

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

December 20, 2011

7:00 p.m. Town Hall

Present:     Liza Quinn  
              Josef Chalot                             Henry Steinberg  
              Carol Anne Jordan                   Victoria Volent  
              Richard Olfene

Absent:     Elaine Falender

Also present was Maureen O'Meara, Town Planner.

In the absence of the Chair, Ms. Quinn nominated Ms. Jordan as Acting Chair. Mr. Chalot seconded and the motion passed, 5-0.

Ms. Quinn requested further information to be included in the minutes of the November 15, 2011 meeting. She specifically asked for more detail in the statement of Ray Neveu. Ms. Quinn made a motion to table the acceptance of the November 15, 2011 minutes to the next scheduled Planning Board meeting. Ms. Volent seconded the motion and it was approved, 6-0.

OLD BUSINESS

**Powers Resource Protection Permit** - Colin Powers and Eoin LLC are requesting a Resource Protection Permit to fill 669 sq. ft. of wetland to accommodate construction of a single family home located at Sunrise Drive and Lighthouse Point Rd (U14-36G), Sec. 19-8-3, Resource Protection Permit Request to Table.

Ms. Volent moved to table the request by the applicant to the January 17, 2012 meeting.

Mr. Steinberg seconded the motion and it was approved, 6-0.

**Rudy's Site Plan** - 517 Ocean House LLC is requesting Site Plan Review and a Resource Protection Permit to construct an 80-seat restaurant and second 1,240 sq. ft. retail building, including 2,502 sq. ft. of wetland alteration to construct a sidewalk, in the Business A District located at 517 Ocean House Rd. The application will be reviewed for compliance with Sec. 19-9, Site Plan Regulations.

Patrick Carroll, of Carroll Associates spoke on behalf of Paul Woods and 517 Ocean House LLC. He said he would just talk about the changes since the November Planning

Board meeting, the staff review and comments, and the comments from neighbors. With him were Allie Welch, and Phil Kaplan the architect. There is an existing sewer line that runs through the parking lot. In order to relocate that line, they will have to get a new easement.

They have been using the previous plan of existing conditions. They have had the property re-surveyed, so they have a more accurate survey to work with. He noted that all the water drains across Route 77 (due to superelevation of the roadway) onto this property. They have re-calculated the stormwater flows and there will be a minimal increase in stormwater runoff. The curb will direct the water out into a catch basin and from there into a rain garden and then the existing wetlands.

The dumpster will be relocated into the parking lot and away from the back of the restaurant and the 100 ft. setback from the residential zone.

The propane tank needed to be moved to comply with a 75 ft. setback required in the BA Zone. It will be relocated over to the side of the parking lot and will have steel bollards to protect it from the cars. A portion of the tank is located in the RP-1 Setback Area. It will impact 257 sq. ft. of the buffer zone.

There is a revised lighting plan. The plan now meets or exceeds the Town standard.

Regarding buffering, they have added evergreen trees along Davis Point Road. The trees will be Serbian Spruce because they keep their lower branches, unlike pine trees. They are very salt tolerant, and are narrow trees. Mr. Carroll noted that in 2009, the plan was to have a parking lot near Davis Point Road, and now there will be landscaping and buildings. The parking lot will be on the other side away from the neighbors.

There will be a pedestrian easement that will come in from the adjacent neighborhood.

The sidewalk has been slightly modified to minimize the impact on the wetlands. It has been shifted closer to the road.

Mr. Carroll also talked about what would be included in Phase 1. It will include all the plantings and all the paving, and only a small area will be left for Phase 2.

Referring to the Town Engineer's comments, he said there were only minor corrections, and they agree with all of them.

Addressing the comments from the neighbors, he said he feels they have done a good job of buffering. The parking will be for 39 spaces. Only 31 spaces are required for the restaurant and retail uses, so they have an excess. The parking lot will be paved and

striped. The intent is that the restaurant will get the most traffic in the evening, and the retail space will be closed in the evenings.

Mr. Carroll then spoke about Phase 2. He said it will be 1240 sq. ft. of retail space. It will be retail use, and it is not being built yet because they have not secured a tenant. He feels retail is an acceptable use, it is low impact and will not be open evenings. He noted that it would be the first new commercial building in Town for a long time. They don't want to build it to have it be empty, so they will build it as needed. As for condensers at this building, they do not know yet where they will be, but it won't be in the 100 ft. setback. It will be a residential scale building, so it would be quiet.

He discussed the hours of operation. When the building is up and operating it will be a 10:00 pm. closing . There will be three extra days of staying open until 11:00.

Mr. Chalot asked if for Phase 2 they are asking for a category 3 use. He then asked about the parking calculations if they changed to a category 2 or 1 use.

Ms. O'Meara replied that the way that pyramid was set up, changing to a lower use did not require more parking spaces.

Ms. Quinn asked about the additional condition of approval that said no expansion of hours until the project is complete.

Mr. Carroll replied that it means that until they have built the new building, they cannot add more tables or expand their hours in the existing building.

Ms. Volent noted that in the last plan there were 5 plants under a window on the north side of the building. Now those plants are removed from the current plan.

Mr. Carroll replied that they are not doing any foundation planting. They have designed nice buildings, and do not want to wrap the foundation plantings around the entire buildings.

Mr. Steinberg asked about sight lines when exiting the car park going south. He asked about the fact that they are adding more plants to further obscure the oncoming traffic.

Mr. Carroll said that any plantings need to be verified with the sight distances.

Ms. O'Meara added that in calculating sight distances, deciduous trees can be left out of the calculations because they are just a trunk.

Ms. Jordan asked about the sewer easement. She wanted to know if it will add to the old one or replace it.

Mr. Carroll said the existing easement will be removed and the new one will come across and connect with the abutting property. Nothing on the other property will change.

Mr. Olfene asked again about the conditions of approval and whether the buffering all needs to be in place before occupancy.

Mr. Carroll agreed that all the buffering will be done before occupancy.

Ms. Volent asked for some clarification on the wording on the plans. She asked for and got agreement to have the plan read that Phase 1 would be a restaurant with a maximum seating of 80. The proposed use of the Phase 2 project is a village retail shop. Also the proposed alteration of wetlands should read 2502 sq. ft.

Mr. Chalot asked about the property line between the north side of Davis Point Lane and the residential area. He said it should be a fairly major buffer zone. The buffering on this property is trying to do what a big wide buffer should do. Why isn't there a big buffer there?

Ms. O'Meara replied that the Planning Board approved that. Davis Point Lane is a private road owned by the professional center and others. The current applicant has no legal rights in that property.

Phil Kaplan, of Kaplan Thompson Architects, said there were minor changes to the floor plans, but none to the elevations. He showed the floor plan and many pictures of the buildings. He pointed out the details of the buildings inside and outside.

He also brought samples of the metal siding and noted that the colors were not representative of what they will use. He said it is not a cheap product. It is a high end product and he contrasted it with the cost of wood which costs about \$3.30 to \$4.00 per sq. ft. This metal costs \$5.25 per sq. ft.

Ms. Jordan opened the public hearing.

Ernie Jordan of 5 Davis Point Lane, questioned the creation of a pedestrian easement across Rudy's. He also has concerns about the traffic. He said he has been there for 27 years, and he has trouble seeing when he pulls out of his driveway. He thinks with the trees being added it will make it even worse than it is now. He is also concerned about the closing at 11:00. He said the Good Table is open until 10:00 and at night he can hear them closing up because it is noisy. He thinks closing at 11:00 is stretching it. He also wanted to know if closing the retail at 5:00 would be mandatory. He is concerned if the retail is open later that there won't be enough parking and the overflow will go onto Davis Point Lane or the professional building.

Morris Kreitz of 524 Ocean House Road thinks that what is happening here with the Rudy's site indicates that the BA Zone is not appropriate for this area. The former Rudy's site has been split in half and a large professional building has been built. Now we are looking at having 2 more buildings constructed. On a plot that used to hold a small convenience store we are now looking at 3 commercial buildings and parking for 60 cars. Even this is not going to be the end of it. The land to the west of the professional building is also in the BA Zone, so we can anticipate that there may be businesses back there as well. That will mean more traffic and more noise in our neighborhood.

The Phase 2 building, the retail building should be in the Town center. The plan leaves the option open to subdivide the property at some later date. The developer can break off the retail building to be a second site. There is no minimum property size in the BA Zone. It is absurd to have this density of development out in this neighborhood where it is pretty rural.

