City of Ellsworth
Planning Board Meeting Minutes
Wednesday, August 5, 2020
5:30PM

Six board members present

Chairman John Fink, Vice-Chairman John DeLeo, Members Rick Lyles, David Burks, and Alternate Members Nelson Geel and Marc Rich attended the regular meeting of the Ellsworth Planning Board.

The meeting was held using ZOOM webinar technology, in accordance with *An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency*, Sec G-1 1 MRSA §403-A.

Six staff members present

City Planner Theresa Oleksiw, Code Enforcement Officer Dwight Tilton, Fire Inspector Mike Hangge, and Development Services Coordinator Kerri Taylor attended the meeting. Noel Musson and Sarah DelGizzo, Planners with the Musson Group, (a planning firm, temporarily hired by the City to assist with Planning Board review) also joined the meeting.

Call to Order

1.) Call to Order
Chairman Fink called the meeting to order at 5:30 PM.

Roll Call

2.) Roll Call
Chairman Fink conducted roll call for the Planning Board members and all were present.

Adoption of minutes

3.) Adoption of Minutes from the July 1, 2020 meeting. John DeLeo moved to approve the minutes. Rick Lyles seconded the motion, and with no discussion, the motion passed unanimously **(5-0).**

Preliminary Plan for Kelly Estates

4.) Preliminary Plan Review for a Major Use Site Development & Major Subdivision entitled <u>Kelly Estates</u> for Steven Grass. The proposal is to construct seven duplex buildings consisting of 14 units (a total of 17,024 square feet) on a 12.8-acre property located on the Bangor Road (Tax Map 75, Lots 16-1 & 17-1) in the Rural and Limited Residential Zones.

Introduction

Jim Kiser joined the meeting to represent the applicant. Steven Grass also attended the meeting.

Applicant Presentation

Mr. Kiser gave a brief description of the project. He explained his client will be developing a 12.8-acre parcel of property on the Bangor Road. The proposal is to construct 14 single family attached duplex units. Maine Department of Transportation has approved the already existing access road with some conditions. The applicant is prepared to meet the conditions put in place by MDOT. A waiver slightly reducing the sight distance requirements has also been granted by MDOT. Mr. Kiser explained the units will be one bedroom rental units served by onsite drilled wells and septic systems. Two wells are being proposed

on the property, with one well serving 4 buildings and the other serving the remaining 3. The applicant is proposing to provide Fire Protection utilizing 10,000-gallon underground storage tanks. The storage tanks will be located at the entrance to the development, with access to a dry hydrant. A proposed 50-foot turn around will be installed at the end of the access road. Mr. Kiser noted that he is aware the City's ordinance requires 70 feet. It can be expanded up to 10 more feet, but that puts the turnaround directly on the property line. However, the applicant is willing to expand the additional 10-feet if necessary. Mr. Kiser stated turning evaluations have been provided for the turnaround and it is sufficient based on the fire protection equipment provided by the City. Mr. Kiser requested that the board grant a waiver on the 10-foot differential. He also explained that a dumpster will be installed at the turnaround as well.

Deliberations and Findings of Fact

Mr. DeLeo inquired about the $125,000 estimated total cost of the project submitted with the application. Mr. Kiser explained that it not the total cost of the entire development, but rather the cost of the infrastructure for the road. Mr. Kiser stated that he can update the project cost on the application for final approval. Mr. DeLeo also noted that an updated letter of financing from Machias Savings Bank will also be required.

Mr. DeLeo inquired about the installation of a stop sign, a street light, and the angle of the access road. There was a brief discussion about the entrance to the driveway. Mr. DeLeo had questions in regards to the septic systems being proposed. Mr. Kiser explained that two systems will serve the development. There was further discussion in regards to an existing well on the property.

David Burks voiced concern about the entrance to the development. Mr. Burks also had questions in regards to the grade and slope of the access road. Mr. Kiser explained that the road has a shoulder that is several feet in elevation, the entire property slopes to the East from the roadway. Mr. Burks again stated revisiting the entrance visibility. Mr. Kiser explained that DOT is requiring the applicant to do some clearing of the vegetation on the North side of the entrance. Nelson Geel voiced his concerns over the sight distance and safety issues surrounding the entrance to the development. A brief discussion ensued.

Rick Lyles asked Fire Inspector Hangge if the Fire Department is satisfied with the proposed turnarounds. Mr. Hangge explained that he conversed with the Fire Chief and they can accept the 60 foot turnaround if the applicant will widen the dumpster pad area. This will accommodate for the dumpster and a fire apparatus. Mr. Hangge suggested the applicant increase the width of that area from 24 feet to 34-35 feet. Mr. Fink questioned why the turnarounds cannot be built to the ordinance requirements. Mr. Kiser answered that they do not have enough room. Marc Rich inquired about building a "Y" turnaround instead of a "T" and moving the dumpster to achieve the 70 feet required by the ordinance. Mr. Kiser explained that the "Y" turnarounds are more cumbersome to large vehicles where as a "T" is preferred by most fire departments and public works departments.

Chairman Fink opened a public hearing at 6:06 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Public Hearing

Rick Lyles moved to approve the waiver for the 70 foot turnaround (Article 9 Section 909.2). John DeLeo seconded the motion and the motion was denied (3-2).

John DeLeo moved to approve the Preliminary Plan for a Major Use Site Development and Major Subdivision entitled Kelly Estates for Steven Grass. Marc Rich seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Preliminary Plan for Major Use Site Development & Subdivision Kelly Estates: Approved

5.) **Final Plan Review for a Revision to a Previously Approved Major Subdivision Plan entitled <u>Beechland Terraces IIA</u> for Associated Builders Inc.** The proposal is to divide Lot 5 (Tax Map 15, Lot 33-2), a 1.84-acre parcel, into two parcels, creating Lot 5A (.92-acres) and Lot 5B (.92-acres) to create a total of 13 lots in the subdivision located on the Beechland Road. All of the subject property is located in the Neighborhood Zone.

Final Plan Beechland Terraces IIA

Steve Salsbury joined the meeting to represent the applicant, along with attorney, Alison King.

Introduction

Mr. Salsbury explained that he updated the subdivision plan to show different lot configurations, removed the septic easement, and confirmed sight distances. Mr. Salsbury voiced his concern in regard to the TRT notes stating that the site distance is still an issue. Noel Musson joined the conversation and added that there is an ongoing issue with a note from the previously approved subdivision stating that there is to be no access from Beechland Road on the property. Mr. Musson explained that the issue lies within the lot access and not necessarily the sight distance.

Applicant Presentation

Mr. Geel inquired about the condition that the lot is to be accessed from Grandview Road only. Attorney King addressed the board and explained that typically when there is a note on a plan there is some expectation that the other lot owners within the subdivision may have interest enforcing said note. Attorney King explained that she discussed this issue with the City's attorney, Ed Bearor and that Attorney Bearor stated that although it may be best for the developer to get the consent of the other law owners it isn't necessarily within the purview of the Planning Board to require that. Chairman Fink added that in the TRT notes it states that both the Planning Board minutes and the plan note that lot 5 can only be accessed via Grandview Road. Due to that, Attorney Bearor's opinion on the matter is that the other lot owners within the subdivision need to assent to the change. Mr. Fink asked the applicant if this had been done. Attorney King stated that she believes the TRT Report was distributed prior to the opinion of Attorney Bearor. Mr. Fink replied that that comment was directly from Attorney Bearor. Mr. Musson stated that since the distribution of the TRT Report, Attorney King and Attorney Bearor have had further discussions in regards to the issue, which

Deliberations and Findings of Fact

may have changed his opinion. Mr. Musson concluded that the attorneys mutually agreed that any potential complications with amending the subdivision will fall back on the developer.

Mr. Fink inquired about the sight distance at the location. Mr. Salsbury answered that the sight distance has been measured on both Grandview Road and Beechland Road. The minimum sight distance has been met on both roads.

Mr. Fink addressed the lot size issue with the proposed lot 5A. Mr. Salsbury answered that it is similar to the Grandview Road only condition and that it is a condition that would be between the lot owners. Mr. Salsbury added that it meets the City's minimum, zoning requirements. Mr. Musson added that the minimum lot size requirement is part of the deed covenants. The note for the access via Grandview only is recorded on the plan and is part of the Planning Board Minutes as part of the subdivisions approval. The 40,000 square feet minimum lot size requirement is recorded in the deed covenants. Mr. Musson questioned if the minimum lot size is the same issue as the Grandview Road access only issue or not. Attorney King stated that she feels that it is the same issue. She was unable to find a blanket deed covenant document covering this particular lot. AttorneyKing believes that this is up to the other lot owners within the subdivision if it's something that they decide to enforce or not. Attorney King added again, that this lot does not have this covenant attached to it and it is not on the subdivision plan and did not have any recorded restrictions. Mr. Musson explained clarification was needed because it is not clear what the covenants cover and whether or not they are applicable to this particular lot and/or the whole subdivision.

Dwight Tilton commented that staff had concerns about the restrictions and covenants on the land. Is there a possibility that other owners within the subdivision can decide that this is not an allowed use, hire an attorney, and halt construction. Staff wanted to ensure that this does not happen to a potential property owner in the future.

Mr. Geel commented that although that would be an unfortunate circumstance, he wonders what obligation the Planning Board has in that regard. As unfortunate at that situation may be, is it the board's job to protect the homeowners. Mr. Fink added that under State law the board really cannot protect homeowners and that the City has no interest unless these things were granted by the deed restrictions. Mr. DeLeo questioned if there is any other written documentation on this issue from the City's attorney. Mr. Musson explained the quote included in the TRT Report is Attorney Bearor's initial opinion on the matter. Mr. Geel noted that any subsequent communication from Attorney Bearor would have been helpful in this matter. Theresa Oleksiw read an email from Attorney Bearor dated July 30th which stated as follows: I've been speaking with Attorney King about the matter we discussed last week. I want to clarify my comments to the extent that I imply that the developer or individual seeking to remove a condition from the approved subdivision plan needs consent from other lot owners. While that may be the case I do not mean to suggest that the City needs evidence of those consents to entertain the application to amend the subdivision.

Mr. DeLeo commented that he still questions this issue. The TRT notes dated July 22nd under the clarification on plan notes says lot 5 shall be accessed by Grandview Road only. Mr. DeLeo asked if that covenant was on the original plan approval, wouldn't that be a condition of approval put on by the Planning Board? If that was the case, how can it now be the lot owners' responsibility to figure this out and not the board's? Mr. DeLeo questioned if approving this application would be a violation of the original plan. Ms. Oleksiw commented that another email from Attorney Bearor on July 21st stated that if both the Planning Board Minutes and the plan make it clear that Lot 5 can only have access via Grandview, then in his opinion the other lot owners need to assent to the change. Ms. Oleksiw added that previous minutes and plans specifically say that Lot 5 can only have access via Grandview Road. The covenant is on the signed subdivision plans and it is in the minutes. David Burks commented that if the Planning Board in the past approved that the access can only be from Grandview Road then he cannot see how it can now be changed. Mr. Lyles asked if the board were to receive proof of assent from the other lot owners within the subdivision would the board be all set to approve the plan, based on the legal opinion. Mr. Fink answered that he doesn't believe that it's a Planning Board matter because it is not in violation of any City ordinances.

Mr. Geel questioned if the application or proposed plans state that the applicant intends to access the new lot from Beechland Road. Mr. Musson added that there is road frontage and potential access on both Beechland and Grandview Roads. The issue came out when staff identified through review of the application that from past Planning Board approvals for this subdivision there was a note and a Planning Board requirement on the plan that you could not access this lot via Beechland Road. Staff pointed this covenant out so that the applicant had the opportunity to clarify to the Planning Board what ability the board itself has to waive or modify that past requirement. The applicant is asking for a modification for subdivision standards. The City's attorney said the lot owners in the previously approved subdivision need to assent to the proposed change and in more recent conversations that it doesn't necessarily mean that the Planning Board has to require that. Mr. Musson added that it doesn't mean the board can't require it, but it doesn't mean the board has to. Mr. Geel stated that he doesn't see how approving the proposed subdivision automatically grants access via Beechland Road. In his opinion the board is just being asked to approve the geometry of the subdivision and he is not sure why the access came in front of the board. Mr. Salsbury commented that he removed the note from the plan so there would be no language in regards to access of Grandview only. There is full intent to access lot 5A via Beechland Road, which is the purpose of the sight distance calculation for the Beechland Road. Attorney King commented that she had an informal discussion with the applicant and he stated when the subdivision plan was originally approved there was a different configuration of drainage on the Beechland Road, since then that road has substantially changed. At the time of the original limitation on the plan there was some concern about the road construction which may something for the board to consider. Mr. Fink stated that the application is based on the approval of the subdivision and that lot 5 is to be accessed through Grandview. The splitting of the lot does not really change that and the access is still from there. We have not been asked to change the access. Mr. Geel stated that it might create an issue for someone because lot 5A would

become inaccessible. Mr. Fink asked if the applicant would like to proceed with the application. Mr. Salsbury answered yes, that he would like to proceed.

Nelson Geel moved to approve the Final Plan Review for a Revision to a Previously Approved Major Subdivision Plan entitled Beechland Terraces IIA for Associated Builders Inc. Rick Lyles seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Final Plan for a Revision to a Previously Approved Major Subdivision Plan: Approved

6.) Preliminary Plan Review for a Revision to a Previously Approved Major Subdivision Plan entitled Tinker Hill Subdivision for Lisa Whittemore. The proposal is to adjust the property line between lot 7 (Tax Map 21, Lot 3-7) and lot 11 (Tax Map 21, Lot 3-11) of the subdivision located off of the Bayside Road in the Rural and Limited Residential Zones.

Preliminary Plan Tinker Hill Subdivision

Steve Salsbury joined the meeting to represent the applicant.
Chairman Fink recused himself from discussion of this application because of a conflict of interest. Vice-Chairman DeLeo stepped in for Mr. Fink.

Introduction

Mr. Salsbury stated that he believed the application came before the board for its final review and not preliminary. Several board members stated their paperwork indicated a preliminary review along with the Agenda. Mr. Salsbury gave a brief description of the application. The applicant would like to adjust the lot line between lot 7 and lot 11 to accommodate a driveway located on lot 7.

Applicant Presentation

Mr. DeLeo commented that it is a straightforward application, with both lot owners in agreement.

Deliberations and Findings of Fact

Chairman DeLeo opened a public hearing at 6:42 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Public Hearing

Rick Lyles moved to approve the Preliminary Plan Review for a Revision to a Previously Approved Major Subdivision Plan entitled Tinker Hill Subdivision. Nelson Geel seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Preliminary Plan for a Revision to a Previously Approved Major Subdivision entitled Tinker Hill Subdivision: Approved

Chairman Fink opened a public hearing for a Revision to a Previously Approved Major Subdivision Plan entitled Beechland Terraces IIA for Associated Builders Inc. at 6:43 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Public Hearing

7.) Final Plan Review for a Major Subdivision entitled <u>Subdivision of Ellsworth Shopping Center</u> for DK Ellsworth Shopping Center LLC. The proposal is to subdivide and reconfigure approximately 22.5 acres of land currently or previously owned by DK Ellsworth Shopping Center LLC (Tax Map 131, Lots 13, 14, 17, and 25) into four lots consisting of 4.67 acres (the current site of Oriole Way Townhouses), 10.96 acres (the current site of the Ellsworth Shopping Center), 2.73 acres (the proposed site of Foster Street Apartments Phase 1), and 3 acres (the proposed site of Foster Street Apartments Phase 2). The land is located in the Urban and Downtown zones.

Final Plan Subdivision of Ellsworth Shopping Center

Nancy St. Clair of St. Clair Associates joined the meeting to represent the applicant.

Introduction

Mrs. St. Clair gave a description of the subdivision to the board.

Applicant Presentation

Mr. DeLeo asked if there would be any changes made to the 3 acres of land needed for the Foster Street Apartments since one of the buildings has been eliminated from the plan. Mrs. St. Clair answered that there will be no changes to the lot lines.

Deliberations and Findings of Fact

Chairman Fink opened a public hearing at 6:51 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Public Hearing

There was a brief discussion in regards to easements on the property.

John DeLeo moved to approve the Final Plan for Major Subdivision entitled Subdivision of Ellsworth Shopping Center. John Fink seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Final Plan for Major Subdivision entitled Subdivision of Ellsworth Shopping Center: Approved

8.) Final Plan Review for a Major Use Site Development Plan & Major Subdivision entitled <u>Foster Street Apartments</u> for DC Predevelopment LLC. The proposal is to construct 41 apartment units (one market rate 12-unit building & one senior housing 29-unit building) on a 6.16 acre parcel (Tax Map 131, Lots 13, 14, and a part of lot 17) located on Foster Street and Oriole Way, located in the Urban and Downtown zones.

Final Plan Foster Street Apartments

Nancy St. Clair of St. Clair Associates and Kevin Bunker of DC Pre-Development, LLC joined the meeting.

Introduction

Mrs. St. Clair gave a description of the project. She explained that there have been no changes made to Phase I of the project since the previous meeting when this application was tabled. Phase II of the project has some significant changes from the last meeting. One of the previously proposed 12-unit market rate buildings has

Applicant Presentation

been eliminated from the plan. The remaining building has been moved slightly to the North and the West resulting in more space between the Easterly property line and the sidewalk on Foster Street. The curb cut proposed on Foster Street has been moved 100 feet to the West. This has addressed the sight distance issue and also eliminated the need to do any clearing of vegetation along Foster Street. Mrs. St. Clair added that as part of the submission materials an updated letter from their traffic engineer was included and states that the relocation of the driveway now meets and exceeds the municipal sight distance requirements. With the reduction of the units they were also able to reduce the number of parking spaces for the market rate building. There are now 20 parking spaces compared to the original 36 spaces that were proposed. As a result they have been able to reduce the impervious surface area and can now treat stormwater runoff with a grassed under drained soil filter located in the Southwest corner of the site. Three bio retention cells will also be installed around the corners of the building.

Deliberations and Findings of Fact

Mr. Geel asked if the stormwater will still drain into the municipal system on Foster Street as previously proposed. Mrs. St. Clair answered that the stormwater will still tie into the municipal system.

Mr. DeLeo inquired if the applicant will still expand the City stormwater system as was previously proposed. Mrs. St. Clair explained that they are still proposing to install a new 15-inch line to be installed in Foster Street.

Mr. DeLeo commented in regards to an anonymous email received from a tenant of Oriole Way apartments in regards to Kevin Bunker's plan to generate income and his future ability to sell or convert the affordable senior housing apartments. Mr. Fink explained that matters such as these are not within the control of the Planning Board. Mr. Fink added that the board serves to ensure proper land use and not someone's ability to make money. Mr. Bunker explained that with affordable housing there are provisions in place with Maine State Housing that effectively prevent developers from evicting affordable housing tenants to convert the units to market rate. Also, the TIF in place with the City prevents that for 30 years. Maine State Housing restrictions go for a 45-year period, which is 18 years beyond the depreciable basis of the building.

Public Hearing

Chairman Fink opened a public hearing at 7:06 PM. With no additional comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Final Plan for a Major Use Site Development entitled Foster Street Apartments: Approved

Rick Lyles moved to approve the Final Plan for a Major Use Site Development entitled Foster Street Apartments. John David Burks seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Vote to adjourn at 7:08 PM

8.) Adjournment

Rick Lyles moved to adjourn the meeting, John DeLeo seconded the motion, and it passed unanimously **(5-0).** The meeting was adjourned at 7:08 PM.

Minutes prepared by: Kerri Taylor, Development Services Coordinator.
Minutes approved by Ellsworth Planning Board on September 2, 2020.

9/25/20

Date

John Fink, Chairman
Ellsworth Planning Board

Agendas and minutes posted on the city of Ellsworth's website: ellsworthmaine.gov
A video transcript of this meeting is also available on YouTube.