MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

These meeting minutes were prepared as a reasonable summary of the essential content of the meeting, not a transcription. In the event that there is a question or dispute about the specifics of this meeting, the official video and/or audio recordings of this meeting shall govern.

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| January 21, 2025 | 7:00 p.m. | Town Hall |

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| Present: | Andrew Gilbert, Chair | Matt Caton |
| | Alton Palmer | Daniel Bodenski |
| | Derek LaVallee | Jim Huebener |
| | Natalie Burns | |

Also present: Maureen O'Meara, Town Planner

**<u>CALL TO ORDER</u>**

Mr. Gilbert called the hybrid meeting (in person and virtual) to order at 7:00p.m., reviewed the procedures for remote participation, and established a quorum.

**<u>Election of Officers.</u>** Mr. LaVallee nominated Mr. Gilbert for Chair and Mr. Caton for Vice Chair. Mr. Bodenski seconded. With no further discussion, the members unanimously voted for candidates Gilbert and Caton with a vote of 7 in favor and none opposed.

Mr. Gilbert called for approval of the minutes of the December 17, 2024, Planning Board meeting. Ms. Burns noted a typo on p. 2, last sentence of the first paragraph and suggested that the word, "a" be replaced with, "of." Mr. Huebener made a motion to approve the minutes and Mr. Bodenski seconded. With no further discussion, the minutes were approved, 7 in favor and none opposed.

Mr. Gilbert called for approval of the minutes of the January 7, 2025 Planning Board Workshop. Mr. Bodenski made a motion to approve the minutes and Mr. Huebener seconded. With no further discussion, the minutes were approved, 7 in favor and none opposed.

**<u>NEW BUSINESS</u>**

**Blue Meadow Final Subdivision Review and Resource Protection Permit.** BRKR LLC is requesting Final Major Subdivision Review and a Resource Protection Permit to construct an 18 unit condominium development located at 90 Ocean House Rd (U26-6 and 7), Sec. 16-2-4, Major Subdivision Review Completeness and Sec. 19-8-3 Resource Protection Permit Completeness.

Robert Metcalf of Mitchell Associates addressed the Board, representing BRKR LLC. He reviewed the changes made to the site plan including the relocation of two of the units, the buffer plan, and the vegetative soil filter system. Mr. Metcalf addressed comments from Town staff. He addressed issues of stormwater fees, postal boxes, open space parking, and stormwater maintenance.

Mr. Gilbert opened the floor for public comment on completeness of the application. With no comment, either in person or virtually, Mr. Gilbert closed the floor.

Mr. Palmer requested clarification on the submission of the stormwater calculations which were not included in the package dated January 6, 2025. Ms. O'Meara stated that the calculations were submitted separately, in paper form. Mr. Palmer expressed concern that the application is not complete without the stormwater calculations. Discussion ensued. Ms. O'Meara clarified that a determination of completeness relies on an assessment of an applicant's effort to provide information in good faith.

With no further discussion, Mr. Huebener made a motion for the Board to consider.

<u>Motion for Completeness</u>

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of BRKR LLC for Final Major Subdivision Review and a Resource Protection Permit to construct an 18-unit condominium project located at 90 Ocean House Rd be deemed complete.

Ms. Burns seconded the motion. With no further discussion, the motion was approved, 5 in favor and two opposed (Palmer & Caton).

Mr. Gilbert asked if there was interest in scheduling a site walk. Mr. Palmer suggested that it would be beneficial for both the Board and members of the public to see the pins marking the relocated units. A date of February 1, 2025 at 8:30 a.m. was set.

Mr. Palmer made a motion for the Board to consider.

Motion to Table (with public hearing):

BE IT ORDERED that, based on the plans and materials submitted and the facts provided, the application of BRKR LLC for Final Major Subdivision Review and a Resource Protection Permit to construct an 18-unit condominium project located at 90 Ocean House Rd be tabled to the regular February 18, 2025 meeting of the Planning Board, at which time a public hearing will be held.

Mr. LaVallee seconded the motion. With no further discussion, the motion passed, 7 in favor and none opposed.

**<u>OTHER BUSINESS</u>**

**<u>Supplemental LD 2003 Amendments.</u>** The Town Council has referred to the Planning Board Supplemental LD 2003 Zoning Amendments, Sec. 19-10-3 Ordinance Amendments Public Hearing.

Ms. O'Meara provided the background for the agenda item as well as a brief summary of the draft amendments in relation to State Law, L.D. 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions."

Mr. Gilbert opened the floor for public comment.

Tom Dunham of 11 Beckys Cove Lane addressed the Board and expressed concern about the impact of the proposed amendments to the Town. He stated that the draft amendments go significantly beyond the State mandates. He stated that the proposed ADU maximum size of 1600 sq ft is inappropriate for established neighborhoods in the Town. He expressed concern about the impact of replacing single house units with multi-family units. He stated that the Board is not considering the ramifications of the changes on the Town.

Kevin Justh of 9 Spruce Lane addressed the Board. He identified that he has served on the Board of Zoning Appeals for 8 years and served as Chair of the Housing Diversity Study Committee. He stated that his comments represent his views as a member of the community. He expressed support for draft amendments that comply with State law.

Timothy Reiniger of 40 Bellfield Lane addressed the Board. He stated that the Town Council had previously rejected language in the draft amendments. He distributed copies of a document from the September 13, 2023 Ordinance Committee. He presented an illustration of the potential effects of the amendments as they pertain to the development of small multifamily units. He concluded by saying that the amendments are legally flawed and should be considered within the context of policy as opposed to a State mandate.

Eliza Matheson of 270 Fowler Rd addressed the Board virtually. She expressed support for the draft amendments which will allow citizens to be flexible with their property, create ADUs and keep aging family members closer.

Mr. Ed Libby, speaking from Mark Mauer's virtual connection from Mitchell Rd, addressed the Board. He expressed support for the amendments. He stated that the change in the maximum ADU size will allow for both greater housing diversity at neighborhood scale and flexibility for a variety of uses.

Cynthia Dill of 1227 Shore Road addressed the Board virtually. She stated that the draft amendments are "too much." She stated that the Town could offer a creative housing solution on the public land at Gull Crest.

With no further comment, either in person or virtually, Mr. Gilbert closed the floor for public comment.

Ms. Burns referenced Section 19-7-7 of the Condominium Act, subsection B-8, and questioned whether an accessory dwelling unit can be separately owned. She requested an opinion from the Town Attorney.

Mary Costigan, Town Attorney, addressed the Board. She stated that the language cited by Ms. Burns describes a duplex and allows for the creation of multifamily units. She pointed out that the difference between an accessory dwelling unit and a dwelling unit is land area. Extra density is not required for an accessory dwelling unit.

Mr. Gilbert expressed reservations about the language allowing separate ownership of an ADU. Ms. O'Meara clarified that the language is designed to allow for separate ownership of an ADU on an existing parcel.

Mr. Palmer stated that the provision for allowing separate ownership of an ADU would allow a property owner to downsize by constructing the ADU and selling the primary structure. He supports opportunities for property owners to age-in-place and remain in the community while increasing housing options.

Mr. Huebener agreed with Mr. Palmer's comments and noted that the language has been vetted since it was adopted in November, 2023.

Mr. Bodenski expressed similar support of the language.

Mr. LaVallee requested clarification on language in the January 21, 2025 Memorandum on the Supplemental LD 2003 Amendments specific to the maximum size on an ADU. Ms. O'Meara clarified that the recommended language is broad and minimizes the need to create exceptions.

Mr. Palmer thanked Town Staff for their due diligence in the proposed amendments. He requested clarification on circumstances requiring subdivision review, given that the language in the proposed amendments waives site plan review for creation of four or fewer units on a single lot. Mr. Palmer requested further clarification of the size requirements of both primary and accessory structures. Ms. O'Meara stated that, in the end, units must conform to requirements, and Subdivision review would still apply. Mr. Palmer expressed support for the ADU maximum size requirement of 1600 sq. ft., noting that this provides flexibility for property owners.

Discussion ensued on the notation of dates in the red-lined amendment package.

Mr. Huebener referenced a table illustrating the number of lots that would qualify for the addition of an ADU. Ms. O'Meara clarified that the illustration pertains to small multifamily units. She stated that there are very few lots that have the minimum lot area required for multifamily development. She further stated that other constraints would preclude further development on individual parcels.

Mr. Huebener made a motion for the Board to consider.

Motion for the Board to Consider:

BE IT ORDERED that, based on the materials submitted and the facts presented, the Planning Board recommends the Supplemental LD 2003 Amendments, as discussed in the January 21, 2025 Planning Board meeting, to the Town Council.

Mr. LaVallee seconded the motion. With no further discussion, the motion passed, 7 in favor and none opposed.

**Public Comment.** Mr. Gilbert opened the floor for public comment.

With no comment, either virtually or in person, Mr. Gilbert closed the floor.

Mr. Caton made a motion to adjourn the meeting. Mr. Palmer seconded. With no further discussion, the motion passed, 7-0.

The meeting was adjourned at approximately 8:43 p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary