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**OGUNQUIT PLANNING BOARD MINUTES
MONDAY SEPTEMBER 26 2016**

REGULAR BUSINESS MEETING

A. ROLL CALL –

Members Present: Steve Wilkos (Chair)
 Don Simpson (Vice Chair)
 Muriel Freedman
 Jackie Bevins
 Rusty Hayes

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

Mr. Wilkos confirmed that all cell phones were off the table.

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES - September 12, 2016 Site Visit and Regular Business Meeting.

Ms. Bevins Moved to Accept the Minutes of the September 12, 2016 Regular Business Meeting as Submitted.

BEVINS/HAYES 5:0 UNANIMOUS

Mr. Simpson Moved to Accept the Minutes of the September 12, 2016 Site Visit 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 no on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

- 1. FINDINGS OF FACT FOR JAMES HARTWELL/THOMPSON GREEN – 309 Shore Road – Map 3 Block 17 – LBD. Site Plan Application for a post 1931 structure. Application for a change of use from business use to boarding house.**
Meeting dates: June 20, 2016 Application found complete
July 11, 2016 Public Hearing
September 12, 2016 Site Visit and Final Approval Granted

Ms. Bevins Moved to Accept the Findings of Fact for James Hartwell/Thompson Green – 309 Shore Road – Map 3 Block 17.

BEVINS/FREEDMAN 5:0 UNANIMOUS

- 2. GRAHANELI, LLC / MOLLY TROLLEY DEPOT — 724 MAIN STREET Map 11 Block 6 GBD2/SLC/SLR/R/RP Zones — Revised Site Plan Review for a post 1931 structure/property. Application for change of use for:**
 - 1. Private pay parking lot with private shuttle for patrons;**
 - 2. Office for private charter service and parking lot;**
 - 3. Retail and Restaurant space.****Meeting dates: January 11, 2016**
March 28, 2016
June 6, 2016 Application Found Complete
June 20, 2016 Public Hearing
August 22, 2016

Attorney Greg Orso addressed the Board as the Applicant's representative. Attorney Orso reviewed the six issues the Board had at the September 12, 2016 Hearing.

1. Response to Mr. Errico's August 19, 2016 memo and his question about the north entrance turning radii.

Attorney Orso responded that it is his understanding, primarily from Mr. Feldman's September 26, 2016 Memo, that Mr. Errico has reviewed the turning radius plan and is satisfied with the turning radius.

Mr. Feldman confirmed that this issue has been resolved.

2. Description of the type of commercial food to be sold.

Attorney Orso responded that James Wright and Mr. Bradish have informed him that it will be light café food. There could be grilling but the café will not be a destination in, and of, itself. The purpose of the café is to allow for patrons going to the beach to take food along with them. He noted that patrons of the café will have paid to park in the lot and are unlikely to do so just to get a cup of coffee and a bagel. The café is also not intended to be a "steak house" where people will go for dinner.

The food will be lite fare, premade items such as drinks, yogurt, and fruit. Any requirements for State, local, and /or Federal safety will be complied with.

Mr. Simpson responded that the answer is still unclear. He noted that if the applicant intends to have grilling he will need some sort of hood system. He asked Mr. Heyland if the Applicant will have to meet all requirements before he is given an Occupancy Permit.

Mr. Heyland confirmed that he will. He added that if the applicant was proposing a large grilling operation the Board would want to know about it, that is not the case here.

Attorney Orso agreed and added that the goal is to sell food that patrons can carry with them to the beach.

Ms. Bevins pointed out that this property originally held a large restaurant with a large exhaust system, this applicant seems to only want a small grilling operation and he will have to comply with all the standard regulations which the Code Officer will confirm.

Mr. Heyland asked Mr. Orso if the Applicant intends to have open serving windows.

Attorney Orso responded “not at this time”.

Mr. Heyland stated that it appears the Applicant is asking for a Type 3 Restaurant which is an allowed use, and is defined as:

“An establishment where food and/or beverages (either alcoholic or nonalcoholic) are prepared and served to the public, which meets all of the following characteristics:

- (1) where food and/or beverages are served for consumption on or for takeout off the premises,
- (2) where food and/or beverages are not served to pedestrians from an exterior opening or counter, nor to occupants in motor vehicles;
- (3) where exterior loudspeakers are not used; and
- (4) where alcoholic beverages may be served only within an enclosed area for on-premise consumption.”

Ms. Freedman reminded the Board that the abutters asked about cooking facilities, and she recalls the Applicant’s representative saying that the most they would have is a microwave. She also recalls the Board asking the applicant’s representative what types of food would be served and the Board not getting an answer.

Mr. Wilkos noted that the most recently submitted site plan, Item 4 states the uses as retail and coffee shop, not a café. He asked if there is a difference.

Mr. Heyland responded that the plan must clearly identify the type of restaurant as defined in the Ogunquit Zoning Ordinance, and from what the Applicant’s representatives are describing it appears that it will be a Type 3 Restaurant. He suggested this be a condition of approval.

Mr. Heyland added that the square footage of the Type 3 Restaurant will be identified on the final plan; and any future changes will require the Applicant to come back before the Board.

Mr. Heyland asked the Applicant’s representative what the square footage of the “café” will be.

Mr. Feldman responded that the plan states “retail and restaurant/coffee shop 1,593 square feet”.

Mr. Heyland suggested an addition to the plan note that it will be a Type 3 Restaurant.

Attorney Orso continued with the Board's concerns from the September 12, 2016 Hearing:

3. Whether or not there will be a paid parking lot open to the public. He stated that the answer is "yes" it will be a privately owned paid parking lot open to the public.

Mr. Heyland asked Attorney Orso to outline how the operation will work. He specifically asked if a patron pays to park will he be paying to take the trolley, walking away. How will it work?

Attorney Orso responded that the goal is for patrons to pay to park and get a free trolley ride to the beach; however the Applicant can't control what parking patrons do when they get out of their car. There are a finite number of parking spaces, and if patrons pay to park in one of those spaces they can then do whatever they want. All the other activities: restaurant, retail. trolley shuttle, are accessory uses.

Mr. Wilkos asked if the privately owned paid parking lot for public use makes a difference in the application.

Mr. Feldman responded that it does not. He noted Mr. Errico's August 19, 2016 memo wherein he believed the provided information was accurate. Mr. Feldman noted that parking spaces will only turn over in a certain amount of time based upon the patrons' reason for parking there. A restaurant will generate more frequent turnover than beach parking where patrons will likely stay four or more hours. He noted that turnover will have less of an impact.

Ms. Bevins stated that she wanted a traffic count as part of the traffic study.

Mr. Wilkos asked what the Board required of the last applicant who applied for a paid parking lot.

Mr. Heyland responded that he was required to have a traffic movement study which covered internal movement within the lot as well as entrance and exit onto Route One.

Mr. Feldman agreed and added that Mr. Eaton, in his original report, included traffic counts on Route One and a trip generation based upon proposed uses.

Mr. Bevins noted that there have been eighteen accidents in that area and she wondered if this proposal would pass. She added that anything that was asked of a previous applicant should be asked of this applicant.

Attorney Orso responded that the Applicant had a review by a professional; next, the Town hired its own professional to prepare a peer review. Both studies confirmed that the proposed project will not generate new traffic. He asked why the Board can't rely on these two professional traffic engineers.

Mr. Wilkos responded that the previous application was denied for a paid parking lot, and that applicant will likely be coming back before the Board. He stated that the Board needs to be consistent in what it requires of this applicant and the other applicant.

Mr. Heyland added that nothing different was asked of the previous applicant or any other applicant along that stretch of Route One. Both applications had traffic studies and peer reviews. What the Board received was the same in both cases. He agreed that Ms. Bevins may have wanted more however that is not what the Board received from the previous applicant or this one.

Mr. Wilkos reiterated that the Board should be consistent in what it requires of applicants for paid parking lots.

Mr. Hayes stated that the Board had asked the previous applicant for traffic counts, information regarding accidents, time for vehicles to exit, and how long it took a vehicle to enter traffic from Ocean Street. When he asked for the difference between traffic studies he was informed that “this is what our ordinance asks for”, which is how that traffic study came about.

