

DRAFT

TOWN OF CAPE ELIZABETH MINUTES OF THE PLANNING BOARD

March 16, 2010

7:00 p.m. Town Hall

Present: Peter Hatem, Chair
James Huebener
Beth Richardson
Victoria Volent

Elaine Falender

Absent: Liza Quinn and Barbara Schenkel.

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order and called for additions or corrections to the minutes of the February 16, 2010 meeting. Mrs. Richardson moved to approve the minutes as presented and was seconded by Mr. Huebener. The motion passed, 5-0.

CONSENT AGENDA

Eastman Meadows Subdivision Resource Protection Permit - Wyley Enterprises, LLC is requesting a one-year extension of the Resource Protection Permit granted for Eastman Meadows, a 46-unit condominium project, located at 68 Eastman Rd, Sec. 19-8-3, Resource Protection Permit.

Mrs. Richardson made the following motion:

BE IT ORDERED that, based on the request, the previously approved plans and materials and the facts presented, the request of Wyley Enterprises LLC for a one-year extension of the Resource Protection Permit for Eastman Meadows, a 46-unit condominium project located at 68 Eastman Rd, be approved.

Ms. Falender seconded the motion, and there was no discussion. The motion passed 5-0.

OLD BUSINESS

Rudy's of the Cape Restaurant Site Plan - Two Lights General Store LLC is requesting Site Plan Review for an 80-seat restaurant/convenience store located at the existing Rudy's establishment at 517 Ocean House Rd, Sec 19-9, Site Plan Public Hearing.

Patrick Carroll of Carroll Associates is representing Mary Page of Rudy's. He will outline the changes made, rather than the entire project.

The sidewalk has been moved closer to Route 77 as it approaches Davis Point Lane as a result of a suggestion on the site walk. Wheel stops have been added at each parking space and signage has been added for spaces for contractors with trailers to park. Site distances, detail on the propane tank and concrete pad for the dumpster have been added to the plans.

Mr. Carroll said they will accommodate all of the engineer's comments.

They have modified the floor plans to show a total of 80 seats. 28 of the seats are moveable tables and chairs, which will be moved out to the patio in summer. There are 52 fixed seats indoors.

In response to questions from a couple of Board members about the seating, Mr. Carroll said that an earlier plan had shown more seats, but that is no longer the plan they are using. The couch and lounge chair are not included in the seat count and are not service seats. They are not dining locations.

Mr. Carroll then summarized the issues that have been raised by staff and in letters to the Planning Board.

First is parking, specifically overflow parking. The 25 spaces on the plan do meet the ordinance. St. Bartholomew's Church is willing to accommodate overflow parking. Father Henchel has given them an informal letter to that effect. The applicant is willing to install a crosswalk from St. Bartholomew's to the site, if they are permitted to do so.

Second is the issue of noise. There is a limited season for outdoor dining and a maximum of 28 seats that will be outdoors. They are 280 ft. from the house across Davis Point Rd. and 180 ft. from the house across Route 77. There is a noise ordinance in effect, and it really becomes an enforcement issue. They are not planning amplified music. They might have someone playing acoustic guitar, or the jazz combo from the High School. They are not applying for an entertainment license at this time. This place is not about entertainment, it is about dining and gathering with neighbors and friends.

The third issue is landscape and buffering. They have pulled all the parking and activities to 102 ft. from the zone boundary. They have planted about 3 times more trees than Mr. Ingalls did and they feel they have provided adequate buffering for this use.

The fourth item is the schedule. The intent is to begin the site work this spring as soon as they have approval. The parking and landscaping will be done this spring and the building would occur in the fall or later. The buffering would be in place, and then the applicant wants the extra hour added to be open until 10

pm. prior to the completion of the building. The building will not be completed this spring or summer, but they want to have the expanded hour and the outdoor seating prior to the completion of the building.

Mr. Carroll did note that he has a letter from Bruce Smith, Code Enforcement Officer that says they may not expand the hours or number of seats until the entire project is finished.

Mr. Hatem said a phased plan is not in front of the Board, so he is not sure how the Board can approve such a move.

The lighting was discussed by Mr. Carroll in response to a couple of questions from the Board. He detailed how they conform to the ordinance on lighting.

Mr. Huebener wondered how practical it is to park at St. Bartholomew's. He would like to see parking at Mr. Ingalls' building.

Ms. O'Meara noted that she has learned that it is legal to park on both sides of Broad Cove Road and on Route 77 as long as you park off the tarred surface of Route 77.

Mr. Hatem opened the public hearing.

Morris Kreitz of 524 Ocean House Road commended Mary Page and Pat Carroll on the thoughtful plan they have submitted and he feels it will make Rudy's a much more attractive place. He is not in favor of having a bar and entertainment until 10 pm. 7 nights a week in a residential neighborhood. He wants to be sure the buffer planting is installed as it is shown on the plan. He doesn't like the idea of phases to the plans. He said they are supposed to rely on the ordinance regarding noise. There must be some enforcement mechanism in place to protect us from excessive noise. He urged the Town to establish some means by which noise complaints, which are most likely to occur at night, can be dealt with promptly and effectively. He worries that the Code Officer isn't going to be interested in going out on a Saturday night. The Code Officer doesn't live in Cape Elizabeth anyway. He wants a better way to enforce that. He wants the Town to cease being reluctant to enforce the existing zoning regulation.

