

**City of Ellsworth
Planning Board Meeting Minutes
Wednesday, February 3, 2021
5:30 PM**

Chairman John Fink, Vice-Chairman John DeLeo, Secretary Rick Lyles, Members Nelson Geel, Marc Rich, Alternate Members Molly Friedland and Patrick Lyons attended the regular meeting of the Ellsworth Planning Board.

Seven board members present

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.

City Planner Elena Piekut, Code Enforcement Officer Dwight Tilton, Development Services Coordinator Kerri Taylor, and Fire and Life Safety Inspector Thomas Canavan attended the meeting.

Four staff members present

1.) Call to Order

Chairman Fink called the meeting to order at 5:32 PM.

Call to Order

2.) Roll Call

Chairman Fink conducted roll call for the Planning Board members.

Roll Call

3.) Adoption of Minutes from the January 6, 2021 meeting. John DeLeo moved to approve the minutes. Rick Lyles seconded the motion, and with no discussion, the motion passed unanimously **(5-0)**.

Adoption of minutes

4.) Final Plan Review for a Major Subdivision Plan entitled Patrick's Way for Bridgetwin, LLC. The proposal is to create two new residential rental units on a 15.2 acres (Tax Map 35 Lots 20 & 21) located on Patrick's Way. All of the subject property is located in the Neighborhood and Rural Zones.

**Final Plan Review
Patrick's Way**

Steve Salsbury of Herrick and Salsbury joined the meeting to represent the applicant.

Introduction

Mr. Salsbury gave a brief description of the proposed subdivision. He shared his screen to display the subdivision plan. Mr. Salsbury explained that two new rental units are being installed and indicated where they will be on the plan. The property owner recently installed a new six inch water line to feed the required fire hydrant and provide water supply to the two new homes. The hydrant will be installed in the City's right of way so the City may take ownership of it.

**Deliberations &
Findings of Fact**

Rick Lyles inquired if there is any subdivision of land being proposed with the application and if the owner could sell the homes separately. Mr. Salsbury explained that the owner would be required to go before the Planning Board in order to sell the homes individually.

Chairman Fink opened a public hearing at 5:37 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

John DeLeo moved to approve the Final Plan Review for a Major Subdivision Plan entitled Patrick's Way for Bridgetwin, LLC. Rick Lyles seconded the motion and with no further discussion, the motion passed unanimously (5-0).

5.) Election of Officers

John DeLeo moved to elect John Fink as Chairman of the Planning Board. Rick Lyles seconded the motion, and with no discussion, the motion passed unanimously (5-0).

Rick Lyles nominated John DeLeo as Vice-Chairman of the Planning Board. John Fink seconded the motion, and with no discussion, the motion passed unanimously (5-0).

Nelson Geel nominated Rick Lyles as Secretary of the Planning Board. John DeLeo seconded the motion, and with no discussion, the motion passed unanimously (5-0).

6.) Final Plan Review for a Major Use Subdivision entitled 8 Union Street for Barbara & Dale Joyce. The proposal is to subdivide the interior of the building to create one residential unit and six professional office spaces on a .7-acre parcel located at 8 Union Street (Tax Map 137 Lot 3). All of the subject property is located in the Neighborhood Zone.

Steve Salsbury of Herrick and Salsbury joined the meeting to represent the applicant.

Mr. Salsbury addressed the board and gave a description of the proposed project. He revised the development application to emphasize that the proposal is to create professional offices and one two-bedroom Airbnb rental space that will not have a kitchen. Mr. Salsbury shared his screen and displayed the site plan giving a brief explanation on the project.

Public Hearing

Final Plan Review for a Major Subdivision entitled Patrick's Way: Approved

Election of Officers

Final Plan Review 8 Union Street

Introduction

John DeLeo asked Code Enforcement Officer, Dwight Tilton if he could provide an example of what a personal service establishment is. Mr. Tilton answered that a personal service establishment consists of businesses primarily engaged in providing services involving the care of an individual. Which may include beauty salons, doctors' offices, or anything similar. The primary operation is not to sell a product. Although, they may sell accessories such as selling shampoo at a beauty shop. Mr. DeLeo made a suggestion that the application be approved based on the condition that the activity be limited to what is defined under Professional Establishment in Article 14 of UDO Chapter 56. Mr. DeLeo voiced concern that if the uses are not restricted now, then in the future the owner could put something in that may not be an allowable use in the Zone. Mr. Tilton explained that any change of use is required to go to the Code Enforcement Office, but a note could be added to the plan to indicate the guidelines of the Planning Board. Mr. Lyles commented that this appears to be a non-conforming use because professional establishments are related to home occupations and the proposed uses do not fit under home occupations. What is being proposed is a bunch of offices that are not allowed in that zone. However, the medical office that was located there previously established the non-conforming use. Mr. Tilton gave a brief history of the property, explaining that the original owner had been issued a permit for the building to be used as a commercial use for a medical office. Mr. Tilton added that you cannot expand a non-conforming use, but you can continue to operate it.

