



Town of Ogunquit
Planning Board
Post Office Box 875
Ogunquit, Maine 03907-0875
Tel: 207-646-9326

**OGUNQUIT PLANNING BOARD
PUBLIC HEARING and REGULAR BUSINESS MEETING
MINUTES
JUNE 22, 2020
ONLINE VIA ZOOM**

A. ROLL CALL –

Members Present: Steve Wilkos (Chair)
Mark MacLeod (Vice-Chair)
Muriel Freedman
Jackie Bevins
Priscilla Botsford
Brian Aromando (1st Alternate)

Members Excused: Elaine Cooper (2nd Alternate) was unable to log into ZOOM.

Also Present: Scott Heyland, Code Enforcement Officer
Lee Jay Feldman, SMPDC Town Planner

Mr. Wilkos noted that for each motion Board Members would vote yea or nea verbally.

B. PLEDGE OF ALLEGIANCE -

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

D. MINUTES – May 26, 2020

**Ms. Freedman Moved to Accept the Minutes of the May 26, 2020 Meeting as Amended.
FREEDMAN / BEVINS 5:0 UNANIMOUS**

E. PUBLIC INPUT – For any matter not on this agenda.

Mr. Wilkos asked if there was anyone asking to address the Board on any matter not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

1. PUBLIC HEARING: Continuation from March 9 and May 26, 2020 Public Hearings for: COASTAL WINE OGUNQUIT / KATLYN MITSCH – 239 Shore Road – Map 5 Block 10-1 – LBD.

Mr. Wilkos noted that at the February 24, 2020 meeting the Board found both the Site Plan and Design Review Applications complete. On March 9, 2020 the Board opened a Public Hearing which has been kept open to this meeting. On May 26, 2020 the Board unanimously voted to grant a parking waiver to reduce the number of commercial parking spaces from six to zero.

Mr. Wilkos asked if there was anyone from the public who wished to bring new material to the Board. Mr. Wilkos noted that the Board has heard from, and appreciates the comments of, several abutters and other members of the public. He asked the speakers to limit their comments to new material.

June Saraceno (241 Shore Road) expressed continued concern with the newly submitted plan. She challenges the boundary line location as noted on the Applicant's survey. Ms. Saraceno noted that the Applicant has indicated 10 foot setbacks; and she asked if the Ordinance doesn't clearly say the setbacks need to be 15 feet. She asked for clarification of the side and rear setbacks.

She has viewed at least 4 surveys, none of which seem to have correct setbacks. She asked if she may remove the boundary sticks which she believes to be on her property.

Scott Scherschel (240 Shore Road) reiterated Ms. Saraceno's comments.

Mr. Wilkos asked if there was anyone else who wished to address the Board. There being no one the Public Hearing was closed at 6:15 p.m.

Ms. Freedman asked about the delivery trucks. Ms. Mitsch has stated that she has spoken with her distributors and told them that their drives need to park legally. She has also stated that it is up to the police to deal with parking violations. Ms. Freedman asked how the police will know if there is illegal parking.

Mr. Heyland responded that abutters or other members of the public can file a report with the police; and the police will monitor this location in the same way they monitor other parts of town and issue citations for violations.

Mr. Wilkos asked about Ms. Saraceno's comments about the setbacks.

Mr. Heyland responded that Table 703.1 states in Footnote #11 that the setbacks for this property are 15 feet and the Final Plan will need to be amended to indicate this.

Mr. Heyland added that property boundary markers are usually stakes and that it is illegal for anyone other than the person who paid for the survey to remove them. He added that the surveyor may have located existing stakes below grade which he would have replaced with new stakes.

Jerry DeHart from Coastal General Construction addressed the Board as the Applicant's representative. Mr. DeHart asserted that the questions have been answered and the Applicant has nothing further to say.

At 6:22 the Board went into deliberations.

1.A. COASTAL WINE OGUNQUIT / KATLYN MITSCH – 239 Shore Road – Map 5 Block 10-1 – LBD – Design Review and Site Plan Review for post 1930 structure. Application for change of use from retail to Type 2 Restaurant with the addition of new outdoor seating.

Ms. Freedman noted that there is no new interior plan/layout.

Ms. Mitsch responded that there have been no changes from the original plan.

Ms. Botsford referred to abutter Gregory Long's letter regarding the vegetative buffer. She asked if the residential parking spaces can be located within the vegetative buffer.

Mr. Heyland responded that the standards which require no parking in the setback/buffer are applicable to commercial parking. The two parking spaces in this case are for residential use. Even though this property is a mixed use the residential parking spaces are reviewed as residential and the application under review is for the commercial use.

Mr. MacLeod noted that the Board has waived the commercial parking requirement so there is no commercial parking on this parcel.

Ms. Botsford asked about the setbacks; she asked if there is any impact on the plan. She noted that the building is 10 feet away and the building next door is even closer.

Mr. Heyland responded that there is no impact. There is no proposed expansion of what is there now. He added that he was unable to find any prohibition against outside dining in the setbacks.

Mr. MacLeod agreed and added that the patio where the outside dining will take place is not considered to be a structure.

Ms. Botsford expressed concern about the "loading zone" for deliveries.

Mr. Wilkos pointed out that the Applicant's retail business is currently open and is currently receiving deliveries.

Ms. Mitsch responded that this is true and she has been working with her delivery drivers to comply with parking regulations.

At this time the Board reviewed the Design Review Approval Checklist regarding Article 11.7.C of the Ogunquit Zoning Ordinance:

Does this review involve a structure built prior to December 31, 1930?

The Board unanimously agreed that it did not.

Scale of Building – Is the scale of the building visually compatible with the site and neighborhood as to the relationship of the open spaces around it and the size of doors/windows/porches/balconies?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Height – Is the height of the building visually compatible with the heights of the buildings in the neighborhood?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Proportion of Front Façade – Is the relationship of the width to the height of the front façade visually compatible with that of its neighbors?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Relationship of Solids to Voids in Front Façade – Is the pattern of solids and voids in the front façade visually compatible with that of its neighbors?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Proportions of Openings Within the Facility – Is the relationship of the height of windows and doors to their width visually compatible with the architectural style of the building and with that of its neighbors?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Roof Shapes – Is the shape and proportion of the roof visually compatible with the architectural style of the building and with those of neighboring buildings?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Relationship of Façade Materials – Are the facades of a building, particularly the front façade, visually compatible with those of other buildings around it?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Relationship of Spaces to Buildings on the Street – Has the rhythm of spaces to buildings been considered when determining visual compatibility, whether it is between buildings or between a building and the street?

The Board unanimously agreed that this is not applicable because there are no proposed changes.

Site Features – Is the size, placement, and materials of walls, fences, signs, driveways, and parking areas visually compatible with the building and neighboring buildings?

The Board unanimously agreed that they are, because the proposed fences are compatible with existing fences. Also, the only parking will be two residential parking spaces which is similar to

other properties in the neighborhood.

Architectural, Historical or Neighborhood Significance – Have the construction, reconstruction, maintenance, or moving of pre-1931 buildings been done in a manner which is visually compatible with the architectural, historical or neighborhood significance of buildings existing in 1930.

The Board unanimously agreed that this is not applicable because this is a post 1930 structure.

Does the Planning Board desire an irrevocable letter of credit or performance bond prior to the issuance of a Building Permit?

It was determined that it did not because this project does not involve public infrastructure.

Mr. MacLeod Moved to Approve the Application for Design Review for COASTAL WINE OGUNQUIT / KATLYN MITSCH – 239 Shore Road – Map 5 Block 10-1 – LBD –for post 1930 structure.

MACLEOD/BEVINS 5:0 UNANIMOUS

Mr. Wilkos asked if the Application had been submitted for review by all Applicable Town Department Heads?

Mr. Heyland confirmed that it had.

The Board reviewed the Site Plan Review Application Approval Checklist as outlined in Section 6.5 of the Ogunquit Zoning Ordinance.

1. Will allow the orderly and reasonable use of adjacent properties.

The Board unanimously agreed that it will, because:

Requirements for a Type 2 Restaurant are spelled out in the OZO and specifically limit the activities of a Type 2 Restaurant in the LBD:

- a. The exterior seating area shall be limited in size to no more than 600 square feet;
- b. Outdoor serving shall not begin before 7:00 a.m. and no outdoor serving is allowed after 9:00 p.m.;
- c. There shall be no outside music or outside entertainment allowed at any time;
- d. Type 2 Restaurant use in the Limited Business Zone is limited to lots that abut Shore Road (Effective June 9, 2015).

And because the Applicant has agreed to abide by these requirements.

The question of access to the rear of the property was discussed; and it was agreed that it was not relevant to this application and any dispute of this nature would be a civil matter between property owners.

2. Will not adversely affect the safety, the health, and the welfare of the Town.

The Board unanimously agreed that it will not, because the granting of the commercial parking

waiver has remedied the parking and traffic danger concerns.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

The Board voted 4:1 (Ms. Botsford Dissenting) and the majority agreed that it will not, because the Board has waived the commercial parking requirement; and because the OZO doesn't address retail or restaurant space under 5000 sf equating to no requirement for a loading zone.

It was confirmed that Article 8.10.c indicates no requirement for a loading zone for commercial spaces under 5000sf.

Ms. Botsford asserted that this business will increase congestion. She noted that there will be a residential dwelling, a retail store, and a restaurant all on one lot. She suggested this increase in congestion would need to be mitigated.

It was agreed that illegal parking of trucks for unloading is a town wide problem and is no worse in this one location than any other.

Ms. Mitsch responded that she is working with her distributors and has instructed them to park in the legal parking spaces in front of the abutting property on Shore Road. She has instructed them to not park directly in front of her property.

4. 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.

The Board unanimously agreed that it will, because the Applicant has agreed to move the trash to the rear of the building; and because the property is on public sewer and water.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

The Board unanimously agreed that they will not, because there will be no major cooking or frying.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

The Board unanimously agreed that it will not, because of the OZO restrictions applied to a Type 2 Restaurant in the LBD; and because the lighting will not change; and because the Applicant has agreed to the installation of fencing or vegetative buffering between her property and that of the abutters. It was also noted that maximum decibel levels are established in the OZO.

7. 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.

The Board unanimously agreed that it will not, because there are none adjacent or in the immediate vicinity.

8. Contains adequate, off-street parking in compliance with this Ordinance.

The Board unanimously agreed that this standard is not applicable because the Board granted a waiver for the commercial parking spaces.

9. 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.

The Board unanimously agreed that it will not, because there will be no change to the accessibility to the property.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

The Board unanimously agreed that this standard is not applicable because this is not a pre 1930 structure; and because there are no adjacent historic properties.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

The Board unanimously agreed this standard is not applicable because the Board waived the items which did not fit on the plot. It was also noted that there are no requirements in the OZO which prohibit outside dining within the setbacks; and that there is no proposed expansion of the existing structure; and that this applicant has sufficient area to conduct the proposed activities.

12. Will be adequately screened and buffered from contiguous properties.

The Board unanimously agreed that it will, because the Applicant has agreed to provide buffering in agreement with the abutter as stated on the plan (12 foot fence to the north and 15' stockade fence or vegetative buffering to the south)

13. 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.

The Board unanimously agreed that this standard is not applicable because there are no proposed changes which would effect the storm drainage.

14. Will provide for adequate pedestrian circulation.

The Board unanimously agreed that it will, because the parking will be reduced lessening the traffic pulling out of the property.

15. Anticipates and mitigates potential nuisance created by its location;

The Board unanimously agreed that it will, because the OZO definition for Type 2 Restaurants in the LBD limit the activities; and because the Applicant has been working to reduced problems caused by loading and unloading delivery vehicles; and because of the agreed upon buffering.

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

The Board agreed by majority vote (4:1 Ms. Botsford Dissenting) that it does, because it meets Standards 1 through 15 above.

The Board discussed what type of buffering will be required as a condition of approval. The Applicant agreed to abide by whatever the Board and the abutters decide.

It was noted that Charles Wilson, the abutter to the north was not on the line for this meeting.

The abutter to the south, June Saraceno responded that she could not offer a preference for fence vs. vegetative buffering because she doesn't agree with the Applicant's survey about where the boundary line is located. She could not agree to a type of buffering until she and the Applicant agree about the boundary location.

Mr. Heyland responded that if the abutter can't make a decision then it is up to the Board to make a determination as to what type of buffering will best meet the ordinance buffering standards. He noted that the Final Plan will need to be updated to reflect the Board's decision.

Ms. Saraceno agreed; with the conditions that:

Nothing be put in place until she has time to get a survey completed;

Any arborvitae vegetative buffering needs to be on the Applicant's property including any future growth.

Mr. Heyland responded that the survey presented by the Applicant was prepared by a licensed surveyor and the Board needs to base its decision on that; and there are boundary markers which have been put in place. The Applicant will have to follow those boundary markers no matter what type of buffering she puts in place. Any dispute between the abutters about the location of the boundary line, or the accuracy of the survey, is a civil dispute which would be settled in a court of law and not be settled by this Board.

Mr. Heyland added that some paving and existing stone wall may have to be removed if arborvitae trees are planted completely on the property at 239 Shore Road in such a manner that it includes any proposed future growth spread.

