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OGUNQUIT PLANNING BOARD MINUTES MONDAY JULY 27, 2015

PUBLIC HEARINGS

- 1. KATHLEEN CAMMAROTA / ROBERTO'S RESTAURANT – 200 Shore Road – Map 6 Block 112 – LBD - Site Plan Review for a Change of Use for a Pre-1930 structure. Application for Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outside serving.**

Mr. Wilkos asked if there was anyone who wished to speak for, or against this application. There being no one the Public Hearing was closed at 6:01 p.m.

- 2. WAYNE PERKINS / PERKINS COVE LOBSTER POUND – 324 Shore Road – Map 3 Block 4-5 – LBD – Site Plan Review and Design Review for a Pre-1930 structure. Application for Change of Use from Residential to Type 3 Restaurant.**

Attorney Durward Parkinson, representing the Applicant, addressed the Board. Attorney Parkinson submitted a letter from the Kennebunk, Kennebunkport, and Wells Water District dated July 22, 2015 which confirms capacity to serve the property.

Attorney Parkinson went on to submit a Waiver Request for buffering between the Applicant's property and that of the abutter James Hartwell (Hartwell House - Map 3 Block 6 – 312 Shore Road). The waiver request is based upon Zoning Ordinance Article 8.3 requirements which do not require buffering between two commercial properties.

Attorney Parkinson noted that should the Board deny the Buffering Waiver Request, the Applicant is prepared to submit a buffering plan which includes nine (9) arborvitae trees to be planted along the existing fence line. This will be the Applicant's fallback position if the Board denies the Waiver request.

Abutter James Hartwell (213 Shore Road – Map 3 Block 6) addressed the Board and read from the following prepared statement (*a copy of which will be maintained in the Applicant's Planning Board file*):

“On January 21, 2015, Corner Post Land Surveyors from Springvale, Maine completed a survey for us that included the properties owned by Wayne Perkins. As a result of that survey, the following conclusions have been reached:

- 1) The Boundary Survey that Mr. Perkins had previously submitted for a change of use from residential to commercial retail use is not correct. Subsequent to the completion of our survey, Mr. Dana Libby, owner of Corner Post Land Surveyors, with my permission, notified Mr. Perkins and his surveyor of the correct location of the property line separating our properties. The end result was that the survey showed the property line to be further southeast and closer to the Perkins dwelling.
- 2) The Plan Drawing submitted for this application is Not to Scale (NTS) and is not either accurate or correct.
- 3) Our fence running from Shore Road towards the rear of our property is several feet from property line to the Northeast and moves further away from the property line moving towards the rear of the property.

In accordance with Section 8.3 entitled "Buffer Areas" on Page 90 of the Ogunquit Zoning Ordinances, it clearly states that "An area of no less than one half the width of the side and rear yard setback shall be maintained as a landscaped vegetative buffer and not be paved or used for parking."

In consideration of that requirement of the Zoning Ordinances and in reference to our most recent 2015 survey, the following determinations have been made:

- 1) With the 9'x18' requirement for a parking space, parking spaces on the Northwest side of the 15' driveway located at 324 Shore Road are limited to only two (2) spaces. (See attached drawing)
- 2) The footprint of the building shown on the NTS Plan drawing submitted by Mr. Perkins with his application is not correct and clearly does not depict the actual footprint of the building.
- 3) The distance from the property line to the front corner of what use to be the garage is only 15 and not 19' as shown on the NTS drawing submitted by Mr. Perkins.

On the application submitted by Mr. Perkins, it specifies a change of use from Residential to a commercial Type 3 restaurant. The application in reference to the current use of the property is clearly incorrect. The property in question has been used as a Commercial Parking lot since the latter 1980's. This current use in accordance with the Ogunquit Zoning Ordinances is not a permitted use in the Limited Business District and can only be approved as a result of a variance. Since 1987, the Perkins parking lot has been expanded three (3) times. The first expansion in 1987 was to the rear of the original parking lot that was created in the latter part of the 1960's. Commencing in 1987, the parking lot was expanded by dumping tons of fill in the rear of the property to within 2'-4' of the Josias River, clearly in violation of the State of Maine Shoreline Zoning Act. In accordance with the Act, the RP Zone, Resource Protection Zone, requires that all abutters to the Josias River maintain a 75' setback from the normal high water line of the river or stream. Of the 60 plus abutters to the Josias from Route 1 and the

Cove, only one property has chosen to ignore this provision of the Ogunquit Zoning Ordinances that has been included in the Ordinances since the adoption of the Maine Shoreline Zoning Act in the early 1970's.

The second and third expansion of the parking lot occurred in 1988 whereby the parking lot was expanded to not only to the rear of the building on the subject property, but also on the subject property itself encompassing the entire property in front of the building on the subject property. This past and current utilization of the subject property provides for the parking of in excess of 30 cars and is currently coexisting with the applicant's current operation of a Type 3 restaurant. The applicant's operation of a Type 3 restaurant continues even though the applicant has been served with a Cease and Desist Order by the Ogunquit Code Enforcement Office.

With the current illegal operation of the commercial parking lot and Type 3 restaurant on the subject property, the plan submitted by the applicant fails to show how the two uses will coexist. With the current number of cars being parked on the front of the property that the applicant has designated as residential, and that which has been used for the same purpose along my property line to the northwest side of the driveway, the application is void of information that needs to show provisions for traffic circulation on the property, as well as how that will correlate with the points of ingress and egress from Shore Road as well. In addition, with the constant movement of vehicles on the subject property, the applicant should be required to perform a traffic study for life safety considerations. To ignore the utilization of the subject property as a commercial parking lot is unacceptable and analogous to taking the ostrich approach to this application.

In closing, let me be perfectly clear. There is nothing on file at the Land Use Department in reference to Mr. Perkins current and past use of both the subject property and his adjacent property for the following uses:

- 1) There simply is no Grand Fathered approval for a parking lot on either of the two Perkins properties.
- 2) There is no approval in existence from the Town of Ogunquit permitting the first expansion of the commercial parking lot in the LBD into the RP Zone to within several feet of the Josias River.
- 3) There is no approval on record from the Town of Ogunquit permitting the second expansion of the commercial parking lot in the LBD Zone to the rear of the subject property up to our property line.
- 4) There is no approval on record from the Town of Ogunquit permitting the third expansion of the commercial parking lot in the LSD Zone that includes the entire front of the subject property up to our property line.

Please be advised that I personally applied for a variance for a commercial parking lot at 309 Shore Road, more commonly known as the Thompson property that was prior to the construction of Thompson Green. The application was initiated in 1987 and at the very same time the Perkins commercial parking lot was being expanded.

Our application at that time included dated photographs of the subject Perkins property and showed the parking of vehicles in the front of the building on both sides of the driveway of the applicant's subject property. The 8"x10" photos taken at that time are included as part of the records on file with the application to show the extent of the parking problem in the Cove area. The end result was that a variance for the commercial parking lot was not granted by the Town, but the Perkins commercial parking lot at the same time was continuously being expanded. Predicated on the inaccurate and misleading information having been provided to the Planning Board, I request that the application be denied at this time.

In closing, it is my personal opinion that many of the voters of Ogunquit did not fully understand the implications of allowing for Type 3 restaurants in the Limited Business District. The inclusion of Type 3 restaurants in the LBD will have major impact on Shore Road and it will only be a matter of time before one of the treasures of Ogunquit that was clearly referred to in the Comprehensive Plan will be lost to replicas of fast food restaurants serving everything from fried seafood to chicken and burritos! Nothing stops the pursuit of money in the end.”

Attorney Parkinson responded that surveyors and surveys differ, and this is the first he has heard that there was a differing survey. He acknowledged that Corner Post Surveyors are very good surveyors; however Mr. Perkins also has a valid survey. This issue is a civil matter between the two property owners, and is not a matter for the Planning Board.

Attorney Parkinson also suggested that the drawings are already to scale, he pointed out that they have dimensions and square footage on them. They clearly indicate the size and locations of things on the lot, which is the purpose of that requirement.

He noted that there has been passionate talk about the Perkins' commercial parking lot, however that is not at issue before the Board tonight. Attorney Parkinson agreed that there has been contentious history regarding the commercial parking lot, but it is not a matter for the Board to consider at this time.

Newell Perkins, Ogunquit Historic Preservation Commission (OHPC) Chair, addressed the Board. Mr. Perkins stated that the OHPC was asked to review this project as it relates to the Thompson House (309 Shore Road, Map 3 Block 17 – Building #2). Not being a pre-1930 structure, normally this project would not have been reviewed by OHPC. However, given the neighborhood, and the other two applications being heard at this meeting and their effect on the nature of the Shore Road area they felt it was their responsibility to review it and present comments to the Board.

Mr. Perkins suggested that the elevations and sketches presented to OHPC are lacking. He noted the indication of two (2) dining tables, each seating eight (8) patrons. Mr. Perkins stated that in the State of Maine, a reasonable space for dining for one (1) individual, in a seat, is fifteen (15) square feet, which is 3.9 feet by 3.9 feet of space to reasonably dine. If that is the case, a picnic table to seat four (4) patrons on one side would need to be sixteen feet (16') long. Mr. Perkins would require two (2) sixteen foot (16') picnic tables, which is not what is indicated on the application.

Mr. Perkins informed the Board that the OHPC's motion, made by Helen Horn, stated: "Lobster in the Rough style dining, on Shore Road, is not in keeping with the overall charm and ambiance with this historic area. Given its proximity to the old Thompson Farm House it should be pointed out that the proposed dining area is ill defined and the plan should be resubmitted." The motion was 2nd by Marsha Williams and passed with a 4:0 vote by the OHPC.

Mr. Wilkos asked if there was anyone else who wished to speak for, or against, this application. There was no one and the Public Hearing was closed at 6:19 p.m.

3. RICK DOLLIVER / THAT PLACE IN OGUNQUIT – 331 Shore Road – Map 3 Block 53 – LBD – Site Plan Review for a Change of Use for a pre 1930 structure, from a Type 1 Restaurant to a Type 2 Restaurant with outside serving.

Mr. Dolliver recused himself from the Board.

Mr. Wilkos instructed Mr. Dolliver that if he was going to recuse himself he should leave the auditorium. Mr. Dolliver did so.

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

Newell Perkins, Ogunquit Historic Preservation Commission (OHPC) Chair, addressed the Board. Mr. Perkins informed the Board that the OHPC's feeling is that the courtyard is already in place and that it is presently used for people waiting to be seated inside. The OHPC's concern is with the exterior of the building and whether or not that is a "site feature". Mr. Perkins read Article XI which includes historical significance, material changes, and other site features such as: walks, driveways, and parking areas. Mr. Perkins noted that there have been discussions about this and the OHPC believes that site features do not have to be limited to walks, driveways, and parking areas but may be extended to benches, walls, fences and other things of that nature.

Mr. Perkins informed the Board that Mr. Dolliver's patio is very exposed and the OHPC's position is to suggest and encourage an effort on the part of the Applicant to screen diners and passerby on Shore Road with some form of potted plantings. This would be consistent with the vision for Ogunquit as mapped out by the Comprehensive Plan.

Mr. Wilkos asked if there was anyone else who wished to be heard. There being no one the Public Hearing was closed at 6:23 p.m.

Mr. Dolliver rejoined the Board.

REGULAR BUSINESS MEETING

A. ROLL CALL –

Mr. Wilkos called the roll with the following results:

Members Present: Steve Wilkos, Chair
Muriel Freedman, Vice Chair
Rusty Hayes
Don Simpson
Rick Dolliver, 1st Alternate
Brian Aromando, 2nd Alternate

Members Excused: Jackie Bevins

Also Present: Scott Heyland, Code Enforcement Officer
Lee Jay Feldman, SMPDC – Town Planner
Maryann Stacy, Recording Secretary

Mr. Wilkos noted that with Ms. Bevins absence Mr. Dolliver, as 1st Alternate, would be a full voting member for the duration of this meeting.

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – The Mission Statement was read by Ms. Freedman.

D. MINUTES – July 13, 2015 – Workshop and Meeting.

**Mr. Simpson Moved to Accept the Minutes of the July 13, 2015 Workshop as Amended.
SIMPSON/FREEDMAN 5:0 UNANIMOUS**

**Mr. Simpson Moved to Accept the Minutes of the July 13, 2015 Meeting as Submitted.
SIMPSON/HAYES 5:0 UNANIMOUS**

E. PUBLIC INPUT – For any matter NOT already on this Agenda.

Mr. Wilkos asked if there was anyone who wished to be heard on any matter not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

- 1. KATHLEEN CAMMAROTA / ROBERTO'S RESTAURANT – 200 Shore Road – Map 6 Block 112 – LBD - Site Plan Review for a Change of Use for a Pre-1930 structure. Application for Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outside serving.**

Ms. Freedman expressed her discomfort regarding Mr. Dolliver sitting in on the two applications, beyond his own application. She suggested that there may be a perceived conflict.

Mr. Dolliver asked “for what reason?”. He added that he would recuse himself from his own application.

Ms. Freedman responded that there may be a perceived conflict of interest with Mr. Dolliver sitting on the two other applications because he might have a financial interest in the approval or denial of the other two applications, because the three restaurants’ applications are so similar in nature and geographic location.

Mr. Aromando stated that Mr. Dolliver recused himself from his own application because he has a financial interest in it. He asked if the concern is with Mr. Dolliver’s competition with the other two restaurants.

Ms. Freedman responded that she did not know.

Mr. Simpson asked for Mr. Feldman’s comments.

Mr. Feldman responded that the issue is with the perceived conflict because Mr. Dolliver has a restaurant and with any of the Board’s decisions it might be perceived that Mr. Dolliver is looking to do himself a favor. Mr. Feldman added that this does not mean that the Board feels Mr. Dolliver cannot act in an impartial manner; however it is up to the Board to determine if there might be an appearance of conflict.

Mr. Wilkos asked Mr. Feldman to expound on what is perceived to be a conflict of interest.

Mr. Feldman responded that a perceived conflict of interest would be if the board member might gain financially from the approval or denial of the other two restaurants’ applications. He stressed that this is only a perceived conflict.

Mr. Dolliver responded that everyone in town owns property. He suggested that if someone was building a house in town it might be a perceived conflict for board members if they thought it could effect their property value. He stressed that he has no money to gain or lose in anyone’s business except his own. He asked; if Cumberland Farms would have a perceived interest because someone was approved or denied, whether there were more or less people in town wanting to buy bubblegum?

Mr. Wilkos asked for the Board members’ opinions as to whether or not Mr. Dolliver should recuse himself from hearing all three (3) applications:

Mr. Simpson responded that given the litigious nature the Town has seen over the last few years, and the Board’s fiduciary responsibility to the Town, he felt Mr. Dolliver should recuse himself.

Ms. Freedman = Agreed with Mr. Simpson that Mr. Dolliver should recuse himself.

Mr. Hayes = Mr. Dolliver does not need to recuse himself and that there are issues with the other applications with which Mr. Dolliver would be helpful.

Mr. Wilkos = Mr. Dolliver does not need to recuse himself.

Mr. Wilkos stated that there were two Board members suggesting Mr. Dolliver can act fairly and two (2) Board members suggesting that may not be the case.

Mr. Wilkos instructed Mr. Dolliver that he will need to recuse himself.

Mr. Dolliver did so. He asked if he may return to represent himself for his own application.

Mr. Feldman responded that he can represent himself on his application.

Mr. Wilkos moved Mr. Aromando up to full voting position.

Mr. Wilkos noted that a Public Hearing had been held earlier and no one spoke for, or against, this Roberto's Application. He called for questions from the Board members.

Mr. Wilkos asked the Applicant's representative if he wished to address the Board.

Mr. DeHart declined to do so.

Mr. Wilkos reviewed Mr. Feldman's Memo to the Board dated July 16, 2015 (*a copy of which will be maintained in the Applicant's Planning Board File*). Within Mr. Feldman's Memo reference was made to a Memo to the Board from then Director of Planning, J.T. Lockman, dated May 16, 2011 (*a copy of which will be maintained in the Applicant's Planning Board file*).

Mr. Feldman summarized that this application involves a change from a Type 1 Restaurant which did not allow outside seated service even though this applicant has been doing so, to a Type 2 Restaurant which does allow for outside seated service. This change results in an additional 500+ square feet of seated service which requires an additional five (5) parking spaces. Mr. Feldman stressed that even though the seating may have been in existence, and been in use, it was not legally allowed for restaurant seated service. The applicant now needs to provide the additional five (5) parking spaces or request a waiver for them.

Mr. DeHart disagreed with Mr. Feldman's interpretation of the parking space situation. However he informed the Board that the Applicant will submit a Waiver Request for five (5) parking spaces.

Mr. Wilkos summarized that at the time those seats were approved outside service was not allowed.

Mr. DeHart again stated that those seats were there and he asked again if the Board would accept the five (5) parking space waiver request.

Mr. Wilkos asked Mr. DeHart to read the waiver request.

Mr. DeHart responded “as part of the application Kathy Camarota is requesting a waiver of the following items: five (5) parking spaces”. The reason being because the Town believes she needs the waiver.

Mr. Wilkos asked the Board members if they have any problem accepting a waiver request at this time.

The Board members agreed that the waiver request would be accepted.

Mr. Feldman informed the Board that the parking space issue is his only concern. He noted that despite his disagreement with Mr. DeHart the intent tonight is to make sure that procedurally the Board deals with the issue appropriately so that no one can come back in the future to question it.

Mr. Feldman restated that while there may have been seating there, it was not approved for patrons to sit and eat. It may have been used for patrons waiting to be seated inside or it may have been illegally used for outside dining, whatever the case it is legal now and the Board needs to be sure that the proper number of parking spaces, required under the Ordinance, is accounted for.

Mr. Wilkos asked if Mr. Heyland had any comments. He did not.

Ms. Freedman Moved to Grant the Parking Space Waiver Request for Five (5) Parking Spaces for KATHLEEN CAMMAROTA / ROBERTO’S RESTAURANT – 200 Shore Road – Map 6 Block 112.

FREEDMAN/SIMPSON 5:0 UNANIMOUS (Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Brian Aromando)

Mr. Heyland asked for the confirmation of the total number of seats.

Mr. Dehart responded that there are thirty-seven (37) seats.

Mr. Simpson Moved to Approve the Site Plan Application for KATHLEEN CAMMAROTA / ROBERTO’S RESTAURANT – 200 Shore Road – Map 6 Block 112 including thirty-seven (37) seats.

SIMPSON/HAYES 5:0 UNANIMOUS (Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Brian Aromando)

Mr. Wilkos asked Mr. Heyland if the applicant had paid the Site Plan Review Fee.

Mr. Heyland confirmed that the fee had been paid.

2. WAYNE PERKINS / PERKINS COVE LOBSTER POUND – 324 Shore Road – Map 3 Block 4-5 – LBD – Site Plan Review and Design Review for a Pre-1930 structure. Application for Change of Use from Residential to Type 3 Restaurant.

Attorney Durward Parkinson responded to the abutter's comment that elevations had not been submitted. Attorney Parkinson pointed out to the Board that the elevations had been submitted and are in the Board members' packets. He pointed out that the lack of elevations was an issue with the past court case, and that the Applicant has complied with the elevations submission.

He also noted that a detailed seating plan has been submitted which indicates two (2) tables with only four (4) seats per table.

Mr. Wilkos noted for the record that the Chair has agreed to accept a revised seating plan drawing from the Applicant.

Mr. Wilkos asked Mr. Feldman if there was a memo for this application.

Mr. Feldman responded that he did not revise his memo (dated June 30, 2015); it is his opinion that his initial memo still has enough issues, which the Board is dealing with, that he did not need to submit another.

Mr. Wilkos asked the Board to consider the Applicant's July 19, 2015 Waiver Request for the screening/buffer standard between his property and that of his abutter James Hartwell. Said Waiver Request read as follows:

“Regarding my application for a change of use of Perkins Cove Lobster Pound to a Type 3 Restaurant, I am requesting a waiver of the screening/buffer standard dealing with the boundary between my property and that of James Hartwell.

Since both properties will be considered commercial after our anticipated approval, there is no need for a buffer. Furthermore, the boundary area in question has operated as a business (Perkins Parking Lot) with cars parking in that location on a daily basis (seasonally) for the past 25 years.”

Mr. Feldman responded that Article 8.3 of the Ogunquit Zoning Ordinance discusses buffers, and says in part: “a non-residential use which abuts an existing or potential residential use shall maintain a buffer strip along the side and yard setback”. Mr. Feldman summarized the need for a buffer which is ½ the width of the required setback, in this case is seven point five (7.5') feet where the setback is fifteen (15') feet. A buffer may be a fence, a vegetative buffer, or a combination of both. Mr. Feldman noted that there is a fence already in place. He also pointed out that the proposed plan indicates an existing maple tree and the addition of six foot (6') tall arborvitae spaced six feet (6') apart.

Mr. Feldman noted that if the Board does not grant the buffering waiver then the applicant will move forward with the arborvitae plantings as required. He noted that arborvitae are a fast growing plant that spreads and grows tall and that, along with the fence, would satisfy the standard.

Mr. Wilkos summarized that buffering is required even though this case involves commercial to commercial abutters, because, in the future, the James Hartwell property might potentially have a residential use.

Mr. Feldman agreed.

Mr. Simpson asked why the Board is discussing a waiver when the Applicant has submitted a buffering plan.

Attorney Parkinson responded that the Applicant is requesting the waiver, however if the waiver is denied he is prepared to go forward with the submitted buffering plan.

Mr. Wilkos asked if the Applicant is withdrawing the waiver request?

Attorney Parkinson responded that they are not, they want a vote on the waiver request.

Ms. Freedman asked if the arborvitae are already there?

Mr. Aromando summarized that there is a waiver request before the Board, should the waiver request not be granted the Applicant will propose the use of the arborvitae to meet the requirements of the Zoning Ordinance.

Attorney Parkinson agreed.

**Mr. Aromando Moved to Deny the Waiver Request based on the potential residential use of the abutting property under Article 8.3 of the Zoning Ordinance.
AROMANDO/FREEDMAN 5:0 UNANIMOUS (Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Brian Aromando)**

Mr. Simpson asked if the planting of the arborvitae should be included in the motion.

Attorney Parkinson asked the Board to consider the proposed buffering plan of six foot (6') tall arborvitae spaced six feet (6') apart. He suggested this might be a condition of approval.

Mr. Feldman stated that the Board may accept this plan or require more, or less, plantings or rearrangement of trees.

Mr. Wilkos invited Mr. Hartwell to respond.

Mr. Hartwell thanked the Board for considering the buffering and noted that there are a number of commercial properties which have reverted back to residential use. He requested six foot (6') arborvitae spaced four feet (4') apart.

Mr. Hartwell stated that the information taken from Mr. Perkins' boundary survey was taken from the 1986 survey of the Harwell House property by Moran. In that survey the Moran people picked up an erroneous marker which has since been clarified. This discrepancy was pointed out to Mr. Perkins' surveyor as required. This is relevant to the question of where to place the tables, parking, and buffering, the location of which are all dependent upon the location of the property

line. He cautioned the Board to take note of the 2015 survey as being correct, that this could impact the location of buffering, parking, points of ingress and egress to the property, etc.

Mr. Wilkos asked Mr. Hartwell if he is satisfied with the planting of six foot (6') tall arborvitae spaced six feet (6') apart, wherever the property line is.

Mr. Hartwell responded that he doesn't know where they are relative to the correct survey.

Attorney Parkinson attempted to provide Mr. Hartwell with the drawing.

Mr. Hartwell rejected it stating that the footprint of the building on the drawing is totally different than what is there today. The information on the drawing is not to scale and is not accurate.

Mr. Wilkos asked again, if Mr. Hartwell would be satisfied with six foot (6') arborvitae spaced six feet (6') apart.

Mr. Hartwell responded, no, that typical spacing for arborvitae is four feet (4') apart. He asked for two feet (2') on each side of each tree for growth into each other, which is what he had to do at Thompson Green.

Attorney Parkinson clarified that the plan includes the planting of eight (8) arborvitae in addition to the one (1) existing maple tree. He agreed that if the Board requests four foot (4') spacing between the trees, the Applicant is happy to comply.

Mr. Wilkos asked the Board members to consider the proposed buffering plan with the change from six feet (6') between plantings to four feet (4').

Mr. Aromando noted that individual trees differ in width and thickness.

Mr. Heyland agreed that each tree is different: some are fuller than others, and the Board needs to determine the purpose of the plantings.

Mr. Aromando asked if the Board might go forward with the application and leave the determination of the appropriateness of the plantings to the Code Enforcement Officer.

Mr. Hayes informed the Board that he has used arborvitae for screening many times and Western Arborvitae grow very fast in height and width, and planted four feet (4') apart they will fill in within two (2) years.

Mr. Wilkos noted that it is the consensus of the Planning Board that six foot (6') tall Western Arborvitae planted four feet (4') apart for a screening is acceptable.

Mr. Feldman informed the Board that this may be a condition of approval. He added that the Board might also require the Applicant to maintain the plants for the life of the business.

Mr. Aromando disagreed, he noted that Zoning Ordinance Article 8.3 states that the residence use shall maintain a buffer strip, not plant. He also asked how far along the property line the buffer strip must extend.

Mr. Feldman responded that the buffering may only begin at the front setback line, this is to prevent impairment of sight distance for cars pulling out.

Mr. Aromando suggested the buffer strip extend from the front setback to the rear of the structure, where the commercial use ends.

The Board agreed with Mr. Aromando's suggestion.

Mr. Wilkos noted that the next item in Mr. Feldman's memo involves off street parking.

Mr. Feldman responded that there does not appear to be any issue with the number of parking spaces. His concern is that as the parking spaces are laid out vehicles are able to back up, make a turn, and exit the property onto Shore Road in a forward manner and not be required to back out onto Shore Road. Mr. Feldman noted that the plan is to scale, however the parking layout scale is missing. He asked: what is the distance between the back of the parking area and the paved area? Is there enough room for cars to back out, turn, and exit the property in a forward motion?

Jay Audet responded that cars have been parking in that area for years and they have always been able to backup and exit in a forward manner. He noted the Google Map which shows a utility vehicle which was doing work there at the time.

Mr. Feldman requested a scaled parking plan. He noted that the standard in the Zoning Ordinance for a one-way parking isle is twelve feet (12'). He needs to see if there is an eighteen and one half foot (18.5') depth to the parking space, and another twelve feet (12') for a car to be able to back out and turn.

Mr. Wilkos asked Mr. Feldman to explain to the Applicant exactly what the Board will require.

Mr. Feldman responded that they need a scaled parking plan which shows how deep the parking spaces are, which is eighteen and one half (18.5) feet by Ordinance. The plan also needs to show an additional twelve feet (12') behind that where cars can turn, back out, and make a forward move onto Shore Road. This is based on the "one-way" standard in the Ordinance.

Mr. Simpson asked if there is a requirement for the width of the parking spaces.

Mr. Feldman responded that the parking spaces need to be nine feet (9') wide.

Mr. Simpson asked for that to be included in the plan as well.

Attorney Parkinson asked how far the cars may come forward.

Mr. Heyland responded that the parking space may begin at seven and one half feet (7.5) from the property line.

Attorney Parkinson confirmed: seven and one half feet (7.5') from the property line, eight feet (8') from there, and twelve feet (12') from the end of the parking space.

Attorney Parkinson requested the Applicant be able to submit the parking plan to the Code Enforcement Officer.

Mr. Wilkos responded that this will be up to the Board.

Mr. Wilkos asked Mr. Feldman to expand on his memo comment regarding bathrooms.

Mr. Feldman responded that under State Regulations zero (0) to fifty (50) patrons utilizing the premises requires one (1) bathroom facility, which is reasonably accessible to patrons.

Mr. Heyland added that the proposed operation in this case does not include any major renovation work. It is his (Mr. Heyland's) understanding that ADA Laws and the State Fire Marshall's Office would not require the one (1) restroom be ADA accessible. The one (1) required restroom needs to be available to patrons, this may helped with signage.

Mr. Heyland also informed the Board that the State Health Inspector will be on site to confirm that the restroom is available to patrons.

Mr. Wilkos asked for confirmation that there currently is a restroom on site.

Mr. Heyland responded that there is a restroom in the residential portion of the structure. He noted that the restroom has to be accessible in a reasonable way, not in some backroom up three flights of stairs – that would be unreasonable. He informed the Board that he will wait to hear from the State regarding the restroom and whether it meets the standards.

Mr. Wilkos confirmed that those are the three (3) concerns in Mr. Feldman's memo: buffering, parking, and restrooms.

Ms. Freedman noted that there was some confusion at the last meeting regarding the Site Plan Submissions Checklist. She reaffirmed, for the record, that the Board did find the application complete at the July 13, 2015 meeting, and that the Board has a Site Plan Submissions Checklist signed by the Code Enforcement Officer.

Ms. Freedman asked if the items, in the photograph, next to the picnic tables will be removed.

Mr. Audet responded that the material has already been removed.

Mr. Simpson noted the litigious history of this applicant, and the fact that the applicant has an attorney present. Mr. Simpson asked if the Board should consider tabling this application until

the Town can review the concerns the abutter has brought up. Or, does the Board have sufficient information to move ahead now?

Mr. Feldman responded that if something was submitted by the abutter that contained a list of things beyond the survey issue it would be to the Town's advantage to review that information with regard to whether or not the Board is required to review those things. Mr. Feldman heard some things that he feels he needs to do further research on to determine if they impact the review of this project, or not. Further review cannot hurt.

Mr. Wilkos asked Mr. Feldman to list those things he feels need further review.

Mr. Feldman responded that he isn't prepared to do that on the record at this point. There was a lot of information provided by the abutter and he hasn't had the opportunity to review the written material.

Attorney Parkinson reminded the Board that the litigious history has not come from the Applicant, it has come from the neighbor. The Applicant has made every effort to work with the Town. He pointed out that with the Ordinance change this is a new, clean, application. This is a straight forward application, everything has been submitted. He noted that this has been lingering for weeks and the applicant needs to move forward.

Mr. Wilkos pointed out that the Applicant has been operating anyway.

Mr. Feldman added that he wants to be sure the Board does everything correctly so that there are no further legal actions against the Town.

Mr. Aromando stated that the Planning Board bases their opinion on the writing in the Zoning Ordinance and nothing else. The abutter's concern regarding the boundary line location is beyond the reach of the Planning Board. The Board requests a certified plan from a licensed surveyor. That has been done. The Board needs to look at what the applicant is required to provide and whether or not that burden has been met.

Mr. Wilkos again asked Mr. Feldman what issues are still on the table.

Mr. Feldman responded that the Board should at least look at the information brought forward by the abutter and respond accordingly. He reminded the Board that the last time this applicant came before the Board it (the Board) felt it had done everything correctly, however the State Supreme Court responded that it had not. Mr. Feldman noted that the abutter has brought a lot of information forward, and he wants to be sure the Board crosses all its T's and dots all its i's.

Mr. Feldman suggested that he would like time to review the abutter's information with Town Counsel and respond to the Board in writing.

Mr. Wilkos summarized that Mr. Feldman, as the Director of Planning, is recommending to the Planning Board that because of the concerns brought up this evening by Mr. Hartwell, he (Mr. Feldman) would like to review them and have them reviewed by the Town Attorney.

Mr. Feldman agreed.

Attorney Parkinson responded that the Supreme Court sent the case back to the Planning Board because of the lack of an elevation which has now been provided. He stated this is a new application and at some point the Planning Board has to rely on itself and Town Staff. He noted that the Board has reviewed the checklist and this application is not that complicated, and it's time to make a decision.

Mr. Aromando expressed concern over the parking spaces.

Ms. Freedman expressed her position that she would like the Town Attorney to review the abutter's statement and give a legal opinion.

Mr. Hayes stated that he didn't hear anything from the abutter other than the survey being in question. It is not within the Planning Board's jurisdiction to determine whether or not the survey is correct. That is a civil matter.

Copies of Mr. Hartwell's statement were distributed to the Board members and the Applicant.

Mr. Wilkos stated that if this applicant was not in litigation, it would appear that this application, on the surface, would meet the requirements for approval. However because this is in litigation it should be reviewed by the Town Attorney.

Mr. Feldman responded that it is not in litigation at the moment. The Supreme Court made a ruling and provided direction to the Board. Now it is a matter of making sure that everything that needs to be submitted, has. The Board has gone through the waiver requests and the application and on the surface everything that needed to be submitted or granted a waiver was done so. Now the Board is dealing with the technicalities of the Ordinance, has everything been met to the letter of the law, and is there anything the applicant can do above and beyond to protect the abutter? He wants to be sure the Board is on solid ground.

Mr. Wilkos asked if there is any reason to believe that the Board is not on solid ground.

Mr. Feldman responded that the first Board believed that they were on solid ground.

Mr. Aromando expressed his belief that the Board should move forward with consideration. He agreed with Mr. Hayes that all the abutter submitted was dispute over the survey and buffering, and the buffering issue has been settled.

Mr. Hayes agreed.

Mr. Wilkos asked if the Applicant is currently operating.

Mr. Heyland confirmed that they are.

Mr. Wilkos asked what will happen if the Board moves forward.

Mr. Heyland responded that Town Counsel has advised him that enforcement action is unrelated to the proposed request for this use. He was advised that the two issues are not connected. Mr. Heyland stated that the enforcement will not go away with Planning Board approval. The enforcement piece will go forward regardless.

Mr. Heyland added that the Applicant will still need approval from the State for the food license and confirmation that the restroom standard is met. The Applicant will also need to supply a parking space plan to scale demonstrating that the parking space requirements are met. These would be his conditions to operate.

At this time the Board affirmed the review of the Design Review Submissions Checklist (reviewed on July 13, 2015) and that it was found to be complete and satisfied. The Board again reviewed the Design Review Submissions and again found all submission requirements satisfied.

**Mr. Simpson Moved to find the Design Review Submissions Checklist Complete.
SIMPSON/HAYES 5:0 UNANIMOUS
(Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Brian Aromando)**

At this time the Board reviewed each item of the Design Review Approval standards for compliance as noted under Article 11.7.C of the Ogunquit Zoning Ordinance, and found the application to be in compliance with all standards.

Mr. Simpson Moved to Approve the Application for WAYNE PERKINS / PERKINS COVE LOBSTER POUND – 324 Shore Road – Map 3 Block 4-5 LBD - pending the approval by the Code Enforcement Officer that all conditions have been met:

1. Satisfactory parking plan which will show the twelve foot (12') clearance behind the parking spaces allowing vehicles to turn, to be submitted to the Land Use Office within ten days of this meeting;
2. Current license from DHHS for food establishment be provided to the Land Use Office;
3. Required buffering of 6' Western Arborvitae trees planted 4' apart be complete on or before August 30, 2015.

SIMPSON/AROMANDO

The Board held discussion regarding the time frame for satisfying conditions of approval.

Mr. Feldman noted that the approval might be contingent that they not operate their business until they receive approval and satisfy all conditions of approval. He suggested deadlines for compliance with conditions.

Mr. Heyland responded that he needs more than that, he has an enforcement action underway and he needs to know exactly when the Applicant is approved and has permission to operate his business legally. He (Mr. Heyland) needs to establish a start date for the applicant to begin legally operating his (Mr. Perkins) business.

Mr. Aromando suggested the final approval and legal start date for operation might be when the Applicant has satisfied all three conditions of approval.

It was noted that the Applicant has continued to operate illegally even though the Code Enforcement Officer has repeatedly instructed them to cease operations.

Mr. Simpson noted that the timeframe for receipt of DHHS approval is out of the Applicant's hands.

Ms. Freedman informed the Board that DHHS has a thirty (30) day review period after receipt of a completed application.

Mr. Heyland responded that if DHHS finds an issue, the timeframe may go beyond the thirty (30) days.

Mr. Wilkos asked Attorney Parkinson ; if the Board moves forward with these conditions, will the Applicant continue to operate?

Attorney Parkinson responded that this is a separate issue and will be handled with the Code Enforcement Officer. He did not come prepared for this discussion with the Board, it was his understanding that this was an issue between the Applicant and the Code Enforcement Office.

Mr. Aromando again reminded the Board members that the Board's role is to consider the application before it, and enforcement of illegal operation is the responsibility of the Code Enforcement Office, and the Board should not consider that aspect as part of its review of the pending application.

Mr. Simpson restated his motion:

Mr. Simpson Moved to Approve the Application for WAYNE PERKINS / PERKINS COVE LOBSTER POUND – 324 Shore Road – Map 3 Block 4-5 LBD - pending the approval by the Code Enforcement Officer that all conditions have been met:

- 1. Satisfactory parking plan which will show the width and depth of the parking spaces and that there is a twelve foot (12') clearance behind the parking spaces to allow vehicles to turn to be submitted to the Land Use Office within ten days of this meeting;**
- 2. Current license from DHHS for food establishment;**
- 3. Required buffering of eight (8) 6' Western Arborvitae trees planted 4' apart be complete on or before August 30, 2015.**

SIMPSON/AROMANDO 5:0 UNANIMOUS

(Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Brian Aromando)

3. RICK DOLLIVER / THAT PLACE IN OGUNQUIT – 331 Shore Road – Map 3 Block 53 – LBD – Site Plan Review for a Change of Use for a pre 1930 structure, from a Type 1 Restaurant to a Type 2 Restaurant with outside serving.

Mr. Wilkos asked if the fee has been paid.

Mr. Heyland confirmed that it has.

Mr. Wilkos asked Mr. Dolliver about the concern regarding parking spaces.

Mr. Dolliver responded that this restaurant was an existing restaurant from 1993 through 2006 without change in size. He measured everything and the plan shows 1878 square feet and he is adding 420 square feet. In 2008 he was granted a parking space waiver for seven (7) parking spaces. He has twelve (12) parking spaces, he was granted a waiver for seven (7) which equals nineteen (19). With the addition of 420 square feet he will need 23 parking spaces. He was granted a waiver on July 13th for four (4) parking spaces. In his opinion this satisfies his required parking spaces.

Mr. Feldman responded that he agrees with the numbers however it doesn't match what is on the plan. He stated that originally there were twenty-three (23) spaces required, there was a waiver granted for seven (7) spaces which gets the number to sixteen (16) spaces. According to the plan there are only twelve (12) existing parking spaces. With the original sixteen (16) and the now waived four (4) the result is twelve (12) parking spaces. Twelve (12) is what he has on the site. Mr. Feldman suggested that the plan appears to have been done sometime earlier than this application.

Mr. Dolliver explained that his dining room measures just under eleven hundred (1100) square feet, bar space is just under five hundred (500) square feet, with the bathrooms, hallways and the additional four hundred and twenty (420') square feet he estimates a total of one thousand eight hundred and seventy six (1,876) square feet which he rounded up to two thousand three hundred (2300) square feet, and for that he has more than enough parking spaces.

Mr. Wilkos asked if the Board should request a new plan.

Mr. Heyland responded that would be unnecessary.

Regarding the Traffic Impact Study Mr. Feldman informed the Board that there hasn't been any expansion in the last five (5) years and the current expansion doesn't trigger the fifty (50) trips per day. Mr. Feldman recommended that no traffic study is required.

Mr. Feldman also noted that restrooms fall under State requirements and no additional bathrooms should be required.

Mr. Dolliver informed the Board that he has four (4) bathrooms in his building, however regulation of that is under State jurisdiction and not for consideration by the Planning Board.

Mr. Heyland added that four (4) restrooms, for both sexes, would meet the standards.

Mr. Heyland asked Mr. Dolliver for the total number of seats.

Mr. Dolliver responded that there are ninety-six (96) internal seats and twenty-eight (28) outside seats.

Mr. Simpson asked if the Board voted on the parking waiver request.

Mr. Feldman responded that it did.

Ms. Freedman Moved to Approve the Application for RICK DOLLIVER / THAT PLACE IN OGUNQUIT – 331 Shore Road – Map 3 Block 53 – LBD – Site Plan Review for a Change of Use for a pre 1930 structure, from a Type 1 Restaurant to a Type 2 Restaurant with outside serving.

FREEDMAN/HAYES 5:0 UNANIMOUS

(Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Brian Aromando)

At this time Mr. Dolliver rejoined the Board and Mr. Aromando resumed his position as Alternate.

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS – None

I. OTHER BUSINESS –

Mr. Wilkos scheduled a Design Review Workshop to take place at 4:30 on August 10, 2015.

Mr. Feldman informed the Board that he is working on the post 1930 structures issue. He noted that there are two sets of standards, one for the Planning Board and another for the Historic Preservation Commission. The Planning Board issues a Design Certificate while the OHPC issues a Certificate of Appropriateness. He suggested that pre 1930 structures would receive a Certificate of Appropriateness from the OHPC and post 1930 structures would receive a Design Review Certificate from the Planning Board.

Mr. Feldman also suggested clarifying the use of Pre and Post 1930 dates.

J. ADJOURNMENT -

Mr. Simpson Moved to Adjourn at 8:45 p.m.

SIMPSON/HAYES 5:0 UNANIMOUS

(Voting Board Members: Steve Wilkos, Muriel Freedman, Rusty Hayes, Don Simpson, Rick Dolliver)

Respectfully Submitted

/S/

Maryann Stacy

Recording Secretary

Approved on August 10, 2015