

City of Ellsworth
Planning Board Regular Meeting Minutes
Wednesday, October 4, 2023 5:30 PM

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

Five board members present

City Planner Matthew Williams, Code Enforcement Officer (“CEO”) Lori Roberts, and Fire & Life Safety Inspector Canavan were present.

Three staff members present

1.) Call to Order

Chair DeLeo called the meeting to order at 5:30 PM.

Call to Order

City Planner Williams told the Board that Item #4 will not be presented at this meeting and asked for a motion to remove it from the agenda. Vice-Chair Lyles made a motion to delete Agenda Item #4. Secretary Geel seconded the motion. **The vote to delete Agenda Item #4 was UNANIMOUS (5-0).**

***Agenda Item #4 Deleted**

2.) Adoption of Minutes from the September 6, 2023 Regular Meeting.

Adoption of minutes

Vice-Chair Lyles moved to adopt the Minutes from the September 6, 2023 Regular Meeting. Secretary Geel seconded the motion. **The vote to adopt the Minutes from the September 6, 2023 Regular Meeting was UNANIMOUS (5-0).**

ADOPTED

3.) Final Plan Review of a Major Subdivision entitled 59 Franklin for Applicant Cory Weigand and Owner 59 Franklin LLC. The proposal is to convert the existing restaurant into 4 residential units. The subject property is an approximately 0.27-acre lot located at 59 Franklin Street (Tax Map 134 Lot 33) in the Downtown (DT) Zoning District.

59 Franklin Final

Weigand asked if the Board would accept new water and wastewater capacity letters that came in after the submission deadline. Vice-Chair Lyles moved to accept the letters from City Staff regarding capacity for water and wastewater. Member Lyons seconded the motion. **The vote to accept the letters from City Staff regarding capacity for water and wastewater was UNANIMOUS (5-0).** Lyles commented that the language in the agenda item is the old language. City Planner Williams said that was an error on the part of the Assistant Planner and when the motion is made for approval, the correct language will be referenced.

New Information ACCEPTED

Weigand introduced the project. He said that they provided updated site and floor plans. He said that he conducted a trip generation study which showed a significant decrease in amount of trips. He said that there are now only 3 residential units with an extra space being held open. He said that once the definition of dwelling unit is updated, he will build a 4th unit. He said that other than those changes, the plans are substantially similar to the last submission.

Introduction

Vice-Chair Lyles asked if the 4th unit being reserved for a later date would negate the item on the TRT report which states that the dwelling unit is not of sufficient size. City Planner

Discussion

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Williams said that it would. Chair DeLeo asked about the parking lot dimensions and where snow storage would go. He asked if City Staff has ever measured the lot to make sure that 5 parking spots fit as proposed. Williams said that going off of the survey which was provided, the spaces would exceed the requirements. Williams said that he has not gone to the site to measure. The Board went through the parking space dimensional requirements and verified that the plan submitted is sufficient. DeLeo said that his concern is primarily snow storage, particularly when more development happens on that site. Williams said that would be a discussion for when the additional development comes before the Planning Board. Weigand confirmed that there is additional room for parking should the need arise.

Chair DeLeo asked Fire & Life Inspector Canavan about the items on the TRT report regarding fire suppression. Canavan said that he had met with the sprinkler company being used to modify the sprinkler system. He said that the company has confirmed that there is adequate water to support the new use and the existing system is functional. He said that once they have designed the new system, they will provide a new plan for the sprinkler and fire alarm system. He said those plans should cover both phases of development. DeLeo asked for clarification that those plans would be submitted after approval of the project. Canavan said that it would, and also noted that was typically how it was done. Alternate Member Hangge asked if there was going to be any sprinkler work done during phase 1. Weigand said that there would. Canavan said that in his fire letter it says that before the Applicant can receive building permits, he needs to submit the plans for approval. Hangge asked what work was going to be done on the sprinklers in phase 1. Canavan said that it would be the moving of the sprinkler heads. Hangge expressed his concern that there does not appear to be a sprinkler in one of the hallways. Canavan said he had already discussed that with the sprinkler company and that will be changed. Hangge said that the way the plans are laid out, they would be creating a dead-end corridor that residents would exit into. Weigand said that there are already sprinklers in place in the building and that area where Hangge is referring it is sprinkled. He said that the placement of the sprinkler heads would be determined by Canavan once the plans are submitted. Canavan said that the Applicant has the right to have a single means of egress because it is sprinkled. Hangge said that he understood. DeLeo asked about the fire letter. City Planner Williams said that he accidentally omitted it from the packet. Canavan gave an overview of the contents of the letter. He said that it discussed addressing and numbering of the units as well as the sprinkler plan. He also said that he included a letter from the sprinkler company saying that there is enough capacity to handle what will be needed. Williams said that he would provide the letter to the Board electronically. Secretary Geel asked Canavan if the letter encompasses all of the points on the TRT report, Canavan said that it did.

Member Lyons asked if there would be a condition of approval regarding the submission of the sprinkler plans. City Planner Williams said that it could be made a condition of approval if the Board so chooses. Canavan said that it would not be necessary given his letter from the sprinkler company assuring that there is adequate water capacity and they are contracted to create the plans. Lyons asked if no permits would be issued until the plans are submitted. Canavan said that was correct. Lyons said that he doesn't think a condition is necessary. Secretary Geel said that it is typically things of this nature are made conditions of approval. Geel said that he thought good language would be "the submission of a plan

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acceptable to the Fire Inspector.” Canavan said that it would not hurt to include a provision like that since it was a topic of discussion. Geel said that it would not impose a higher burden on the Applicant so it would be good to be as specific as possible so there are no questions down the line. Lyons said that he would be okay with adding it as a condition. Alternate Member Hangge said that he agrees with it being made a condition of approval. Hangge also said that over 50% of the building is being renovated. Williams corrected Hangge, saying that it is only 48% and therefore does not trigger the requirements that it would if it were over 50%. Hangge said he understood.

Chair DeLeo asked about the old survey from Herrick & Salisbury, wondering if it is still current. City Planner Williams said that he had a discussion with the company to see if they still believe that survey is accurate. They said that it is and assisted the Applicant in the printing of the larger plans. DeLeo asked if the company needed to stamp the site plan that was submitted. Williams said that was not a requirement for a structure subdivision so they were not required to stamp it. He said that they did confirm that they are still willing to stand behind the survey and said that it was still accurate. Member Lyons said that made sense because all of the work is being done on the interior of the building.

Chair DeLeo opened the public hearing at 5:48PM. There were no members of the public in appearance. DeLeo closed the public hearing at 5:48PM.

**Public Hearing
Opened and
Closed.**

Chair DeLeo asked if Staff had any more comments. City Planner Williams said that there are some small things that he would like updated for the final plan. He asked that the application no longer mention 4 dwelling units since it is now 3. Member Lyons asked how much the 4th unit was short of the dwelling unit dimensional requirements. Williams said it was about 25 square feet. Alternate Member Hangge asked if the 4th dwelling unit was removed from the site plan. Williams said that it was. Weigand confirmed that he was not planning on building the 4th unit at this time. DeLeo mentioned that the dwelling unit size may be changing and the 4th unit could come back at that time.

Secretary Geel moved to approve the final plan of a subdivision of a New or Existing Structure entitled 59 Franklin for Applicant Cory Weigand and Owner 59 Franklin LLC on the condition that the Applicant provide new and updated fire sprinkler and alarm system plans to be approved by the Fire Life & Safety Inspector before obtaining permits. Vice-Chair Lyles seconded the motion. **The vote to approve the Final Plan of a Subdivision of New or Existing Structure entitled 59 Franklin for Applicant Cory Weigand and Owner 59 Franklin LLC on the condition that the Applicant provide new and updated fire sprinkler and alarm system plans to be approved by the Fire Life & Safety Inspector before obtaining permits was UNANIMOUS (5-0)**

**APPROVED on
condition.**

4.) Preliminary Plan Review of a Major Subdivision entitled 59 Franklin for Applicant Cory Weigand and Owner 59 Franklin LLC. The proposal is to convert the existing commercial structure currently containing 4 commercial units into 3 residential dwelling units. The subject property is an approximately 0.27-acre lot located at 59 Franklin Street (Tax map 134 Lot 33) in the Downtown (DT) Zoning District.

**59 Franklin
Preliminary**

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Item Deleted (See above)

5.) Proposed amendments to Chapter 56 Unified Development Ordinance, Article 4 Shoreland Zoning, Article 8 Performance Standards, Article 11 Parking Standards, and Article 14 Definitions. The proposed amendments will add new definitions and performance standards to come into compliance with the State’s passing of LD 2003. These changes related to affordable housing, accessory dwelling units, and zoning density ratios.

**Proposed
Amendments to
Chapter 56**

City Planner Williams said that if the Planning Board needed another meeting to discuss the ordinances that would be okay with the City Council schedule. Williams said that Article 4 has not changed since the last meeting and the only changes are the removal of language which prohibits 2-family dwelling units. Williams said that Article 11 also has not changed and the only thing added was a provision referencing the affordable housing standards held in Article 8. Williams then directed the Board to Article 14 and the definition of “Dwelling Unit.” Williams said that originally, the Board discussed the definition of “cooking facility” which is in the Dwelling Unit section. He said that definition was updated due to the comments from the last meeting. He said that he removed the ambiguous language to make it clearer. He also added a list of appliances that would constitute a “cooking facility.” He said that he left the list open so other appliances could be included even if not mentioned. He said that there are some appliances that are not considered a cooking facility and those have been mentioned. Secretary Geel asked about the change in format for the definitions, asking if the definitions of “accessory dwelling” was moved into the “dwelling unit” section. Williams said that was correct. Williams said that definitions of “sleeping facility” and “bathroom facility” are not needed since it is fairly self-explanatory. Member Lyons said that there is a definition for “sleeping facility” later on in the ordinance. Williams said that definition is a narrow definition which does not encompass all facilities. Williams said that he could remove the definition or expand on it. Lyons said that there is a subsurface wastewater regulation through DHHS which defines a “sleeping area” and “bedrooms” and suggested Williams look at that definition. Lyons said that it may be a good idea to put a broad definition, but if it were removed, that would be fine as well. Vice-Chair Lyles asked if “studio” needs to be defined. Williams said that it is not currently defined and he believes it would fall under the definition of apartment. He said it would just be a style of apartment just like a 1-bedroom or 2-bedroom. Geel said that he thought the key was the provisions which say “room or area” so it does not dictate that all of these facilities need to be in separate rooms.

Introduction

Discussion

Chair DeLeo asked about the definition of “accessory dwelling unit,” asking about the minimum requirements. City Planner Williams said they would get to that definition in a moment, but he would like to stay on the definition of “dwelling unit” right now. Williams said that he will write a definition for “sleeping facilities.” Secretary Geel asked why the current definition could not be used. Williams said that it is too restrictive. DeLeo said that he thought a definition of “studio apartment” was needed. Williams said that he could define it. Member Lyons explained the legal consequences of not defining it, saying that it would then be left up to the common definition of the word or phrase in question. He also said that they could include a provision at the beginning of the section saying that all terms

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not defined should be interpreted by using a certain edition of a dictionary. Lyons suggested adding it now so that it will help planners and applicants in the future. Vice-Chair Lyles read the common definition of studio and said that, based on what Lyons said, he does not think it needs to be defined. Geel said that the point of a “sleeping unit” is where a person sleeps. He said that he thought the definition contained in the ordinance would encompass the spirit of the definition. Williams asked Lyons if it would be a good idea to reference the State’s definitions for these terms instead of the dictionary. Lyons said that it wouldn’t be a bad idea, but the State’s definition would be subject to change whereas a certain edition of a dictionary would not. He said that he thought it made sense to define all of the facilities contained in this definition. He said that he thought a broader definition of “sleeping unit” would make more sense.

Chair DeLeo then asked about the definition of “accessory dwelling unit.” City Planner Williams said that they will be moving onto that topic now and asked if he could speak to the changes made before any questions. Williams said that the definition was moved into the “dwelling unit” section to make it uniform. He said in terms of dimensions, that he compiled a table of how other municipalities determine the dimensions for an accessory dwelling unit (ADU). He said that there was a large range in allowable sizes for ADUs. He said that typically, most municipalities have the ADU be set at 50% of the primary dwelling unit or smaller. He said that he put a limit of 750 square feet in this definition since it was common in other municipalities. He asked the Board if they wanted to set it larger or if they had any other thoughts. Vice-Chair Lyles asked what the history of size requirements for ADUs. Williams said that he did not know, but he determined the 750 figure because the Assessor said the average principal dwelling unit size was 1,500 square feet in Ellsworth. Alternate Member Hangge said that there does not seem to be any commonality between the requirements of the municipality. He said that would be confusing for developers since it is not uniform. Williams said that the municipalities can determine their own dimensional requirements and that LD2003 only requires a minimum of 190 square feet be allowed. Williams said that the maximum size can be determined by the municipality. Member Lyons said that municipalities have “Home Rule” and can determine their ordinances and the dimensional requirements on their own, they are not required to be uniform with other municipalities. Lyons said that he appreciated the information about the other municipalities and thought they would be helpful in determining what would be best for Ellsworth. Williams said that he thought the maximum size requirement would be helpful for developers to know when they are building an ADU versus a second primary dwelling unit. Lyons agreed with Williams, noting that every municipality is different and they were in the best position to determine what would be best for Ellsworth. Lyons said that he liked how Williams had written the requirements.

Chair DeLeo asked about the minimum requirement for ADUs. He asked why the minimum requirement is 190 square feet when the minimum requirement for a primary dwelling unit is 500 square feet. City Planner Williams said that typically there are less people living in an ADU which is why the requirements from the State are so low. Vice-Chair Lyles said that the ADU is supposed to be subordinate to the primary dwelling unit and one of the ways that it is so is through its size. Member Lyons said that another reason the dwelling unit size is larger is because they do not want to encourage development of

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homes that do not have enough space to live comfortably. Lyons asked what the requirements of a tiny home were. Williams said that it was 400 square feet. Williams also said that in his proposed changes, he has changed the size of a dwelling unit to 400 square feet so that a developer can build a tiny home and it can still be considered a primary dwelling unit. Lyons said that he thought 400 square feet made a lot of sense and is in line with the purpose of LD2003.

City Planner Williams then moved on to discuss the definitions of “hotel” and “motel” which have now been separated. Williams said that he received a comment from a citizen asking if he could include a provision in the definition of “hotel” to say that a hotel cannot meet the definition of a dwelling unit even if it has a cooking, eating, and sleeping facility included. Williams said that he will be adding that to the definition. Member Lyons asked about hotels and motels that are used for long-term stays. Williams said that there was no limitation as to length of stay, only that it cannot be considered a dwelling unit or an apartment complex, it would be considered a hotel. Williams said that this would provide clarity on the definition of the unit, but not limit any use of the hotel or motel rooms. Alternate Member Hangge asked about the ingress and egress provision in the hotel definition. Hangge said that there are some hotels that have ingress and egress from the outside. Williams said that, by definition, they would be considered a motel in that case. Williams said that any existing hotel or motel that has been approved will still be considered a hotel/motel since it was approved under that definition. Secretary Geel said that they are two separate things so it makes sense to now make them two separate definitions. Williams said that under the table of uses, they are still allowed in the same zones, so there will be no difference in reality, only in definition. Hangge said that he would like to see the definition of “hotel” should not say that the individual has to exit the building through the lobby, just mention that the room can only be accessed from indoors. Williams asked if saying “primary ingress and egress” is through the lobby would be sufficient. Chair DeLeo suggested saying “ingress and egress is made within the building.” Lyons suggested the phrase “interior space.” Hangge said that “interior hallway” would be the best way to put it.

City Planner Williams said that there were no other definitions that have changed since the last meeting. Williams then moved on to Article 8 Performance Standards. Williams started with the ADU provision. Williams said that he added the maximum square footage of 750 feet. Williams then said that the density and lot requirements would still be in place for ADUs, however he went back and forth particularly on where to put the setback requirements. He said that Ellsworth already does not require additional setback requirements for ADUs so he thinks that the setbacks should be in their own section followed by the LD2003 requirements. The Board thought that may make the ordinance more confusing. Member Lyons said that there was a statute reference that needed to be updated. He also said that instead of putting specific figures for violations, Williams could just put a broad reference to State penalties so Ellsworth can have more wiggle room with the amount of fines for violations. Vice-Chair Lyles asked about the parking requirements, asking if it is derived from State statute. Williams said that was a requirement of LD2003 and they cannot deviate from it. Lyles then asked about how the short-term rental provisions would be enforced when there is change of ownership of the property. Williams

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said that the requirement will be a part of the Certificate of Occupancy which is held onto by the Code Enforcement Office. Lyles asked if the provision would be on the deed. Lyons said that it would not be, but the file on the property would contain the provision. DeLeo asked if the Assessor could also put the provision onto the tax card to make it more likely that a new owner would be aware of the provision. Williams said that was something he could do. Williams also said that this provision would impact a very small number of ADUs. Lyons asked if the Assessing files are linked to the Code Enforcement files. Code Enforcement Officer Roberts said that they were not. Williams said that every time Roberts gets a building permit, she provides it to the Assessor. He said that the Assessor would be able to know when an ADU is constructed under LD2003 and therefore subject to the short-term rental restriction. Lyons said that he thought this was a good system, and if it does not work out, they can always change it later on. Williams said that he would make sure the Assessor also flags those ADUs so they are noted in several different locations.

Alternate Member Hangge asked if City Planner Williams was still planning on revising the lighting standards. Williams said that he is working on it, but the timing would depend on when they can get further guidance.

City Planner Williams asked if the Board was okay with these changes or if they have any other changes that they wanted made. Member Lyons asked if Williams was working on changing the definitions of "Major Site" or "Major Subdivision." Williams said that would be a very large undertaking and that should be planned for the next fiscal cycle where he can budget for those changes. Chair DeLeo brought up his concerns on the amount of parking downtown. He said that if some of the office buildings are converted to residential units it would interfere with the parking for other businesses. Lyons said that parking could be included in the Comprehensive Plan and that will feed into the ordinance changes. He recommended that the Board wait until the Comprehensive Plan is finished. Williams said that the requirements for parking is fairly lax in the Downtown Zone, but those could be changed if the Board saw fit. The Board discussed the negative impacts of parking and their concerns regarding snow removal if more residents will be parking on Main Street.

Chair DeLeo opened the public hearing at 6:59PM. There were no members of the public in attendance. DeLeo closed the public hearing at 6:59PM.

Member Lyons said that he thinks the ordinances are ready to go to Council with the minor changes that they discussed during this meeting. Lyons said that it would be a good idea to vote on it this evening and send it to Council for November. Member Lyons moved that the ordinances are recommended to the City Council for consideration subject to the minor revisions discussed. Vice-Chair Lyles seconded the motion. **The vote to recommend the ordinances to City Council for consideration subject to the minor revisions discussed was UNANIMOUS (5-0).**

6.) Staff Comments

City Planner Williams discussed the opening for Planning Board members. He said that he was planning on waiting to choose a new member until the November election since those

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results may impact the makeup of the Planning Board. Williams said that he would like to wait until he knows if he has to fill one position or two. He said that Lyons will still be attending the meetings and a quorum will be ensured regardless. Chair DeLeo suggested that Williams just advertise for open positions and not specify how many seats need to be filled. Vice-Chair Lyles agreed with DeLeo's suggestion.

City Planner Williams said that the Comprehensive Plan Consultants did provide a draft of the Inventory & Analysis document that the Steering Committee is currently reviewing. He said that at the October meeting, there will be an in-depth discussion. Williams said overall, he is very happy with the document. He said that the City-wide mailing for the survey will be going out hopefully next week and he encouraged all members to fill it out. Williams said that all rental units are not tracked, there are only addresses tracked. He said that there were 6,500 units that got the mailing which is more than just the amount of tax bills. Vice-Chair Lyles asked about going to grocery stores and asking people to take the survey. Williams said that he has ordered boxes which will be put around town to collect the surveys. He said that some of the boxes will be at local businesses and grocery stores. Williams said that the November Steering Committee meeting will be a workshop on the visioning statement. He said that the survey will be mostly completed at that time. The Board discussed what types of information would be included in the visioning statement.

Code Enforcement Officer Roberts said that they have been conducting interviews for the new Code Enforcement Officer and Deputy Officer. She said that once they are hired, they will start right away. She said that she would like the new Officer to be certified before she leaves in May.

7.) 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
7:12 PM

Minutes prepared by: Elizabeth Ouellette, Assistant City Planner.

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

11/1/23
Date


Nelson Geel, Secretary
Ellsworth Planning Board