Joseph Foley of 511 Ocean House Road is concerned about the lighting washing out into the residential area. He feels the pole lights will be above the buffer and will come into our residential neighborhood. He doesn't think the buffering is adequate and he wants more mature trees and a higher and wider buffer. He doesn't want any trimming of the buffer.

Outside noise and entertainment are a concern to him. He wants a mechanism to monitor that. If there are complaints, there needs to be something to be done at the time it is going on. We know that the Code Enforcement Officer is not around the area at night so other arrangements need to be made.

Overflow parking is another concern. He doesn't think there is enough parking on site for the number of seats they want. Parking on Davis Point Lane should not be allowed. He wants no activity allowed in the 100 ft. buffer zone. He is concerned about the activity proposed to happen before all the project is complete. He wants no phasing of the project.

He wants a mechanism so there is a firm and strict closing time. The closing time should be monitored and enforced.

Gail Schmader of 511 Ocean House Road appreciates the upgrades to the property. She still has concerns about the outside music and entertainment that may take place at Rudy's. Even the jazz band from the High School would be entertainment in her opinion. When the winds blow in her direction the noise will permeate the neighborhood and disturb the quiet. Noise will carry through the fence and buffers. There is no stipulation about amplification. She wants only entertainment inside the building, with no amplification of any kind allowed.

She is concerned about noise enforcement. How will the 65 decibels at the property line be monitored or enforced? Our Code Enforcer lives about 50 minutes away. How will we handle noise that occurs in the evening?

She is also concerned about overflow parking. On Feb. 12, there were 32 cars in the parking lot with the current 39 seats available. What will happen when there are 80 seats and only 25 parking spaces. She is afraid there will be overflow parking in our neighborhood.

She wants no activity be allowed in the 100 ft. buffer. She wants all improvements made before allowing outside seating and extended hours.

Carl Best of 12 Pond View Road is leery about more good ideas in our neighborhood. We'll have to listen to the next phase. Our property values have already suffered from the first project approved there. This project will further downgrade our area.

He appreciates the design changes they have made, but the prospect of any outside entertainment would undermine all that. The entertainment has to be kept indoors. It would be a gross infringement on our privacy.

The screening on Davis Point Road fails pretty miserably. It needs more evergreens. He is also skeptical about the overflow parking at St. Bart's and doesn't want people parking in his neighborhood.

He wants the Town to provide adequate enforcement of any and all plans that they approve.

Scott Irving of Crescent View Ave. has been there for about 30 years, and sees that the site plan is a substantial improvement over what has existed over the years. He trusts that the sound level can be established at the boundary. He noted that acoustic instruments can be louder than amplified music. He trusts that the Cape police can enforce the sound level and we don't need the Code Officer for that purpose.

Erin Grady of 2 Emerald Way thinks this plan is a great improvement over what it used to be.

Michelle Buckley of 526 Ocean House Road agrees that it is a nice plan, but she is concerned about the noise. Noise just travels and outdoor entertainment will be unbearable. She wants the Board to look at the outside seating and the possible parking problems. Otherwise it is a good plan.

There were no other comments, so the public hearing was closed.

Mr. Carroll addressed some of the comments from the public hearing. He showed the lighting diagram and how the lights do not spill over the property line. The old type of lights did spill over, but the modern lights do not do that. These fixtures throw light down but not out.

The buffering is not all deciduous plantings, there are 9 evergreens (pines and balsam firs), and there are also rugosa roses as infill. The infill will be thick and will prevent pedestrians from cutting through the vegetated area.

On the subject of noise, Mr. Carroll said there might be some acoustic entertainment as a background. The intent is to provide food and a gathering place, not an entertainment venue. He did say that plantings will not provide any sound barrier, only a solid wall would do that. They have located the outdoor dining on the south side of the building so the building will block the sound. He does agree that it is an enforcement issue.

Ms. Falender asked if they are planning to apply for an entertainment license. If they bring in a guitar player, will they need an entertainment license?

Ms. O'Meara noted that the entertainment license is not in the scope of the Planning Board. Only the ordinance is relevant to this application.

Ms. Falender then read a part of the standards for an entertainment license and it seems that Rudy's will need to obtain such a license for the activities that have been discussed.

Mr. Carroll then spoke about the overflow parking. He said the ordinance is clear about the standards. We have met the standards. They have an agreement with St. Bart's. He agrees that they need to have signs directing people to parking off site. They have met the ordinance.

Ms. Falender asked if there is still the intention to have both a restaurant and a convenience store.

Mr. Carroll said it is not the intent to also have a convenience store. It will be just a restaurant.

Mr. Hatem said he is not in favor of a step-wise implementation of the plan. He doesn't think the Board has the authority to grant that .