Mr. Wilkos suggested that the Applicant is now asking for a paid parking lot when before he was asking for paid parking for people taking his trolley.

Attorney Orso pointed out that the original plan stated “paid parking” with accessories.

Mr. Hayes responded that this is not how it was originally presented to the Board.

James Wright responded that “this project, from the get go, was for a paid parking lot!”.

Mr. Simpson referred to the Applicant’s waiver requests on his revised site plan review, which were approved by the Board, and stated “1) private paid parking with private shuttle for patrons, 2) office for private charter service and parking lot, 3) retail and restaurant space. Mr. Simpson agreed that from the beginning it was clearly stated that this application was for a paid parking lot with a shuttle.

Mr. Feldman agreed and added that the confusion comes from whether or not this is a paid parking lot for anyone to use, or is it a paid parking lot for patrons using the Applicant’s shuttle service? Based upon what the application states, it will be a single private paid parking lot with a single private shuttle available to patrons.

Ms. Freedman referred to minutes from March 2016 which stated that the proposed facility will provide parking for visitors to Ogunquit who wish to use the Town trolley stop located directly across the street; to avoid traffic congestion and traffic difficulties in Ogunquit. That indicates to her that there will be a paid parking lot for people who may go across the street and get the Town Trolley.

Attorney Orso responded that this will be a privately owned paid parking lot. “Private” designates who owns it, not who can use it, and if patrons want to pay to park and then not take advantage of the Applicant’s shuttle they are free to do so.

Ms. Bevins reiterated that she wants to see both applicants for paid parking lots treated the same.

Attorney Orso responded that to treat people the same way they have to be similarly situated. The Maine Supreme Court has made it clear that there is no binding effect on any application which comes after the first one. The Board doesn't create precedent, the Board is here to hear this specific application; and any traffic study is dictated by a specific application.

Mr. Feldman agreed that every project stands on its own and any standards required stand on their own. He noted that the Applicant's traffic study has northbound and southbound counts. That study was reviewed by the Town's traffic engineer and he has confirmed the Applicant's report.

Mr. Heyland added that any patron parking in the Applicant's parking lot has the same effect whether he gets on the Applicant's shuttle or walks across the street and gets on a Town trolley. He noted that when this application came into his office it was for a trolley depot activity, now it appears that the final permitting will be for a parking lot use with accessory use of the trolley, retail, and restaurant.

Ms. Bevins noted that the first application's traffic study was twenty pages long, this applicant's traffic study was only two pages long.

Mr. Feldman responded that every traffic engineer does things differently and presents their information in different ways. The question is whether the information is accurate and if the report meets the needs of the Board for the use being reviewed. For this application the Town's traffic engineer (Mr. Errico) peer review indicates that it does.

Mr. Hayes expressed his concern that if the first application was at a failed intersection then there cannot be another paid parking lot within a mile and this application is within a mile of the Ocean Street / Route One intersection. Until he can be convinced that the application isn't within a mile of a failed intersection he would have to vote no.

Mr. Wilkos clarified that the intersection at Route One and Ocean Street is the intersection they are discussing.

Mr. Feldman responded that both traffic engineers agree that this project will not generate new traffic to Ogunquit. Even if there is a failed intersection in the area, the use of this project as a parking lot does not trigger the failed intersection standard. People are not coming to Ogunquit because of the parking lot, the parking lot will be taking vehicles which are already on the road.

Mr. Heyland responded that the Ordinance states that the failed intersection rule only applies to projects which will increase traffic, parking lots do not.

Attorney Orso reiterated that the problem with voting on a previous application, and applying that application's criteria to this application is apples and oranges. There is no way for an applicant to have due process if Board members apply what happened with a previous application. If Board members base their votes on how they voted in a previous application then the future applicants have no way of knowing what was done or said. This is why the Board has to apply the Ordinance to each application based on its own merits. In this case the Ordinance is

satisfied by the Applicant's traffic study and the Board's peer review study. Every application is different.

Mr. Simpson and Ms. Freedman agreed that they are satisfied.

Ms. Bevins and Mr. Hayes stated that they are not satisfied.