Mr. Fink asked how many professional offices are being proposed. Mr. Salsbury answered there 6 proposed offices. Mr. Fink stated that the photography studio is a retail use. Mr. Salsbury commented that it is not a retail use. Mr. Lyles questioned if the studio is the property owners business. Mr. Salsbury answered yes, it will be operated by the owner.

Mr. Fink inquired about the Airbnb rental unit and the difference between it being considered a rental or a residential unit. Mr. Tilton commented that it is not being considered as a dwelling unit. Mr. Fink asked if rental units are allowed in the Neighborhood Zone. Mr. Salsbury stated that boarding is an allowed use.

Nelson Geel asked if a change of use, for example, retail or manufacturing were to be proposed in the future would the Code Enforcement Office permit such a use or would that be too much of a stretch on the grandfathered non-conforming use. Mr. Tilton confirmed it would be and explained that Code Enforcement has the authority to send any proposal to the Planning Board for review. Mr. Geel commented that there has been concern of residents in the neighborhood in regard to the expansion around the commercial aspect of the property. Mr. DeLeo commented that language should be included on the site plans to restrict certain commercial uses at the property.

A lengthy discussion ensued in regards to the rental unit being an allowed use in the Zone and if it can be considered as a bed and breakfast.

Mr. DeLeo requested an opinion from City Attorney Ed Bearor. Attorney Bearor explained that the proposal is before the Planning Board as an interior subdivision. It is the responsibility of the Code Enforcement Officer to determine whether or not each individual use is allowed within the Zone. In regards to the residential and bed and breakfast aspect of the proposal, he interprets the definition to include a unit within the dwelling. The current proposal as it has been presented appears to meet the definition of a bed and breakfast. Ultimately, it is up to the Code Enforcement Officer to determine if it meets the requirements of the Ordinance or not. Attorney Bearor reiterated that he does not believe the proposal is anything more than a subdivision and that the discussion in regards to the uses is not applicable.

Mr. Deleo inquired if the board is supposed to approve the proposal as just a subdivision with no restrictions to it. Mr. Fink answered that the restrictions exist within the Ordinance. Attorney Bearor commented that the previous agenda item was a similar proposal. For example if a 6 unit apartment building was proposed it would come before the Planning Board as a subdivision.

Chairman Fink opened a public hearing at 6:03 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Public Hearing

At the request of Chairman Fink, Mr. Geel read a letter to meeting participants received by staff prior to the meeting from a Union Street resident. The letter read as follows:

To the members of the Ellsworth Planning Board:

I am the owner and year-round resident of 16 Union Street, next door to 8 Union Street (on the other side of Bayview Avenue). I attended the Planning-Board meeting on January 6th via Zoom as what happens with 8 Union Street is of obvious concern to me. I am grateful to my neighbor across the street, V. Kelly Bellis at 17 Union Street, for submitting questions prior to that meeting. The meeting of January 6th was very reassuring because the Board members brought up the questions I had as well as others. I do not have experience or knowledge in code-enforcement and related matters, so I was very happy to see that the Board members took the time to look at this application closely, even asking questions despite it being a preliminary plan review. As one of the "next-door" neighbors, my worry is about how this plan could change the neighborhood and quality of life that, in the almost ten years I've been here, has been pretty quiet and peaceful, and it's important to me and, I assume, all my neighbors that this continue to be the case, that we keep having a neighborhood that is pleasant to live in. I therefore confirm the points that were brought up during the meeting on January 6th:

- I liked hearing that there are limitations on what businesses can be established in the office spaces due to the zoning restrictions, and would like that to be included, as suggested, in the approved proposal (if approved) because those not being in there could lead to a precedent or a loosening of restrictions for the future.

- The fact that the primary use is supposed to be residential is important, and this was brought up as there is much more office space than residential space in the current application.

- The letter dated January 19th announcing the final plan review now only mentions one residential unit, which makes me think the application was amended to remove the second so-called residential unit with no kitchen. (The original application stated that this unit would possibly be used "in the future" as an "overnight rental space.") Is there a certain percentage of space in the building that needs to qualify as residential? In any case, I would like to thank the Planning Board for the diligence they've already shown in bringing up these issues in the preliminary meeting. I trust the Board to ask any other pertinent questions and make sure that the outcome of the proposal is what it purports to be, i.e., the owner being in residence, the offices being "professional," i.e., the photography studio/gallery, offices for architects, lawyers, etc., with all of this being clear in the application that is approved, in order to avoid any bad surprises for the neighbors later.

Thank you for your work and your time,
Corentine Howe

Mr. DeLeo commented that he is against approving something with no conditions applied. He is not comfortable with the leaving the option open for future uses such as putting a convenience store at the property. Mr. Tilton commented that a convenience store is an allowed use in the Neighborhood Zone. Mr. DeLeo responded that he is aware of that, but he believes the board has the right to restrict a convenience store at this particular location.

Molly Friedland asked Mr. DeLeo if his concerns are based off that of the concerns brought forth from Union Street residents or if it is because he doesn't believe a convenience store would fit in with the neighborhood. Mr. DeLeo answered that although a convenience store is an allowed use in the Neighborhood Zone he doesn't believe it is an appropriate use for this location. Mr. Tilton commented that the board does not have the authority to make that determination. Mr. Fink agreed with Mr. Tilton and explained that if it is an allowed use in the Neighborhood Zone then the Planning Board does not have jurisdiction over the exact location. Mr. DeLeo expressed his disagreement and stated that an ordinance cannot cover every situation. He referenced Article 1 of the Unified Development Ordinance and stated that the general purpose of the board is to promote the health, safety, and general welfare of residents. Patrick Lyons stated that the board does not have the authority to override the legislative body that enacted the ordinance. If a convenience store is a permitted use in the Neighborhood Zone then the only way that can be changed is through an approved amendment by the City Council. Mr. Lyons suggested noting that the board found the proposed project to be a continuation of the non-conforming uses for any subsequent property owners and future Code Enforcement Officers. Mr. Tilton explained that at the time the medical office use was approved it was not an allowed use in the zone therefore, creating a non-conforming use. It was a strict residential zone and since the revision of the

ordinance, most of the uses that were not allowed then are allowed now. Mr. Tilton added that he does support revisions to the zoning ordinance that Code Enforcement, Planning, and Economic Development are looking into making some changes to the definitions in the ordinance and would appreciate suggestions from the Planning Board members.

Marc Rich asked if the art gallery is considered a commercial use and if the owners will be selling the art. Mr. Fink answered that it is a photography studio where the pictures are taken, but sales of art are not included.

Ms. Friedland asked what the fear of having a convenience store in this location is as opposed to professional business offices. Mr. Tilton explained that it was decided to include convenience stores within the Neighborhood Zone to provide more pedestrian services. If a small convenience store is in a neighborhood residents have the option to walk there instead of driving. The concept was to encourage more pedestrian passageways throughout the City, especially considering the lack of crosswalks on High Street. Ms. Friedland commented that it is actually a good location for a convenience store and although the residents in the neighborhood may be concerned about the traffic it would produce, it's possible that a professional business office can produce a similar amount of traffic. Mr. Fink commented that a convenience store is not part of the proposed application. Mr. Lyons added that the board needs to determine if the application meets subdivision requirements and not focus on the uses.

Marc Rich moved to approve the Final Plan for a Major Subdivision entitled 8 Union Street for Barbara and Dale Joyce. Rick Lyles seconded the motion and with further discussion in regards to allowed uses within the Neighborhood Zone, the motion passed unanimously (5-0).

Final Plan for a Major Subdivision entitled 8 Union Street: Approved

8.) Final Plan Review for a Major Use Site Development entitled Gilpatrick Solar LLC for Ryan Stair. The proposal is to construct a 19.81-acre solar energy facility on a 126.86-acre parcel located on the Gilpatrick Road (Tax Map 58 Lot 15). All of the subject property is located in the Rural and Urban Zones.

Final Plan Review Gilpatrick Solar

Chris Byers and Dale Knapp of Boyle Associates joined the meeting, along with applicant Ryan Stair of Aypa.

Introduction

Mr. Byers gave a brief description of the outstanding items from the preliminary meeting that have been addressed and finalized.

Chairman Fink opened a public hearing at 6:26 PM. With no comments submitted through ZOOM or through email/phone, the public hearing was subsequently closed.

Public Hearing

John DeLeo moved to approve the Final Plan for a Major Use Site Development entitled Gilpatrick Solar LLC. for Ryan Stair. Marc Rich seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Final Plan for a Major Use Site Development entitled Gilpatrick Solar LLC.: Approved

9.) Adjournment

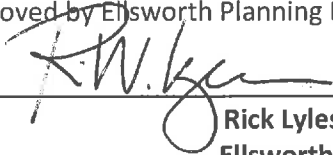
John Fink moved to adjourn the meeting, John DeLeo seconded the motion, and it passed unanimously (5-0). The meeting was adjourned at 6:34 PM.

Vote to adjourn at 6:34 PM

Minutes prepared by: Kerri Taylor, Development Services Coordinator.
Minutes approved by Ellsworth Planning Board on March 3, 2021.

Agendas and minutes posted on the city of Ellsworth's website: ellsworthmaine.gov

3/30/21



Date

Rick Lyles, Secretary
Ellsworth Planning Board

A video transcript of this meeting is also available on YouTube.