

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

November 18, 2014

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the October 21, 2014, and November 5, 2014 Minutes. The October 21, 2014 minutes were approved 6-1 (abstain) after a slight correction. The November 5, 2014 minutes were approved 7-0.

Town Planner's report

Ms. O'Meara said the Town Council has passed an ordinance that says, in order to keep a rooster, you must have a lot of at least 40,000 sq. ft.

OLD BUSINESS

**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, Site Plan Public Hearing.

Ms. O'Meara gave an overview of the project. She said it is an 80 seat restaurant with 1 apartment and another Phase 2 building of village retail space. She outlined the history of this project.

Ms. Volent asked Ms. O'Meara if she had included all the research information in the Supplemental Information memo dated November 12, 2014.

Ms. O'Meara said that everything she had been provided was included in that memo.

Ms. Volent then asked if any of the Board members had any other research information for the record. Since no one spoke up, there were no additional items of research. She also asked the Board if they could consider the proposed site plan and resource protection plan solely on the record. The entire board said they could do so.

Pat Carroll of Carroll Associates said there are a series of minor changes and some major upgrades in quality and aesthetics of the project. The site changes are : Site Lighting, Curbing, Waterline, Generator, Dumpster pad, Signage, Raised planters and the Siding. He then went on to explain each item in more detail, with the exception of the siding.

The applicant is requesting that the installation of the generator be optional to the completion of the project. Mr. Carroll claims there are no generators made that meet the Town's noise standard.

He also said they have no problem meeting all the items in the Town Engineer's letter.

Phil Kaplan of Kaplan-Thompson Architects made a presentation about the weathering steel siding and how it meets the Town's design guidelines. He said it is compatible with the design of the whole structure and with nearby buildings in the neighborhood. He showed elevations of the building and photos of other buildings in the area. He also showed photos of other buildings which have used the weathering steel siding.

Ms. Volent opened the public hearing.

Catherine Cliffe of 82 Ocean House Road likes the way it looks. She works in the building behind it and thinks it is appropriate and beautiful. She wants to get it open and get the employees back to work there.

Elizabeth Sprague of 7 Ram Island Farm Road said she is pleased with the transformation from the old Rudy's to the new Rudy's. She feels all the amendments are justified, especially the siding.

Aaron Acheson of 6 Great Pond Terrace said this is an improvement over what it was. They have met all the requirements and he is 100% for it.

Todd Colpitts of 1 Masefield Terrace said this is not visually appealing. It looks like Darth Vader's helmet, and he does not think it is compatible with the structures in the neighborhood. He said they have been operating before approval.

Lisa Conley of 14 Whaleback Way likes the look of it. She hopes the Planning Board approves it.

Zev Myerowicz of 2 Davis Point Lane has watched the project from the beginning. He thinks it is a fantastic addition to the neighborhood.

Lisa Harrington of 59 Stonybrook Road loves the building and thinks it looks wonderful and works beautifully with the surrounding architecture.

Richard Berman of 58 Hannaford Cove Road said this is the favorite building he has seen in the entire region. It is beautiful and it reflects nature. He applauds it.

Amber Myerowicz of 2 Davis Point Lane loves it and thinks it is beautiful.

June O'Neill of 10 Clinton Road loves it, and loves the metals. It is so different and she feels it is a good addition to the neighborhood.

Carrie Novak of 52 Oakhurst Road says she loves it.

Louise Fox of 36 Cliff Avenue thinks it is a beautiful building.

No one else came forward to speak, so the public hearing was closed.

Ms. Volent said she would like to take the items in order, with the siding last.

Lighting: Ms. Volent had a couple of questions about the number of lights, and was told that some of them are duplicates on the elevations. She also noted that there is a light on the plan, north elevation, that is not included in the photometrics. Mr. Carroll concurred and agreed to add that light.

Curbing: There were no comments.

Water line: Mr. Steinberg wanted to know if they will need to dig up the street again.

