

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

October 21, 2014

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Josef Chalot  
Peter Curry

Elaine Falender  
Carol Anne Jordan  
Liza Quinn (departed 8:24 p.m.)

Also present were Maureen O'Meara, Town Planner and Carmen Weatherbie, acting Minutes Secretary.

Chair Victoria Volent opened the meeting and called for approval of the August 19, 2014, minutes. The minutes were approved as presented, 6-0.

TOWN PLANNER'S REPORT

Maureen O'Meara reported that the Town Council had held a public hearing on the Town Center Plan. Peter Curry represented the Planning Board on that committee. The Town Center Plan was approved, unanimously, at the beginning of October.

The Town Council also had a public hearing on a TIF (tax increment financing) application for the Town Center and that was also approved by a unanimous vote. The TIF will be submitted by the end of the month and that positions the town to save money on infrastructure improvements, specifically sidewalks and storm water.

CONSENT AGENDA

**Old Sea Point Road Subdivision Amendment** - Elaine Zavodni-Sjoquist is requesting an amendment to the previously approved Old Sea Point Road Subdivision to reconfigure the lot lines for lot 5. We will hear both application for completeness and a public hearing tonight. The plan will be reviewed under Sec. 16-2-3 of the Subdivision Ordinance.

Town Planner O'Meara said that Old Sea Point Road is a subdivision that dates back to the early 1990's when it was a two-lot subdivision. Over the years, those two lots have been divided into five lots, each time with a subdivision amendment. The last time the Planning Board approved the subdivision amendment, it recommended improvements to Old Sea Point Road. Those improvements have been completed. The applicant is asking to reconfigure the lot lines for lot 5. The land outside what is reconfigured will be conveyed to an abutting lot and then both of those lots will be conveyed to another abutter. Therefore, it qualifies as one of the exemptions under the state subdivision law. It is not considered an additional lot.

Robert Metcalf, of Mitchell & Associates, Portland, representing Elaine Zavodni-Sjoquist, addressed the application without the benefit of his Power Point presentation due to technical difficulties. He posted paper plans and spoke of acreage, the shrinking of lot 5 and road frontage required for a water line. There will be an on-site private well. Public utilities would be run underground. He explained the parcel of land that would be conveyed. He said there was a note on the plan and added to the deeds stating the conveyed land would not be part of the subdivision. He said that six of the seven recommendations from the 2012 subdivision approval have been completed. The remaining condition to add a town road through the middle of the property was not deemed practical and would have a significant impact on the property. Given that this land is being conveyed, the road is no longer necessary for future development. He asked the Board to eliminate that condition. The note, pertaining to the road, has been removed from the subdivision plan.

There was no public comment on completeness of the application.

There was Board discussion about subdivision covenants.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Elaine Zavodni-Sjoquist for an amendment to the previously approved Old Sea Point Road Subdivision to reconfigure the lot lines for lot 5 be deemed complete.

Ms. Falender seconded the motion. It passed: 6 - 0.

There was no public comment.

Ms. Falender asked about the note concerning the conveyed land not being a part of the subdivision. Mr. Metcalf read the note. "This conveyance is subject to the restriction that if the 5.390 acre parcel or any part thereof transfers within five years of the date of this deed to another person without the 4.609 acre parcel, said transfer will require subdivision approval from the Town of Cape Elizabeth."

There was discussion on whether the parcel would be part of the subdivision and the access to Old Sea Point Road. Town Planner O'Meara read the Ordinance definition of subdivision where exception number 6 applies to this action. After further discussion, it was concluded that a note would be added to the Mylar to the effect that the conveyed parcel would not be part of the subdivision.

Chair Volent noted that there were two number 9's on the Mylar plan.

Ms. Falender made the following motion:

Findings of Fact

1. Elaine Zavodni-Sjoquist is requesting an amendment to the previously approved Old Sea Point Rd Subdivision to reconfigure the lot lines for lot 5, which requires review under Sec. 16-2-5, Amendments to previously approved subdivisions.
2. The applicant will be deeding land outside lot 5 to the abutter, resulting in no new subdivision lot.
3. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Elaine Zavodni-Sjoquist for an amendment to the previously approved Old Sea Point Road Subdivision to reconfigure the lot lines for lot 5 be approved, subject to the following condition:

That a note be added to the plan that the land remaining outside lot 5 will be deeded to the abutter and that such land will be removed from the Old Sea Point Road Subdivision and will no longer have access to Old Sea Point Road and that the lot being created within the subdivision be labeled as lot 18-4 on the subdivision plan.

Ms. Jordan seconded the motion. By a vote of 6 - 0, the motion passed.

**Rudy's Site Plan Amendments** - 517 Ocean House LLC is requesting amendments to the previously approved site plan and resource protection permit for exterior siding, lighting, curbing, waterlines, generator and planters. The application will be reviewed for compliance with Sec. 19-9, Site Plan Regulations, and Sec. 19-8-3, Wetland Regulations.

The Town Planner stated that the Planning Board approved Rudy's Site Plan in December 2011. There have been two amendments after that. Those amendments did not address siding. The applicant elected to come to the Board because the Code Enforcement Officer (CEO) has made a decision that the exterior siding on the first floor does not match the siding that the Planning Board approved in December 2011. So the applicant has combined that request with requests for other amendments, which are very typical during a project. The other amendments relate to the installation of a generator, conversion of lighting to an LED system, replacement of asphalt curb with

concrete extruded curb (which has previously been approved by the town and is at the C Salt Market site) and the waterlines.

Peggy McGehee of Perkins Thompson, Portland, stated she was representing 517 Ocean House. She stated also present were Paul Wood of 517 Ocean House and the Landscape Architect, Pat Carroll of Carroll Associates and the Architect Phil Kaplan of Kaplan and Thompson Architects. Due to technical difficulties they could not use their Power Point presentation but they did have a few photographs.

Ms. McGehee made comments about procedural due process. They were concerned that one or more of the board members was doing online factual research on this application. The Town Planner forwarded an email request from one of the board members to the engineer requesting similar information to what was found online. There was also a concern about a board member making an unscheduled, unannounced site visit. They also have concerns about bias due to some aggressive questioning at the workshop by one or two members, one of which had a personal confrontation with the applicant a couple years ago.

Ms. McGehee asked that board members review this application based on the public record only and not on any board member's personal research that is not in the record. Ms. McGehee continued to admonish the Board at length. She read from the Maine Municipal Association Handbook. There was heated discussion about online research and site visits.

Town Planner O'Meara said she had not received any information from any board member about this project. She advised that if any member did do research, to provide her with a copy. She will circulate it to every member of the board, to the applicant and the public file.

There were more heated comments. There was discussion as to whether the Board could proceed without appropriate legal advice from the town attorney.

Mr. Curry noted that the Ms. McGehee has referred in her written materials to websites where the Planning Board could obtain more information and felt she had opened the door to online research. Ms. Falendar stated that this Planning Board does not interrupt speakers or Planning Board members and the applicant should also not interrupt. Ms. Falendar and Mr. Chalot both noted that they had seen the site from their cars.

Ms. Quinn departed at 8:24 p.m.

Ms. McGehee agreed to waive her due process concerns.

Chair Volent said she regretted the bad start to the proceedings tonight. Rudy's application has been the model other commercial applicants in town were referred to. She was dismayed to hear the Board was doing everything wrong, when the Board considered that Rudy's was doing everything right. Ms. Volent would like to get the process back on track. The architects have worked well with the Board. Although the Board was now on the defensive, members would try to keep open minds.

Pat Carroll of Carroll Associates, Portland, said he hoped the project could move forward with a public hearing next month. He said there were six items, siding being the most important but most contentious. As the project evolved, minor changes occur. In Cape Elizabeth neither the Planner nor CEO can approve de minimis changes.

Mr. Carroll said the remaining five items were simple. They have been reviewed in the workshop, by a staff review, and by the town engineer. Everyone seems to agree these items can happen. He was hopeful that the Board could approve just these five items tonight so that they could go forward. He discussed the following:

1. Site Lighting - change to LED lighting which is much more efficient and green. They are also adding two additional pole lights to areas that were not well lit according to the photo metrics. They meet, or are less luminous than the town standards.

All of the improvements they are proposing have been chosen to improve the quality and the aesthetics of the project. All are costing more but there is long-term benefit.

2. Curbing - change some areas from bituminous to slipform reinforced extruded concrete (used in South Portland) that is more durable. Granite curbing has also been added to the entrance. Plan L4 shows details.

3. Waterline - Only a two-inch line is needed for the fire suppression sprinkler system. The Portland Water District had lines already running through the property to service the abutting office building. Those two six-inch lines were relocated and will service the requirements for Rudy's five two-inch lines for both the main and phase two building. This has already been approved by the water district.

4. Generator - This is something new. This will allow refrigeration to run and for Rudy's to be open to serve the public during a power outage. It is a Kohler 20-kilowatt generator. It is a residential style generator (houses in town have them). It runs off propane. He said it is fairly quiet but there is not a generator made that meets the town ordinance as it currently exists. He explained that the generator would be located as far away from the abutters as possible. He explained the soundproofed fenced enclosure designed by an acoustic engineer. He said a note could be added to the plan to the effect that the generator would not be run at full capacity except in the event of a power

outage. With the enclosure and the distance from abutters, he believed the town's noise standard would be met. The letter from the acoustic engineer is part of the application.

5. Raised Planters - this is an optional improvement. They are thinking of growing some of their own vegetables (lettuce, herbs). The planters would be four-feet by eight-feet by 24-inches high made of cedar timbers. They would be adjacent to the parking lot.

Mr. Carroll said correspondence about these items has occurred between Maureen O'Meara, Town Planner, and Steve Harding, AMEC Environment & Infrastructure, Inc. He asked the Board to consider approving these five minor items tonight.

Ms. McGehee returned to the podium to address the design standards and to explain how they feel that the Corten siding meets that standard. She spoke from her Power Point presentation, which could not be shown due to technical difficulties. The use of copper is permitted and Corten weathers to look similar to copper. It is a high quality, high cost material. Weathering steel siding is compatible to the structure's design and to nearby buildings. It has been used on high-end residential and commercial buildings in Maine and New England. She said web sites explaining the product were listed. It is an environmental green material.

Ms. McGehee said the product was consistent with other seaside weathering aspects of buildings in town, e.g. weathering shingles, stones. She read excerpts of letters received from residents in support. Corten's look is comparable to copper, which is a permitted siding; therefore it too should be compatible.

Phil Kaplan of Kaplan and Thompson Architects stated he has worked with weathering steel for over twelve years on three projects. He showed side-by-side images (on paper) of Corten and copper. Conditions that effect appearance are age and geography. Corten is used adjacent to brick, natural wood and historic buildings. He discussed a project on Great Diamond Island that is much closer to the water than Rudy's and one in Falmouth 150 feet from the water. As Corten goes through wetting and drying cycles it builds up a protective patina that creates its distinctive look. This weathering steel, A606, is expected to last about 120 years under ideal conditions.

Mr. Carroll said this material exceeds the minimal thickness standard. It meets all code requirements even with corrosion. Mr. Kaplan gave specific measurements.

Ms. Jordan asked about the generator pad construction material. It is noted on L1 to be a crushed stone pad.

Chair Volent asked for public comments on completeness.

Christopher Piper owner of the abutting property at 2 Davis Point Lane said he had concerns about the new lighting for the upstairs tenants whose apartments overlook the restaurant. He was also concerned about the curbing, pitch and drainage onto his property. Sand from the construction has washed onto their parking lot. He was also concerned about the noise from the generator.

There were questions from board members and discussion concerning the Corten material. Iron oxide run off and staining would be minimal. There is a gasket between dissimilar materials. Corten darkens and becomes more uniform over time. This material would not have direct salt spray (as a project mentioned in Baltimore) and would be able to develop the protective patina with the wetting and drying cycles.

Ms. Falender expressed that the compatibility to nearby BA District buildings needed to be addressed. Mr. Kaplan mentioned the site visit. Ms. McGehee stated that information is contained in her Power Point presentation. She discussed several points. Mr. Carroll said that today's copper does not contain the alloy that oxidized to the aqua-green patina. He gave examples of area buildings with copper exteriors.

Copies of the Power Point presentations would be emailed to Town Planner O'Meara for distribution.

To prepare for the public hearing, Chair Volent asked for the applicant to provide quality information on the product, such as warranty information, any correspondence with the vendor about using this material, information on any other steel product that would mimic the color/texture of this material and a comparison to other nearby buildings.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 517 Ocean House Road for amendments to the previously approved site plan and resource protection permit for Rudy's, an 80 seat restaurant/one apartment mixed use building and phase 2 1,240 sq. ft. retail building, located at 517 Ocean House Road, to change exterior siding, lighting, curbing, water lines, add a generator and add raised planters be deemed complete.

Ms. Jordan seconded the motion and it was passed, 5-0.

Chair Volent opened the public hearing. No one came to speak, so the public hearing was closed.

There was board discussion about public notice to continue with approval. The agenda

stated Site Plan Completeness only.

Chair Volent reviewed needed changes to the photo metric and requested the applicant provide new sketches without shading and with building lights, labeled with materials and correct color key match.

Ms. Jordan made the following motion:

BE IT FURTHER ORDERED that the approved application be tabled to the November 18, 2014, meeting of the Planning Board, at which time a public hearing will be held.

Mr. Curry seconded the motion; it was passed, 5-0.

The Board decided a site visit was necessary. It is scheduled for 7:30 a.m. Wednesday, October 29.

The Board voted unanimously to adjourn at 10:08 p.m.