Ms. O'Meara urged the Board to be specific as to what they are approving. In the cases where there have been phases, there have been detailed plans clearly showing phases.

Mrs. Richardson agrees that there is not enough detail for the Board to rule on such a phasing.

Ms. Page has indicated that she does not need the extra hour of operation until completion of the project.

Ms. Falender noted that there will be no outdoor seating allowed this summer. No expansion of the existing 39 seats will be allowed until the entire project is done.

Mrs. Volent questioned the delineation of the parking spaces for the compact cars and handicapped space. Since there is no paving she is concerned that there will be no way to mark the access space next to the handicapped space.

Mr. Carroll agreed that there will be signs posted to designate the compact and handicapped spaces.

After a brief discussion about the lack of paving in the parking lot, the Board agreed to delete the second paragraph of the Town Engineer's letter of March 8, 2010.

Mrs. Volent asked if the applicant is proposing they will have a crosswalk.

Mr. Carroll said they have tried to get a crosswalk, and they will be willing to install a crosswalk if they can get a permit to do so.

The board then discussed the overflow parking agreement with St. Bartholomew's and whether they can require the agreement since the ordinance has been met, and how many spaces they should require to be made available.

After a discussion of the issues, the Board decided to require a minimum of 15 spaces in an agreement with St. Bartholomew's church.

Mrs. Volent wanted it to be in the record about the policies regarding parking in the area, and who has the authority over compliance.

Ms. O'Meara said she has made inquiries and that Davis Point Road is private. The police will not be enforcing any parking on Davis Point Road. The owner is responsible for enforcing any parking rules on the road. Mr. Ingalls owns that road.

Ms. Falender wanted it on the record that the Board and the Town Council have spent a lot of time and effort on the standards for the BA District, on how they envisioned the area to present itself to the Road frontage and architecturally etc. Ms Falender wanted to say that she thinks Rudy's has done an excellent job of complying with the new BA Zone.

Mrs. Volent wants to address the issue noise. She would like to have entertainment confined to the indoors, and none outdoors. Both she and Ms. O'Meara cited the example of the limits the Board has placed on outdoor entertainment at the Inn By the Sea.

Mr. Huebener said he could see keeping the entertainment indoors.

Ms. Falender said she does not know whether the building will be enough of a buffer for the noise if they have entertainment outdoors. Will it keep the decibel low enough at the property line? Maybe we are being too restrictive.

Mrs. Richardson agrees that they do not have enough information to determine that.

Mrs. Volent wants it clear cut and enforced.

Mrs. Volent kept coming back to the point of not having it disturb the neighbors. She said the applicant has said they are only intending a restaurant, not an entertainment venue.

The Board had a lengthy discussion of many of the facets of this issue. They were reluctant to make a rule prohibiting outdoor entertainment, and all agreed that the burden of proof of compliance with the ordinance is on the applicant.

The Board also discussed how the applicant would prove their compliance. Do they require a noise meter?

The Board then discussed noise meters, their prices, the feasibility of having one.

Mary Page came forward and said she is not going through all this with the Town to make a problem with the noise level. She said they are talking about an acoustic guitar, maybe a jazz band, maybe not anything more than a radio, nothing amplified. She just wants to make a nice place to come and enjoy.

The Board continued to discuss noise levels and how to measure them and whether to limit the entertainment to the indoors or to limit the hours of the entertainment.

Mrs. Richardson made the following motion:

Findings of Fact

1. Two Lights General Store LLC is proposing a change of use of Rudy's of the Cape, located at 517 Ocean House Rd, to an 80-seat restaurant, which requires Site Plan Review under Sec. 19-9-Site Plan Regulations.
2. The Town Engineer has recommended revisions to the plans.
3. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Two Lights General Store LLC for Site Plan Review of Rudy's on the Cape, an 80-seat restaurant located at 517 Ocean House Rd, be approved, subject to the following conditions:

1. That the plans be revised per the Town Engineer's letter dated March 8, 2010, with the exception of the second paragraph of item 7.
2. That there be no alteration of the site as part of this approval or issuance of a building permit until a performance guarantee has been provided by the applicant in an amount acceptable to the Town Engineer, form acceptable to the Town Attorney and all acceptable to the Town Manager.

3. That the applicant execute an agreement with St. Bartholomew's Church for the use of no fewer than 15 parking spaces for overflow parking.
4. The applicant has agreed to install a crosswalk once the appropriate approvals are granted.
5. Applicant will install signage to delineate the required compact car spaces, the full width of the handicapped space, loading and service areas and the no parking areas adjacent to the handicapped and compact spaces.

Mr. Huebener seconded the motion.

Ms. Falender proposed the following amendment:

That no live amplified music be permitted outdoors unless the applicant maintains equipment to calibrate noise level at the residential limit of the property.

Mrs. Volent seconded the amendment, and the vote was 2 in favor and 3 opposed.

The Board then voted 5-0 in favor of the original motion.

Mrs. Richardson made a motion to adjourn and was seconded by Mr. Huebener. The board voted 5-0 to adjourn. The meeting was adjourned at 9:25 pm.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary