**Town of Cape Elizabeth**

**Ordinance Committee Minutes**

May 19, 2021 7:00 p.m. Remote meeting

As a result of the COVID-19 virus, the Ordinance Committee conducted the meeting via remote access as provided by Maine law. The Ordinance Committee used Zoom meeting to conduct the meeting and allowed the public to remotely attend and participate. Zoom allowed all Ordinance Committee members and members of the public to hear all discussion and hear votes, which were taken by roll call, as required by law. A meeting link was provided to access the meeting by video/audio.

Members Present: Penny Jordan, Chair

Jeremy Gabrielson

Caitlin Jordan

Town Councilors: Nicole Boucher

Valerie Deveraux

Jamie Garvin

Gretchen Noonan

Staff: Rachel Davis, Library Director

Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the December 17, 2020 meeting were approved 3-0.

Diversity, Equity and Inclusion Committee

*Public comment*

No members chose to speak.

The Ordinance Committee begin review of the draft amendments of the Boards and Committees Ordinance. Councilor Caitlin Jordan would like the new committee have 7 members, consistent with most town committees. Chair Penny Jordan and Councilor Gabrielson agreed.

Keyla Alston-Griffin, Civil Rights Committee member, clarified that the current committee started with 7 members, added student representatives and a town councilor. She was satisfied with the new committee composition at 7 members. Chair Jordan confirmed that the new committee could then reach out for student representatives.

Melanie Thomas, Civil Rights Committee member, questioned omitting a town councilor as a member.

Chair Jordan explained that any town councilor can attend a committee meeting. Councilor Caitlin Jordan noted that the Town Council had retired the old town council committee liaison assignment system.

Ms. Alston-Griffin asked how the committee will be guided without a town council member? Chair Jordan explained that the committee staff person should provide advice on committee logistics.

Councilor Caitlin Jordan added that the point of a committee is to have a point of view outside of the Town Council.

Councilor Garvin observed that the current ad hoc committee was new to committee work. The proposed 7-member standing committee are voting and doing the work and you can ask anyone you need to participate. Councilors change over time, so it is another reason not to have them as a sitting member. For example, the Planning Board recently asked for clarity from the Town Council and he attended its meeting.

Ms. Thomas said committee members are new to this and appreciate help to understand the process.

Chair Jordan said the committee will not be an island. Councilor Gabrielson said they are asking the right questions.

Chair Jordan emphasized that the committee should advocate to the Town Council. Councilor Caitlin Jordan said that other committees advise the Town Council and we should not ask more than from other committees. Councilor Gabrielson suggested a parallel with the Energy Committee, which is advising and also pushing the town in a subject area. The Ordinance Committee agreed to accept the new committee duties as drafted.

The Ordinance Committee voted 3-0 to recommend the DEI Boards and Committees Amendments to the Town Council.

Ms. Thomas asked about member terms after the new committee is created. Councilor Caitlin Jordan clarified that the committee membership would be staggered 3 year terms. It would similar to the Energy Committee, with options to renew and vacancies handled through the Town Council appointment process.

Town Center Affordable Housing Amendments

*Public Comment*

Melanie Thomas, 6 Starboard Dr - There is value and need for affordable housing, and will help transition to more diversity and a more welcoming community. She appreciates the Szanton Company proposal. There is a crucial need for some type of affordable housing. If this project doesn't happen, we need something to happen some day because affordable housing is missing. People of diverse backgrounds bring value to the community and she is optimistic to see more.

Chair Jordan asked Ms. O'Meara to introduce the draft amendments. Ms. O'Meara explained that the Planning Board Option 1 recommendation was reviewed by the Town Attorney. It is common practice to have a legal review of draft language once it nears final consideration. Comments from the developer's attorney, Drummond and Woodsum, were also forwarded to the Town Attorney. The draft for review, dated 5-18-2021, is from Town Attorney Mike Hill, with his revisions highlighted in yellow.

Chair Jordan said the committee will review this for recommendation to the Town Council. Planning Board Chair Jim Huebener is here if there are questions. She wants all town councilors to engage, but not for this to be a full Town Council meeting. She referenced the Short Term Rental amendment process as a guide.

Committee members liked the definitions.

Councilor Gabrielson questioned the 36 minimum affordable units referenced. Ms. O'Meara explained that the Planning Board chose a "minimalist" amendment approach rather than drafting an amendment that would have wide applicability in the Town Center District. The number 36 can be changed. Its origin came from a rough approximation that 6 units would fit in a 5,000 sq. ft. building footprint. If you double the footprint, which this project is essentially requesting, then you have 12 units. If the building is 4 floors, 48 units, then 75% are affordable, you have 36 units. The idea is that the town is willing to alter the Town Center Zoning for a project that provides a substantial affordable housing component.

Councilor Gabrielson asked if 36 can be reduced to 24 and Ms. O'Meara said it could. He agreed to stay with 36 with no objection from other members.

Councilor Gabrielson asked about the amendments applying to 5-6 lots. Ms. O'Meara explained that the 200' minimum setback from a public right-of-way eliminates all but 5-6 lots. Other factors may reduce the total number, but would be dependent to the specifics of a project.

Councilor Caitlin Jordan objects to the backwards process where the zoning changes are spurred by this project.

Chair Jordan countered that many times we do plans and strategies in a top/down model. But we can also use a bottom/up model. This project gives us a perspective to see what actions are needed to do something. If this project is feasible, it benefits the town.

Councilor Caitlin Jordan is concerned that if we go down this road and opt, for example, for a 10,000 sq. ft. building footprint instead of a 12,000 sq. ft. building footprint, then it looks like we are shutting down the project. We do not have time to think and are stuck with what they give us.

Councilor Noonan said she would like to have an opportunity to look at the amendments and talk more.

Councilor Deveraux concurred. Do we want 45' or 40' high? We are just using numbers given by the developer.

Councilor Garvin acknowledged the situation may be difficult. Are we tailoring the ordinance or is there value in the proposal on the table? It is impossible to set the project aside from the ordinance consideration, but he would not have felt differently if we had done the policy discussion in a vacuum. This project has shown a light on problems with the Town Center District and Town Center Plan. Is it in the town's interest to change and provide flexibility? A 45' high building looks ok.

The Planning Board Option 1 vote was close, but it is hard seeing so many commercial vacancies. The Town Center zoning has not achieved the vision and maybe projects need more flexibility. This 4-lot project will have mixed uses on multiple lots. The parcel already looks dramatically different than the previous "damp woodland." There is also some public misunderstanding of the town's role on soliciting proposals as this is private property.

Councilor Boucher echoes Councilor Garvin. This project has helped to think in a different way. Given a zoning amendment process without this project, the end result may not be different. A lot of people with experience have commented, for example the GPCOG affordable housing study, that town zoning has affordable housing barriers. This project helps us look at the Town Center in general. She would like a more cohesive/townwide approach to affordable housing amendments.

Councilor Noonan is ok with the amendments happening organically at the same time as the project.

In response to a question if amendments were requested with a pending project before, Ms. O'Meara said yes. She expanded that in traditionally developed ordinance amendment packages, it is typical to "test" ordinance drafts on real world examples. For example, when the Town Center Committee drafted the first zoning, members provided a list of real restaurants that would be the type appropriate in the Town Center and she called those restaurants to find out how many seats they had. We tested open space zoning numbers on existing projects. You don't want to write zoning that will not get you want you want, so having a pending project is not that different a process.

The committee asked about the 200' setback that would allow residential uses on the first floor.

Planning Board Chair Jim Huebener shared his personal experience with an office in Freeport. It was set back 300' from Route One and originally built as retail space and eventually converted to office space when no retail establishment attracted enough traffic. Cape is not Freeport, with less traffic on Route 77 than Route 1, so he could support no commercial on the first floor when the building is at least 200' back. Closer to Route 77, he would not support eliminating the first floor non-residential requirement.

Councilor Boucher would like to get creative with the percentage affordable. There are very few Town Center lots large enough to support the minimum number of units.

Chair Jordan said she reviewed the building layout and unit sq. ft sizes and it seems livable. Councilor Gabrielson is ok with the building footprint amendment.

Councilor Caitlin Jordan criticized the size of the building as huge.

Councilor Garvin asked staff about the size of existing town center buildings. Ms. O'Meara said the Public Safety building is about 9,000 sq. ft, the shopping center 25,000 and Hill way 8,000+ sq. ft. Councilor Garvin felt the building footprint was acceptable in context.

In response to a question from Councilor Deveraux about restricting the size of the building in relation to the lot size, Ms. O'Meara offered that the Town Center design standards will still apply.

Councilor Garvin noted that the scale of the Hill Way project was criticized. After it was built, people more generally happy. Councilor Gabrielson agreed that he had concerns but that Hill Way fits into the landscape. He asked about the Szanton building coverage related to the lot size and Ms. O'Meara said about 1/4 of the lot.

Councilor Gabrielson is satisfied with the 200' setback and 45' height triggers. Councilor Caitlin Jordan is comfortable that it will apply to no more than 5 lots.

The committee asked about Town Center building heights. Ms. O'Meara said that she and the Code Enforcement Officer measured the town hall using a combination of outdoor ground and attic measurements. The height at the midpoint between the eave and the ridge line is 43'. The Szanton project is at an elevation about 6' lower than the town hall and just under 45' high.

Councilor Gabrielson noted the building height of 35' originating from the Building Code and it makes sense to go a bit higher, especially with today's building materials. In practice, seeing 35' to 42' is comparable.

The committee discussed the parking amendment. In response to a question, Ms. O'Meara strongly endorsed parking lot usage for multiple uses in order to minimize pavement, due to its environmental impacts and to reduce the amount of stormwater the town is eventually responsible for managing.

Councilor Gabrielson likes the flexibility with the reference to the ITE manual. He attended the GPCOG affordable housing projects tour and many parking spaces were unused. Parking construction adds to costs and extends the development footprint. He asked if parking flexibility should be extended to other uses. Ms. O'Meara said that she has tried to recommend the low end of parking requirements, but there may be an opportunity to further reduce standards for other uses. The Town parking requirements do include flexibility through shared parking and compact spaces.

Chair Jordan asked about traffic access and Ms. O'Meara said that was a site plan review requirement.

Councilor Garvin noted that site plan will address items not included in the amendments. The project will project more detail in that process with the Planning Board.

No missing items were identified.

A motion was made by Councilor Caitlin Jordan, seconded by Councilor Gabrielson that the Ordinance Committee recommends the amendments to the Town Council for review. The motion passed 3-0.

Public Comment

Nathan Szanton, Szanton Company - In response to comments that the amendments are reacting to a specific project rather than independent research, he said this project gives you the data points on what makes an affordable housing project feasible. The affordable housing developers group in Maine is small and we all use the same Maine State Housing subsidy programs. It is fantastical that a 25 unit project would work or need less subsidy.

Next meeting

Chair Jordan said that Wireless amendments would be on the next meeting agenda. The next meeting is scheduled for June 9, 2021, beginning at 7:00 p.m.

The meeting adjourned at 9:07 p.m.