

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

May 19, 2015

7:00 p.m. Town Hall

Present: Peter Curry, Chair  
Josef Chalot  
Elaine Falender  
Carol Anne Jordan  
Jonathan Sahrbeck  
Henry Steinberg  
Victoria Volent

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and called for approval of the minutes of the April 27, 2015 meeting. The minutes were approved as presented, 5-0, ( 2 abstained)

NEW BUSINESS

**Summer Oven/Tammaro Landscaping Mixed use Site Plan.** Nick Tammaro, Jen Feeney, and Sheldon Goldman are requesting Site Plan Review of the Tammaro Landscaping (5,137 sq. ft.)/Summer Oven 30-seat restaurant/retail (4,416 sq. ft.) mixed use site located 541 Ocean House Rd, Site Plan Completeness and Public Hearing.

Ms. O'Meara said this project received site plan approval in the 1980's and there have been many changes since then. The applicant has submitted a new site plan which will replace the prior plan. The site is in the BA District, and there are now design standards in this district. They are seeking specific approval for the landscaping business, a 30 seat restaurant and 4460 Sq. ft. of retail space.

Johann Buisman of Northeast Civil Solutions introduced the project. There are 4 businesses on the site. They want to have a brick oven pizza restaurant named Summer Oven. The site has a commercial feel now. We are improving what is there now.

They have addressed all the issues in the ordinance. He then showed plans that showed the layout of what is proposed. He also noted that many impervious surfaces will be removed and planted in grass. They will close one entrance and make a driveway for the use of only the landscaping business. There will be an outdoor patio in front of the building and it will be landscaped.

They have incorporated all the Engineer's suggestions. They have not changed the drainage and he also addressed the parking, and said there is plenty of parking. He is asking for a waiver for the stormwater report. He said they are actually removing impervious surfaces which will improve the drainage.

Mr. Buisman addressed the landscaping and buffering by showing the plan.

Mr. Curry opened the public comment period on completeness.

Sandra Jones of 2 Algonquin Road is the owner of 2 retail stores, called "Somethings Fishy". She has a store at 541 Ocean House Road, and her lease does not expire until March 2016. This is the space proposed for the Summer Oven. Her business was omitted from the plans. She has never been notified that the proposed restaurant would be opening in her space this summer. She feels no action should be taken to disregard her rights.

No one else spoke, so the public comment was closed.

Nick Tammaro stated that they did notify their tenants and are negotiating with Somethings Fishy.

Ms. Falender wondered who owns the property. She said the deed says 541 Ocean House Road LLC is the owner, but not mentioned in the application.

Mr. Tammaro said he is the sole owner of 541 Ocean House LLC.

Ms. Falender said 541 Ocean House Road LLC should also be named as an applicant.

Mr. Curry said he is concerned about the lease, and what it is they will decide upon if that lease does not expire until 2016.

Mr. Tammaro said he thought they could come to an agreement with Somethings Fishy. If we get approval, there is a lot of work to be done before we can open the restaurant. He is confident they can come to an agreement with Ms. Jones.

Ms. Falender wondered if the greenhouse will be part of the retail business.

Mr. Tammaro said it would be used solely for his landscape business.

Mr. Curry wants a note on the plan that the greenhouse is not to be used for retail.

Ms. O'Meara clarified the number of parking spaces needed and how they are calculated. The total amount of proposed retail space was reduced by adding the greenhouse space to the landscaping business use category.

A further discussion of the lease and its possible effect followed, and the Board agreed that it was beyond their scope to consider it.

Ms. Volent made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Nick Tammaro, Jen Feeney, Sheldon Goldman and 541 Ocean House Road, LLC for Site Plan Review of the Tammaro Landscaping (7240 sq. ft)/Summer Oven 30-seat restaurant/Retail (2713 sq ft.) mixed use site located at 539-541 Ocean House Rd be deemed complete.

Ms. Falender seconded and the motion Passed, 7-0.

Mr. Curry opened the public comment period on the merits of the project.

