

City of Ellsworth  
Planning Board Workshop Minutes  
Wednesday, July 5, 2023 5:30 PM

Chair John DeLeo, Vice-Chair Rick Lyles, Secretary Nelson Geel, Member Marc Rich, and Alternate Member Mike Hangge attended the regular meeting of the Ellsworth Planning Board. Member Molly Friedland and Alternate Member Patrick Lyons were absent.

**Five board members present**

City Planner Matthew Williams, Code Enforcement Officer (“CEO”) Lori Roberts, and Assistant City Planner Elizabeth Ouellette were present.

**Three staff members present**

**1.) Call to Order**

**Call to Order**

Chair DeLeo called the meeting to order at 5:29 PM.

**2.) Adoption of Minutes** from the June 7, 2023 regular meeting.

**Adoption of minutes**

Vice-Chair Lyles moved to adopt the Minutes from the June 7, 2023 regular meeting. Secretary Geel seconded the motion. **The vote to adopt the Minutes from the June 7, 2023 regular meeting was UNANIMOUS (4-0).**

**ADOPTED**

**3.) Revision to an approved Subdivision entitled Stone Park for Applicant/Owner Branch Pond, LLC.** The proposal is to construct a 30’ x 60’ in-ground pool in the northwest corner of the property. The subject property is an approximately 2.56-acre lot located at 377 High Street (Tax Map 16, Lot 16) in the Commercial (C) Zoning District.

**Stone Park**

Jon Bates and Andrew McCullough were present representing the project. McCullough began by introducing the project. McCullough said that the pool will be in the northwest corner of the property to provide an amenity for the residents of the apartment building. McCullough said that the pool would impact one of the parking spaces, so they put in 2 additional parking spaces to avoid any loss in parking. McCullough also said that the pool will impact the amount of impervious surface, however it will still be below the threshold in the ordinance. He then talked about the stormwater. Originally, McCullough said, the route of the stormwater would go through where the pool is now. McCullough described the changes made to the stormwater design and verified that there was no change in peak flow off the site, the only change was the route the water was taking. He said that all of the stormwater will go into an underground filter and the filter will not be negatively impacted by the change.

**Introduction**

Chair DeLeo asked where the underground filter would be located. McCullough said that it is along the westerly side and goes to the south end. DeLeo then asked about the flow of stormwater, asking if the water will go around the pool. McCullough explained that it would flow on the pavement side of the pool around the perimeter. McCullough then went on to say there is a contour elevation of 98 near the pool where the water will flow into and reach the filter.

**Discussion**

Chair DeLeo then asked about parking and snow storage, wondering where the snow storage would be if the additional parking needed to be created. McCullough said that there is language on the plan stating that the snow will be hauled off-site if the additional parking

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is required in the future. City Planner Williams pointed out the note on the plan where the language is located. DeLeo then asked about the note from Code Enforcement Officer Roberts stating that two additional parking spaces are needed. Williams said that the developer has included those additional parking spaces on the plan and have satisfied that requirement. Vice-Chair Lyles asked why the two additional spaces were needed. Williams said that in the original plan, there were two spaces missing and therefore the developer was just correcting the original plan.

Chair DeLeo said that he thinks the pool is a great idea and asked Bates if he anticipated residents inviting guests over to come and use the pool. Bates said that the pool is for residents only and hopes that people will honor the rules. Bates also said that there will be two gated entrances to the pool with keypads so the residents will need to know the code in order to even access the pool. DeLeo noted that there is not much room around the pool for people to gather or sit. Bates said they will be putting some lounge chairs on the southerly side of the pool where there is some room for it, but there would not be a lot. Bates reiterated that the pool is just an amenity for the apartment building and hopes that the residents respect that.

Alternate Member Hangge asked if there was any structure near the pool for water filtration or maintenance equipment. Bates said that the water filtration system will be mostly operated out of the utility room of the apartment building and the water will flow underground to the pool. Hangge asked about the circulation of the water, noting that the water will need to be circulated frequently to keep it clean. Bates said that he was unsure about the circulation of the water, saying it was a question for the company putting in the pool. Bates said that if there were to be a structure, it would likely be on the 15 foot concrete portion of the pool area. Hangge then asked if there was going to be a separate water meter for the pool. Bates said that there would not be, it would all be under the one domestic meter. Hangge asked where the pool drain went. Bates said that he did not know and that was another question for the company putting in the pool. Chair DeLeo asked if the drain would go into stormwater or wastewater. City Planner Williams and Code Enforcement Officer Roberts said that it would have to go into wastewater.