Ms. Saraceno stated that she isn't interested in the corner post markers. She is referring to flagging stakes put in place to locate the entire boundary line.

Mr. Heyland responded that these stakes are grade stakes put in by a surveyor to assist in the location of the property line for installation of fencing.

Mr. Feldman agreed with Mr. Heyland that the Board needs to abide by the survey it has in front of it; and any dispute between Ms. Saraceno and the Applicant would need to be taken to a court of law and is not within the purview of this Board.

Ms. Botsford noted that the current survey references past surveys.

Mr. Feldman agreed and noted that surveyors usually refer to past surveys. He noted that this survey is a Category Class 1 Survey and is prepared to a higher standard than a mortgage type survey.

There was discussion regarding 4 foot fence transitioning to a 6 foot tall stockade fencing vs. 6 foot tall arborvitae along the north and south property lines. It was agreed that from an aesthetic standpoint the vegetative buffer would be more appealing than a wooden fence.

Mr. DeHart, the Applicant's representative, agreed to abide by whatever the Board decides.

Mr. MacLeod Moved to Approve the Site Plan Review for COASTAL WINE OGUNQUIT / KATLYN MITSCH – 239 Shore Road – Map 5 Block 10-1 – LBD –for post 1930 structure. Application for change of use from retail to Type 2 Restaurant with the addition of new outdoor seating with the following conditions of approval:

The Final Plan needs to be amended to include the 15 foot setbacks required by Article 7.3, the addition of a signature block, and the location of planting of a line of 6 foot tall arborvitae hedges to the north and south.

Arborvitae trees on the north are to be planted to extend far enough east to fully screen the outside dining area from the abutter.

Arborvitae to the south are to be planted completely on the Applicant's property at 239 Shore Road including any anticipated future growth spread.

MACLEOD/FREEDMAN 5:0 UNANIMOUS

G. NEW BUSINESS –

- 1. Request for extension:
MISTER T LLC / LINDA BRIGGS – 387 Main Street – Map 14 Block 13 – GBD2 – Site Plan and Design Review for Change of Use from gas station to office.
Application to construct a new structure for use as a real estate office. Application Approved on September 23, 2019.**

Mr. Wilkos noted that the new deadline date would be September 23, 2021

**Mr. MacLeod Moved to Approve a one year extension.
MACLEOD/FREEDMAN 5:0 UNANIMOUS**

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland noted that the Town Attorney has given her opinion regarding Design Review standards. He reviewed an e-mail he received from Attorney Mary Costigan:

“I am following-up on our discussion from earlier today regarding the applicability of the Design Review requirements. As we discussed, the ordinance appears to be drafted in a manner similar to other historic review ordinances in that the requirements only apply in particular locations in town. In many other municipalities, there is a process to first designate particular

areas as historic districts and then to apply the standards within that historic district. In Ogunquit, the “district” for the purpose of design review consists of 6 existing zoning districts. Although the end of the definition of “district” could potentially be read to include any district in Ogunquit, such an interpretation would render the definition and many provisions of Article 11 illogical. Rather, the definition can be read in a manner in which the final clause is redundant of the first, stating the district is wherever a property is located within the 6 listed zoning districts.

The ordinance is not intended to apply town-wide; if that was the intention it would be stated very clearly and it is not. Rather than defining a district, the ordinance would simply state that the standards apply to all buildings in the Town of Ogunquit existing as of 1930. Because the ordinance does not state that it applies town-wide, the reasonable interpretation is that it applies only in those six listed zoning districts.”

This means that properties requiring Design Review Certificates are those properties which are located in “The District” as noted above. Mr. Heyland noted that a copy of the e-mail was forwarded to the OHPC Chair.

I. OTHER BUSINESS – Confirm Meeting Schedule for July through December.

The Board confirmed the schedule as the 2nd and 4th Monday of each month through the end of the year; with the exception of the October 12th meeting which falls on Columbus Day and would be moved to October 13th.

Ms. Freedman asked the Board to reconsider the rule prohibiting alternate members from participating in discussions.

It was agreed that the Board would schedule a workshop to discuss the problem of illegal parking of delivery trucks on a town wide basis.

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 8:15 p.m.
MACLEOD/BOTSFORD 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Town of Ogunquit

Planning Board Recording Secretary

Notes:

- *These minutes are not a transcript.*
- *Copies of all referenced documents will be maintained in the Application packet on file with the Land Use Office.*

- *All Planning Board meetings are video archived, and may be viewed for one year after the meeting date, on the Town of Ogunquit's website at www.townofogunquit.org.*

Approved on August 10, 2020