Attorney Orso asked why they are unsatisfied, and if there is a section of the Ordinance which this applicant has not met he (Attorney Orso) needs to know what it is so he can address it. He stated that if the Board member's decision to vote to deny is based upon a past application then it needs to be stated on the record and that past application needs to be identified.

It was noted that Mr. Eaton did traffic counts for this stretch of Route One in 2011.

Mr. Heyland noted that this information was probably taken from the State DOT.

Mr. Wilkos stated that the traffic engineer did not come out and do his own traffic count.

Mr. Feldman noted that the traffic report states that Mr. Eaton did a traffic count in July 2011.

The Board expressed dissatisfaction with a 2011, five year old traffic count.

Attorney Orso responded that if the Town's peer review traffic engineer says that the data is OK it should be sufficient for the Board.

Mr. Hayes expressed his concern that the Applicant has been represented by several different individuals, some of which were unaware that the application involved a paid parking lot.

Mr. Heyland stated Articles 8.13.C, A and B of the Ordinance indicate what triggers a traffic study and what triggers the "failed intersection" component. This application will not increase traffic. The Town's engineer confirms that there will be no additional traffic generated by this project.

Mr. Wilkos asked if the Planning Board could require a traffic count.

Mr. Heyland responded that a parking lot does not add even a single vehicle to the traffic volume, thus it doesn't matter how many cars travel by the site.

Mr. Wilkos asked why they even need a traffic study.

Mr. Heyland responded that until the ordinance is amended to exempt parking lots the Board is required to review the study. He added that should the Type 3 Restaurant change in the future and become more than an accessory use, and become a destination in its own right that generated traffic, it would be important to review the new traffic flow into and out of the site.

Mr. Wilkos asked again, why the Board requires a traffic study.

Mr. Feldman responded that the way the Ordinance is set up any project which creates ten or more parking spaces triggers the need for a traffic study and until the ordinance is amended to exempt parking lots the requirement stands.

Mr. Heyland pointed out that the Board has the ability to waive the traffic study for any project creating less than fifty parking spaces.

Mr. Hayes agreed that the issue is clearer and he is more comfortable with the traffic study without a traffic count for this particular application. His concern has always been with safety and vehicles turning into and coming out of parking lots. He suggested the Board hold a workshop to discuss this issue.

Attorney Orso continued with the Board's concerns from the September 12, 2016 Hearing:

4) Confirmation that trolleys will not be sold on site. Attorney Orso pointed out that Note #7 on the Plans state that trolleys will not be sold on site.

Mr. Wilkos responded that Mr. Feldman has suggested that Note #7 be changed to read: "Trolleys shall not be sold or displayed for sale from the site".

Attorney Orso agreed to this change.

5) Revised plans indicating additional signage regarding location of handicapped parking spaces.

Attorney Orso referred to the revised Plan and Sheet 4 which provides additional detail.

6) Revise plans indicating parking lot striping as suggested by Mr. Feldman.

Attorney Orso noted that this change has also been added to the Plan.

Ms. Bevins asked if the parking for the restaurant has to be specifically labeled.

Mr. Heyland responded that it does not.

Ms. Freedman asked if it is the intent to allow patrons to park in the lot and go across the street to get a Town Trolley.

Mr. Orso responded that if patrons want to pay to park they can do whatever they want.

Ms. Freedman expressed frustration with the qualification of the answer by prefacing it with "it is not the intent".

Mr. Wilkos asked if the parking fee includes a free trolley shuttle.

Attorney Orso responded that it does.

Mr. Hayes asked for hours of operation.

Attorney Orso responded that they will be consistent with the Town's parking lots, whatever that is.

Mr. Wilkos stated that hours of operation were listed in the original application.

Mr. Wright responded that everyone was in agreement.

Ms. Freedman referred back to past meeting minutes where the Board was informed that the hours of operation would be 8:00 a.m. to 6:00 p.m. Mid May through October.

Mr. Wright responded that they may want to run later in the evening, he would talk to Mr. Bradish and get something on the plan.

Mr. Wilkos responded that the Board needs a definite answer.

Mr. Wright suggested 8:00 a.m. to 10:00 p.m.

