

Cape Elizabeth Planning Board Meeting May 19, 2015

Peter Curry: Bring the planning board to order, excuse me, May 19, 2015 meeting, I'd like to ask folks if you look to silence your phones and other mechanical electronic devices. The agenda is as follows: we will be approving the minutes of the previous meeting of April 27, the items of new business are 1, is the Summer Oven Tammaro Landscaping mixed use site plan, requesting site plan review of a application by Tammaro Landscaping for a mixed use site at 541 Ocean House Rd.

The next item of new business, Inn by the Sea the 500 building site plan amendment. They are requesting amendments to the previous approved site plan to replace a 12 unit so called 500 building with a new 12 unit building.

Other business involves a special event facility overlay district amendments to the zoning ordinance and lastly if any members of the public wish to make any comment at the end of the meeting, there will be opportunity for that.

The public will also have an opportunity to comment on the other items of business, the applications, and the special event facility.

So with that, the first item is the minutes of the previous meeting. Do the board members have any comments or questions on those minutes? Being none, I will entertain a motion to approve them as submitted, Henry, second Victoria, in favor, opposed. Carries unanimously.

There were 2 abstentions. I'm sorry. You abstained, no he made the motion. Jonathan said I made the motion. He wasn't here. That's a good point, thank you Joe. Henry, we will ask for a motion for someone that was here. Do I have a motion from someone who was in attendance? Jonathan second Victoria, in favor, opposed, abstained we have our consensus. Ok, it carries unanimously, the affirmative vote with 1 abstention. Good catch Joe, thank-you. One abstention or 2, I was absent as well, ok very good all in favor.

The next item of business is the Summer Oven Tammaro Landscaping application. The applicants are requesting site plan review of the Tammaro Landscaping 537 sq ft Summer Oven 30 seat restaurant retail, 4416 sq ft mixed use site located at 539-541 Ocean House Rd.

The site had received site plan approval in 1988 and this application replaces the earlier approval application we reviewed for compliance section 19- 9 and site plan regulations and section 19-6-5 BA district design requirements.

The procedures will be as follows. The planner will provide a summary of the project within the context of town regulations. The applicant will then summarize the project. The public will have a chance to comment on the issue of completeness of the application. The board will then make a determination of completeness and, if is found to be complete, then the process can continue to a public hearing this evening on the merits

of the application. First ask the town planner to summarize the project and context of the town regulations.

Maureen O'Meara: Certainly. So as the chair noted, the project has already received site plan approval, but there's been many changes on the site since its approval in the 80's and the applicant has chosen to come forward with a brand new approval to leave what's in the past in the past. So the board should treat this as a new site plan. The applicant is looking to make some changes to the site and it also takes an approval dated from the 1980's and makes it much more current today. So it makes it a lot clearer what's allowed and what flexibility is allowed.

So this is in the Business A district and in the business A district there are design standards. Also the practice is now to approve categories of use by square footage or by numbers of seats and within those categories there's some flexibility. So if you have, for example 4000 sq ft of retail of approval, you can change businesses within that 4000 sq ft, and as long as it still retail use, it doesn't trigger a planning board review unless there are exterior changes to the building.

So the applicant is looking for a approval for a specific amount of space for the landscaping business, a 30 seat restaurant and also 4416 sq ft of retail. Of that 4416 sq ft, I included the greenhouse that is shown on the plan. I don't know if the board would like to call that some other use, but lacking any other direction that's the way I went with it. And that's, I just have one other correction I wanted to make in my memo. I talked about 2 inch 2.5 inch caliber trees. In fact what I was trying to say is 2 to 2.5 inch caliper trees which is the standard size we usually require for new tree plantings. So that's all I have.

Curry: Ok. would the applicant now like to summarize the project? If you could give your name sir.

Johan Buisman: Sure my name is Johan Buisman. I work for Northeast Civil Solutions in Scarborough and we've currently have done all the site plan and engineering for this project. I'll quickly summarize a little bit. I'll paraphrase what's in our cover letter to you and then I'll talk more about specifics on the plan itself.

Currently there are 4 businesses on the property. It's a multi-use site at the moment, and there, maybe I'll explain this. Then I'll look at the map. But anyway there are 4 businesses on the site at the moment. There's Pet Positive, Off the Wall Boutique, Something Fishy, and Tammaro Landscaping, that's currently on the site as is, and what we are doing, would like to have a brick oven restaurant named Summer Oven. That's really what this whole project is really about. It's really about the restaurant.

While we are doing this restaurant, we have had to address the other issues of this site. So it's really, that is been the focus of the site, is the restaurant that, however, in doing that we are addressing all the other concerns, the other businesses the parking, other issues that come up as far as the site plan so that whole site will be completed as such. It was an old Agway building as many of you know, and this site right now has a very commercial

sort of feel to it. From our site walk, you realize a lot of paving and this and that, (turn this back on, it just turned off by itself, anyway, I'll let you fool with that.)

But anyway, the site has a very commercial feel right now, and one of things we'd like to do is in an area where you know a lot of people see the site so we feel what were doing with the site. We're not altering any new construction or something like that. We are vastly improving what is there now, so I think we should keep that in mind that this is going to be a big change and a real improvement to the site that a lot of people see right on Ocean House Road. We've addressed all the issues in your ordinance as far as the site plan layout, driveway and parking and I'll go on more about it waste disposal. I can go right through the list but anyway, why don't I turn the attention to the plan itself and we'll go from there?

(Visual of the plan) Currently, on the property we have 4 buildings and 2 greenhouses. So we have Tammaro landscaping which is this building ,this building, this building, this building and the green house is right here. There are 2 green houses on the property, this one here and one here. This on here is part of the landscaping business and with it is another green house. Here you have the main structure which is this building right here. This greenhouse is one we removed so we just have one greenhouse right here. This is the main building right here, and as you'll see there will be 2 retail spaces here and then the Summer Oven restaurant will be in this front portion right here. The main thing I want to draw your attention to is this green colored surface right through here. Everywhere you see green right now is that more impervious surface. That's going to be turned into lawn so there is actually more grass that's in this section here and in between these buildings and also up front here.

