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*Thomas A. Fortier*  
Town Manager

## **OGUNQUIT PLANNING BOARD MINUTES JANUARY 12, 2015**

### **REGULAR BUSINESS MEETING – 6:00 PM**

**A. ROLL CALL –**

The Roll was called with the following results:

Members Present:      Don Simpson, Chair  
                                 Rich Yurko, Vice Chair  
                                 Muriel Freedman  
                                 Jackie Bevins

Also Present:              Scott Heyland, Ogunquit Code Enforcement Officer

Excused:                    Maryann Stacy, Recording Secretary

**B. PLEDGE OF ALLEGIANCE -**

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

**D. MINUTES – December 15, 2014 and December 19, 2014 Site Visit (5 Bourne Lane).**

**Mr. Yurko Moved to Accept the Minutes of the December 15, 2014 Meeting as Submitted.  
YURKO/FREEDMAN 3:0 (Ms Bevins abstained as she was excused from the December 15, 2014 Meeting).**

**Mr. Yurko Moved to Accept the Minutes of the December 19, 2014 Site Visit as Submitted.  
YURKO/BEVINS 4:0 UNANIMOUS**

**E. PUBLIC INPUT –**

Mr. Simpson asked if there was anyone in the audience who wished to speak on any matter which was not on this meeting's agenda.

John Mixon (Vinton Road) addressed the Board. He noted that he was reluctant to make the points he was going to make, particularly because he has an application currently pending before the Board.

Mr. Mixon asserted that there currently are problems, and if he doesn't speak up he feels as if nothing will change.

Mr. Mixon asked, who is in charge of the Planning Board? Who makes sure that the procedures and By-Laws are followed?

Mr. Simpson responded that the responsibility is upon the entire Board as well as the Code Enforcement Officer, however the Chair is in charge of the Planning Board.

Mr. Mixon again asked, who is in charge of making sure that procedures are followed?

Mr. Simpson responded that it would be the responsibility of everyone on the Board.

Mr. Mixon asked if Mr. Simpson felt it was the responsibility of the Town of Ogunquit and the Planning Board to follow its own ordinances?

Mr. Simpson responded "absolutely".

Mr. Mixon reviewed Section 6.3.A of the Ogunquit Zoning Ordinance which states, in part:

"The Board shall consist of five appointed full members and two appointed alternate members, pursuant to section 803 of the Town Charter. When a member is unable to act because of conflict of interest, physical incapacity or otherwise unable to participate, the Chair shall designate an alternate to act in that member's stead."

Mr. Mixon suggested that the word "shall" does not mean "might or maybe" it means "you have to". He noted that since 2006 the Planning Board has not had five members and an alternate. He suggested that this can't be called a temporary situation when it's been seven years. He asked why the Town is not following Section 6.3.A.

Mr. Heyland responded that the Town has made attempts to fill the Board, however if those attempts are unsuccessful the Town needs to continue to operate. He also noted that the Ordinance states that three members shall vote in the affirmative to pass a motion. He asked if Mr. Mixon is suggesting that if the Board doesn't have five sitting members it should shut down until five members are appointed?

Mr. Mixon responded that yes, it should shut down. He again stressed that Article 6.3.A states that the Board is obligated to have five full members and two alternate members. He suggested that the lack of five sitting members on the Board violates his due process. He noted that two members cannot recuse themselves, that he has to come before a four person Board all the time.

Mr. Simpson noted that if there were five sitting Board members and three recused themselves there wouldn't be a quorum either.

Mr. Mixon argued that the Board expects him to follow the regulations.

Mr. Mixon asked whose responsibility it is to fill vacancies on the Board.

Mr. Yurko responded that it is the Town's responsibility to generate interest. He stated that Mr. Mixon can't berate the members who are here, doing the best they can, because there aren't more of them. He reiterated that fault can't be laid upon the sitting Board members because of the empty seats at the Board. They have all attempted to encourage people to join the Board.

Mr. Mixon noted that under the Town Charter it states that it is the Chairman's responsibility to encourage new members whenever a vacancy occurs.

Mr. Simpson responded that he does encourage new members. He also pointed out that whenever it occurs that one of the sitting members is absent and there are only three sitting members, he informs the applicants that it will require a unanimous vote to pass any motion and if the applicant feels at a disadvantage he/she may table the application, without prejudice, until all four members are present.

Mr. Mixon asked if the Board has a legal opinion as to whether it can legally operate with only four sitting members.

Mr. Heyland and Mr. Simpson both responded that they do not.

Mr. Heyland also pointed out that neither the Charter nor the Zoning Ordinance states that if there is not a five member sitting Board that the Board will be defunct and non-operational. He noted that Mr. Mixon does not have a legal opinion, and he is only expressing his personal views.

Mr. Mixon agreed.

Mr. Mixon asked Mr. Simpson if he was aware that when a Zoning Ordinance is changed the Planning Board is required, by State Statute, to hold a public Hearing?

Mr. Simpson responded that he is.

Mr. Mixon stated that there was no Public Hearing for the June 2014 change in the Driveway Definition.

Mr. Simpson acknowledged that there was not, the Board made a mistake.

Mr. Heyland responded that the Select Board held a Public Hearing.

Mr. Mixon responded that State Statute requires the Planning Board to hold the Public Hearing and post notice in the newspaper thirteen days and nine days prior to the Hearing.

Mr. Simpson informed Mr. Mixon that if he is unhappy with the actions of the Planning Board he can take his concerns to the Select Board. The Select Board appoints the Planning Board members.

Mr. Mixon asked who he needs to talk to in order to have the improperly changed driveway definition properly vetted.

Mr. Heyland responded that he has spoken to the Town's attorney, and the definition stands until a Court informs the Town that it is improper.

Mr. Mixon went on to state that the Board cannot exceed its reasonable scope of Sketch Plan Review.

Mr. Simpson interrupted to remind Mr. Mixon that the Board is not prepared to discuss his pending Subdivision Application at this time.

Mr. Mixon responded that he isn't talking about his application. He noted that Sketch Plan Applications are only required to be a simple sketch which does not have to be engineered and may be a freehand pencil sketch showing the proposed layout of the streets, lots, and other features. He asked if it was only in his case where legal opinions and traffic studies are being requested. He noted that he received a letter from the Code Enforcement Officer.

Mr. Heyland responded that as of this time, other than a letter from his office regarding the definition of driveway, nothing has occurred. He noted that the Board has held a site visit, but it was Mr. Mixon who requested that the application be tabled. He noted that if Mr. Mixon hadn't requested the delay the Board was prepared, at this meeting, to discuss the site visit and probably act on the Sketch Plan Application.

Mr. Simpson again stated that the Board will not discuss Mr. Mixon's application at this time.

Mr. Mixon expressed his frustration that there is no single person who can give him all the answers regarding the Planning Board's actions. The Town Manager says he has nothing to do with the Planning Board, Mr. Heyland says he is only an advisor, the Town may, or may not, have a planner, and Mr. Mixon is uncomfortable going the Planning Board Chair when he has an application pending before the Board.

Mr. Simpson asked if Mr. Mixon had anything further.

Mr. Mixon responded that he did not, that it would be overturned in Court.

**F. UNFINISHED BUSINESS –**

- ~~JOHN MIXON – 5 Bourne Lane – Map 5 Block 35A – Residential and Limited Business District. Subdivision Sketch Plan for Phase II (Units 5-7) of a seven unit condominium subdivision.~~**

TABLED AT THE APPLICANT'S REQUEST

**G. NEW BUSINESS –**

- Patelli Group LLC / Admiral's Inn – Map 6 Block 1-4 – General Business District One (GBD1). Site Plan and Design Review for Pre 1930 buildings. Application for interior and exterior renovations as well as landscaping and parking changes to site.**

Joe Deloise, Manager of Patelli Group LLC, addressed the Board. He noted that his engineer and architect were both unable to attend this meeting. He gave the Board an overview of the project.

They want to add a cabana for outdoor beverages, they want to change the design of the existing fire pit. They want to replace the existing portable hot tub with an in-ground hot tub. Mr. Deloise noted that the property contains four buildings which currently appear to be disconnected. It is his intention to landscape the property in such a way that the buildings are visually connected and there is a sense of a single "place". They will not be expanding the use, and they will be decreasing the impervious surfaces. They will add more trees and plantings.

Mr. Simpson asked for confirmation that in one of the buildings they will be reducing the number of guest rooms by six and in another they will be increasing the guest rooms by five which is a net reduction of one room.

Mr. Deloise confirmed this and added that they will also be restoring the wrap-around exterior porch on the original inn, similar to what was done at the Colonial Inn on Shore Road. The plan is to create five new rooms at the formally known White Rose Inn and remove six rooms from the original inn on the corner, this is the breakdown of the net loss of one guest room.

Mr. Simpson asked if the plan is to reduce the seats in the restaurant by ten.

Mr. Deloise responded that this is correct. He also confirmed that a portion of the exterior stairway structure will be removed and a new fire escape will be installed on the back of the building.

Mr. Yurko agreed that the plans do unify the property. He pointed out that the proposed cabana and fire pit have the feel of a bar. He noted that if this was in the center of the property and there was nothing else around it that would be fine, however there are two residential neighbors which are practically surrounded by the inn. He asked if this was going to be a potential problem with noise, and the fire pit.

Mr. Deloise responded that the existing fire pit will be moved further away from the houses. He also noted that the cabana will be tucked in among the other buildings as much as possible. He also stressed that there will be no carousing. There will be set hours and his intention is to create a family resort. There will be no loud music or live music.

Ms. Freedman asked if the cabana would be accessible to the public.

Mr. Deloise responded that it would.

Ms. Freedman asked if this is allowable.

Mr. Heyland responded that it is. The cabana/bar is an accessory use which is permitted in that zone.

Ms. Freedman asked if the two new guest rooms at the "White Rose Inn" will be the required size.

Mr. Deloise responded that they will be larger than the required size.

Mr. Heyland noted that there is a floor plan in the plan set.

Ms. Bevins stated that Mr. Deloise has done a very good job at the Colonial Inn on Shore Road and she has no doubt that he will do a great job with this property.

Mr. Simpson read the Fire Chief's January 12, 2015 Memo to the Board and asked Mr. Deloise if he will abide by the Chief's recommendations/requirements.

Mr. Deloise responded that he will.

At this time the Board reviewed the requested waivers:

*Item 6.6.C.3.I - Location of all wetlands, rivers, streams, brooks and other water bodies, natural features on-site or adjacent.*

REASON: There are no known, nor documented, wetlands, rivers, streams, brooks or other water bodies, natural features on-site or adjacent.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.I as being unreasonable in these circumstances.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.J - High intensity soil survey (for undeveloped, vacant sites w/o water & sewer)* REASON: The site is currently developed.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.J because it does not pertain to this site.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.L - The boundaries of any flood hazard areas and the 100-year flood elevation*

REASON: There are no known flood hazard areas as per the Fema Map, Map Community Panel 230632 003C from [msc.fema.gov](http://msc.fema.gov)

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.L because there are no known flood hazard areas per the FEMA Map.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.M - A copy of any proposed deed restrictions intended to cover all or part of subject property*

REASON: There are no known deed restrictions as per deed because it does not pertain to this application.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.M because it does not pertain to this application.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.N.ii - Outside Sewer Area — Septic System Design by LSE or PE*

REASON: The property is not outside the Sewer Area.

**Mr. Yurko Moved to Waive Requirement 6.6.C.N.ii because the property is not outside the Sewer Area.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.O.ii - Outside Water Service Area — Evidence of adequate supply from well driller or hydrogeologist*

REASON: The property is not outside the water service area.

**Mr. Yurko Moved to Waive Requirement 6.6.C.O.ii because the property is not outside the water service area.**

**YURKO/FREEDMAN 4:0 UNANIMOUS**

*Item 6.6.C.3.Q - Width and location of any streets, public improvements or open space shown upon the official map as in the comprehensive plan, if any, with the site*

REASON: The property is currently developed. There are no public improvements or open spaces that exist on this property.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.Q for the reason given by the Applicant.**

**YURKO/FREEDMAN 4:0 UNANIMOUS**

*Item 6.6.C.3.R - Location of any open space to be preserved and a description of proposed ownership, improvement and management*

REASON: The property is currently developed. There are no open spaces that exist and will be preserved improved or managed.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.R for the reasons stated by the Applicant.**

**YURKO/FREEDMAN 4:0 UNANIMOUS**

*Item 6.6.C.3.S - Hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer — Outside of public water & sewer areas*

REASON: The property is not outside of public water and sewer areas.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.S for the reasons stated by the Applicant.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.T - An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours*

REASON: The property's current and future functions as a hotel and restaurant shall remain the same, so the type of vehicular traffic arriving and leaving the property shall not be altered. The traffic count at peak hours will be less as a result of the proposed reduction in the number of seats at the restaurant by 10 and the reduction of 2 1 hotel rooms. Likewise the traffic to the restaurant is anticipated to be mainly on foot or registered hotel guests.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.T because the project constitutes a reduction.**

**YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.U - A Traffic impact analysis, prepared by a Registered Professional Engineer with experience in traffic engineering (for projects requiring 10 or more parking spaces, or 50 + trips per day)*

REASON: The property's currently and future functions as a hotel and restaurant remain the same, so the number of vehicle trips shall not increase. In fact, it will be reduced as a result of the proposed reduction in the number of seats at the restaurant by 10. As stated above, the traffic to the restaurant is anticipated to be mainly on foot or registered hotel quests.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.U for the reasons stated by the Applicant.  
YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.V- Areas within or adjacent to the proposed site which have been identified as high or moderated value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan*

REASON: The property is already developed, so there is no valuable wildlife habitat.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.V for the reasons stated by the Applicant.  
YURKO/BEVINS 4:0 UNANIMOUS**

*Item 6.6.C.3.W- Historic Areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places, Ogunquit Historic Register, or have been identified in the comprehensive plan.*

REASON: The property is not identified in the comprehensive plan and is not known to be listed on the National Register of Historic Places. The proposed plan for the Admiral's Inn was reviewed and approved by the Ogunquit Historic Preservation Commission in December 2014.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.W for the reasons stated by the Applicant.  
YURKO/FREEDMAN 4:0 UNANIMOUS**

Mr. Simpson noted that the Board has received a letter from the Ogunquit Historic Preservation Commission in support of this project.

*Item 6.6.C.3.AA - Location of any streets, public improvements or open space shown in the comprehensive plan or capital improvements plan, within the site.*

REASON: There are no streets, public improvements or open space within the site.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.AA for the reasons stated by the Applicant.  
YURKO/FREEDMAN 4:0 UNANIMOUS**

*Item 6.6.C.3.BB- Parcels of land proposed to be dedicated to public use and the conditions of such dedication*

REASON: There are not dedicated spaces for public use.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.BB for the reasons stated by the Applicant.  
YURKO/FREEDMAN 4:0 UNANIMOUS**

*Item 6.6.C.3.CC - Location/Method of Land Clearing & Construction Debris Disposal*

REASON: There property is already developed.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.CC for the reasons stated by the Applicant.  
YURKO/FREEDMAN 4:0 UNANIMOUS**

*Item 6.6.C.3.DD - Cost Estimates for Setting Performance Guarantees, pursuant to sec. 4.8*

REASON: The scope of site and building improvements do not require performance guarantees.

**Mr. Yurko Moved to Waive Requirement 6.6.C.3.DD for the reasons stated by the Applicant.  
FREEDMAN/BEVINS 4:0 UNANIMOUS**

At this time the Board reviewed the Design Review Submissions Checklist and found all requirements to be satisfied.

**Mr. Yurko Moved to find the Design Review Submissions Complete.  
YURKO/BEVINS 4:0 UNANIMOUS**

**Mr. Yurko Moved to find the Application complete and Schedule a Public Hearing  
YURKO/FREEDMAN 4:0 UNANIMOUS**

Mr. Simpson noted that the Public Hearing would take place on January 26, 2015 at 6:00 p.m.

#### **H. CODE ENFORCEMENT OFFICER BUSINESS –**

Mr. Heyland reviewed the procedure for application submittals. All applicants come to the Land Use Office where he will review the Ordinance and go over the application and required submittals.

Mr. Simpson added that when people stop him on the street with questions he refers them to the Code Enforcement Officer.

#### **1. OTHER BUSINESS –**

- 1. Perkins Cove Lobster Pound Correspondence** – Workshop Request for Ordinance Change to allow Type 3 Restaurants, with restrictions, in the Limited Business District (LBD).

Mr. Simpson noted that this matter will be scheduled for a Workshop to take place on January 26, 2015 at 5:00 p.m. At that time the Applicant may present a request for an Ordinance change.

#### **2. Proposed Boarding House Definition:**

”Lodging accommodations in a home or other building where a person or company acts as a proprietor or owner. The number of guest accommodations will be limited by the towns adopted National Fire Protection Association 101 Life Safety Code standards. Meals may be offered to overnight boarders in a common area with either partial or full cooking facilities. The minimum stay shall be one (1) week with no maximum stay

required. This definition shall include housing for Seasonal Workers. Offsite/employer housing for 4 or more Individuals shall be deemed a boarding house.”

*Planning Board Action: Vote to Approve Language and Schedule Public Hearing – January 26, 2014.*

Mr. Yurko summarized that this issue involves an intensive use of a particular type of property. He agreed that this question should go to the voters.

Ms. Bevins expressed concern over the presented language.

Mr. Yurko responded that they may tweak the language after they hear what the public has to say at the Public Hearing.

Ms. Freedman expressed concern that the language contains no mention of which districts/zones will allow this type of use.

Mr. Heyland responded that the definition needs to be tightened up, and then Table 702 should be consulted to see which zones allow this type of use.

Mr. Simpson stated that if the language is sent to the Select Board they too will hold a Public Hearing.

**Mr. Yurko Moved to Accept the above noted language and schedule a Public Hearing following which they will review the language again.**

**YURKO/FREEDMAN 4:0 UNANIMOUS**

Mr. Simpson spoke to the public reminding everyone that there are open positions on various Town Boards and Committees including the Planning Board. He noted that new members may begin as alternates until they get a feel for what it means to sit on a board or committee.

**J. ADJOURNMENT -**

**Mr. Yurko Moved to Adjourn at 7:00 p.m.**

**YURKO/BEVINS 4:0 UNANIMOUS**

Respectfully Submitted

Maryann L. Stacy

Maryann Stacy

Town of Ogunquit

Recording Secretary

*Approved on February 23, 2015*