

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

March 17, 2011

7:00 p.m. Town Hall

Present: Elaine Falender, Chair                      Carol Anne Jordan  
                 James Huebener                              Richard Olfene  
                 Henry Steinberg                                      Victoria Volent

Absent: Liza Quinn

Also present was Maureen O'Meara, Town Planner.

Ms. Falender began by welcoming Richard Olfene as a new member.

The minutes of the February 1, 2011 meeting were approved 6-0.

CONSENT AGENDA

Rudy's of the Cape Site Plan Approval Extension - Rudy's of the Cape is requesting a one year extension of the Site Plan approval granted for the restaurant located at 517 Ocean House, Sec. 19-9-4, Site Plan Review Procedures.

Pat Carroll, of Carroll Associates, spoke for the applicant. He noted that a year ago the Planning Board approved the plan of renovation and expansion. The original plan was to have the work done before the summer season. They have had a tenant operating the restaurant, and that lease is up at the end of September. The plan of the owners is to have the work start after the tenant is no longer there and be finished by the first of the year.

Ms. Falender called for public comment.

Gail Schmader of 511 Ocean House Road said she continues to have a concern about outdoor entertainment. Ms. Schmader does not feel there will be adequate monitoring of the noise levels. She would request that the Board reconsider that issue.

Since no one else came forward to speak, the public comment was closed.

Ms. Falender then asked if anyone on the Planning Board wished to have a discussion on the subject. Since no one spoke up, she said it will remain as a consent agenda item.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the request submitted and the facts presented, the request of Rudy's of the Cape, located at 517 Ocean House Rd, for a one-year extension of the

Planning Board approval granted March 16, 2010 for an 80-seat restaurant be approved, with an extension to March 17, 2012.

Mr. Steinberg seconded the motion and it passed 6-0.

#### OTHER BUSINESS

Roosters Zoning Ordinance Amendment - The Planning Board will hold a second public hearing on amendments to regulate roosters, including establishing a minimum lot size of 40,000 sq. ft. to keep a rooster, and a recommendation to amend other ordinances to address noise, Sec. 19-10-2, Zoning Ordinance Amendment Public Hearing.

Ms. Falender opened the public hearing.

Jody Jordan of 83 Old Ocean House Road said if the Town wants to keep a rural character, then they don't need any more regulations, especially about roosters.

Beth Angle of 3 Young Lane thinks the way to control this is by the nuisance ordinance. We can resolve this between neighbors if it is even a problem. She sees a regulation to have 40,000 sq. ft. as a slippery slope because next it will be ducks and geese etc. She wants kids to be encouraged to get engaged by agriculture and not to regulate these things for a couple of complaints.

Penny Jordan of 349 Fowler Road feels it comes down to the noise. As we create these ordinances, we limit peoples' food sources. Noise is a nuisance issue. We need to encourage small scale agriculture in our community.

No one else came to speak, so the public hearing was closed.

Ms. Volent outlined her reasons for supporting the 40,000 sq. ft. zoning amendment. She said it will have no effect on local commercial farms, and it addresses the concerns of people on small lots in close neighborhoods. The disturbing the peace ordinance does not address or apply to roosters.

Mr. Huebener thinks it is an unnecessary regulation. We have been over this many times and you can have a large lot with the offending rooster right on the property line. It's one more unnecessary regulation.

Ms. Jordan said she and Mr. Huebener agree that the noise ordinance is the way to address the problem. She wants to move this forward to the Town Council and there will be more opportunity for comment at the Council level.

Mr. Olfene said he has not been in on the prior discussions, and wonders what is the problem?

Several members of the Board noted that there were complaints and referred to Ms. O'Meara for further background.

Ms. O'Meara quoted from several letters received from some residents complaining about noisy roosters in their neighborhood.

Ms. Falender then noted that this matter then goes to the Town Council and there will be more public input during the Town Council's consideration.

Mrs. Volent made the following motion:

BE IT ORDERED that, based on the materials submitted and the facts presented, the attached amendments to the Zoning Ordinance establishing a minimum 40,000 sq. ft. lot size to keep a rooster, be recommended to the Town Council for adoption.

Ms. Falender seconded and it was defeated 3-2 with one abstain.

Ms. Jordan made the following motion:

BE IT FURTHER ORDERED that the Planning Board recommends that the disruption of the peaceful quiet and enjoyment of property that may be caused by roosters may be more appropriately addressed with amendments to Sec. 12-1-1, Disturbing the Peace, and Sec. 7-1-4, Dog Ordinance.

Mrs. Volent seconded and it was passed 4-1 with one abstain.

The Board voted 6-0 to adjourn at 7:30 pm.

Respectfully submitted,

Hiromi Dolliver  
Minutes Secretary