Joseph Foley of 511 Ocean House Road lives behind the fence (on the other side of Davis Point Lane). He said that fence was constructed and paid for by himself and Gail Schmader. It had nothing to do with the Two Lights Professional Center. The plantings were part of that project, and a small section of the fence was as well. The rest of the fence was for our privacy because we felt the buffering on that project was totally inadequate. As for this project we feel the buffering along Davis Point Lane is not enough. The prior plans in 2009 and 2010 had substantially more buffering. This current proposal is not adequate. He would like to see the same buffering that was in the 2009 and 2010 plans.

He also talked about the condenser. He finds it hard to believe they don't know where they are going to put it. He's concerned about where it will be and if it will have some sort of shielding on it.

He addressed the hours of operation. He noted that once the building is finished they can stay open until 10:00 and three nights until 11:00. There is no notification to the abutters about this. He would like to have in place notification to abutters within 500 ft. of the property, at least 7 days in advance when they will be staying open until 11:00.

As for Phase 2, he will echo the previous speaker. This is a large building on a small piece of land. It overwhelms and is not compatible with the neighborhood. He is concerned about parking on Davis Point Lane and Route 77 and in front of his house. He is concerned about noise, and the hours of operation. He requests that the Planning Board table and postpone Phase 2. He thinks the first phase is a big improvement over what is there now.

Katie Fairbanks Cliffe of 82 Ocean House Road is the manager of Rudy's. She is here to encourage the Board to pass the design. It is a huge improvement over what is there now. She feels the layout and parking are a good design and have taken into consideration the neighbors' concerns. She also noted that the business provides a job for her and her 11 fellow employees. She said Rudy's is a part of the community. She spoke of the diverse groups of people served by Rudy's. She said she and the employees and all the patrons make Rudy's an important part of the Cape. She also noted how many people would be employed when this beautiful new building is built.

Gail Schmader of 511 Ocean House Road appreciates this plan and thinks it is a vast improvement over what is there. She does still have some concerns. The first is the buffering along Davis Point Lane. She thinks it is still very limited with a very large building being placed almost adjacent to a residential neighborhood. There is only a 10 ft. sector with 5 Serbian pine trees and one dogwood. Serbian pines are tall slender trees and are slow growing trees. It will take many years for that to fill in. She requests the Board to require substantial, year round, fast growing, dense foliage. She does not agree with taking out the buffering under the window on the north side of the restaurant. Until Phase 2 is built it is a very stark facade that faces our neighborhood.

She does not agree with the siding that is proposed. She does not think that is compatible with what is in the neighborhood. She is disappointed that the color hasn't been chosen at this point.

She also concerned about the overflow parking. Where will the trucks with trailers park? She is worried they will be forced onto Route 77 and maybe Davis Point Lane. The bike lane in this area is a very heavily used bike lane. Any parking in the bike lane will be a safety concern. Pushing parking onto the street is not a good idea. She wonders why St. Bartholomew's is no longer a part of this plan as it was in an earlier plan.

Phase 2 is too much in too little space. She does not think it is the intent of the BA Zone. This is not the downtown business zone, it is a small BA Zone abutting residential neighborhoods.

Carl Best of 12 Pond View Road said most of what he was going to say has been said, but it bears repeating. He is pretty pleased with some of the changes that Mr. Carroll has made. He has concerns about the rear lighting of some of the buildings proposed. He would like the applicant to make an effort with the buffering to equal that of the neighbors. They have put up fences and things of that nature to maintain privacy. That is his chief concern.

He's also concerned about parking on Davis Point Road. He's skeptical that overflow parking will actually occur at St. Bart's and he's not sure if any such arrangements have

been made. He fears that people will park on Davis Point Road, which will bring them in close proximity to his home.

He is also concerned about more development in this area. Are we poised to make this the new Town center? What is coming down the road after this?

Nathalie Descheneaux, owner of the professional building at 2 Davis Point Lane, is pleased with the proposed plans. She only has concerns with the buffering between the two properties. They have worked hard to find good tenants for their unit, and they are very quiet and they are concerned about noise. She thinks with the entrance where it is proposed to be, the noise will be in that corner. She would like more buffering around there.

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

Ms. Quinn asked what is the official use of the professional center?

Ms. O'Meara replied that it is a combination of office and residential.

Mr. Steinberg asked if Phase 2 can be split off from Phase 1, and if it were , would the buffering between the two buildings be sufficient.

