

TOWN OF CAPE ELIZABETH
APPROVED MINUTES OF THE SPECIAL PLANNING BOARD MEETING

November 5, 2014

8:00 p.m. Town Hall

Present: Victoria Volent, Chair
Josef Chalot
Peter Curry
Henry Steinberg

Elaine Falender
Carol Anne Jordan
Liza Quinn

Chair Victoria Volent opened the meeting and introduced the only item.

Rudy's Site Plan Amendments - 517 Ocean House Rd LLC is requesting 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 Rd, to change the siding, lighting, curbing, water lines, and add a generator and optional raised planters, Sec. 19-9. The Planning Board will discuss possible research to be conducted as part of this application as a result of advice from Town Attorney John Wall.

Mr. Steinberg stated that he did not attend the last meeting but he reviewed most of video of the last meeting. He believes the remarks made about potential bias were directed at him related to words he had with the applicant some years ago regarding trespass. The incident occurred 6 to 6 and one-half years ago. He has had no other dealings with the applicant until the Rudy's approval [2011]. He made a statement at that time that he can be impartial. He voted in favor of the project at that time. He is disclosing this information and has no bias at this moment.

He also commented on the issue of review and research and the applicant's contention that we are a judicial board. He had not done any research on his own, but pointed out that each board member is asked to serve and brings expertise. Everyone has some specific knowledge. As long as research is transmitted to the Planning Board and the applicant, it should be ok.

Ms. Volent noted that Mr. Steinberg also voted in the affirmative on two subsequent amendments to the Rudy's site plan. Mr. Steinberg agreed, and added that he did not think there was any aggressive or negative comments during the workshop, just normal questions.

In response to a question, Ms. O'Meara said the Planning Board should make a finding about Mr. Steinberg's participation, either through a motion and vote or by consensus. By a vote of 6-0, the Planning Board decided that Mr. Steinberg had no bias and could participate.

Ms. Quinn followed up with a question about the applicant's charge of trespass. She said that it was more than the stop in front of the property by Mr. Chalat. Ms. O'Meara said the agenda for tonight's meeting specifies a discussion about how to handle research.

The Board discussed designating a person to collect information and that the town planner is the obvious choice.

Mr. Curry said that the role is more of a clearinghouse person for other Planning Board members. It preserves the principle of an open process. He said it was unfair to put the responsibility for research on one person, and not practical.

Ms. Quinn agreed that is a good solution. She does not want to put too much burden on the planner and suggested that a time line for collecting information be set, such as one week before the meeting. Ms. O'Meara pointed out that Planning Board members do not receive the applicant's submission until a week before the meeting and this deadline would preclude research based on what was submitted. The Planning Board receives correspondence from the public up to 4:00 p.m. of the day of the meeting. When this is received, the correspondence is forwarded to the Planning Board and the applicant at the exact same time. The Board may not want to overly restrict itself.

Ms. Falender does not want a specific deadline of days. The Planning Board has received new information from the applicant at the meeting and flexibility has been valuable. When the applicant presents new information at the meeting, we can agree not to consider it and the applicant can respond. We should agree to distribute information to everyone at the same time and not tie our hands with deadlines.

Ms. Volent said we normally get our Planning Board package around Wednesday/Thursday and she needs time to digest the information. That is when research may be done and then sent to the Planning Board and the applicant.

Mr. Steinberg noted this is the internet age. He said we may want to explore posting the information on the cape webpage where it is available for everyone.

Ms. Jordan said we are talking about research as it is commonly done, within time frames. Not until I read the submission will I know if I need more information. I may want to call Maureen or do a quick study or write up a question to be forwarded to the applicant in advance of the meeting. She agrees that any research should be made available to the Planning Board and the applicant as timely as possible. We should be guided by common courtesy and appropriate discussion.

Mr. Curry said we have an unusual situation, which is not a good catalyst for a general rule. The applicant's counsel suggested we were all running off and that couldn't be further from the truth. Most of us are unfamiliar with the materials proposed so we try to ask intelligent questions. We checked websites cited in the applicant's submission. We were only gathering facts to ask questions, not to form an opinion. Three times we ask and then get an answer. So how do we apply this reasonably? We submit our websites through a clearinghouse.

Ms. Volent supports sharing information. She wants anything from the town planner to be provided at the same time to the Planning Board and the applicant.

Mr. Steinberg said sharing with the applicant is the normal practice. He would prefer a page on the town website to designating a person. Ms. Falender noted that the town had an open page and it was discontinued due to inappropriate use. Ms. O'Meara said we could look at a dedicated page for staff posting information in the future.

Ms. Falender referenced the letter from town attorney John Wall. She suggested 2 steps. The Planning Board could address the issue for this application tonight. Then, perhaps in January, the Planning Board could develop a procedure that preserves flexibility.

Mr. Chalot agreed. He has emailed the planner requesting additional information, always to help the applicant prepare. He had a question about the aging of corten and Phil did a good job explaining aging. He does not want to put a time limit on seeking information and design professionals typically prepare at the last minute to get ready for a meeting. The town planner should be the clearinghouse for new information and should not have to do research. We are not trying to stymie the applicant. Making sense of the application only helps it along.

Ms. McGehee was offered three minutes to make a comment, which she declined.

Ms. Falender made the following motion:

Findings of Fact

1. 517 Ocean House LLC, through its legal counsel, has made certain procedural requests in connection with the Planning Board consideration of facts and materials presented by the Applicant.
2. The Planning Board has consulted the Town attorney in connection with such requests.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented by 517 Ocean House LLC requesting various amendments to

the previously approved Site Plan and Resource Protection Permit for the Rudy's project at 517 Ocean House Rd, the Planning Board hereby charges the Town Planner to collect supplemental information in connection with this application, in accordance with the following procedure:

1. Any Planning Board member may request the Town Planner to obtain or distribute additional or supplemental resource information in connection with facts or materials presented by the applicant.
2. The Town Planner shall provide photo copies, and/or a list of website links, of all such resource information collected, to all Planning Board members, to the applicant, and to the public as part of the public record of the application in advance of any public meeting in which a decision may be made by the Planning Board.

Ms. Jordan seconded the motion. Board members agreed that this could happen at any time in advance of the meeting and Ms. O'Meara said, after the Planning Board package goes out, she would forward information as she received it.

The motion was approved by a vote of 7-0. The meeting was adjourned at 8:40 p.m.