



MUNICIPAL OFFICES
23 SCHOOL STREET • P.O. BOX 875
OGUNQUIT, MAINE 03907-0875
(207) 646-5139 General Offices
(207) 646-9326 Land Use
(207) 646-9546 Town Clerk
E-mail: townofogt@maine.rr.com

OGUNQUIT PLANNING BOARD MINUTES MONDAY AUGUST 10, 2015

A. ROLL CALL –

Mr. Wilkos called the roll with the following results:

Present: Steve Wilkos (Chair)
 Muriel Freedman (Vice Chair)
 Don Simpson
 Rick Dolliver (1st Alternate)

Members Excused: Jackie Bevins
 Rusty Hayes
 Brian Aromando (2nd Alternate)

Also present: Scott Heyland, Code Enforcement Officer
 Lee Jay Feldman, SMPDC
 Natalie Burns, Esq. Town Attorney
 Maryann Stacy, Recording Secretary

Mr. Wilkos noted that with the three excused members Mr. Dolliver would be moved to full voting member position.

B. PLEDGE OF ALLEGIANCE -

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

D. AFFIRMATION OF THE OGUNQUIT PLANNING BOARD BY-LAWS

Ms. Freedman referred to Section 3.1.8 “For each application filed during the course of the Board’s review and prior to the Board’s vote, the Chairman shall ask for comment from any abutters present at the Meeting.” She argued that this implies that abutters may be allowed to be heard at any time during the application review process and are not restricted to public hearings.

Attorney Burns responded that if the Board holds a public hearing for every application that comes before it, and abutters are permitted to be heard that will satisfy this requirement. As long as abutters are allowed to be heard prior to the final vote.

Ms. Freedman disagreed pointing out that Section 3.1.8 falls under the “Regular Meeting” section of the By-Laws.

**Mr. Simpson Moved to Approve the Planning Board By-Laws as Amended.
SIMPSON / DOLLIVER 4:0 UNANIMOUS**

E. MINUTES – July 27, 2015 Meeting

Mr. Simpson noted that he was quoted, out of context, by the York County Coast Star when they made reference to Mr. Simpson’s suggestion that Mr. Dolliver should recuse himself from hearing and acting upon Ms. Cammarota and Mr. Perkins’ Applications. Mr. Simpson stated that the YCCS took another of his statements out of context and misquoted him with the statement that he made referencing the “litigious nature by the Applicant” referring, in that case, to Mr. Perkins. Mr. Simpson stated for the record that this was not the statement that he made and that it is his opinion that the York County Coast Star owes the Perkins Family an apology, and he (Mr. Simpson) asked the YCCS to get their quotes correct in the future.

**Mr. Simpson Moved to Approve the Minutes of the July 27, 2015 Meeting as Amended.
SIMPSON/DOLLIVER 4:0 UNANIMOUS**

F. 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 agenda. There was no one.

G. UNFINISHED BUSINESS –

FINDINGS OF FACT FOR:

- 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 Moved to Approve the Findings of Fact, Conclusions, and Decision for 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, as submitted.

FREEDMAN/SIMPSON 3:0 (Mr. Dolliver had been recused from hearing this application)

- 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 Burns informed the Board that there were two things the Board should do in addition to adopting the draft Findings of Fact before them:

1. Review the previously granted waiver requests. Attorney Burns noted that the Board did go through the waiver requests and did vote on each one, and did have a statement as to why it was granting each one. However Section 6.6.C.4 of the Zoning Ordinance requires the Board determine that “strict compliance with the required submission would unduly burden the applicant and/or strict compliance with the required application submission would be excessive in nature of the proposed structure or activity”. Attorney Burns noted that this portion of the granting of the waivers was not done. She recommended a single motion, with the following language be added to each of those findings: “the board finds that strict compliance with the required application submission would unduly burden the applicant and strict compliance with the required application submission would be excessive in light of the nature of the proposed structure or activity”.

Mr. Wilkos asked if the Board may make that motion now.

Attorney Burns confirmed that it may.

Mr. Simpson Moved to find that the Board finds that strict compliance with the required application submissions would unduly burden the applicant and strict compliance with the required application submissions would be excessive in light of the nature of the proposed structure or activity.

SIMPSON /FREEDMAN

Mr. Dolliver asked why the Board is only making this additional motion for the Perkins Application and not the other two.

Attorney Burns responded it is her recommendation that going forward the Board incorporate the language for all waiver requests, however the Board is concentrating on the Perkins Lobster Pound Application in anticipation of future legal action and because this was the only one of the three applications where any opposition was expressed.

Mr. Dolliver asked if he could vote on this Finding of Fact given that he was recused from hearing and acting upon this application.

Mr. Wilkos confirmed that Mr. Dolliver would not vote on this Findings of Fact.

Attorney Burns also informed the Board that they should go through each of the findings in Section 6.7 and make findings for each of those. She noted that the Board has the initial overall Findings before them however there are some additional things which need to be added so that it will be a complete set of Findings for the Site Plan Review.

Mr. Simpson withdrew his Motion to find that the Board finds that strict compliance with the required application submissions would unduly burden the applicant and strict compliance with the required application submissions would be excessive in light of the nature of the proposed structure or activity.

SIMPSON /FREEDMAN

Ms. Freedman agreed to the withdrawal of Mr. Simpson's Motion.

At this time the Board reviewed the standards of Section 6.7.A with regard to the Applicant's Site Plan Review Application.

For the following sections of Section 6.7.A:

1. Proposed use or structure will allow the orderly and reasonable use of adjacent properties.
This application involves an application for a small restaurant in an existing building with four parking spaces.
Mr. Simpson Moved that the small nature of the use of the property will allow for the orderly and reasonable use of adjacent properties.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)
2. Proposed use or structure will not adversely effect the safety, the health and the welfare of the Town.
This is a small scale permitted use, with a four (4) car parking lot in the Limited Business District and will not effect the safety health, and welfare of the Town.
Mr. Simpson Moved that the small scale permitted use in the Limited Business District will not effect the safety, health, and welfare of the Town.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)
3. The proposed use or structure will not create an undue increase of vehicular traffic congestion on public streets or highways.
Mr. Simpson Moved that the proposed use is a small scale restaurant and will only provide four parking spaces it will not create an undue increase of vehicular traffic congestion on public streets or highways.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)
4. The proposed use or structure includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.
Mr. Simpson Moved that the property is on public sewer which will be used for treatment of sewage from the site. Refuse will be handled as set forth in the application provided to the Planning Board.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

5. The proposed structure or use of materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.
Mr. Simpson Moved that the restaurant will have proper cooking ventilation system.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

6. The proposed structure or use will not cause disturbing emission of electrical discharges, dust, light, vibration or noise.
Mr. Simpson Moved that the proposed use is a permitted one in the Limited Business District and is not anticipated to generate unusual amounts of noise , dust, light, or electrical discharge.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

7. The proposed structure or use of the operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.
Mr. Simpson Moved that the use will be conducted on the applicant's property including the four parking spaces in support of the use.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

8. The proposed structure or use contains adequate, off-street parking in compliance with this Ordinance.
Mr. Simpson Moved that the proposal contains four off street parking spaces which exceeds the requirement of the ordinance.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

9. The structure or proposed use does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
Mr. Simpson Moved that the proposed use will be located in an existing structure that is in close proximity to Shore Road which will provide access to the property in an emergency situation. In addition the

Applicant is required to meet all Life Safety Codes relevant to DHHS for the restaurant's cooking facilities as well as any electrical permits for any electrical or structural changes.

SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

10. The proposed structure or use will be sensitive to adjacent historic properties in compliance with Article 11.
Mr. Simpson Moved that the property has an existing structure. Renovations to that structure have been reviewed by the Ogunquit Historic Preservation Commission, and have been approved under Article 11. The OHPC provided comments to the Planning Board as well as elevation drawings for the Board members' consideration.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

11. The proposed structure and use has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.
Mr. Simpson Moved that the Applicant has provided a survey plan showing the entire lot as well as the specific area of the proposed use which is sufficient for that use.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

12. The proposed structure and/or use will be adequately screened and buffered from contiguous properties.
Mr. Simpson Moved that the applicant has provided a plan illustrating the existing and proposed buffering and screening which the Board has determined to be adequate with the addition of eight (8) Western Arborvitae to be planted along the abutter's property line for additional buffering.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

13. The proposed structure and/or use will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.
Mr. Simpson Moved that landscaping has been addressed in finding number twelve (12) a storm water drainage system will not be required because it is an existing structure.
SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

14. The proposed structure and/or use will provide for adequate pedestrian circulation.

Mr. Simpson moved that the Applicant has provided a site plan which indicates the parking area and the route for pedestrians access to the restaurant.

SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

15. The proposed structure and/or use anticipates and mitigates potential nuisance created by its location.

Mr. Simpson Moved that the use is a permitted use in the Limited Business District and the Applicant has provided a plan indicating how the project will be developed and maintained. In addition the Planning Board has required additional screening of eight (8) Western Arborvitae Trees to mitigate any potential nuisance.

SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

16. The proposed structure and/or use complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

Mr. Simpson Moved that the Applicant has submitted plans and the Planning Board has required additional buffering. Based upon that the Board finds that this criterion is satisfied.

SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

Mr. Simpson Moved to Adopt the Findings of Fact, Conclusions, and Decision as presented by Town Staff and as amended at this meeting.

SIMPSON/FREEDMAN 3/0 (Mr. Dolliver had been recused from hearing this application)

- 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. Simpson Moved to Approve the Findings of Fact, Conclusions, and Decision 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.

SIMPSON/FREEDMAN 3:0 UNANIMOUS

SUBDIVISION PRELIMINARY PLAN APPLICATION

1. SHORE ROAD COMMONS – PHASE II / JOHN MIXON – 5 Bourne Lane – Map 5 Block 35A – Residential District (RD). Subdivision Preliminary Plan Application for Phase II (Units 5-7) of a seven unit condominium subdivision. Sketch Plan Accepted on March 9, 2015.

Mr. Simpson recused himself due to the possibility of a perception of conflict. The Board members agreed to his request. Mr. Simpson left the room.

Mr. Wilkos informed Mr. Mixon that with only three sitting Board members present any vote will require a unanimous vote for it to pass.

Mr. Mixon agreed to continue with the three Board members.

Rick Licht, Mr. Mixon's representative addressed the Board and gave a brief overview of the Preliminary Plan. Mr. Licht referenced the submitted site plans. He noted that the first part of what will be a seven (7) unit condominium project is already underway. It did not require subdivision review because it was a condominium. There were two (2) existing dwellings and two new dwelling units are currently under development.

It was the fifth (5th) unit which triggered subdivision approval. Mr. Licht pointed out that Mr. Mixon has improved the existing lane from approximately ten feet (10') feet wide to eighteen feet (18') wide, and the entrance on Bourne Lane has been increased to almost thirty feet (30') feet in width. This improvement runs from the entrance at Bourne Lane to the beginning of the Phase I area of the project.

A new driveway will be created for units 5 and 6 and a second driveway for unit 7.

The project is part of the overall Shore Road Condominium Project. The Condominium Declaration has been included in the Board Members' packets and has been recorded at the Registry of Deeds as has the Condominium Platt.

The objective is to create a cohesive neighborhood.

Mr. Licht reviewed the setbacks between the homes as well as the road and driveway widths as noted on the submitted plans. He noted work done to retain existing trees and vegetative buffers.

He pointed out that electrical lines will be underground and water and sewer will be public. In addition, buried propane tanks will be in place to service heat for the units.

Responding to the Conservation Commission comments – each unit will have a DEP drip edge which takes all the roof runoff and filters it through a filter bed. This removes the impervious roof area out of the equation. The roadways will be discharged through new pipe systems and rain garden features. Eventually the water will run into the existing ravine which the Applicant has improved.

Mr. Licht informed the Board that the Applicant is in agreement with the Fire Chief's requests by retaining the extra width of the driveways and possible connecting Phase 1 and Phase 2, and by marking Hartwig Lane as a fire lane with "NO PARKING" signage.

Mr. Licht informed the Board that the Police chief has confirmed that there has only been a single accident at the Bourne Lane / Shore Road intersect and this was caused by a drunk driver.

Mr. Licht also suggested that the anticipated trips from the three proposed dwellings will be thirty (30) trips per day which falls well below the need for a Traffic Study. He also noted that this community will be a walkable community which will even further reduce traffic.

At this time the Board reviewed the Applicant's Waiver Requests with the following results:

Article 6.2.8 Deed Restrictions — The project will be governed as a Condominium Association and copies of the declaration are included herein. No deed restrictions apply to individual lots or dwellings.

Mr. Dolliver Moved to accept the waiver for Article 6.2.8 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 (Mr. Simpson Recused)

Article 6.2.9.2 Test Pit Analysis for projects served by subsurface waste water disposal - The site is served by public sewer. The standard does not apply.

Mr. Dolliver Moved to accept the waiver for Article 6.2.9.2 Test Pit Analysis under special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 (Mr. Simpson Recused)

Article 6.2.11.3 7- Preliminary Plan for Subdivision — Submission of High Intensity Soil Survey. We are requesting a waiver of this requirement as the site is only 2.59 acres, is previously developed and is located on public water and sewer. We have provided U.S. D.A. Medium Soil data supporting that the site soils are suitable for development. We respectfully request that the Planning Board grant the requested waiver.