Secretary Geel asked about the fencing around the pool. Bates said that he supplied some information about the fencing. Geel also asked about other security features like the lighting and the gated entrances. Bates said that he will likely impose some operational hours for the pool so residents are not using it at night. McCullough said that there is enough lighting planned for safety purposes. Geel made the comment that the fencing chosen is not able to be seen through, which could pose a safety risk to the people using the pool if they are in need of help or something. Chair DeLeo asked if there were going to be any cameras pointed towards the pool. Bates said that they are planning on having a camera system for the apartment building and will absolutely have a few cameras pointing at the pool.

Chair DeLeo opened the public hearing at 5:43PM. There were no members of the public present. DeLeo closed the public hearing at 5:43PM.

**Public Hearing  
Opened and Closed**

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Vice-Chair Lyles moved to accept the revision to an approved subdivision entitled Stone Park for Applicant/Owner Branch Pond, LLC for a 30' x 60' in-ground pool. Secretary Geel seconded the motion. **The vote to approve the revision to an approved subdivision entitled Stone Park for Applicant/Owner Branch Pond, LLC for a 30' x 60' in-ground pool was UNANIMOUS (5-0).**

**APPROVED**

**4.) Discussion regarding the update to Chapter 56 Unified Development Ordinance (UDO) to comply with the upcoming legal changes in LD 2003.** Changes will involve increased density for affordable housing units in certain areas of the City, updating the definition of 'accessory dwelling unit' to match the State's, and creating a processing system for additions of new dwelling units on a lot (i.e., when does an accessory dwelling unit need to go to Planning Board versus not). This is just a discussion on which articles within Chapter 56 make sense to house these changes and no action will be taken.

**LD 2003**  
**Discussion**

City Planner Williams began by giving a review of the different portions of LD 2003 and describing what each section will do. There are three major areas, one affecting affordable housing density, one affecting single family dwelling units, and a third about accessory dwelling units (ADUs). For the affordable housing portion, there will need to be some significant changes to Ellsworth's ordinance since there is currently no provisions for affordable housing. Williams said that in his conversations with the State, they said putting these standards into the "Performance Standards" article of the UDO would likely be the best way to go. Williams said that there would also need to be changes to the definitions portion of the UDO. Williams then explained that in order to get the density bonus for affordable housing, it must be sold or leased at the Office of Housing and Urban Development's (HUD's) definition of "affordable," and there must be a deed restriction recorded stating such. Williams said that there will also have to be a reference to the parking standards portion of the ordinance, since there are changes in the requirements.

**Introduction**

Chair DeLeo asked about how the median income level is determined and how the income restrictions will be enforced. Williams said that the developer would need to show proof that they are going to be selling/leasing the units for an affordable rate, including references to the "Area Median Income" (AMI). Williams said that there will also be deed restrictions required for each project stating that they will only rent/sell the units at an affordable rate for 30 years. Williams said that if there were any violations after the plan is approved, the Code Enforcement Officer would treat that as any other violation. Vice-Chair Lyles asked why the developers are the ones who have to determine the AMI. Williams clarified that the AMI is determined by HUD, not the developer. All the developer would have to prove is that they are following the HUD standard. Williams said that the AMI is determined by HUD every year and it gets information from the U.S. Census. Lyles asked what region is covered in the AMI, wondering if it is just for Ellsworth or the whole State. The Board clarified that it is not for the entire State, it is determined regionally, likely for all of Hancock County. Lyles made the comment that in Hancock County alone, there is a lot of different income levels. Secretary Geel noted that having such large outliers can affect the final result. Lyles said that those outliers do not really impact the median, however. Williams said that he will get more information on how AMI is calculated and provide it to the Board.

**Discussion**

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Alternate Member Hangge asked about how the growth areas are determined, asking about the language in the legislation which states in the absence of a Comprehensive Plan, the growth area will be determined by an area served with public water and sewer or a comparable system. City Planner Williams explained that the City has a Comprehensive Plan, so the growth areas determined in the Plan will still be used. Williams also made the comment that most of those areas are already served by public water and sewer. Williams also explained that a 'comparable system' is defined in the legislation. Williams said that there is a program through the State that will reimburse the municipality for 90% of their expenses incurred as a result of this legislation. Williams said that he and Assistant Planner Ouellette will keep track of their time spent working on this. Williams also said that they will be working with Rudman Winchell on these changes to the ordinance and will include the costs incurred through that.

City Planner Williams then went on to explain the second portion of the legislation, explaining that it affected the density of single-family dwelling units on a single lot. Williams said that there are some provisions of the legislation that Ellsworth is already complying with, so no changes will be needed in regard to those. He also explained that the number of units allowed will change, since the legislation allows for up to four single family dwelling units on one lot in certain situations. Williams said that he is talking with the State about this provision and will get further clarification on what needs to change in Ellsworth's ordinance. Williams said that property owners would still have to comply with density requirements in this portion of the legislation and will get clarification on how that will work in practicality. Chair DeLeo asked about the designated growth areas. Williams reiterated that the growth areas are defined in the Comprehensive Plan and encompasses most of the 'urban core' of Ellsworth. Secretary Geel asked about the cluster subdivisions and what the spirit of that rule is. Vice-Chair Lyles said that the spirit of the rule is to encourage open space, however that does not happen in reality sometimes. DeLeo made a comment about a previous project that the common area was undevelopable land, stating that it did not seem to follow in the spirit of the rule. Williams provided some context about the previous project and why that open space was considered adequate. Lyles said that he believed that the definition of common space needs to be cleaned up so the open space can be usable land instead of wetlands that are not developable. Williams said that a lot of changes will be needed in the definitions section so that is something that can be addressed at that time.

Vice-Chair Lyles asked about the units that are allowed under the second portion of the legislation, wondering if they could be attached or detached. City Planner Williams said that these units allowed are single-family units, not accessory dwelling units, and they can be attached or detached. Williams said that ADUs are dealt with in the third portion of the legislation. Lyles asked about the dimensions of the units. Williams said that there are no dimensional requirements regarding this portion of the legislation and they would just follow Ellsworth's standards. Williams said that the dimensional requirement that Lyles was referring to was in regard to ADUs and the minimum size for that. Williams said that the legislation defines the minimum size at 190 square feet, and Ellsworth can determine the maximum size, which they already do at 50% the size of the principal structure. Lyles made the comment that 190 square feet is extremely small. Lyles also noted that Williams

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was working with other municipalities and attorneys who will provide more guidance on the dimensional requirements. Williams said that he is going to set up a joint workshop with the Planning Board and the City Council where the State will come in and give a presentation on the new legislation. Williams also said that he will get the attorneys working with him to come and present as well.

Secretary Geel, noting that City Planner Williams is the person present who is most well-versed in this new legislation, asked Williams how much Ellsworth ordinances actually have to change and how much Ellsworth will be impacted. Williams said that he believed that the impact will be relatively minor compared to other municipalities. Williams noted that some zones do not even have density requirements so those will not have to change. Williams said that the biggest changes will come in the affordable housing portion of the legislation and the definitions for all of the new terms involved. Williams also made the comment that the ADU portion will have little to no impact on the Planning Board since those projects typically go through the Code Enforcement Office.

Vice-Chair Lyles asked about how this legislation will tie into any regulation that the City may pass in the future regarding short-term rentals. City Planner Williams noted that the State included in the legislation some language specifically stating that municipalities can still regulate short-term rentals in addition to the new legislation. Andrew McCullough asked about how these additional units would impact the subdivision ordinances. Williams said that how the subdivision ordinance is structured now, any additional units would have to come back to Planning Board for a revision, however that is something that the Planning Board can change during this process and it is definitely a discussion that needs to happen. Williams said that the addition of primary residence is different from an addition of an ADU since the ADUs do not have to follow density requirements and the primary residences do. Chair DeLeo asked if these additional units could be attached or detached. Williams said that they could be either. DeLeo then asked Alternate Member Hangge about how that will be impacted by the fire codes. Hangge said that if the units are attached and there are more than 3 units, then it is required to have a sprinkler system installed. Williams said that any units built like that would have to come before Planning Board and it will go through the fire review process. Hangge asked if there was an existing definition of an ADU. Williams said that there is an existing definition, however it is vague and will need to be updated. Hangge asked if the construction of an accessory dwelling unit would come before the Code Enforcement Office. Code Enforcement Officer Roberts said that it would and explained the current regulations around ADUs. Roberts noted that Ellsworth's standards would be updated to include the 190 square foot minimum size. Lyles wondered where the 190 square foot requirement came from. Williams said that he did not know and would try and get some clarification. The Board then discussed how small the requirement is and noted that it would be very difficult to live in. DeLeo made the comment that there are people living in motel rooms which have turned into short-term rentals that are smaller than 190 square feet, so it is possible. Williams said that although the minimum size is 190, in practicality it will very difficult to fit all of the required elements of a dwelling unit (i.e., sleeping, cooking, and restroom facilities), so there may be very few units that are actually built at 190 square feet. DeLeo asked if there was any requirement that the unit would have to be on a slab or if it can be on a chassis. Roberts said that it can be on a chassis and does

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not have to be on a slab. Roberts said that they are currently approving tiny house units that are on chassis and they are allowed as long as they are immobile. DeLeo said that this could enable developers to just put units on concrete blocks, which would then pose more safety concerns. Roberts said that she does have requirements regarding the chassis or foundation and will continue to review each project for safety concerns.

Alternate Member Hangge asked how much work will be required for this update. City Planner Williams said that it will take a lot of staff time. Vice-Chair Lyles asked if there would be any model legislation to use for reference. Williams said that there was no model legislation, however there are other municipalities who are going through the process simultaneously. Williams said that he is talking with other municipalities, the State, and the City's attorneys about these changes and has a lot of references and resources to rely on. Williams made a comment that this is a good opportunity to look at some definitions and performance standards that may be outdated or vague and could be updated. Williams asked the Board when they would be available to do a workshop with the City Council. Chair DeLeo said to check in with the City Council first and see when they are available.

#### 5.) Staff Comments

#### Staff Comments

City Planner Williams began by explaining that there was a presentation in Bar Harbor about individual site visits to locations that are under review by the Board which brought up some concerns. Williams said that there were some issues in other municipalities with Board members going to sites under review without giving notice to the landowner or even asking permission to access the property. Williams explained that the attorneys giving that presentation recommended that no individual site visits take place at all since it would create a potential due process violation since that visit would not be on the record. After speaking with some legal resources, Williams said that he has determined that as long as the individual visits are disclosed on the public record, there would be no concerns like that. Williams said that he will be creating a form for Board members to fill out if they are going to do an individual "drive-by" site visit. Williams said that he did not recommend actually going onto the property during an individual site visit, but driving by to see the property from the street would be acceptable as long as the form is filled out and the visit is included in the public record when the project comes before the Board for review. Secretary Geel asked for clarification on whether or not they would be allowed on a property without permission if it is under review. Williams said that they are not allowed on the property without permission and he would discourage going onto the property at all. The Board agreed that a "drive-by" site visit is far different than entering the property. Williams said that the form will include the date of the visit, any information obtained during the visit, and if any conversations were had with the public or property owner during the visit. Williams said that he did not anticipate conversations to take place during these visits since they are quick and discrete, however if they do they must be disclosed. Lyles asked about Maine Municipal Association's advice stating that no individual site visits should be conducted. Williams said that this advice is being overly cautious so as to avoid any potential issues, however he believes the solution he has come up with will also avoid those issues. DeLeo said that, as one of the Board members who does occasionally drive by sites, he believes that as long as the Board member does not enter the property that it

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should be acceptable. Lyles said that he also conducts visits like those, but he likes the idea of the form since it gives the City protection if there should be any issues that come up. Williams said that as long as the visit is on the record and the applicant has an opportunity to reply to the information obtained, then there should not be any issues. Alternate Member Hangge also made the comment that if a Board member were to go to the property individually and something is said between the members and the property owners, it could lead to a "he-said/she-said" situation. Williams said that he did not think that any members should be talking with the property owner individually. Williams said that Staff will be working on the form and he would bring it to the next meeting.

**6.) Adjournment**

Vice-Chair Lyles moved to adjourn. Alternate Member Hangge seconded the motion. The vote to adjourn was UNANIMOUS (5-0).

Vote to adjourn at  
6:26 PM

Minutes prepared by: Elizabeth Ouellette, Assistant City Planner.

August 2, 2023  
Date

  
Nelson Geel, Secretary  
Ellsworth Planning Board

*Agendas and minutes posted on the City of Ellsworth's website: [ellsworthmaine.gov](http://ellsworthmaine.gov)*  
A video transcript of this meeting is also available on YouTube.