Ms. O'Meara said the only time you can control buffering is when a site plan review is triggered. She sees a potential for phase 2 to be divided off as a separate lot. She is not convinced that the Code Officer would consider a division enough to trigger a site plan review. She has proposed additional conditions regarding easements that would be required if the lot is split off.

Mr. Steinberg was also concerned about the sight distance from Davis Point Road turning south.

Ms. O'Meara said when Davis Point Road was approved, the Planning Board approved the sight distances.

Ms. Volent wanted to respond to some audience comments about the hours of operation. She said the Ordinance requires notice to the Code Enforcement Officer at least 7 days in advance of the late night opening event.

Ms. O'Meara noted that there is nothing in the Ordinance that requires notification to the abutters. The provision is there as an enforcement provision, rather than a routine notification to residents.

Ms. Volent also addressed the parking concerns. She noted that you cannot park in the bike lane, you cannot park on Davis Point Lane if they don't want you to. These go to enforcement issues, and are not anything the Board can stipulate.

Ms. Volent said the rear lighting has met the code, so that should not be an issue.

Ms. Quinn asked whether the professional building was approved before or after the BA District ordinance was rewritten.

Ms. O'Meara said it was approved before. She said this lot has been in the BA District since before she was hired in 1990. The separation of the two lots and the approval of the professional building was done before the new regulations were written.

Ms. Quinn said she thinks it is a great plan, and also thinks the former Planning Board did a good job in rewriting the BA District with design standards. She also thinks the applicant has done a good job of siting the buildings.

Mr. Steinberg said the plan is a good one and will be an improvement over the existing building. He has a concern about the metal siding and thinks it will not absorb noise, but reflect it.

Mr. Kaplan said he cannot give a precise answer, but having a corrugated surface will diffuse the sound.

Mr. Steinberg repeated that it will still reflect the noise.

Mr. Chalot made the following motion:

#### Findings of Fact

1. 517 Ocean House LLC is requesting Site Plan Review and a Resource Protection Permit to construct an 80-seat restaurant and second 1,240 sq. ft. retail building, including 2,502 sq. ft. of wetland alteration to construct a sidewalk, in the Business A District located at 517 Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations and Sec. 19-8-3, Resource Protection Permit Regulations.
2. The Town Engineer has identified revisions needed to the plans.
3. The applicant will be relocating an existing sewer line and will also need to relocate the corresponding sewer easement.
4. 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 517 Ocean House LLC for Site Plan Review and a Resource Protection Permit to construct an 80-seat restaurant and second 1,240 sq. ft. retail building, including 2,502 sq. ft. of wetland alteration to construct a sidewalk, in the Business A District located at 517 Ocean House Rd be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated December 13, 2011;
2. That the applicant provide a letter from the Portland Water District confirming an adequate supply of water for the proposed project;
3. That the applicant provide a sewer easement in a form acceptable to the Town Attorney and all acceptable to the Town Manager; and
4. That, if a second lot is created for any portion of Phase 2, the lot division include the exchange of easements from lot 1 to the new lot 2 to accommodate parking and vehicle access for lot 2 on lot 1, and reciprocal utility easements, including but not limited to sewer easements and possibly water supply easements;
5. That the site plan be amended to show a boundary for Phase 2 located on the setback lines for the west and north side of the lot, the property boundary for the east side of the lot and an appropriate boundary between the two proposed buildings on the south side of Phase 2;
6. That a note be added to the plans that there be no expansion of use, including added seats, or expansion of hours until the approved site plan improvements for Phase 1 have been constructed;
7. That note number 4 on page L-1.0 read "the proposed use of the phase I project is a restaurant for a total maximum seating of 80. The proposed use of the phase II project is a village retail shop";
8. That note number 10 on page L-1.0 be changed to indicate the total square footage of wetland to be altered is 2502 SF.
9. That there be no issuance of a building permit nor alteration of the site until the plans have been revised per the above conditions and submitted to the Town Planner for review and a performance guarantee has been provided in accordance with Sec. 19-9-4B(3).

Ms. Volent proposed corrections to the square footages of the Phase 2 building and the wetland to be altered, and Ms. Jordan requested a change to the numbering of the conditions, both of which are reflected in the motion above.

Ms. Quinn seconded and the board approved the motion 6-0.

The Board voted 6-0 to adjourn at 8:50 p.m.

Respectfully submitted,

Hiroshi Dolliver, Minutes Secretary