Mr. Dolliver Moved to accept the waiver for Article 6.2.11.3 based on strict compliance with the required application submission would unduly burden the applicant and strict compliance with the submission would be excessive in light of the nature of the structure or activity.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.11.5 Location of Rivers or Brooks — The project does not contain any rivers or brooks nor is the project directly adjacent to such. This standard does not apply.

Mr. Dolliver Moved to grant the waiver for Article 6.2.11.5 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.11.10 Width of Streets or Open Space shown on Comprehensive Plan - There are no proposed or existing public streets within the subdivision nor are any proposed. This standard does not apply.

Mr. Dolliver Moved to grant the waiver for Article 6.2.11.10 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.11.13 Parcels proposed for dedication to public use — No parcels are proposed for dedication to public use. The standard does not apply.

Mr. Dolliver Moved to Approve the waiver for Article 6.2.11.13 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.12 Hydrogeologic Study required when the project is not serviced by public sewer and subsection a. or b. are met. The project is serviced by public sewer. This standard does not apply.

Mr. Dolliver Moved to Grant the waiver for Article 6.2.12 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.14 Traffic Impact Analysis for subdivision involving 40 or more parking spaces or 200 or more trips per day. An estimate of traffic trip generation has been provided which documents that less than 200 trips per day will be generated. The project proposes 3 units and 3-5 parking spaces therefore this standard does not apply.

Mr. Wilkos asked: if the Board grants this waiver does it mean they cannot request a traffic study?

Mr. Feldman responded that if during deliberations the Board feels it requires additional information regarding safe traffic or safe travel it may request it. At this time the standard has not been met to require the applicant submit a traffic study however at a later time the Board may determine that a traffic study is required.

Ms. Burns added Article 6.2.14 is asking for a full traffic impact analysis. However the Board might request a lesser amount of information. Waiving Article 6.2.14 does not prevent the Board from requiring another type of traffic study.

Mr. Feldman added that the Board might ask for information regarding safety of Bourne Lane entrance, vehicle projected distribution, questions that may not require a full Traffic Impact Study.

Mr. Dolliver Moved to Grant the waiver for Article 6.2.14 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.15 Wildlife Habitat Areas and Unique Natural Areas. No areas on site have been mapped by the Maine Department of Inland Fisheries and Wildlife as high or moderate wildlife areas nor is the site shown on the Town Comprehensive Plan (which incorporates any Maine Natural Areas Program mapped critical areas) as having unique natural areas. This standard does not apply.

Mr. Dolliver Moved to Grant the waiver for Article 6.2.15 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Article 6.2.16 Historic Sites. No areas on or adjacent to the site are listed by the U.S. Department of the Interior on the National Register of Historic Places. This standard does not apply.

Mr. Dolliver Moved to Grant the waiver for Article 6.2.16 based on special circumstances of this particular plan.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

Mr. Dolliver Moved to find the application complete for SHORE ROAD COMMONS – PHASE II / JOHN MIXON – 5 Bourne Lane – Map 5 Block 35A – Residential District (RD). Subdivision Preliminary Plan Application for Phase II (Units 5-7) of a seven unit condominium subdivision. Sketch Plan Accepted on March 9, 2015.

DOLLIVER/FREEDMAN 3:0 UNANIMOUS (Mr. Simpson Recused)

The Board scheduled a Public Hearing for August 24, 2015 at 6:00 p.m.

Mr. Mixon agreed.

The Board scheduled a Site Visit to take place on Monday August 24, 2015 at 4:00 p.m.

Mr. Wilkos noted that discussion at Site Visits is normally restricted to Board members.

Mr. Licht agreed to have the proposed buildings and roadways, and driveways flagged prior to the Site Visit.

H. NEW BUSINESS – None

Mr. Simpson rejoined the Board

I. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland advised the business community and that there is a strict limitation to the amount of signage allowed and if there are any questions to call the Land Use Office.

He noted that there are limitations to the types of signage allowed. A-Frame signs and Banners are not allowed.

J. OTHER BUSINESS –

The Board scheduled its 5th Design Review Workshop to discuss the Design Review process for structures built prior to and after 1931. This workshop will take place on September 14, 2015 from 4:30 to 5:30 p.m.

K. ADJOURNMENT –

**Ms. Freedman Moved to Adjourn at 7:45 p.m.
FREEDMAN/SIMPSON 4:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Recording Secretary

Approved on August 24, 2015