson be absent it will take a unanimous three person vote to approve any motions. A 2:1 vote will fail.

Mr. Simpson stressed to the Applicant the importance of the submittal of a detailed seating plan indicating the exact number of tables and chairs, both inside and outside.

Mr. Dennis asked what the effect would be if they were to ask for more than fifty (50) seats.

Mr. Heyland responded that over fifty seats would push them into another occupancy classification and may trigger things like sprinkler requirements, increased number of bathrooms, and other life safety requirements. He agreed to provide an exact list when the applicants sit down with him to review the amended plans.

Mr. Yurko noted that in inclement weather some of the outside tables may be moved inside however the number of approved outside seats may not be increased nor may the number of overall seats.

Mr. Feldman summarized that the Applicants currently have a Restaurant Type 1 which is:

An establishment where meals are prepared and served to the public for consumption, which meets all of the following characteristics:

- (1) food or beverages (either alcoholic or nonalcoholic) are served to persons seated only at indoor seating on the premises;*
- (2) where food or beverages are not served to pedestrians from an exterior opening or counter, and*

where the design of the facilities, advertising, signage or packaging procedures does not promote the consumption of food or beverages outside the enclosed building.

Mr. Simpson reiterated that customers must order and pay for food inside the building, when the food is ready the applicant's may call out that the order is ready for pick up and the customer must come inside to pick it up and carry it back to the table. Employees may go outside to clear tables etc but there can not be any wait service.

Mr. Yurko Moved to Table this Application until Friday July 12, 2013 at 6:00 at which time the Board will hold a special meeting to determine application completeness, and if the application is found to be complete the Board will schedule a Public Hearing for July 29, 2013.

YURKO/RENAUD 4:0 UNANIMOUS

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Mr. Simpson informed the Board that there has been a suggestion that the Board schedule a workshop to discuss any ordinance amendments. He suggested the Board members think about potential changes to the ordinance and e-mail their suggestions to the Code Enforcement Officer as soon as possible.

Mr. Yurko suggested the Board find a way to fast track smaller applications so that the process doesn't take so long. He also suggested that the issue of outdoor seating vs. outdoor dining may be clarified.

Mr. Yurko also reminded the board that he had suggested the Board review previously approved projects to see if things turned out the way the Board intended.

Mr. Simpson went one step further to suggest that the Town recognize those businesses/residences who have gone above and beyond to improve their properties.

J. ADJOURNMENT -

**Mr. Yurko Moved to Adjourn at 7:07 p.m.
YURKO/BEVINS 4:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Town of Ogunquit
Recording Secretary

Approved on July 29, 2013