

TOWN OF CAPE ELIZABETH  
**DRAFT** MINUTES OF THE PLANNING BOARD

April 15, 2014

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Josef Chalot  
Peter Curry  
Elaine Falender

Carol Anne Jordan  
Liza Quinn  
Henry Steinberg

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the March 18, 2014 minutes. The minutes were approved, 6-1 (abstain).

OLD BUSINESS

**Hilse/Mitchell Highlands Subdivision Amendment** - Erick Hilse is requesting an amendment to the previously approved Mitchell Highlands Subdivision to divide a lot located at 27 Killdeer Rd to create a second lot with proposed access to Aster Lane, Sec. 16-2-5, Amendment to a Previously approved Subdivision Public Hearing.

Ms. O'Meara said this property is in the Residence C District where the minimum lot size is 20,000 sq. ft. This is an amendment of the Mitchell Highlands subdivision which was approved in the 1960's. The proposal is to divide the lot into two lots that are at least 20,000 sq. ft. each. The only amendment is to the Mitchell Highlands subdivision to add a lot. Access will be from Aster Lane, which is intended to become a public road as part of the Cottage Brook subdivision.

Bob Metcalf of Mitchell and Associates was representing Erick Hilse. He first indicated that they have corrected the items previously requested by Ms. O'Meara.

This is an existing lot in the Mitchell Highlands subdivision. Existing lot 46 is a 47,366 sq. ft. parcel. The proposal is to carve out a new lot of 20,200 sq. ft. The road frontage will be on Aster Lane. Since Aster Lane is now private and under construction, there will be several conditions of approval. For one the lot is not to be sold until Aster Lane is an accepted street. The utilities will come from Aster Lane. They will be paying an open space impact fee, and have requested that it be paid when the lot is sold, or a building permit is obtained.

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

Ms. Quinn made the following motion:

Findings of Fact

1. Erick Hilse is requesting an amendment to the Mitchell Highlands Subdivision (approved by the Planning Board in phases in the 1960's) to divide lot 46 into 2 lots, which requires review under Sec. 16-2-5, Amendments to previously approved subdivisions.
2. Lot 46A will functionally become part of the Cottage Brook neighborhood and will have access to Aster Lane, which is proposed to become a public road but has not yet been submitted to the Town Council for acceptance.
3. The Cape Elizabeth Subdivision Ordinance includes an open space impact fee provision that applies to new subdivision lots.
4. 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 Erick Hilse for an amendment to the Mitchell Highlands Subdivision (approved by the Planning Board in phases in the 1960's) to divide lot 46 into 2 lots be approved, subject to the following conditions:

1. That an Open Space Impact fee in the amount of \$6,729 be paid to the Town of Cape Elizabeth (for deposit in an account dedicated to open space preservation) prior to the issuance of a building permit or the sale of the lot;
2. That there be no sale of the lot or issuance of a building permit until Aster Lane has been accepted by the Cape Elizabeth Town Council as a public road; and
3. That the above conditions be added to the subdivision recording plat.

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

NEW BUSINESS

**Jordan/Hews Jordan Subdivision Amendment** - Philip Jordan and Chelsea Hews are requesting an amendment to the previously approved Jordan Subdivision to change the length and slope of the proposed road and to eliminate the public water line, Sec. 16-2-5, Subdivision Amendment Completeness.

Ms. Jordan recused herself from consideration of this item.

Ms. O'Meara said this project is in the Residence B District. The subdivision was previously approved as a three lot subdivision. The proposal is not to increase the number of lots, but to shorten the amount of road to be built, and eliminate the turnaround, and eliminate the public water line.

Bob Metcalf of Mitchell and Associates presented on behalf of the applicants. He said the subdivision was approved in 2006 and amended in 2007. They are before the board because the cost to construct the road as approved, is cost prohibitive. They would like to raise the grade of the road and shorten it. They will still have over 50 ft. of frontage for Lot 3. They also want to eliminate the turnaround. Half of the road will drain to the field and half to the ditch beside the road.

The original plan had been approved with public water, in consideration of the fact that there is considerable acreage abutting. There is no intent to develop that acreage at this point. They would like to vacate that requirement at this time. Lot 1 has an existing structure and has its own well which has been tested for quantity and quality of the water.

The first 50 ft. of Deer Run will be improved, and monumentation will be set. They are asking for a waiver of the requirement for street trees, because there are already trees there alongside the road which they plan to retain.