Attorney Orso suggested hours of operation that match the Town's parking lot hours of operation.

Mr. Wilkos responded that throughout this entire application review process the answers are different every time.

Attorney Orso again asked for the Town parking lot hours of operation.

Mr. Simpson responded that the Main Beach Parking Lot stops charging at 6:00 p.m.

Mr. Orso stated that stopping charging is different than hours of operation, he again suggested they use the same hours as the Town's parking lot.

Mr. Wilkos responded that the applicant needs to provide a specific answer to the hours of operation.

Attorney Orso responded 8:00 a.m. to 10:00 p.m. from May 15th through October 31st.

Mr. Wilkos asked about timeframes outside of the agreed to hours and dates.

Attorney Orso responded that if the applicant wants to operate outside of those timeframes he would need to come back before the Board and ask for a modification.

Mr. Wilkos asked for confirmation that these are the hours and dates of operation the applicant wants.

Attorney Orso responded that this is his understanding.

Mr. Heyland pointed out the Noise Abatement Article 8.9 of the Zoning Ordinance has a 10:00 p.m. end time which matches what the applicant is asking for.

Mr. Wilkos asked to have the hours and dates of operation added to the plan.

Attorney Orso agreed to see that it is done.

Mr. Feldman reviewed the proposed conditions of approval:

1. The Plan will include a notation that the restaurant is a “Type 3 Restaurant”.
2. Trolleys shall not be sold or displayed for sale on site.
3. Time of operation will be May 15th through October 31st and hours of operation will be 8:00 a.m. to 10:00 p.m.
4. There will be no live or recorded music on site.

Attorney Orso agreed to the conditions of approval.

At this time the Board reviewed the Site Plan Review Standards as outlined in Section 6.7 of the Zoning Ordinance and found all standards to have been met.

Mr. Wilkos asked about lighting in the parking lot.

Mr. Feldman responded that the applicant’s representative had stated that there would be no new lighting.

Mr. Wilkos asked about the running of trolleys overnight.

Mr. Feldman responded that the applicant’s representative had confirmed that no trolleys would be left on site overnight.

Mr. Simpson Moved to Approve the Site Plan Application for GRAHANELI, LLC / MOLLY TROLLEY DEPOT — 724 MAIN STREET Map 11 Block 6 GBD2/SLC/SLR/R/RP Zones — Revised Site Plan Review for a post 1931 structure/property. Application for change of use for:

1. Private pay parking lot with private shuttle for patrons;
2. Office for private charter service and parking lot;
3. Retail and Restaurant space;

With the following conditions of approval:

1. Restaurant will be a Type 3 Restaurant;
 2. Trolleys will not be sold or displayed for sale on site;
 3. Time of operation will be from May 15th through October 31st;
 4. Hours of operation will be from 8:00 a.m. through 10:00 p.m.;
 5. There will be no live or recorded music;
 6. No trolleys will be left on site between the hours of 10:00 p.m. and 8:00 a.m.
- SIMPSON/BEVINS

Mr. Wilkos called for discussion. There being none he called for a vote on Mr. Simpson’s motion.

Mr. Simpson Moved to Approve the Site Plan Application for GRAHANELI, LLC / MOLLY TROLLEY DEPOT — 724 MAIN STREET Map 11 Block 6 GBD2/SLC/SLR/R/RP Zones — Revised Site Plan Review for a post 1931 structure/property. Application for change of use for:

- 1. Private pay parking lot with private shuttle for patrons;**
- 2. Office for private charter service and parking lot;**
- 3. Retail and Restaurant space;**

With the following conditions of approval:

- 1. Restaurant will be a Type 3 Restaurant;**
 - 2. Trolleys will not be sold or displayed for sale on site;**
 - 3. Time of operation will be from May 15th through October 31st;**
 - 4. Hours of operation will be from 8:00 a.m. through 10:00 p.m.;**
 - 5. There will be no live or recorded music;**
 - 6. No trolleys will be left on site between the hours of 10:00 p.m. and 8:00 a.m.**
- SIMPSON/BEVINS 5:0 unanimous**

G. NEW BUSINESS –

- 1. TERRACE BY THE SEA – 23 Wharf Lane – Map 7 Block 109 – SLC – Design Review for a pre-1931 structure. Application to renovate and reconstruct an existing porch roof deck.**

Shelley Howard and David Hill from Frame 2 Finish Construction addressed the Board as the Applicant's representatives.