Mr. Carroll said they would not need to go back into the street.

Regarding a letter about the sewer line, Ms. O'Meara said that is not part of the amendments requested or related to the amendments.

There was a brief discussion about the catch basin. Mr. Carroll explained that town staff concerns would be addressed with final paving.

Generator: Since they are now requesting that it be optional, it was recommended that a note be added to the plan.

Ms. Volent asked to have the note on the plan referring to outdoor seating be deleted. Ms. Falender wanted an explicit statement that no outdoor seating has been approved.

Dumpster: There were no comments.

Sign: Mr. Steinberg wanted to know how high from the ground the bottom of the sign would be. Since the sign will be in a landscape area and only 5 ft. from the ground, it was agreed that they would put a chain to anchor the swinging of the sign.

Planters: No one had a comment.

Siding: Ms. Falender commented that tonight almost all the comments were in favor of this siding, but they have had many emails opposing this siding. The comments are about 50/50 for and against.

Mr. Steinberg read from some notes he had prepared. He spoke about the character of the Town. He said he finds the new building to be "edgy" and industrial looking. He said the original design was unanimously approved, and is not at all like what is there now. He said it does not look compatible with the Town.

Ms. Quinn said she would like Board members to limit their comments to 3 minutes each, like the public, so we can move through this.

Ms. Volent said she is not going to limit the Board. The Board also agreed that they do not want a limit.

Ms. Quinn then said she thinks they have shown it to be compatible with nearby buildings. She said we are not arbiters of taste, and also it is not relevant to consider what was approved before. She is proud to have it in the Town.

Mr. Chalot noted that compatible is not the same as just like everything else. The rest of the building is all approved. He is in favor of this.

Mr. Curry said the original approval was for an anodized surface. Using the Corten was not on the agenda at that time. If we accept it here, we should approve it in other places. He had a problem that there is a body of opinion that Corten is not appropriate in a seaside setting. No one has rebutted that point directly. He was astonished that it was not addressed directly and that the fact that the Board had that information was raised as a constitutional objection. He will vote in favor of this project.

Ms. Jordan said she wished they had had this presentation 2 months ago. We'd be done by now. She would have wanted them to come to the Board when the Code Officer asked them to stop work. She is sad that they have had to fight to get it. She will be voting in favor of this.

Ms. Falender agreed with Ms. Jordan and said she feels this applicant has abused our town process. He has disregarded our Town laws. The applicant did it at his own risk.

We have no authority to penalize that disregard of our Town statutes. She thinks the project meets the broad compatibility standards, and she will have to vote in favor reluctantly.

Ms. Volent cited the standards of the BA District. She said Corten is an industrial material. It signifies decay like the Rust Belt. This never came up until July 29. An industrial material is not compatible to what is in the BA District. Metal is in the discouraged materials for this district. She does not feel that this meets the compatibility standard.

Ms. Quinn made the following motion:

#### Findings of Fact

1. 517 Ocean House 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. village retail building, located at 517 Ocean House Rd, to change exterior siding, lighting, curbing, water lines, add a generator and dumpster, and raised planters, which requires review under Sec. 19-9, Site Plan Regulations and Sec. 19-8-3, Resource Protection Permit Regulations.
2. The Planning Board approved the site plan for Rudy's at the December 20, 2011 meeting. That approval includes plans labeling the exterior materials on the first floor of the building to be vertical steel siding. Based on the presentation by the applicant's architect at the December 20, 2011 meeting, which includes colored building drawings showing the first floor in a gray palette, submission to the Planning Board of sample building materials of a coated anodized aluminum with a .32 gauge, and statements by the architect describing the anodized aluminum and the gray palette, it was the Planning Board's understanding that the "vertical steel siding" would be a coated metal material with a corrugated profile.
3. The December 2011 plans also labeled the exterior material on the second floor gables to be a decorative shingle.
4. Following the December 2011 approval, the applicant sought 2 packages of amendments from the Planning Board that were approved. The amendments did not include any changes to exterior materials and the Planning Board did not review the exterior materials as part of the approval for the site plan amendment.

5. Code Enforcement Officer Ben McDougal notified the applicants by email on July 30, 2014 that "the current siding is not consistent with the facts presented and materials submitted to the planning board."
6. On October 3, 2014, 517 Ocean House LLC submitted an application for amendments to the Rudy's Site Plan, including "modifications to the plans in response to proposed changes in the restaurant building facade."
7. The Planning Board deemed the application complete on October 21, 2014 and held a site walk on October 29, 2014 at 7:30 a.m. at 517 Ocean House.
8. The Planning Board held a special meeting on November 5, 2014 at 8:00 p.m. to decide how internet research would be conducted related to the Rudy's application. The Board's decision at that meeting is hereby incorporated.
9. The Planning Board has received public comments in support and in opposition to the weathering steel siding installed on the building.
10. 517 Ocean House Rd is located in the Business A District. The Business A Design Requirements, (Sec. 19-6-5.E), state "The Ocean House Road Business A District, while also a neighborhood commercial area, has a more relaxed beach/seaside retail character."
11. Sec. 19-6-5.E (f), Exterior Materials, states: Facade materials give a structure character. Exterior materials shall be compatible with nearby buildings and with the design of the structure. No structure addition shall consist of architectural materials inferior in quality, appearance, or detail to any other exterior of the same building. The use of wood shingles, wood clapboards, copper, and brick is permitted. The use of concrete block, sheet metal, vinyl, or aluminum siding is discouraged, except for the use of concrete clapboards or siding, such as hardiplank, that mirrors the appearance of natural materials. The Planning Board finds that the proposed exterior changes do comply with the Exterior Materials Design Standard.
12. The Town Engineer has recommended that revisions be made to the plans.
13. The Conservation Commission has recommended acceptance of the increased RP1 buffer alteration.
14. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-8-3, Resource Protection Permit Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 517 Ocean House Rd 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 Rd, to change exterior siding, lighting, curbing, water lines, add a generator and add raised planters be approved, subject to the following conditions:

1. That the plans be revised to address the concerns of the Town Engineer in his letter dated November 12, 2014;
2. That lighting levels not exceed .5 footcandles at the property line at the completion of Phase 1;
3. That the generator as detailed in the plan is optional. If it is installed it will only operate at full power during power outages;
4. That Note 12 on Sheet L-1 be augmented with the following statement: "There will be no increase in the number of seats unless a request to amend the Site Plan approval for 80 seats has been submitted to and approved by the Planning Board."
5. That the elevations for the Phase 2 building be revised to relabel the exterior material as "7/8" A606 Type 4 corrugated steel siding."
6. That the photometric plan be corrected to reflect the number of lights in the elevation.
7. A motion limiter be added to the sign design.
8. If there is clear visual evidence that the weathering steel is not objectively performing as anticipated within 20 years of the receiving its Certificate of Occupancy, the owner agrees to promptly repair or replace the portion of siding that is experiencing the issue.
9. That the date of the plan be updated.
10. That note 4 on page L-1 be amended to remove outdoor seating. No outdoor seating is approved.
11. That the photometric plan be submitted to include one A.1 .1-B canopy mtd. down light.

12. That there be no issuance of a certificate of occupancy until the plans have been revised to satisfy the above conditions.

Note: several amendments were made and what is above was the final agreed-upon version.

Ms. Jordan seconded and the Board voted 5(for)-1(against)-1(abstain).

Mr. Carroll asked why Condition 4 is there, since the District now allows 100 seats.

Ms. O'Meara explained that there are many factors, such as parking, lot size, sewers etc, that go into an approval. So if you increase the number of seats, the Planning Board needs to review that increase.

Ms. Quinn said she has noticed that a couple of board members had prepared comments before this hearing had taken place. She would like those notes attached as part of the record.

Ms. Falender said some people have a need to have notes before speaking in public.

Ms. Quinn is concerned that people have made a decision before this meeting.

Ms. O'Meara said she remembered that the Chair had asked all the Board members if they could a decision based on the record, and everyone had said they could.

Mr. Steinberg felt this was directed at him, and wanted to respond. He said the decision is based on all that has come before. It is a gradual process and he had made some notes about that process for him. His final decision was not made until a few minutes ago. He would have liked to have the vote broken up, but Ms. Quinn did not allow that so since he had to vote on the entire project, he voted against it because of the siding.

Ms. Volent called for a 10 minute recess.

## NEW BUSINESS

**Latter Day Saints Parking Lot Site Plan Amendment** - The Town of Cape Elizabeth is requesting an amendment to the previously approved Latter Day Saints Parking lot, located at 29 Ocean House Rd (U28-16), to replace 2 parking spaces with a biofiltration unit as part of the Trout Brook Phase II grant project, Sec. 19-9, Site Plan Completeness and Public Hearing.



Ms. Jordan recused herself.

This project is part of the Trout Brook Phase II grant. The Town of Cape Elizabeth is the holder of the grant, but most of the administration is being done by the Cumberland County Soil and Water Conservation District. It is before the Board because a portion of the parking lot has been part of a site plan approval.

Christopher Baldwin, District Engineer, Cumberland County Soil and Water Conservation District, is administering the grant to restore and protect Trout Brook. They propose to remove 2 parking spaces and replace them with a biofiltration system that will treat runoff from the roof and parking lot. They want to remove impervious surface and and replace it with a water quality treatment structure.

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

The board had no comments, so Ms. Falender 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 (1987) Church of Latter Day Saints Site Plan, located at 29 Ocean House Rd, to replace 2 parking spaces with a biofiltration unit be deemed complete.

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

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

Ms. Falender made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting an amendment to the previously approved (1987) Church of Latter Day Saints Site Plan, located at 29 Ocean House Rd, to replace 2 parking spaces with a biofiltration unit, which requires review under Sec. 19-9, Site Plan Regulations.
2. The biofiltration unit will include native plants.
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 (1987) Church of Latter Day Saints Site Plan, located at 29 Ocean House Rd, to replace 2 parking spaces with a biofiltration unit be approved, subject to the following condition:

1. That the applicant submit a planting list prior to construction of the biofiltration unit.

Mr. Steinberg seconded the motion.

Ms. O'Meara wanted the record to show that the Church is a complete partner in this application, even though the town of Cape Elizabeth is the applicant.

The motion passed, 6-0.

**Rams Head Boardwalk Resource Protection Permit** - Rams Head Partners LLC is requesting a Resource Protection Permit to construct 2,046' of boardwalk at 20 Rams Head Road (R9-49-4), Sec. 19-8-3, Resource Protection Permit completeness.

Ms. O'Meara said this project is heavily in RP-1 Wetlands. The Conservation Commission has seen the plans and is expected to bring forth some recommendations next month.

Stephen Mohr of Mohr and Seredin Landscape Architects spoke on behalf of the applicant. They have had to thread this boardwalk through this wetland, piping plover habitat and sand dune area. They want to minimize the impact and stay on the back dune. They are proposing to replace an existing footpath. They are required by the DEP to keep any improvements to the back dune.

He showed pictures of what exists there now. He said there will be no trees cut, nor any grading. He said the pipes will be hand driven, limiting the impact. The purpose is to let the owners navigate the area and let the dune grass regenerate. The boardwalk will be 2049 ft. long and 3 ft. wide.

He outlined the waivers requested and said they have no concerns about the Town Engineer's comments.

Ms. Volent opened the public comment period on completeness. No one came forward 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 Rams Head Partners LLC for a Resource Protection Permit to construct 2,046 linear feet (6,138 sq. ft.) of boardwalk in an area of RP1 wetland and sand dunes located at 20 Rams Head Rd, be deemed complete.

Mr. Steinberg asked about the material to be used on the boardwalk and was told it will be pressure treated lumber, but not any that is copper treated.

Ms. Quinn was concerned that the boardwalk might be washed away in a storm, such as the Patriot's Day storm.

Mr. Mohr said the Patriot's Day storm did not come up to that level. They have engineered the size of the pipes, etc. to withstand a storm.

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

The Board decided to have a site walk on December 1 at 9:00 a.m. They also decided to hold a public hearing at the next Planning Board meeting on December 16, 2014.

Mr. Steinberg made the following motion:

BE IT ORDERED that the above application be tabled to the regular December 16, 2014 meeting of the Planning Board, at which time a public hearing will be held.

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

**Srungavarapu Blueberry Ridge Subdivision Amendment** - Srinivas Srungavarapu is requesting an amendment to the previously approved Blueberry Ridge Subdivision to replant a buffer and install fencing at the rear of 10 Blueberry Rd(U34-17-15), Sec. 16-2-5, Subdivision Amendment completeness.

Ms. O'Meara said this is a home grown plan. The Blueberry Ridge subdivision was approved with a very detailed buffering plan. The buffering was tailored to each lot. The applicant inadvertently removed plantings that were included as part of the original subdivision approval.

Ms. Srungavarapu said they unknowingly took out the trees. She showed the plan she had made. They plan to plant 8 arborvitae and a couple of fruit trees. She feels this will give the coverage for them and the neighbors. They are talking about apple trees.

Ms. Volent asked about the phasing.

Ms. Srungavarapu said the arborvitae will be phase 1. Then when this settles down, we will plant the fruit trees (phase 2) and then they would like to have a fence for their yard. In reply to a question about timing, she said in the spring they will plant the arborvitae, the fruit trees by the fall and then a couple of years they will do the fence (phase 3 in 2016)

There was a discussion of whether the fence would need Planning Board approval, or if it was not required in order to satisfy the buffering.

Ms. Falender said she is ok with a home grown plan, but we are amending a subdivision. She needs the name of the subdivision, the formal number of the lot, and if the lines on the plans are lot lines, they need to be labeled as lot boundaries. It would be more helpful if the measurements of the plantings are to scale, and measured from the trunk to trunk and to the lot line.

Ms. Volent opened the public comment on completion.

Lee Bumstead of 58 Goudy Street, South Portland said she abuts this property. When the developer of the subdivision asked her what she wanted for a buffer, she wanted the existing trees to be kept. Those trees and the evergreens that were planted are all gone now. She said the arborvitae are fine, but she was hoping to get a few more deciduous tree back too. She does not want it too close to her fence, or the proposed fence. She would like to see details about the fence, and is concerned about losing more trees in order to install a fence.

No one else came forth to speak, so the public comment period was closed.

Mr. Steinberg thinks the plan is short of measurements.

Ms. Falender said they also need to consider sunlight for the lot. We don't want to make the lot too dark. We also want a north/south arrow on the plan.

Mr. Chalot wants a copy of the original subdivision that shows the plantings in that area.

Ms. Srungavarapu said she took out the trees because she was worried they would fall down in a storm.

Ms. Falender wants to see the details of the fence, the height, the materials, etc.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Srinivas Srungavarapu for an amendment to the previously approved Blueberry Ridge Subdivision to replant a vegetated buffer on a lot located at 10 Blueberry Rd be deemed incomplete.

Ms. Jordan seconded the motion and it passed 5-2.

Public comment on items not on the agenda. No one came forth to speak, so the public comment period was closed.

The Board voted unanimously to adjourn at 10:30 p.m.

Respectfully submitted,

Hiromi Dolliver  
Minutes Secretary