Mr. Metcalf then addressed the various issues raised in the Town Engineer's letter. He also said the Fire chief is okay with backing up his truck on the shortened roadway and the intersection is adequate for the truck to turn around. He is asking for a final approval today.

Ms. Volent opened the public comment on the issue of completeness. No one came forth to speak, so the comment period was closed.

Ms. Falender wants to know if the information we have on Lot 1 is sufficient to establish the quality and sufficiency of water for Lots 2&3. She also cited the letter from Peter Gleeson (Fire Chief) which she feels does not agree to the elimination of the turnaround.

Ms. O'Meara said they do not usually see information about well water, because 98-99% of the town has public water. It is pretty typical to get that information from an area that is similar to yours. As for the letter from Peter Gleeson, it seems that the short section of Hockey Pond Road can serve as a turnaround.

Mr. Metcalf agreed with that assessment and said they have put a B 40 template on there and it does have that turning ability.

Ms. Quinn wanted to be sure that the stub of road would be plowed in the winter.

Mr. Metcalf said they plow it now and would be willing to have that as a condition of approval.

Mr. Curry was concerned that the applicants are not the owners, and wanted to know if there was proof of an agreement from the owners.

Ms. O'Meara read a letter from the owners with such permission.

Mr. Chalot proposed the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Philip Jordan and Chelsea Hews for amendments to the previously approved Jordan Farm Subdivision to shorten the length and change the grade of Hockey Pond Rd and eliminate the public water line be deemed complete.

Ms. Quinn seconded the motion and it was passed, 6-0.

Ms. Volent pointed out several items on the plans and asked for clarification about items to be done. She also asked about the width of Deer Run Road.

The reply was that the width varies along the road.

Ms. Falender asked about the street trees, and was concerned about the lack of specification of those trees on the plan. She also asked about the status of Lot 1, and that they are being asked to correct any existing violation on Lot 1.

Mr. Metcalf said that was not his intention. He said the water quality testing was done on the well on Lot 1.

Ms. Falender feels that there needs to be some statement about the impact of removing the public water line as it refers to Lot 1.

Ms. O'Meara said her feeling is that there are a lot of little loose details tonight that could be cleared up if the applicant had the next month to work on it.

The board agreed that a site walk was necessary and it was scheduled for Friday, April 18, 2014 at 8:00 a.m.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Philip Jordan and Chelsea Hews for amendments to the previously approved Jordan Farm Subdivision to shorten the length and change the grade of Hockey Pond Rd and eliminate the public water line be tabled to the regular May 22, 2014 meeting of the Planning Board, at which time a public hearing will be held.

Ms. Falender seconded the motion and it was passed, 6-0.

**Middle School Boiler Room Site Plan Amendment** - The Town of Cape Elizabeth is requesting an amendment to the previously approved site plan for the Cape Elizabeth School campus to construct a 1,050 sq. ft. boiler room addition to the middle school located at 14 Scott Dyer Rd, Sec. 19-9, Site Plan Amendment Completeness and Public Hearing.

Ms. O'Meara said the school is in the Town Center District. They are proposing to add a boiler to the western side of the middle school. There are pipes underground where the boiler room is proposed. The staff have recommended that a building should not be built on top of those pipes. It is a very tightly crowded area, so the proposal is to move the water pipe and the utility lines. The storm drain line is going to be left in place.

Greg Marles, Facilities Manager handed out updated plans to the Board.

Frank Crabtree from Harriman gave an overview of the project. This addition is very small, about 1000 sq. ft. The building is displacing a water line. A storm line is also under the building, but they are choosing to leave it there. There is no impact on parking or circulation. The siding is designed to match what is there.

Greg Marles said the new building will not impact the snow plowing. The new boiler plant will generate a noise level of 19dbs at the property line. There is no ventilation system to generate noise.

Mr. Crabtree then addressed the comments of the Town Engineer. As part of the discussion of the storm pipe he said that if there were ever a problem with the pipe they would have to re-route it at that time.

They have requested 5 waivers: Evidence of right title and interest, neighboring property owners, and lot line dimensions, all were asked for because they are 400 ft. from the nearest property line. There will be no change in the landscape and buffering. The noise measurement at the property line is once again asked to be waived because of the 400 ft. distance to the property line.

Ms. Volent opened the public comment on completeness. No one came forth to speak, so the public comment period was closed.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for an amendment to the previously approved School campus Site Plan to add a 1,050 sq. ft. Boiler room to the west side of the Middle School be deemed complete.

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

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

Mr. Curry made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting an amendment to the previously approved School campus Site Plan to add a 1,050 sq. ft. Boiler room to the west side of the Middle School, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town Engineer's comments include recommended revisions to the plans.
3. 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 the Town of Cape Elizabeth for an amendment to the previously approved School campus Site Plan to add a 1,050 sq. ft. Boiler room to the west side of the Middle School 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 April 9, 2014 as subsequently amended;
2. That the plans include notes indicating that existing utility lines will be located out of the building footprint; and
3. That there be no alteration of the site nor issuance of a building permit until the plans have been revised to address the above conditions and submitted to the Town Planner for review.

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

**Tamaro Landscaping/Summer Oven Site Plan** - Nick Tamaro and Jennifer Feeney are requesting Site Plan Review of the property located at 539-541 Ocean House Rd, including the addition of The Summer Oven, a 26 seat restaurant. Sec, 19-9, Site Plan Completeness.

Ms. O'Meara said this is a complex of buildings in the Business A District. The current status is that everything is in Village Retail category. The applicant is now proposing a restaurant which requires a site plan review. There is a 1989 site plan and a new survey that shows a lot of inconsistencies from the older plan, so the applicant has come forward with a new site plan for the entire complex.

Jennifer Feeney is representing the Summer Oven and co-applicant, Nick Tamaro, the owner of the property. The proposed project is a 26 seat restaurant in building #4 of 541 Ocean House Road. They are proposing a change of use in building #4 from Village Retail to Village Retail with Restaurant. They are also proposing a change of use in Building #3 from cold storage to small engine repair. They are also proposing an entrance relocation. They have reviewed the Town Planner's comments and the Town Engineer's recommendations and it is their intent to meet all the necessary requirements.

Ms. Volent opened the public comment on completeness. No one spoke, so the public comment period was closed.

Ms. Jordan asked if all the restaurant seating is to be outside, or is there interior seating also.

Ms. Feeney said there may be 6 seats inside, and confirmed that those seats do not show on the plan.

Ms. Falender said that all BA District Standards apply to this project. She said it seems that they do not have all the detail they would need to confirm that all those standards are met, or not applicable.

Mr. Tamaro said there was construction on the site since 1989. When he took over the property he had to bring the property up to par, because a lot had been done without code approval. He has taken down two buildings that had never gotten permits and constructed a parking lot. He decided to seek approval of a completely new plan rather than an amendment of the old one. This site plan was drawn by an architect. He said items number 1, 2 and 3 of the AMEC letter are the important ones and 4-13 are minor changes. They intend to comply with all the items.

Ms. Falender said she thinks there is not enough information to determine if they are meeting the BA District requirements.

Mr. Curry is concerned about the length of the comments of the Town Engineer, including the statement that the plans are hard to read.

Ms. Quinn said she agrees that the plans are difficult to read.

Ms. Volent said she would also speak out and agree that we don't need computer generated plans. These plans are difficult to read and are lacking all the nitty gritty details that we need to have on the plan. She also noted that the Town Engineer did not realize that this was not an amendment to the prior site plan. We are looking for a greater level of detail than you have provided. She suggests that they work with the Town Planner to guide them in what is needed.

Ms. Feeney wants to know which plan the Board is concerned about. She wants to know, if this is an amended plan, do they have to meet all the standards of the BA District.

Ms. O'Meara said yes, they need to meet all the standards as much as they appropriately apply to you.

Ms. Falender said that they are looking at the whole project, but particularly the new use of a restaurant, they need much more detail about that portion of the facility.

Ms. Feeney then said they have a lot of detail about the parking.

Ms. Falender said she would refer the applicants to Ms. O'Meara for how to comply with the request for details.

Ms. Quinn said Rudy's was the most recent restaurant to be reviewed and that was very detailed, and might be helpful for the applicants to review.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Nick Tammaro and Jennifer Feeney for Site Plan Review of a multi-use complex including a new 26-seat restaurant, the Summer Oven, located at 539-541 Ocean House Rd be deemed incomplete.

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



**The Well 44 seat restaurant Site Plan** - Jason Williams is requesting Site Plan Review of the Well at Jordan Farms, a 44 seat restaurant located at 21 Wells Rd, and an amendment to the Site Plan for the Jordan Farm Stand, Sec. 19-9, Site Plan Review Completeness.

Ms. Jordan recused herself from consideration of this item.