Mr. Wilkos reviewed the Ogunquit Historic Preservation Commission's August 10, 2016 Memo to the Board (*a copy of which will be maintained in the Applicant's Planning Board file*).

At this time the Board reviewed Article 11.7.C of the Ogunquit Zoning Ordinance and found all standards to have been satisfied.

Mr. Simpson Moved to Approve the Design Review Application for TERRACE BY THE SEA – 23 Wharf Lane – Map 7 Block 109 – SLC – Design Review for a pre-1931 structure. Application to renovate and reconstruct an existing porch roof deck.
SIMPSON/BEVINS

Mr. Wilkos called for discussion. There being none he called for a vote on Mr. Simpson's motion.

**Mr. Simpson Moved to Approve the Design Review Application for TERRACE BY THE SEA – 23 Wharf Lane – Map 7 Block 109 – SLC – Design Review for a pre-1931 structure. Application to renovate and reconstruct an existing porch roof deck.
SIMPSON/BEVINS 5:0 UNANIMOUS**

- 2. PIZZA NAPOLI / BRUNO LOLA PARIS PROPERTIES LLC – 667 Main Street - Map 12 Block 19 – GBD2 – Site Plan and Design Review Application for a post 1931 structure. Application to expand prep area of existing kitchen.**

Jerry Dehart addressed the Board as the Applicant's representative.

Mr. Heyland stated that any expansion of land area, for a use which is an approved use, requires Site Plan Review.

Mr. Wilkos asked if there are different sizes of Site Plan Review and if there are different fee structures.

Mr. Heyland responded that if the cost of the project is less than \$2000 the Design Review Fee is reduced from \$500 to \$250.

Mr. DeHart stated that the building will look very much the same except that it will be six feet closer to the road. He noted that he didn't prepare a design board because this is such a small project.

At this time the Board reviewed the submissions checklists and found all submission requirements to have been met or waived by the Code Enforcement Officer.

Mr. Simpson Moved to find the application complete for PIZZA NAPOLI / BRUNO LOLA PARIS PROPERTIES LLC – 667 Main Street - Map 12 Block 19 – GBD2 – Site Plan and Design Review Application for a post 1931 structure. Application to expand prep area of existing kitchen; and to waive those submission items the Code Enforcement Officer has deemed not applicable.
SIMPSON/HAYES

Mr. Wilkos called for discussion. There being none he called for a vote on Mr. Simpson's motion.

**Mr. Simpson Moved to find the application complete for PIZZA NAPOLI / BRUNO LOLA PARIS PROPERTIES LLC – 667 Main Street - Map 12 Block 19 – GBD2 – Site Plan and Design Review Application for a post 1931 structure. Application to expand prep area of existing kitchen; and to waive those submission items the Code Enforcement Officer has deemed not applicable.
SIMPSON/HAYES 5:0 UNANIMOUS**

Mr. Wilkos noted that Monday October 10th is Columbus Day. The next Planning Board meeting will take place on Tuesday October 11th and this application's Public Hearing will take place at that time.

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland noted that the Board might want to schedule another workshop. He suggested they finish with the Design Review discussions. He also noted the ORA is interested in the single family home rentals, drones, and parking lots are some other topics for work-shopping.

Mr. Heyland suggested that Board members prepare a list of proposed workshop topics to be presented at the next meeting.

The Board agreed to do so.

I. OTHER BUSINESS –

Mr. Wilkos noted that the Board held its second workshop with the Ogunquit Residents Alliance (ORA). One suggestion was to put application documents online and the Code Enforcement Officer will look into the feasibility of doing this.

It was agreed that the third Planning Board ORA Workshop would take place on October 24, 2016 at 4:30 p.m.

J. ADJOURNMENT -

**Mr. Simpson Moved to Adjourn at 7:45 p.m.
SIMPSON/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Planning Board Recording Secretary

Approved on October 11, 2016