We didn't highlight that, but really what were really highlighting in green, is all this pavement that's up front is going to be removed. I think it's going to make a big improvement of how you see this site. So this green here right here this is all gravel, same here, same in here. That's all going to be turned into additional grass and landscaping, so that's going to be a huge improvement on the site when you visually see this. What we're also proposing to do is close an entrance here. There are currently 2 entrances, one here and one about here, and what we're going to do is close this entrance right here, then shift this entrance here to the right that currently exists.

One of the reasons we're shifting that is to really promote better access to the site, 90 degree to the site, as we've had a traffic engineer look at it and also allow for handicap parking along the side of the building, and also a nice flow. Now there will be a second driveway, that's proposed right here, and that's going to be for Nick's landscaping and what that's going to do is to separate his portion of the business with the traffic here from the retail and the restaurant. So he will have a nice flow through here out to the back in this area right over here.

So that's sort of the overall look of the site. As we're going to change it, couple things I'll draw to your attention is that this is a residential selling right here. And what we've done is there a setback from that, we'd assured that the restaurant is not within that restaurant

door any of the patio. At first, it was designed on this left hand side for outdoor seating. We've moved that back to the front. We did that for a couple of reasons of, one to stay out of the setback, but two to at first we kept it here, but then we realized it be much nicer in front to have it. And with the removal of all that pavement, it just makes a much more nicer looking site when you first approach the site. So there will be an outdoor patio right in here. That outdoor patio will be landscaped. It will have a stone wall along one side of it and also plantings over. I can go flip thorough the next. What I've done is loaded each of the sheets that's part of the plan set and I can go through each of them rather quickly. (Asking someone to operate the visual slides)

I don't want spend too long on this particular one. It is a fairly busy drawing. I won't go over all the details, abutters here. I would like to emphasize a few things while going through these. One of things we are looking for is for you to look at the completeness of this and also were hoping for is, if all goes well, approvals. It's our clients wish, they would actually like to start this year. Summer Oven, it's really for that point of the season and we are really looking for that if that's at all possible and we've think we've met all of the criteria.

This just shows soils right here. We have some contour maps here. We're not changing any of the drainage here. Well overall, we're not changing any of the drainage here the way the drainage is working and so currently the drain is a little bit to this side of the site, but also towards the front sort of a line through here. What this map also represents are different soil types. These are very good soils for drainage so we're in luck here. Also show overall boundary of the property right here.

What I've done here, there's a couple of things through this plan set. You're going to see a few things that are highlighted here. Those highlighted are changes we've made to the plan that are result of the comments of the reviewing engineer. We felt that the comments were, their weren't too many changes that were requested which we were very happy about, and so we thought ahead and already incorporated the changes into the site plan we felt that was necessary to do.

There was a comment back here about some of the parking in the island. We've actually lost a couple parking spaces back here in this corner which was done, and about a question about some the propane tanks here in the back and their removal. So we've highlighted that. There are propane tanks which each of the greenhouses, and the restaurant itself the propane tanks back here that were with the one greenhouse are to be removed as they are no longer necessary. The other ones will remain.

The highlight down in this corner went from 38 to 36 spaces. We had actually extra spaces designed for this 30 seat restaurant. We had more than that even so we have a couple of those. We will still have plenty left over. Right here was a comment about note and this has to do with the sidewalk here in front. We have a sidewalk that says stone dust. That's actually called a path, not a sidewalk on the front of the property and we've made a note about it that we are going to be doing the maintenance of that path, but the maintenance as we understand it will not include snowplowing, that's not considered part

of the maintenance, so snowplowing will not be included in that. But we will maintain the path for people keeping it nice and that sort of thing. We have already added that note to the plan. One thing I will address on here, you can't see it, have to zoom in on this little section right here, as we've addressed exactly how many employees there are. We actually state each of the uses, how many employees there are going to be, and how many patrons. That's how we came up with the calculation for the parking. So that's in this corner of the plan, so that's all been calculated on this plan here.

One thing I will show you over here is in the buffering. Back here, you'll see parking spaces back here but those actually aren't formal parking spaces. It's something that Nick will use for his landscaping business where he parks his vehicles. It's an overflow so its actually extra parking spaces, but we didn't calculate them. We didn't need to. I suppose we could have but these aren't official parking spaces. All the parking is going to be along in this section here in front of the building and also in the section. Right here back here is really going to be used for Nick for his employees and the parking here over here will be for retail and restaurant.

There's a green house right here, and there was a question that came up about parking for that. There is going to be no employees for that because Nick's running that, so one of his employees is already designated to work with that building. So there isn't going to be no additional parking required for that greenhouse because that's really incorporated into this business.

This is for the grading and the storm water right here and on this plan. (He repeats this) This is for the grading and storm water as we're not changing our the grading really on the site. For the most part, we're asking for a waiver for the storm water. The reviewing engineer has looked at this and says he agrees with that because for the most part none of the grading is changing in here. What we are really doing is making the site more pervious than it was before.

We are taking out like 4000, no we're taking out quite a lot of pervious surface, 4 -5 thousand square feet. So we are actually putting in a lot more impervious surface pervious surface in that area. What I've highlighted right here was there was a couple of comments about drainage, and that we should not let the water flow across the path right here. So we've added some inlet structures here and here and we've already done the calculations on these right here. This is a detail of those inlet yard drains, so no water can be flowing across the path.

Curry: Excuse me Johan I know you have a lot of ground to cover, but we are still only in completeness, and if you have any core parts to cover tonight in the time we have allotted to your application, I would ask you to pick up the pace a bit.

Buisman: Oh ok, I wasn't sure how detailed you wanted me to get. Again this has to do with storm water. The reviewing engineer asked for check dams here for some, so we've taken care some of those issues. Again this is a detail sheet. Some things we've added.

These are a couple questions the engineer had. They were real minor as far as the size and structure. We've addressed all those, so will just go over the last plan.

This is really the landscape plan. Here again, what we have here, I'd like to spend a moment on this particular one. We've had the buffering that we have here would be along here from the original site plan that was requested right through this buffering through here. We've gone ahead and added some trees through this section. We've added a fence there which wasn't required through this section, here again some more trees for landscaping. We've augmented what was already there with the abutter with some more landscaping there, on the road and you can see some landscaping and what's highlighted we've upgraded here from the one inch to the 2 inch requirements, and that's why those are all highlighted through here.

This section over here, we have quite a bit to block this abutter right here. We have a fence, trees and we have other landscaping through that section. One last thing I will add to that is from this path right here, there is a sidewalk that also connects. So we have lot of walking facilities through this section to the patio through this section.

Curry: Thank-you. Before we open up to the board to comments, I want to give the public a chance to speak if they wish. On the subject of completeness, not the merits of the application, just whether or not sufficient information has been submitted. As you also know, we have a several page letter from a law firm representing a business interest near by. I don't know if they plan to speak tonight. I will ask you to keep it brief because we have your detailed comments before us.

Would any members of the public like to be heard? If you do, when you come up, give your name, address. We would like you to keep your comments to 3 minutes if possible, also. I realize it's going to be difficult. You're welcome to submit comments at any time in writing to the town planner.

Hello, my name is Sandra Jones. I am a property owner at 2 Algonquin Rd in Cape Elizabeth for 35 years. I am also the owner of 2 retail stores, Something Fishy at 32 Exchange St in the Old Port for 34 years, and Something Fishy 541 Ocean House Rd. that we are talking about today.

On May 6, I went into the town hall and discovered that a proposal was submitted on April 30 to the town planning board showing the intended use of my leased space at 541 Ocean House for the construction and operation of a restaurant called Summer Oven. It is scheduled to open this summer.

There remain several issues that need to be resolved. The summer oven/ Tammaro proposal is premature since my lease does not expire until March of 2016. My right to quiet enjoyment is in effect till then. This proposal is not complete because the plans list Pet Positive, Off the wall Antiques as existing tenants and Something Fishy has been omitted.

I was never informed or given any notice that the proposed restaurant would be opening in my space this summer. Something Fishy is a retail store so all my merchandise has been ordered for the summer season as a new shipment already has arrived. This proposal as stated is premature and incomplete. Something Fishy has a lease until March 2016 no action should be taken at this time to enable summer Oven /Tammaro to disregard my rights. Thank you very much.

Curry: Thank-you ma'am. Are there any other members of the public that would like to be heard on completeness? Counselor, you want to speak at this point or on the merits of the application? Your letter seems to cover both. (Her response cannot be heard as she did not go to podium)

Curry: Ok, thank-you. Members of the board, would you like to address comments on the nature of completeness?

Henry Steinberg: I guess I have a question. When was, assuming that everything sailed through, when were you planning on starting construction?

Nick Tammaro, owner of 541 Ocean House Rd and 539 Ocean House Rd, some of the statements aren't true and some of them are incorrect. We're, we did notify our tenants of potential change. We still we have a timeline we'd like to open this summer, however there is a lease in place with Something Fishy and we are in the process of negotiating a buyout so that she feels comfortable and everybody is happy and we will follow the law to do that correctly.

Elaine Falender: I had a question as to who the applicant is here, and I think its something that can be clarified, corrected. The deed we have been provided shows the owner as Ocean House Rd LLC, but the applicant appears here as 3 named individuals. There is sort of a disconnect between what's being provided to us and evidence of ownership and whose being put forth as the applicant. If the applicant does own the property, then I think the private lease dispute between the applicant and the tenant really is not our business, but I do think it's important for us to clarify that the party bringing application in fact is the owner of the property.

Tammaro: Yes, I am the owner of 541 Ocean House Rd LLC which is the holding company that owns the property.

Falender: So are you the sole owner?

Tammaro: Sole owner, no partners.

Falender: Ok, so I think for completeness purposes I think we're fine. For approval purposes, we would need some confirmation of that.

Tammaro: Sure.

Falender: I wonder whether 541 Ocean House Rd LLC should not also be named as an applicant? That might be the easier way to do that?

Curry: Other questions on completeness from members of the board? I guess I have a question, maybe it's a follow up to question by Henry and Elaine, that is if it's being represented the pizza oven restaurant is going to be created but yet a good slice of that stays, no pun intended, occupied by retail store which has sole rights until March 2016, I'm having a little trouble figuring out what it is we're going to decide on here on completeness if the space is not available to do what you want.

Tammaro: When we started the project and started the whole process, the you know getting hiring Northeast Civil Solutions, starting that whole process, we didn't have a current timeline at that time. We didn't know how long the process would take to get through the board and what not, so just recently things were going well, you know Northeast was doing a great job for us. We thought if we could make this work, then we could come to a deal with Something Fishy to let her out of her lease. It would work for everybody.

I don't have any, you know, that was our intentions and we don't want to displace anybody, we want someone to leave willingly. We have, there are some other underlying issues currently, and so I don't know if we need to get into this, those scenarios, but if we get approval, there's a lot of work to be done on this site. And everything has to be done before the restaurant opens and that would be our intentions, if we can strike a deal with Sandy. And if we cannot, there's still a lot of work that's got to be done in a time frame before we can open the restaurant.

Curry: Are you saying basically that well I guess you're agreeing that if you can't use that space you could go ahead and develop the property without the pizza oven use actually coming into existence because of the Something Fishy lease hold?

Tammaro: Correct. We wouldn't be here tonight if we didn't have a feeling that we were close to a buyout agreement. So we wouldn't be pushing as hard as we were if we didn't think we could make it happen with our current tenants and there's some other stuff going on inside that building too. We have to redevelop the space and shift some things around and we've gotten all the tenants to agree that are currently in the building. That's why we're pushing forward. I'm confident we'll be able to make an agreement with Sandy Jones to make her feel comfortable before we proceed.

Curry: Thank you.

Falender: I just have one other question and that has to do with the greenhouse that's remaining for and I don't know I'm wondering about the parking calculations. Is that in fact a retail space or is that part of your landscape business?

Tammaro: It will be moved, we will use it for landscaping only.

Falender: So you won't be having retail sales

Tammaro: There will be no retail sales, no out front sales. It's going to be strictly for starting seedlings, shrubs, things we would use inside of our landscaping business.

Falender: So does that effect our parking calculations? I guess that's a question for Maureen.

O'Meara: I would suggest if there's, my understanding in the past was that was where seedlings were sold to the public out of that space, and if it is now. Basically right now Tammaro landscaping has 3 buildings on the site and the parking that was calculated for those 3 buildings was based on number of employees so if we just add the 4th building it doesn't change the parking that they're proposing right now. But what it should do is in the motion I talk about 4416 sq. ft. of retail space, that number needs to be changed to delete the green house space so all of this, and we would then take that number and add it to the 5137 sq ft of Tammaro Landscaping space.

Curry: I think we would want to note the plan that the Green house was only used for landscaping and no retail.

O'Meara: Absolutely

Tammaro: Absolutely, it's an accessory use to Tamara Landscaping, that's all it is.

Steinberg: Question to parking, the restaurant it's a 40 seater, and how many parking slots would you reckon, think would be used for the restaurant at any given time considering it's also pizza, which might be ok. So did you say full 40 seat?

Tammaro and O'Meara: It's 30 seat

Steinberg: 30. I apologize.

Tammaro: Johan, questions parking calculations?

Buisman: Was not audible not at podium

O'Meara: No, if I could be recognized, what they're proposing, they're proposing a 30 seat restaurant. I believe you proposed 4 employees so for 4 employees, so 30 seats at 4 at 1 parking space per 4 seats gets you 8 seats plus another 4 seats plus another 4 parking spaces for the 4 employees and that's what they proposed in their plan.

Curry: Any more questions or comments from the board? Well then, the next step down the road is the issue of completeness to determine if it's complete or not. I should also mention to the public the board has been a site viewing a site visit to the premises. So we've seen the situation and the ground as well. Anybody want to voice opinions about the completeness?

Carole Ann Jordan: I'm fine, I just wanted calculation square footage and I think Maureen

Curry: I think Maureen's in the process.

O'Meara: I am.

Victoria Volent: I'll make a motion for completeness but those calculations are needed for approval.

Curry: John

Jonathan Sahrbeck: So I got 7850 for Tammaro. I'm adding the greenhouse into that.

O'Meara: Really.

O'Meara: What number did you use for the greenhouse?

Sahrbeck: 2103 and then 5137 for landscaping business.

O'Meara: I've got 7240.

Volent: Yeah I do too.

Curry: I do too.

O'Meara: So going to the motion page, I think what we want to do is replace the 5137 with 7240 and replace the 4416 retail with 2303. Is that wrong, ok 2313.

Curry: I just want to go on the record I'm a little bit troubled by the fact that we don't seem to have arrangements in place for the brick oven restaurant to be installed although I appreciate there is negotiations between the retail owner and Mr. Tammaro. As do completeness with respect with what were dealing with, that space will either be continue to be Something Fishy with a real small pizza restaurant or work something out and it will be a bigger pizza restaurant so I guess I'm willing to move forward but I'm not thrilled about the uncertainty.

Jordan: I do have a question. If this were to be approved there's nothing to stop them from creating this summer oven in 2016. They will have their site plan approval already in place.

O'Meara: Correct and yes, and if you have remaining concerns ,you could add a condition to the approval that the outstanding lease agreement with Something Fishy has to be resolved in order for the restaurant to occupy that space.

Jordan: That's a given.

O'Meara: It is, but if it makes you feel more comfortable to put it in the motion, you can.

Curry: Elaine

Falender: It seems to me we don't have any evidence in front of us with respect to the restaurant claim so I would be reluctant to put as a condition in here that the dispute be resolved. We really have nothing, no record of evidence of that issue.

Curry: Well, we have a statement of the tenant and an admission by Mr. Tammaro yes there is a lease that they are trying to get sorted out. We have verbal testimony from both sides that are on the same page.

Jordan: My point is whether they do it in 2015 or 2016, the site plan isn't in place so their dispute is beyond our power to do anything about it, and if we were to go through to approve this and it sits until 2016, that's fine.

Curry: I agree within the four walls of the building it's either going to be all pizza joint or pizza joint and retail doesn't really affect the seat count or the restaurant or number employees.

Jordan: So the lease issue is really beyond our power to do anything about.

Falender: Right, or to, I guess my concern it is beyond our capacity to judge whether it has been or not been resolved so I'm reluctant to make that a condition unless we want to require someone to produce a legal opinion that it has been resolved and I would be very reluctant to do that.

Curry: Ok, if there's no more comments or discussion entertain a motion for completeness? Somebody care to make it? Victoria?

Volent: I do, but before I make a motion, I am going to say I do want this to be resolved in a way that everybody is comfortable knowing that what we're doing tonight does not mean that this cannot be put off until another. Maureen, I would ask when does this expire?

O'Meara: The site plan would expire in one year if no other action was taken on the site to activate it. For example, if the board granted approval tonight and shortly thereafter Mr. Tammaro started installing his driveway, that would trigger site plan approval so the rest of it would not expire.

Volent: Ok, so there is a one year on this, ok. Given that, then a motion for completeness be ordered that based on the materials submitted and the facts presented application of Nick Tammaro Jen Feeney, Sheldon Goldman for the site plan review of Tammaro Landscaping 7242 sq ft Summer Oven 30 seat restaurant retail 2313.

O'Meara: I have 7213 off the site plan

Volent: What number should I go with here?

O'Meara: Hang on; hang on 2713 is what I would recommend because that's what the parking calculation was based on.

Volent: All right 2713 Mixed Use site located at 539-541 Ocean House Rd
be deemed complete.

Falender: Second

Curry: Any discussion? Elaine, do you want the LLC name in that motion uh do you care?

Falender: If the applicant wants to add that name

Tammaro: The deed is in the packet

Falender: I'm sorry?

Falender: The deed is in the packet but the name of the applicant isn't there.

Volent: I will accept that.

Curry: So add that.

Falender: I'm not sure if I look at the actual application, Maureen?

O'Meara: What you could do is have the applicant add the LLC name to the application form.

Curry: So the resolution will recognize it.

Tammaro: Is also on the plan the LLC.

Curry: The part is that the application should be in the name of the record owner the LLC and you want to add that into the motion Elaine? So reference the LLC

Falender: We can't do it until they have.

O'Meara: Well but they, their also agreeing to do it

Volent: Ok, then the motion stands because I can't make that change. So that is the motion as I read.

Curry: Uh, its

Volent: I'm looking at Elaine to see if she wants to make any changes.

Falender: If the applicant makes a representation to us tonight that the as the president head of the LLC the LLC is also the applicant, then I think we would add it.

Curry: I think you would want the LLC in the approval.

Tammaro: It's currently on the plan and I am willing to agree to add it to the application.

Volent: Then I will put that in to the motion of completeness based on Elaine's

Falender: Its not on every page of the plan what I'm looking at here shows the owner as Nick Tammaro.

Tammaro: It's noted on the plan.

Falender: Ok, Well when we get to that it should be on the title block on the plan too, but were not there yet.

Someone comes up and shows Elaine the plan

Curry: We believe you.

O'Meara: In an effort to try to move us forward, I believe what your suggesting is in the motion where its says the application of Nick Tammaro, Jen Feeney, Sheldon Goldman and 541 Ocean House Rd LLC.

Falender: Right

Volent: Yes, and I accept that.

Curry: OK.

Falender: And I second that.

Curry: That motion as amended is there a second? Elaine? Any discussion on the amended version? I'll ask for a vote please. All in favor? Opposed? Carries unanimously. We will move next to the merits of the application. Did the applicant want to add anything further to what you've already said about the merits of the application itself?

Buisman: I covered most of the plans real quickly. I guess maybe better if you have any questions for me, I could go through that.

Curry: Sure, we'll have the public comment and then have the board can. Before we open to the board, would any members of the public like to be heard on the merits of the application? Yes? Counselor for Rudy's? I realize 3 minutes may be tough but if you could do your best ok.

I will, thank you. My name is Lauren Weliver and I'm here on behalf of Rudy's of the Cape located at 517 Ocean House Rd. We're here to comment tonight on the application for which you know involves 30 seat restaurant, 2 retail uses and a Landscaping business. I've submitted a letter in advance and I've brought hard copies with me tonight in case that would be helpful for the board members. Are you all set? Before I summarize our comments, I just want to make clear a few things.

Rudy's is generally supportive of the potential of this project. It would certainly improve this visible site. It would be a good potential addition to the neighborhood. Rudy's interest tonight is to see that the planning board applies the site plan and design requirements consistently within the BA zone and that like applicants are treated similarly. As you're aware, Rudy's recently went through the same process, in its application was acquired to meet these very same standards considering tonight. As a result, Rudy's invested significant time and resources to insure that its restaurant was compatible with this zone.

The process was thorough and long, but it did result in a high quality establishment and we have no doubt that an established business like Flatbread pizza, this would be its 13th franchise, has the financial resources to do this project right. Flatbread can and should give this community the caliber restaurant that it deserves. In brief and as detailed in my letter, the application is not ready for approval tonight for the following reasons.

First we just discovered tonight there's a lease dispute I believe that should be resolved in and reported to the board in terms of its resolution before we review any further with this site plan. There's also no letter from the Portland Water District regarding its ability to supply water for all the uses contemplated for this property. As you know, the letter that was submitted speaks to its ability only to serve a 30 seat takeout restaurant.

The applicants have failed to demonstrate how the existing exterior lighting will be adequate with the many new features of the site plan. As you know, there's a new parking lot, some driveways and the site would now be used at night time. A photometric study should be required to insure this site plan is safe and meets the applicable lighting standards.

Applicants have also failed to meet many of the BA zone landscaping design requirements, including failing to provide landscaping that will obstruct the view of parked cars from the sidewalk. Applicants have also failed to provide a concrete or asphalt sidewalk from the restaurant to the street. Use of stone dust is not allowed, is not compatible with Ocean House Rd neighborhood and may present issues with ADA compliance and maintenance.

With regard to the parking calculations, it's not clear from the material whether the 30 seat restaurant includes seating of the patio area. The applicant should be required to clarify that and if it does add additional seats to the 30 then parking and any other requirements that are geared toward seats should be revised accordingly.

In sum the application as submitted is not compliant with the Town's land use standards and is not ready for approval at this time. Applicants should revise their application to address these shortcomings and resubmit a revised site plan application which will allow the planning board an opportunity to review a complete package for this site plan rather than approving the site plan in parts. As I indicated in my opening remarks, the planning board was vigilant in its assuring that Rudy's met these standards. As it did with Rudy's, the board's consistency in applying these standards will insure that the Town gets the high quality establishment that it deserves and Flatbread has the resources to do this right. For these reasons, we believe it's not time to approve this application.

Curry: Thank you, would any other members of the public like to be heard on the merits of the application? If not, I will close the public portion of this application and open up for the members of the board to ask questions or discuss among ourselves. Any questions?

Steinberg: I noticed in the letter that was sent to us about the water supply there was a question about washing dishes and I noticed in the letter that was written composed you were going to use paper plates. I know this is a bit mundane, but are they going to wash dishes or use paper plates?

Buisman: Ok I can address a few of her concerns. First I'd like to say about Flatbreads, it's not associated with Flatbreads so clarification on that. Anyway, as far as the water goes, we originally got that letter from the water department a year ago when we were here before. When we asked them to update that letter, it takes quite a bit of time to do it. They don't return calls real quickly or emails so luckily Rick got a hold of them and asked can you make this change and they did so fairly quickly and just updated the letter. They didn't really detail after that because of the change of paper plates and the sink.

There's plenty of water. There's a fire hydrant right in front so we've already emailed and called Portland Water District for an updated letter. We've absolutely addressed the concerns that you have. We just haven't heard back from them so it will take a little bit.

Steinberg: I noticed that there's a proposal in the water that reduced the pressure because it would be too high for your use. They recommended reducing the pressure at local reducing the way you use it.

Buisman: I don't know anything about that.

Steinberg: So then my assumption was that there is plenty of water supply regardless of the, I just wanted to state that you've done the research on it that was all.

Buisman: Correct. This will be a sit down restaurant with not paper plate's applicable plates and things like that.

Steinberg: That's fine. It answers that point on the letter as far as I'm concerned.

Rick Bacon PE NCS: If you dig a little further, I think on the last page she says that any additional water use can be handled by an inch and a half or 2 inch line. We don't anticipate a problem. Please ask us in the future if you can be any more help. I thought that may have covered it, but when I read through the letter and noticed the same thing you did, that we still had paper service from previous, that's when I tried to get a letter so I'm about 2 weeks out on that letter. I can expect 2 more weeks. They are running about a month behind at Portland Water District.

Steinberg: I would suspect that if you put in a pressure reducer that there was ample water supply.

Bacon: Yeah, and they'll be a pressure reducer.

Steinberg: I guess just one quick follow up if you don't mind. You're taking away one green house and adding saplings or what you call it. Does that increase or decrease the amount of water supply on the property. Would it be net gain or net loss or equal?

Tammaro: It would decrease. Currently the seedlings, regular flowers, pansies, and that sort of thing being watered twice a day. The stuff we're going to do will be in the ground, not on tables, and will be through drip irrigation so it will cut down the water usage way down.

Steinberg: Thank you.

Falender: I have a question about the landscaping in front of the roundabout on Route 77. Are some of the trees showing on your landscape being also in the town are in the right away as well?

Bacon: Can we bring up that site plan?

Falender: I'm sorry.

Bacon: Sorry, I want to bring up the site plan real quick. I need a password.

O'Meara: ACP

Bacon: The last sheet this line right here (visual).

Falender: So whose planting them and whose obligation to maintain them?

Bacon: It would be the property it would be applicants.

Falender: Obligated to maintain them?

Bacon: To plant them, yes plant the trees.

Falender: But if there's a problem, I know there had been a request for a note the town is not obligated to maintain the path which raised for me the question is there something else in the town right away and that's the trees, so do we need to affirmatively say the applicant would be required to maintain both the path and the trees and the town has agreed that their going to be there.

Curry: Maureen, go ahead

O'Meara: So the Town Center district now the BA district has design standards that no other zoning district has.

Falender: Right.

O'Meara: Those districts talk about having sidewalks or paths between the business and the road to create a grass strip between the road and the sidewalk and to put things like trees and lighting in that grass strip. The reason the request has been put in to not be responsible for maintaining the path is because it's a stone dust path and public works doesn't want to be responsible for something that's not paved.

The trees on the other hand are very typical of what we see everywhere else. I will be honest with you, since these trees were planted in front of a landscaping business, I'm sure the town would be very appreciative if the landscaper would take responsibility for maintaining those trees, but they are in the right of way and I can tell you that the public works department right now takes care of the trees that are planted in the espionage in the town center.

Falender: So is it typical. Maybe I'm just not remembering this in the BA district that the required landscaping is not on the applicant's property.

O'Meara: It's absolutely required that it be in that grass strip between the sidewalk and the street. So (Falender interrupts here)

Falender: Is that always the town right away?

O'Meara: That's almost always the town right of way. Sometimes we've actually had some of the sidewalk or the path veer onto private property. We've asked the property owners to give us what we call a public access easement, which is what was the case with C-salt Market and they provided that. So what were trying to do is create a very pedestrian friendly environment between the edge of the road and the business, and we've said that includes pedestrian facility like a sidewalk or a path, to have it separated from the road, to put some trees between the path of the sidewalk and the road. This

proposal is consistent with what we've been seeing for new proposals in the business districts.

Falender: Ok, I just had forgotten that it was always in the Town right away.

Curry: Jonathan.

Sahrbeck: Could the applicant or the representative of the applicant, I noticed that on a couple of these site plans are some referral to lights, that to be exterior lights. Can you just address the concern for the public with the regards to whether or not there is going to be adequate exterior lights?

Bacon: Yes, I know its sort of lets go to the cover page, how do you close this. (Trying to get the slide up) Ok, sorry for the time delay, there is exterior lighting. See what is highlighted. I located all the lighting. There's currently overhead lighting on this particular portion right here, and some lights here, a motion light and, over here, there is lighting here on this one. Why we feel it's adequate, because there is already parking here, so we're actually reducing the size of the parking here so, and there's parking over here. We already have lighting for the parking. There's also lighting on this particular building here on this space here and here and right here, so there's at least 4 or 5 places where there is lighting and we're not actually creating a space where there's no lighting. And so we're modifying the parking lot where there's already lighting out there, so we feel it wasn't necessary to add more lighting.

Curry: I should point out the applicant is requesting a waiver on the requirement that there be a photo metric lighting study and Maureen could you speak to that.

O'Meara: The site plan standards do say that the planning board needs to make sure that there's adequate lighting on the site. But in practice you've always treated less lighting as better lighting because there's always been a lot more concern about light wash off the property than inadequate light on the property.

Because the applicant isn't proposing any additional lighting. That, usually is when you get a photo metric study, the review isn't how much lighting is on the interior of the site. The review is to make sure there is no .5 footcandles or greater going off the site and because the applicant isn't adding any more lighting. that was the reason for saying we don't need a photometric study. Because the lighting they put in is before we were doing this site plan review.

Curry: Thank you. Victoria?

Volent: Follow up questions on the lighting. What is the tallest? How tall is the lighting that you have in the back you mentioned?

Bacon: It's connected to this building.

Volent: Oh it's connected to the building. Ok at Rudy's, there was a number of 14, 16 they were really tall so you're not. How tall are they?

Bacon: No, no this is a one story building here.

Volent: Ten feet it's not even at the top?

Bacon: Maybe ten feet?

Volent: I agree with Maureen. We're always concerned about lighting going off of the property. That's why we have the photometric. The photometric is to see that it's not coming off, so I'm satisfied that with the lighting, you don't have it as tall, you don't have it as close to the road. I feel comfortable that it's not.

Bacon: There is nothing shining on the neighbors

Volent: Right, ok I agree.

Curry: Uh, Henry.

Steinberg: Yes quickly, what hours of operation would be for Summer Oven? I assume it's only for summer?

Bacon: It's year round.

Steinberg: It's year round, so in the winter it will be dark, so will there be additional lighting for the parking area?

Bacon: There is parking on this part of the building pointing out this way.

Steinberg: So it's going to be adequate? People getting out of their car aren't going to trip over a tree or anything.

Curry: There was another point that was raising here. Maureen would you also Comment on precedents?

O'Meara: Sure, this application came before the board a year ago, and in the workshop the applicant discussed putting in a stone dust path. Came to the first meeting, it was deemed incomplete for issues totally unrelated to the sidewalk path. In this section, BA district, it's explicitly says path not sidewalk.

The intent was to be more casual. It does not say in the landscaping and site plan development section what the surface treatment has to be. I'm looking forward to a sidewalk, another pedestrian pathway, such as to the building and parking area shall be located between the road and the structure the side of the structure facing the front yard shall be designated.

There is an illustration on page 114 which is designated for the Ocean House Rd section of the BA district that shows a meandering pathway and there is a label that says asphalt or concrete. These illustrations cite its asphalt or concrete for the walkway going from the pathway into the property. There's no designation of what pathways should be and further I think we would have a hard time holding people to the labeling in these illustrations. The illustrations are intended to give people an idea of what was required and if we were going to require specifically a specific surface, it would have had to been in the text of the ordinance.

Even in the Town Center district where we have pretty strict sidewalk requirements, we do not require a specific sidewalk treatment so in some portion of the Town Center we have concrete and others we have asphalt. In the BA district on Shore Rd, we actually had a brick sidewalk installed. So in this area of BA district, was specifically designed described as a relaxed beach seaside area, so I would say that the board needs to make a determination about whether they feel that the stone dust path meets the requirements of the beach seaside area, and if you decide that a stone dust path doesn't, then you should require something else. And if you think this does meet the minimum standard, I don't see anything in the ordinance that says it has to be concrete or asphalt.

Curry: I might add that while back the Good Table was in with an application and that particular type of path was discussed and they pointed out a paved sidewalk was really out of keeping with the neighborhood, and I think the board agreed at that time and suggested a gravel stone dust or what have you informal path would be more compatible with the neighborhood yet satisfying the requirement. So this isn't totally a matter of first impression.

Curry: Victoria.

Volent: I would like to point out to the board, in the letter we actually received just a few hours ago, the last page, page 6 seven pages actually the applicant is excuse me, the representative of Rudy's is saying there is a failure to provide a concrete or asphalt sidewalk from the restaurant to the street. So they're not commenting on the pathway, they're saying from the restaurant to the street, so their comment is on the pathway from the restaurant to the street, so they're not commenting on that.

The board wants to consider that as Maureen has pointed out.

Steinberg: There is a pathway.

Volent: But they're not commenting on that. The board wants to consider that as Maureen has pointed out. But I also want to point back to the letter that we received it's very clear their concern is they don't provide concrete or asphalt from the restaurant to the street.

O'Meara: Again I would like to point out I think it would be difficult to hold people to standards that are labels and the illustrations. I think where the standards are written in the text, we should vigorously apply those standards, and I would say I will be honest it is my hope that as the applicant maintains this stone dust path year after year after year, that he may in the future decide that a paved path would be a more prudent route.

Curry: Stands ups and point to the plan

Bacon: If I could comment on one, that's correct this pathway right here that's in yellow, that's stone dust, however, for ADA purposes this will be brick pavers, so we'd have brick pavers from the restaurant all the way to the parking lot up to the handicap and basically to the street. (He picks up the actual paver to be used to show the board)

Curry: Any other comments from the board?

Volent: There was also, in that same letter about landscaping, and there was a concern about screening in the back of the lot. I just want to point out that when Golden Ridge came before us as a subdivision they are required to provide buffering, so this letter is asking us to buffer the buffer, and my personal view on that is I think there's adequate buffering in the backside because it is a buffer and I rather not, I think its a little excessive to buffer a buffer as far as that goes and there is a if the landscaping is still up there, there is landscaping there are fencing, there are plantings, it certainly not the heavy residential.

The Chapman's are the residential, I forget the name of this owner that's the BA district and I forget the name of that owner my apologies that's the BA district, buffering for the BA district to another BA district of course is not the standard as it would be to a residential, so we're really looking at the Chapman's. It's not a whole neighborhood as it was when we were looking at Rudy's. It wasn't just one neighbor, it was a neighborhood. So as far as the buffering to the Chapman's goes, I do see that the evergreens and they have already the evergreens are already taken off.

I'm not sure of the height. Nick could probably speak to that, but they've already taken off. There already is a buffer to the Chapman's, but if anyone from the board thinks there should be more buffering for the Chapman's, that's for the rest of the board, but as far as the buffering goes I'm satisfied with the buffering for the BA district and to the subdivision to the buffer and the back.

Bacon: I believe the Chapman's feel, their fine with the buffering that's required we put in with the original site plan which would be that row of evergreens back in here.

Curry: Elaine.

Falender: I have a question with Golden Ridge subdivision if that's this property. Is Golden Ridge itself in the BA or is that the lot point of entry.

O'Meara: Actually let me come up for a minute.

Falender: There was something that said the building envelope on that Golden Ridge lot was not in the BA portion of the Golden Ridge lot which led me to think that maybe that lot itself is split by the zoning board.

O'Meara: Right. I'm the one who wrote that, and yes the back line is abutting that residential area but that back line is abutting the Golden Ridge subdivision and the lot that line abuts the building envelope is way far away from that lot line. That side of the lot line is all buffers because it goes into wetland.

Falender: Is it entirely in the RA district, is that entire lot in the RA district?

O'Meara: The entire lot is in the RA district.

Falender: OK.

Curry: I would (interrupted here)

Falender: I just misread what was in the memo.

Curry: I would add just from just the value of the site walk that whole back area is densely wooded and it is the buffer of Golden Ridge. I agree with Victoria that to buffer on a buffer would be really rather pointless, in the back part of the Tammaro lot is the existing landscaping business which will stay there and its actually being more visually screened from the street so the view from the street will be enhanced tremendously by the proposal and I think people know the property is kind of beat up and the front doesn't have the greatest appearance in the world. I think the landscaping plan has been presented is going to greatly improve the looks of that property from the street.

Curry: I'm sorry sir, the public comment period for the public is closed. I'm sorry Sir. Do we have any other comments questions or discussions on items from the board?

Volent: I just want to comment on one last item that was brought to us by Rudy's, failure to address the design guidelines. I went through the seven pages and I'm not exactly sure which design guidelines that this is not compatible with. And so unless anyone else on the board, it seems like the design guidelines it's compatible.

I vigorously tried to oppose steel siding and I failed. And so the rest of the board said steel siding is compatible, which Rudy's was very pleased to find out steel siding was compatible. I would say at least yours is going to be painted and will not rust away as my argument was and though I did fail in that argument, I at least say bravo for painting it and protecting it because I do not feel that corton, and I won't go down that path again but, as far as I mean I'm surprised that they would actually put in this letter that you did not address design guidelines when.

Curry: Pardon me, we have no specific design issues to address. I think we should move on.

Volent: I've already moved on. I think you've addressed the design guidelines.

Curry: Thank you, Victoria. Jonathan

Sahrbeck: I just want to point out one concern that was brought up the parking and I just want to point out that the new proposal from the applicant does actually get rid of one of the entrances and a very large area of pavement in the front which I think would make it more pleasing aesthetically when driving down Route 77 looking at that building. So I and then also I don't believe there is an expansion of that parking lot as it exists, is going to be continued to be used, so I applaud them for taking away pavement to bring back grass. I think that's going to make it unfielding as much as some of us miss the field back way, I think it will make a nice addition to that area of town.

Curry: Ok, Elaine.

Falender: On the design guidelines, we have been provided with drawings of the new window openings and doors, what's changing and what's staying the same, so we have looked at the facade to determine that is consistent with what were looking for in that district, so I think we have a basis for concluding and that is the case.

Curry: If there's no, Joe (Joe interrupts here) I have a question for Maureen here.

Chalat: Maureen, on the lighting , it strikes me when they do this they're going to get half way through construction and realize they want to do a substantial upgrade on the lighting. At that time, they would be required to submit a photometric study and fixture cuts and all of that. (Stopped here interrupted)

O'Meara: If I'm asked by the code officer, I will strenuously recommend, (repeat) strenuously recommend that no lighting be added that isn't already shown on the plan without amending the plan and bringing it back to the planning board.

Chalat: Ok.

O'Meara: The only thing I would put as an exception to that is that I think some folks have used what I would call the Christmas tree lights and it is the code enforcement officer's feeling that those are decorations and we don't regulate those.

Curry: Any further discussions if there are none we can. (Interrupted here) Oop Carole Ann sorry.

Jordan: There is one comment we haven't addressed and that's the 30 seats and the fact that make it very clear that if this is approved as a 30 seat restaurant, that includes the

patio so if you have people seated on the patio, your interior seating must be reduced, so just to make that really clear and that's understood.

Bacon: That's correct, 30 seats is understood. We do actually have extra parking but if we do go beyond as designed, that would be extra, that includes the seating that's outdoors.

Jordan: If you go beyond 30 seats, you need to come back here and talk to us.

Bacon: That's correct, that's correct.

Curry: I'll entertain a motion, a planning board member would like to make one regarding approval?

Chalat: I'll do it, motion for approval. Finding of fact Nick Tammaro, Jen Feeney, Sheldon Goldman and 541 Ocean House Rd LLC, I request site plan approval of the Tammaro Landscaping 7240 square feet Summer Oven 30 Seat restaurant retail, 2713 square feet mixed use site located at 539-541 Ocean House Rd which requires review under section 19-9 site plan regulations. 2. Several revisions to the submitted plans are needed to bring them into compliance with the site plan and BA district design requirements. 3. With the revisions described in the conditions of approval the application substainsly complies with 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, 541 Ocean House Rd. LLC, for site plan review of the Tammaro Landscaping Summer Oven 30 seat restaurant (I'm sorry) 7240 square foot Summer Oven 30 seat restaurant retail, 2713 square foot mixed use site located at 539-541 Ocean House Rd. motion has been 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 the parking calculations be revised to include the greenhouse and adequate parking for all proposed uses on the site provided.
- 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 2.5 inch 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 are submitted to the Town Planner.

7) Prior to any alterations of the site performance guarantee be posted for the proposed improvements the amount which is reviewed by the Town's engineer. The form of which is reviewed by the Town attorney and all subject to the approval of the Town Manager.

Jordan: Second

Curry: We have a motion to second, any discussion on the second motion, Victoria

Volent: Did we want to add 541 Ocean House Rd LLC on the block on the site plan?

O'Meara: Yes

Falender: Yes

Volent: Yes I'd like to add that 541 Ocean House Rd LLC appear on each of the plats.

Jordan: I would also like to propose a revision and that is number 2 the parking calculations of the greenhouses are obsolete, so it should be removed.

O'Meara: May I make a suggestion?

Curry: Yes

O'Meara: Just to keep for parliamentary rules, there's a condition about adding 541 Ocean House Rd LLC that can be a friendly amendment if the person who made the motion and the person second the motion accepts it.

Chalat: Yes

Jordan: Yes

O'Meara: Ok that's now part of the motion

O'Meara: Then there is a second recommendation, that item number that condition number 2, be removed and that can be removed if it's a friendly amendment accepted by the person who made the motion and seconded

Chalat: Yes

Jordan: Yes

Steinberg: Maureen wasn't that already addressed by the water board? I thought there was a letter already in the packet.

Curry: No

Steinberg: I thought there was already a letter on it in the package.

O'Meara: There is a letter in the package but it needs to be updated.

Steinberg: Ok

Curry: Ok so we have a motion (interrupted)

Dolliver: I have a question, to the number you want

Volent: Would that be number 7?

Chalat: It would be new number 2

Dolliver: Ok

Steinberg: Are you going to change the other numbers or just add to it.

Chalat: No

Dolliver: No, I'm just going to add the new requirement

Curry: Ok we have a motion that has been seconded; we had 2 friendly amendments which have been consented to by the mover and seconded.

I'll call for a vote on the amended and seconded motion all in favor
(All hands rose) opposed. It carries unanimously.

Bacon: Thank you very much we really appreciate it, this will really enhance the site. So I think it's a real bonus to the Town of Cape Elizabeth.

Curry: Thank you.