Ms. O'Meara said the property is located at 21 Wells Road and is in the RB District. The restaurant is classified as an agriculture related use. It is allowed where the principal use on the property is agriculture. You may put other uses on the property as long as they are subordinate to the principal use of agriculture and they are related to agriculture. This is a brand new site plan for The Well and an amendment to the Jordan Farm Stand site plan.

Todd Gammon, Civil Engineer, with Blais Civil Engineers represented the Well restaurant. He showed an aerial photo of the farm. The site plan shows that they will be sharing parking with the Farm Stand. There are 16 spaces, 11 of them are for the restaurant, and 5 of them are for the farm stand. It will be a seasonal restaurant that will be open 5 months of the year. It will be open from 5-9 p.m. There is a 20X8 mobile restaurant, a wooden bridge, 4 gazebos and 3 picnic tables. They will add another bridge, a fire pit and a composting toilet. They will have a subsurface water system and some underground electric. The intention is to have the lightest footprint as possible. There is a partnership between the farm and the restaurant. Mr. Williams either picks or purchases the food for the restaurant from the farm.

They have a written letter from Statewide Surveys about the RP-2 wetlands near the employee parking area. They are about 100 ft. from the wetlands.

He then addressed the AMEC letter. He spoke about the parking area and how they plan to improve it. He said there are 44 seats at the restaurant, so they need 11 spaces, and there are 5 more for the Farm Stand. There will be 6 employees, so they will have 6 spaces in the employee parking area.

Ms. Volent opened the public comment on completeness. No one came forth to speak, so the public comment period was closed.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jason Williams for Site Plan Review of the Well, a 44-seat restaurant located at 21 Wells Rd and an amendment to the Jordan Farm Stand Site Plan approval be deemed complete.

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

Ms. Volent asked if their plan calls for separate lavatories for males and females.

There was further discussion on this issue and it was decided that this is a Code issue, not one for this Board to decide.

Ms. O'Meara said the Board does need to know whether there will be one or two structures. That decision would affect the site plan.

Ms. Quinn said there is an approval standard concerning sewage.

Mr. Gammon said they will be showing that on the plan and the gray water will be going into a tank and disposed of by a waste hauler.

Ms. Volent is concerned about the parking spots in the front near Wells Road being closer than 5 ft. to the road.

Mr. Gammon said they will move them back to 5 ft from the road.

Mr. Chalot asked if the route from the parking lot to the restaurant and then to the restrooms, is ADA accessible.

Mr. Gammon said it is now accessible.

The Board did not need a site walk.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jason Williams for Site Plan Review of the Well, a 44-seat restaurant located at 21 Wells Rd and an amendment to the Jordan Farm Stand Site Plan approval be tabled to the regular May 22, 2014 meeting of the Planning Board, at which time a public hearing will be held.

Ms. Quinn seconded and the motion passed, 6-0.

**Harvest Lane Private Road Amendment** - Nick and Jim Tammaro are requesting an amendment to the previously approved Harvest Lane Private Road to provide access and frontage to a new lot located at the end and southerly of Harvest Lane, Sec. 19-7-9, Private Road Standards Completeness.

Ms. O'Meara said the property is in the Residence A District. The minimum lot size is 80,000 sq. ft. A few years ago, the Board approved Harvest Lane as a private road, and it had a waiver to construct the road to a private accessway width. The proposal is to add another lot.

Todd Gammon of Blais Civil Engineers introduced the project on behalf of Nick Tammaro and his father, Jim. He then showed an aerial photo of the area. In 2009 they built a road to private accessway standards. It is 14 ft. wide in a 40 ft. right of way. They want to add a second lot of about 2 1/2 acres and add frontage on Harvest Lane. This will be the second and final lot. They will add an emergency turnaround. They propose widening the 14 ft. road to 18 ft. and add enough to Harvest Lane to provide the 125 ft. frontage for the house lot.

The applicant is hoping to keep a rustic feel and is requesting a waiver to only increase the width to 18 ft. and not 22 ft. They are also asking to waive the paving of the 40 ft. turnaround because everything else is gravel.

They are requesting 4 waivers:

1. The curbing at the entrance.
2. The 50 ft. of pavement from Valley Road.
3. A waiver from 22 ft. to 18 ft.
4. To not pave the turnaround.

Mr. Gammon said that 22 ft. of roadway would be a much greater technical challenge. There will only be two lots, these are the only two that can be developed. They would like to keep the majority of it graveled. There will not be any disturbance of the wetlands.