Lauren Welliver spoke on behalf of Rudy's of the Cape, 517 Ocean House Road. Rudy's is generally in support of this project. Their interest tonight is to see that the Planning Board applies the same site plan and design standards within the BA zone. Rudy's spent a lot of time and money to follow these requirements and they want to be sure the same standards will be required of this project. They feel this project is not ready for approval because of the lease dispute; there is no letter from the Portland Water District; they have failed to demonstrate how the exterior lighting will be adequate; a photometric plan should be required; they have failed to meet the BA Zone landscaping requirements; there is no concrete or asphalt sidewalk from the restaurant to the street; the applicant needs to clarify the seating on the patio, and whether the parking is adequate. She indicated that Flatbread would be running the restaurant. She says the application is not ready to be approved.

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

Mr. Buisman said there is no association with Flatbread, and he assured the Board that the water supply is adequate, and that the water district is slow to give them a letter to that effect. If they need to upgrade existing water lines, they will.

A discussion of the sidewalk and plantings between the sidewalk and the road brought out the fact that the Town will not maintain the sidewalk and the applicant will maintain the trees. The sidewalk and landscaping are a Town requirement and the Town maintains them in the Town Center. Later in the meeting there was a further clarification of the standards as they apply to the sidewalk and its material.

As for the lighting, no new outdoor lighting is being proposed, so no photometric study will be required.

Mr. Steinberg asked if they will operate the restaurant all year or only the summer, and what the hours of operation will be.

Jen Feeney said the hours of operation will be from 12 to 8p.m., and they will be open all year.

The Board then discussed the buffering with the abutting lot in Golden Ridge, which is in the RA District. They decided that the existing buffering is adequate to meet the standards because of the existing buffering on the Golden Ridge lot.

Mr. Sahrbeck said the new proposal gets rid of paving, and gets rid of one entrance. It is not expanding the existing parking lot, so it will be more aesthetically pleasing.

Ms. Falender said that they have been given the design information.

Ms. Jordan wants it to be clear that if we approve 30 seats, that will include the patio. If you put seats outside, you must reduce the inside seating so there are no more than 30 seats in all.

Mr. Chalot made the following motion:

#### Findings of Fact

1. Nick Tammaro, Jen Feeney, Sheldon Goldman and 541 Ocean House LLC are requesting Site Plan Review of the Tammaro Landscaping (7240 sq. ft)/Summer Oven 30-seat restaurant/Retail (2713 sq ft.) mixed use site located at 539-541 Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. Several revisions to the submitted plans are needed to bring them into compliance with the town Site Plan and BA District design requirements.
3. With the revisions described in the conditions of approval, 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 Nick Tammaro, Jen Feeney, Sheldon Goldman and 541 Ocean House Road, LLC. for Site Plan Review of the Tammaro Landscaping (7240 sq. ft)/Summer Oven 30-seat restaurant/Retail (2713 sq ft.) mixed use site located at 539-541 Ocean House Rd be approved, subject to the following conditions:

1. That the plans be revised as described in paragraph 4, 5, and 6 of the Town Engineer's letter dated May 12, 2015;
2. That 541 Ocean House Road LLC be added to the title block on each of the plats;

3. That the applicant provide a letter from the Portland Water District confirming that adequate water will be available for all proposed uses on the site and that any necessary upgrade to water lines be installed.
4. That the west side of the dumpster be screened;
5. That the proposed maple trees be a minimum of 2" to 2 1/2" in caliper at time of planting;
6. That there be no alteration of the site nor issuance of a building permit until the plans are revised to satisfy the above conditions and submitted to the Town Planner.
7. That prior to any alteration of the site, a performance guarantee be posted for the proposed improvements, the amount of which is reviewed by the Town Engineer, the form of which is reviewed by the Town Attorney and all subject to the approval of the Town Manager.

Ms. Jordan seconded the motion and it was passed, 7-0.

**Inn by the Sea 500 building Site Plan Amendment** - The Inn by the Sea is requesting amendments to the previously approved site plan for the Inn by the Sea located at 40 Bowery Beach Rd (U17-40) to replace the 12-unit "500 building" with a new 12-unit building, Sec. 19-9, Site Plan Completeness.

Ms. O'Meara stated this project is in the Business B District. It is within 250 ft. of a Resource Protection Wetland, and in the Shoreland Protection Zone. Those zone lines go right through the center of the building. The applicant has been diligent in calculating the square footage and volume of the new building. The code Officer is comfortable that what is being proposed is compliant with our current restrictions.

Mike Zimmerman of Olympia Companies is representing the owner. He said this is a 30 year old building in poor condition. There are 12 guestrooms and they would like to replace them with 12 guestrooms. The schedule they propose is to break ground on Columbus Day and be open on Memorial Day next year.

Eric Dube of Casco Bay Engineering said the overall net reduction in impervious surface is 392 sq. ft. He showed a plan and said they lost 8 parking spaces, but they were over by 52 spaces, so that will not be a problem. He noted that the drainage, sewer, fire lane and water line will remain the same. There will be no increase in the number of units as they are replacing 12 units with 12 new units. They will add downlights on the building and the paths. They will demolish the existing shed.

Richard Lowe of Kaplan Thompson Architects showed pictures of the project. They have kept the scale relatively small, and it will look like 3 separate cottages. The building will be 2 stories high instead of 3. The style will be similar to the existing Inn. It will be painted wooden shingles with wooden decks, wood trim and double hung windows. The building will be 2 stories, with a basement under the center building for storage.

Mr. Curry opened the public comment period. No one came up to speak, so the public comment period was closed.

Mr. Steinberg made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Inn by the Sea LLC to replace the 12-unit "500 building" with a new, 12-unit building located at 40 Bowery Beach Rd be deemed complete.

Ms. Jordan seconded the motion and it was approved, 7-0.

Ms. O'Meara wanted to make a comment. She said that she wants the Board to note the view of the building as it faces Route 77.

There was a brief discussion of the screening and view distance from the applicants.

The Board had no further questions.

A site walk was scheduled for Friday May 29 at 7:30 a.m.

Mr. Zimmerman thanked Ms. O'Meara and Ben MacDougal for their help in working with them on the complicated issues of this site.

Ms. Jordan made the following motion:

BE IT ORDERED that the above application be tabled to the regular June 16, 2015 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Chalot seconded the motion and it was passed, 7-0.

OTHER BUSINESS

**Special Event Facility Overlay District Zoning Amendment and Zoning Map Amendment.** The Planning Board has drafted an amendment in response to a request

from the Town Council creating a Special Event Facility Overlay District where land area of at least 15 acres may operate a special event facility. Sec. 19-10-3, Table to Public Hearing.

Mr. Curry said they have before them the draft that they have been over many times. He said Ms. O'Meara has put in all the revisions they have made, and asked the Board how they wish to proceed.

Ms. O'Meara said the major change is that no map amendment is proposed with this. The owners are not comfortable at this time to include the map amendment. She then outlined the regulations that will apply for approval of a facility.

Mr. Steinberg asked how many people may be there at one time.

Ms. O'Meara said no more than 275 people at one time.

Mr. Sahrbeck said an event is something that may not exceed 8 hours in duration, so no more than 275 people may be there at that one event.

Ms. Falender said she would define it as 275 per event. She also said that when it goes to the Town Council, unless there is a property owner willing to step up and say they want this, she would recommend to the council that they not take action. This was not a Planning Board initiative.

Mr. Steinberg was concerned about whether they need more restrictions in case there is a site that just can't handle this large an event.

There was a discussion of suitability of a parcel, and whether they need to require liability insurance.

It was decided that this is a land use issue, not a liability issue.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the materials prepared and the facts presented, the Planning Board tables the Special Event Facility Overlay District Amendment to the June 16, 2015 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Chalot seconded and it was passed, 7-0.

## **Public Comment**

No one was there to make a comment, so the public comment period was closed.

The Board voted 7-0 to adjourn at 9:20 p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary