

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

March 16, 2021

7:00 p.m. Remote meeting

Present: James Huebener, Chair  
Daniel Bodenski  
Andrew Gilbert  
Carol Anne Jordan  
Mary Ann Lynch  
Alton Palmer  
Jonathan Sahrbeck

Also present was Maureen O'Meara, Town Planner.

As a result of the COVID-19 virus, the Planning Board will conduct the meeting via remote access as provided by Maine law. The Planning Board will use Zoom meeting to conduct the meeting and to allow the public to remotely attend and participate. Zoom will allow all Planning Board members, applicants, and members of the public to hear all discussion and hear votes, which will be taken by roll call, as required by law.

CALL TO ORDER

Mr. Huebener called the meeting to order, then called for approval of the minutes of January 19, 2021. The minutes were approved as submitted, 7-0.

NEW BUSINESS

**Aster Lane Private Road amendment** - Maggie Birlem is requesting amendments to the previously approved Aster Lane private road to (1) pave the road, (2) relocate her driveway 115'± northwest on the private portion of Aster Lane, (3) allow a boundary fence outside the building envelope, and (4) update current signage, Sec. 19-7-8 Private Road completeness and public hearing.

Mr. Gilbert said he lives on Aster Lane, but not right near this portion. He sat on the previous approval of this project and feels he will be impartial.

The Board agreed that he can remain impartial.

Ms. Birlem said they are here to amend their prior approval. They want to upgrade 80 ft. of the private road, remove most of the existing driveway, add a fence and change some signage. She mentioned the gate that is on the private road and cannot be modified. They will not touch that gate. They will go in and out on Aster Lane.

Steve Bradstreet, private consultant working for Ransom Consulting on this project. They will remove and relocate the driveway. They will pave Aster Lane

to Town standards. He addressed the Town Engineer's letter of March 8, 2021. He spoke about how they will provide drainage, and asked to waive the storm water report, because they are reducing the amount of impervious surface. They want to install a no outlet sign instead of the sign that says dead end.

Mr. Huebener opened the public comment on completeness. No one indicated a desire to speak, so the public comment was closed.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Maggie Birlem for revisions, including paving the gravel portion of the approved road, relocating the driveway, updating signage and adding fencing as an allowed activity outside the building envelope, to the previously approved Aster Lane private road located at 8 Aster Ln, be deemed complete.

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

Mr. Huebener opened the public hearing on the substance of the project. No one indicated a desire to comment, so the public hearing was closed.

Mr. Sahrbeck asked about the gate.

Ms. Birlem spoke about the fact that the gate was fixed as a result of a court case.

Ms. Jordan asked about the sign and whether the people on South St. etc. need to approve the change.

Ms. Birlem said the sign was part of the prior Planning Board approval and will be placed at her expense. The road association has no jurisdiction in this matter.

Ms. Lynch made the following motion:

#### Findings of Fact

1. Maggie Birlem is requesting amendments to an approval granted October 15, 2019 to add surface pavement to the previously approved gravel private road, relocating the 8 Aster Lane driveway to a portion of Aster Lane that has not been approved as a private road, replacing "Private Road" sign with a "No Outlet" sign, and adding fencing to the activities allowed outside the building envelope, which require review under Sec. 16-2-3 of the Subdivision Ordinance.

2. The Aster Lane approved private road section been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Subdivision Ordinance, and the findings and decisions of those approvals which are not altered by the proposed amendments remain in effect.
3. The private road approval revisions will not result in undue water pollution. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the private road approval revisions.
4. The private road approval revisions will not cause soil erosion, based on the erosion control measures shown.
5. The private road approval revisions are intended to meet town standards, subject to the additional details added to the plans. The private road name change has been approved by the Town Assessor.
6. The applicant has demonstrated adequate technical and financial capability to complete the project.
7. The private road approval revisions will not adversely impact surface water quality.
8. The private road approval revisions will provide for adequate stormwater management.
9. The private road approval revisions will continue to provide a vegetative buffer throughout and around the subdivision and screening as needed.
10. 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 Maggie Birlem for revisions, including paving the gravel portion of the approved road, relocating the driveway, updating signage and adding fencing as an allowed activity outside the building envelope, to the previously approved Aster Lane private road located at 8 Aster Lane be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated March 8, 2021;

2. That the applicant submit evidence of financial capability to complete the proposed revisions; and
3. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

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

#### OTHER BUSINESS

**Town Center Affordable Housing Amendments** - The Town Council has referred to the Planning Board amendments to the Town Center District to enable an affordable housing project, Sec. 19-10-3, Table to Public Hearing.

Chair Huebener recognized that Town Council Chair Jamie Garvin was attending the meeting by request and asked him to comment.

Jamie Garvin, Town Council Chair, said this is in line with what the Planning Board does. A project is proposed and the Planning Board reviews it and provides comments on proposed ordinance amendments. The Council was given a preview of the proposed project, and there were multiple requests for zoning amendments or relief from current zoning requirements to make the project viable. The Planning Board is the place to begin the process of writing zoning that will fit the proposed project. He said it is possible that the Board will say they cannot come up with something that fits that need. If there was some sort of draft that is consistent with the Comprehensive Plan, then return that to the Council for review.

He said that for the Town Center there are two guiding documents that do not completely reconcile with one another. One is the Town Center plan that contemplated a certain type of development. It specifically mentions first floor retail. Then there is the Comprehensive Plan that envisioned the need to revise, update and consider alternative regulatory measures in order to meet several goals around housing, especially affordable housing. The Council is looking for the Planning Board to come up with an opinion on how to reconcile those two things.

Ms. Lynch said she read the order from the town Council as saying, not that it cannot be done, but this is how it should be done.

Mr. Garvin said the goal is to develop this ordinance that preserves as much of the spirit of the Town Center regulations. He said it is possible for the Board to say that there is no way to make this work.

Ms. Lynch said they need to say this is how it needs to be drafted to make it work. Observing the Town Center requirements to the extent feasible. She sees it as saying we preserve what we can and then we move to the next step of what do we need to do to make an affordable housing project work.

Mr. Garvin said it is up to the Council to make the policy changes, not the Planning Board.

Mr. Sahrbeck asked about the language that said to the extent feasible.

Mr. Garvin said there is no impetus to make wholesale changes to the Town Center Plan. They want to keep what's good about the specific regulations in the Town Center, while acknowledging the benefit of an affordable housing project.

Ms. Jordan said when they started this process they attempted to come up with what would be required in order to allow affordable housing in the Town Center. They can send that to the Town Council and they can take it, throw it out, revise it or do whatever they want. She said they did not think that "not feasible" was in consideration.

Mr. Garvin said this process shouldn't be that someone asks for something and we write up the rules to make it happen. He thinks it's bad politics and bad process to take a bunch of requests from any developer and then write the rules to fit. And going back to the Town Center Plan, it envisions a reality that hasn't happened. He believes that is a result of market conditions, not policy or regulations.

Mr. Gilbert is not really sure of the implications of changing these requirements. This is really for one project and he's not sure of the implications. He thinks there may be another location that would fit the town better. There is a strong headwind against this project.

Mr. Sahrbeck said there is not just a headwind of public sentiment, but the difficulty of making this work. Any deviation from what is proposed will make the project unworkable. It has been taken out of the hypothetical.

Mr. Huebener said if this project had come before the town before the Town Center Plan was in effect, the result would have been different. As Mr. Garvin said, that plan is not having the desired effect. His idea was that the Board was to come up with amendments that will make affordable housing work in the Town Center. He said then the Board would send that to the Council and they would make any policy decisions based on report.

Mr. Garvin said they could take a broader view than just this one project. If this proposal fails and something else comes forward, these amendments would

apply. The Council is saying there is a policy benefit to having greater flexibility within this area to see development happen and have it be for community benefit.

Chair Huebener asked the developer to present the information requested by the Planning Board at the last meeting.

Nathan Szanton said Kristin Martin would speak about the impact of having part of the ground floor as commercial space.

Kristin Martin ran two different scenarios to try to see if we could make commercial space work in this property. There would be a lower cost to build the commercial space and it would reduce the number of apartments by 6. By removing the 6 apartments, they would get a reduced subsidy from Maine Housing and a reduced tax credit. We would also have a reduction of income. all that resulted in a financial gap of \$400,000. Also, the total development cost per unit would exceed the Maine Housing limit.

The second scenario we ran was to assume we would not have to remove any apartments, but we could find two 1900 sq. ft. spaces for the commercial. Since commercial does not cover construction costs like residential, there would be a gap of \$250,000.

Mr. Szanton said they are proposing 49 units, 8 2bedroom, 39 affordable and 10 market rate units. The 1 bedrooms would be about 600 sq. ft., the 2 bedrooms about 850 sq. ft. They had a public meeting last week. They have a website, Dunham Court.com .

Mr. Huebener opened the public comment.

Rob Gips of 109 Delano Park is pleased to see that there is a reasonable, sensible project to bring affordable housing into the town center. He thinks it is a great thing to see this project and hopefully other projects to make this town affordable for more people. Adding increased density into the town center can only help with the goals of the town plan. He is really supportive of Cape becoming a more diverse affordable place for those who work in this community.

Josh Benthien of 9 Rocky Hill Road is speaking as a resident, and also as a fellow developer. He thinks this is a great project and a good use of the space. He has a lot of respect for Mr. Szanton and thinks he is the best of the best in affordable housing. He did a conversion of a mill in Sanford. We did 36 units on the second and third floor and 22,000 sq. ft. on the ground floor. Seven years later, we have a waiting list of 60 people for the upper floors and yet to have full occupancy on the ground level. They have just had a zone change

with the town of Sanford and will be allowed to have housing on the first floor, leaving 11,000 sq. ft of commercial. He does not think this lot is the right spot for retail and 49 units will help the front lot secure a really good retail use.

T. C. Haffenreffer said he is a commercial broker. He has no connection to this project. Adding more population density can create a more vibrant town center and more retail growth. He said it is good to have an affordable option for parents and grandparents to downsize and stay in the area. He supports the project.

Richard Blake said he was a banker in Portland for 43 years. He worked with affordable housing projects. Nathan (Szanton) was a client of ours, and an outstanding developer and exceptional manager. He thinks this is a good location for affordable housing because it is walkable to town amenities. Putting it out further is not a good decision. He has also worked as a consultant and has had clients who pass up properties where they must lease out the first floor for commercial use. It's just not feasible financially. He thinks the Town Center Plan is a good one, but the requirement that every parcel have commercial space on the ground floor is not realistic.

Lucas Homicz said he watches how the town treats smaller entrepreneurs who want to do things and go before boards and town planners and are told what you can do and what you cannot do versus to watch somebody who has much greater resources walk in and tell the Town Council, this is what we are going to do. Then to watch the Town Council ask the Planning Board to tell us what we have to change. He wonders what this town would look like if the Planning Board would say they could change this a little bit here for a reasonable project. Let's not force a small person to put a front door here when they have already got two doors here. To listen to Nathan say traffic is not going to be a problem, they only need one car per unit. This project needs a lot more study. You are rushing this through. You are changing things for this one project.

Zev Myerowitz of 12 Hill Way wants to reiterate Dr. Homicz's comments. I personally have tried to go through the process of trying to develop the town. I have a complete sense of frustration with the Planning Board, due to the nature of how applications are treated when coming from a small business owner who is community minded versus a large developer. Most of you were on the Board for my most recent submission and just the sheer opposition I got to a conforming submission was very frustrating. That you are holding special workshops and considerations of changing the zoning. I too, had to encounter the same sources and uses challenges in putting through my building. There was no such opportunity to have a use as applied to a building that may benefit the town. Whatever wording you do, make sure it is clear that it benefits more than this one lot.

No one else indicated a desire to speak, so the public comment was closed.

Mr. Bodenski spoke about a project he saw in New Hampshire. This is an example of what we can do in the Town Center or another area. These were tiny little 380 sq. ft. cottages

Ms. O'Meara summarized the memo she sent regarding the Dover, New Hampshire project referenced by Mr. Bodenski. The Dover style project was anticipated in the Comprehensive Plan and called cottage housing. This style of housing would also require zoning changes. She spoke about the existing zoning and how it will need changes to get affordable projects anywhere in the town.

Ms. Jordan asked what approach does the Board wish to take. They can look at affordable housing anywhere in the town, only in the town center, or what regulations should we change.

Mr. Gilbert said we haven't had a discussion about affordable housing. We should study it more.

Mr. Sahrbeck said it is difficult to ignore the project that is in front of us. He would rather have a conversation about affordable housing. It is difficult for him to rush this through. He would want affordable housing to be for families.

Mr. Huebener said he thinks the town center is the only place that we could practically fit affordable housing. It is close to the IGA, to other services or to the schools. Other areas of town, people would need a car to get anywhere, there's no bus service. Retail has changed radically over the last few years, and we have heard from people who have tried to fill these spaces.

Mr. Gilbert feels it needs further study.

Ms. Lynch said she agrees with Mr. Huebener. She has lived in Cape Elizabeth for 37 years and this is the first proposal for affordable housing she has seen. People say they are for affordable housing, but when you look at the survey you see that 50% of the people are opposed to any development ever. There is an opportunity here. It's only going to happen here in the town center. She thinks the current Town Center Ordinance is a failure. There are a lot of empty spaces. She would like to see what we can do to bring a town benefit. It's time to bring more diversity to this town.

Mr. Palmer said he is in the same sphere as Mr. Gilbert and Mr. Sahrbeck. We talk about affordable housing, but there are different levels of affordable housing. There is 60% AMI, 80% AMI, 100% AMI. So the discussion on affordable can have a considerable variation on what demographics are being

served. He talked about an area in Virginia that had residential over commercial and there were no problems.

Mr. Huebener said they need to make a decision about the first floor commercial. He said his mind is not made up yet.

Mr. Palmer asked about the status of retail space in a project on Main Street in South Portland with 46 units of affordable housing over 7,000 sq. ft. of commercial.

Mr. Szanton said that project is on Route 1 in S. Portland, so it is a very different environment than this one. A lot more cars go by there than in Cape Elizabeth, so it would be a much more viable commercial location.

Mr. Garvin said since there are 4 lots in the development, it might be possible to consider the percentage of commercial space within the development instead of for each lot.

Mr. Sahrbeck asked how we define affordable housing. In this case he would be ok with giving up the non residential on the first floor, but then not allowing an extra floor in height. To me, you don't get both.

Mr. Gilbert said it is interesting to consider the village green development as a whole, however this development has already been approved as it is.

In response to a question from Mr. Gilbert, Ms. O'Meara noted that we are talking about private property, so you cannot change the approval without the owner's participation. You are waiting for a private property owner to say what they propose to do. These lots have already been approved.

Mr. Huebener asked for a clarification of the terms 60% AMI, 80AMI.

Mr. Szanton said that going to 80% AMI or 100% AMI would lose all the tax credits you get for building housing at 60% or below. He spoke further about the economics of building affordable housing.

Mr. Huebener asked for a poll of the Board as to whether they are in favor of eliminating the requirement for first floor commercial.

Robert Monks said he is part of the company that manages the Pond Cove Center. He said they are struggling to fill the vacant spaces there. He also just received an email from the agent who is trying to lease the retail space in the [above referenced] South Portland project. Retail is struggling in so many ways right now.

The Board voted 4-3 to keep the commercial space requirement.

Based on the lack of majority support for option 1, Ms. Lynch wants to move forward with option 2.

Mr. Bodenski said this feels so rushed.

Mr. Sahrbeck asked if the Town Council would be willing to take on this idea about changing the zoning for affordable housing. This is a policy decision for the Council to make.

Mr. Garvin said the Council has made priorities based on the Comprehensive Plan. This was not made specific in that plan.

Mr. Gilbert said maybe the Council needs to say that the requirement for commercial is not working.

Ms. Lynch moved that we set Option 2 to a public hearing on April 20, 2021.

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

Mr. Huebener moved that we table option 2 to the April 6, 2021 workshop. After discussion it was decided to withdraw his motion.

The Board voted unanimously to adjourn at 9:30 p.m.

Respectfully submitted,

Hiromi Dolliver  
Minutes Secretary