Ms. Volent asked if they need to talk about the width of the road during the consideration of completeness.

Ms. O'Meara said they can find it complete, but not adequate to meet the standards.

Ms. Falender said she feels a strong inclination to talk about the road width. She said they need to comply with the 22 ft. road standard. She said the original approval was on the representation that there was only going to be one lot, there was only ever going to be one lot. We allowed the road to be built to private accessway standards, and now those original representations are being changed. She does not think this application is complete to show us what the ramifications of a 22 ft. wide road would be.

Ms. Volent then quoted the minutes of February 23, 2009 when the applicant requested a waiver of the width. He said there were no plans for future development of this parcel of land. There was public comment in March 2009 that said the applicant was

establishing a farmstead. By subdividing the parcel you are getting away from the working farm that was originally proposed. She feels they should be looking at 22 ft. of roadway.

Ms. Jordan said she feels that 18 ft. is reasonable.

Mr. Curry asked if they were only talking about the new section of road.

Ms. O'Meara said they are adding to the road so you get to look at the whole road.

Ms. Volent opened the public comment period on completeness. Since no one came to speak, the public comment period was closed.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Nick Tammaro for an amendment to the previously approved Harvest Lane Private Road to extend the road to provide adequate frontage for a second lot be deemed complete.

Mr. Chalot seconded the motion and it was approved, 6-1.

Ms. Volent then opened the public comment period.

Byron Castro of 185 Fowler Road who also owns 29 Valley Road spoke. He said he had taken some pictures of Valley Road. He has concerns about the road. Many of the houses in the area do not meet the requirements for frontage. In that neighborhood you do not need to have a lot of frontage to build houses. His biggest concern on Harvest Lane is making it more like a highway. It will really affect our house. When Nick built the farm, it did affect us by changing our setbacks from Harvest lane from 10 ft. to 20 ft. That made our garage a non-conforming building. If you make Harvest lane be 22 ft. it will reduce our back setbacks from 15 ft. to 20 ft. It will be an impact on our property. He would like a buffer and less impact on him and the other neighbors.

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

Ms. Quinn asked if there are setbacks for private roads.

Ms. O'Meara said the Code Officer determines setbacks.

Mr. Curry said he is leaning towards the rustic character of the area and why the full width is necessarily required with just one additional house.

In response to a question regarding town staff comments, Ms. O'Meara said this is pretty much a rerun of the Elizabeth Road discussion. The Staff does not support waivers. She elaborated on each requirement and why the Staff wants to keep them.

Ms. Quinn said she was on the Board at the time of the original proposal. She remembered that they were concerned for the neighbors at that time, and she still feels that is a consideration. She said she knows now that when someone says they do not plan on further development, it is irrelevant. She does not think it is great planning to have a road come back around right behind the Castro's house.

Mr. Chalot noted that Dawe Road is quite narrow. He wonders if that makes a difference in the requirement of 22 ft.

Ms. O'Meara said it is up to the Board to decide on waivers.

Mr. Steinberg said the less you waive the more you keep an even playing field. If you change for one, why not for others.

Ms. Jordan asked if this lot is sub dividable. The answer is no, it is not. She said her concern is for the abutters in taking this road to 22 ft.

Ms. Falender asked Mr. Tammaro if his remaining lot is subdividable. He said it is not.

Ms. O'Meara said the Tammaros' lots do not have the potential for division, but right behind them is the Maxwells' 78 acres.

Ms Quinn asked why the road was originally proposed as a private road, and not a private accessway.

Ms. Falender and Ms. O'Meara both replied that because there was so much land abutting, they wanted to preserve access for that land.

Mr. Chalot said he is reluctant to go against the Fire Chief, but he is concerned about the character of the area.

Mr. Curry said it is a big road for that little lane, he is leaning mildly to not granting the waiver.

Ms. Quinn said it is unfortunate about the Castro's house. She noted that the road is raised with a drop off on each side, which makes it more difficult to go around. She wants the standard enforced.

Ms. Volent summarized by saying that there are 4 members in favor of holding the applicant to the standard. She also likes the offer to make the turnaround to go opposite the Castro's and to leave some buffer for them.

The Board decided to have a site walk. It was scheduled for 7:30 a.m. Monday April 28, 2014.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Nick Tamaro for an amendment to the previously approved Harvest Lane Private Road to extend the road to provide adequate frontage for a second lot be tabled to the regular May 22, 2014 meeting of the Planning Board, at which time a public hearing will be held.

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

#### OTHER BUSINESS

**BA District 100-seat restaurant Zoning Amendment** - The Town Council has asked the Planning Board to consider an amendment to the Business A District to increase the maximum number of seats in a restaurant from 80 to 100, Sec. 19-10-3, Zoning Ordinance Amendment Table to Public Hearing.

Ms. O'Meara said that in the Business A District, restaurants are limited to a maximum of 80 seats. There has been a request from the Good Table to change the ordinance and increase it from 80 seats to 100 seats.

Ms. Volent opened the public comment period. No one requested time to speak, so the public comment period was closed.

Ms. Quinn said she had gone to the Good Table last week and counted seats. She counted 104 seats. She then emailed the Code Officer and asked him to send her the notice of violation. She said that the members of the Board spend a lot of time making sure the applications fit the ordinance. She herself has spent many many hours reviewing applications and there is a certain integrity to the process. She said the Code Enforcement Officer went into the Good Table and observed this violation in July of last year. He did not write it up. A meeting was held and no notice was written up, and the Good Table has gone to the Town Council for a change in the ordinance to cure this violation.

She does not feel this is the way to run a town. The ordinance is being flouted.

Mr. Steinberg asked whether the seats are counted when there is someone in the seat, or if they are empty.

Ms. O'Meara said it is the number of seats, whether or not someone is in the seat. She also said that when there is a violation, there is a meeting with the Code Officer, and most are cured by the violator stopping what they are doing. He doesn't write up a violation because the person says they will stop and the violation stops.

Ms. Quinn said this feels like spot zoning, changing the Zoning ordinance to benefit one interested party. In response to recommendations in the Comprehensive Plan, the BA District was rewritten. The number of seats was set at 80 when that was adopted. She is not inclined to rewrite that limit. She also said that Rudy's spent a lot of time and money bringing their plan to the Board, and she does not think it's fair to let a neighbor in the same district violate a very important part of the code for almost a year.

Mr. Curry said it has never been a secret that they were seating more than 80 people, and he was under the impression that it was a seasonal problem.

Ms. Quinn said she does not think changing the ordinance is the right way to deal with a serious violation of the code.

Ms. Volent asked Ms. Quinn if she has changed her mind about the limit on the number of seats in both areas that are in the BA District. She said Ms. Quinn had favored 100 seats in both areas when they were in workshop.

Ms. Quinn said she had wanted to get away from the perception of spot zoning when she had supported raising the limit in both areas.

Ms. Jordan said it was her understanding that the Code Officer was aware of the violation, but was waiting for the process (of amending the ordinance) to finish.

Ms. Falender said it is easy to cure this violation. The only reason not to cure it is to preserve the economic potential of those extra 20 seats. It is quite clear what the current requirement is. It is 80 seats. Any other restaurant in the BA District is held to 80 seats, and they are quite clearly in violation of that requirement and all that would need to happen is a reconfiguration of the seating. For a very long time one business is getting an economic advantage from knowingly not complying with the ordinance.

Mr. Chalot said our job is to weigh in on the issue of 80 or 100 seats being appropriate for this district. He is not sure that whether or not they are complying has any bearing on this decision.

Mr. Curry said he feels strongly that they are expanding their focus well beyond what it should be. All we have been asked to do is say what is a good number for seating in the BA District.

Ms. Quinn said the site plan calls for 75 seats. She said she has a hard time volunteering and putting in time if the ordinance is not being enforced.

Ms. Falender thinks they are inviting Rudy's to set up an extra 20 tables. Why would they respect our ordinances if we are not going to say anything. We are sending the wrong message.

Mr. Steinberg said that clearly 80 seats is too small, but he thinks that when we have someone who says we can do what we like, regardless of the code, we are sending the wrong message.

Ms. Volent thinks this should go back to workshop because they are not in agreement.

There was further discussion about whether or not to go back to workshop, and Mr. Chalot then made a motion to leave the seating cap at 80 seats.

After more discussion, the motion was worded:

BE IT ORDERED that, based on the proposed text and the information presented, the BA District 100-seat Zoning Amendment seating changes be removed and restored to 80 seats and be tabled to the regular May 22, 2014 Planning Board meeting, at which time a public hearing will be held.

Ms. Falender seconded and the motion passed, 6-1.

Ms. Volent opened public comment on items not on tonight's agenda. No one spoke, so the public comment was closed.

The board voted unanimously to adjourn at 10:25 p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary