

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

August 20, 2024

7:00 p.m.

Town Hall

Present: Jonathan Sahrbeck, Chair
Matthew Caton
Daniel Bodenski
James Huebener

Derek LaVallee
Alton Palmer
Andrew Gilbert

Also present: Maureen O'Meara, Town Planner

CALL TO ORDER

Mr. Sahrbeck called the meeting to order at 7:00 p.m. Mr. Sahrbeck noted that the Zoom connection for virtual participation would not be available for tonight's meeting.

Mr. Sahrbeck called for approval of the minutes of the June 16, 2024 Planning Board meeting.

Mr. Huebener moved to approve the minutes and Mr. LaVallee seconded. With no further discussion, the minutes were approved, 6 in favor, 1 abstention (Gilbert) and none opposed.

Ms. O'Meara stated that the minutes of tonight's meeting would be prepared by the Minutes Secretary from the CETV videotape.

NEW BUSINESS

Blue Meadow Subdivision and Resource Protection Permit. Rob Barrett is requesting 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.

Mr. Sahrbeck asked Ms. O'Meara to explain the process for a major subdivision review. Ms. O'Meara explained that the number of units in the proposed development requires a major subdivision review, as defined in the Town Subdivision Ordinance. The process involves a preliminary review of the application by the Planning Board, to include completeness of the application, site visit, and public hearing. The preliminary review process is designed to provide the applicant with direction on Town requirements for approval. Upon preliminary approval by the Planning Board, the applicant would need to apply for final review. The elements of the final review process mirror those of the preliminary review. The entire process would likely transpire over many months, if not years.

Robert Metcalf of Mitchell & Associates, addressed the Board, representing the applicant BRKR LLC which includes Rob Barrett, Karina Napier-Anderson, and Bennett Morris. Mr. Metcalf provided a comprehensive overview of the preliminary plans for the condominium development proposed on a portion of a previously approved subdivision (2008). Mr. Metcalf's presentation included review of abutting parcels, nine duplex condominium units, wetland areas, open space, preliminary landscaping features, utilities, traffic assessment, trails, easements, and requested waivers.

Discussion ensued on both the need for a high intensity soil survey and the impact of exposed ledge on the allowable density of the project. Mr. Metcalf clarified that the applicant intends to complete a geotechnical survey for the purpose of understanding the improvements necessary for the construction of the duplex units. He stated that the applicant is requesting a waiver for a high intensity soil survey because of information provided in a Stormwater Summary letter submitted in 2004 by Project Engineer Andrew Morrell. The 2004 summary letter was recently reviewed by Town Engineer, Stephen Harding. In a letter to the Town Planner dated August 13, 2024, Mr. Harding stated that he “agreed conceptually” with the stormwater approach described in the letter. Mr. Metcalf was advised that the Board may not be satisfied that the preliminary application may not be deemed complete without the high intensity soil survey.

Mr. Metcalf informed the Board that the applicant did not complete a community impact analysis for the project because this was not discussed during the Workshop for the project. Discussion ensued regarding the value of this analysis for meeting the conditions necessary for preliminary approval of the application.

Matthew Ahlberg, architect with Barrett Made, addressed the Board to provide an overview of the architectural features of the condominium units.

Mr. Caton requested clarification on the ownership of the right of way to the development as well as the open space parcels delineated on the plan. Mr. Metcalf noted that the current plan includes open space parcels which were deeded to the Town at the time of the 2008 subdivision approval and appear on the current plan for the purpose of illustrating connectivity between both the previous and current open space and trails.

Mr. Sahrbeck asked the Board members to hold additional questions on the issue of completeness and opened the floor for public comment.

Douglas Babkirk of 25 Westminster Terrace addressed the Board and identified himself as President of the Canterbury on the Cape Condominium Association. On behalf of the Canterbury community, he described three areas of concern about the proposed project. Specifically, the community is interested in understanding the applicant’s plans for an adequate vegetative buffer between Canterbury and the proposed project, the applicant’s request for a trail easement on the Blue Meadow property, and the impact of any blasting that will be necessary to construct the condominium units.

Julie Barnes of 84 Ocean House Rd addressed the Board seeking clarification on the open space parcels as well as the sewage easement that has been requested by the applicant for placement of the sewage lines.

With no further comments from the public, Mr. Sahrbeck closed the floor.

Mr. Caton requested clarification from Mr. Metcalf on both the spacing of the duplex units and the evidence presented for demonstrating financial capacity. Ms. O’Meara stated that BRKR LLC has asserted that the entity holds the necessary assets for completion of the project.

Mr. Gilbert requested clarification on the references to Phase I of the 2008 subdivision project and questioned whether the current project requires two, separate applications, one requesting an

amendment to the previously approved plan and another for the development of the current, Phase II, parcel.

Ms. O'Meara explained that the current proposal straddles the 2008 plan. The 2008 plan illustrates a parcel that was divided into individual lots, a commercial building, and a large plot of land in the rear of the plan that was denoted as "Phase II." The 2008 plan includes access to the rear plot. Ms. O'Meara further clarified that the current proposal includes the Phase II plot as well as lots created in 2008 and includes a request for a sewer easement through open space that was deeded to the Town in 2008.

Mr. Palmer stated that the materials presented to the Board appear to be an amendment to a previously approved subdivision plan that presumably included a full plan set and net density calculations. He also questioned whether there should be two applications.

Ms. O'Meara stated that, in terms of density, the only area of the proposed plan requiring density calculations is the development of the condominium units.

Mr. Metcalf provided a brief overview of the 2008 subdivision plan, stating that the plan included only a conceptual plan for cluster housing on the Phase II lot. The current plan does not create any physical changes to the 2008, Phase I, portion of the plan; the open space, lots and right of way remain intact. The current plan includes a request for both sewer and drainage easements for the purpose of reducing construction costs. The focus of the current plan is the development of the Phase II lot.

Mr. Palmer expressed concerns about the impact of the utility easement on the net density calculations for both the original subdivision plan and the current plan. Discussion ensued, to include whether the concerns raised were beyond the scope of determining completeness of the application.

Mr. Gilbert asked how the Board will account for the subdivision changes to the 2008 plan ("Bothel Meadows") if a new owner assumes the Phase II parcel for the development of "Blue Meadow." Discussion ensued, to include a reference to prior projects that involved the reconfiguration of previously approved subdivisions. Ms. O'Meara acknowledged that the reconciliation of the 2008 plan would be necessary; however, this work would occur later in the approval process for the Blue Meadow subdivision.

Mr. Palmer expressed concern that the application does not meet the conditions of completeness with regard to vernal pools, financial capacity, and net residential calculations. Mr. Metcalf stated that the information provided for these areas of concern would be reviewed further by the applicant.

Mr. LaVallee requested clarification on the applicant's ability to complete the proposed project. Rob Barrett, applicant and owner of Barrett Made, addressed the Board to provide an overview of recent projects for Saddleback Mountain, the Town of North Yarmouth and a variety of residential homes. He noted the technical challenges that were addressed for each project. Mr. Barrett also addressed Mr. Palmer's concern regarding financial capacity, clarifying that the developer plans to build and sell one half of the development before building and selling the second half.

Mr. Sahrbeck acknowledged the open communication between Mr. Barrett and the Canterbury on the Cape property owners and expressed appreciation for this effort.

Mr. Bodenski asked Ms. O'Meara for clarification on past projects that included a community impact analysis. Ms. O'Meara replied that these analyses are typically completed for larger developments.

Mr. Huebener stated that he felt the application included all the information necessary to deem the application complete.

Mr. Caton asked Ms. O'Meara for her opinion on whether material submitted by an applicant should be accepted and deemed by the Board as adequate. Ms. O'Meara stated that information submitted may include all the necessary components of a completeness checklist; however, the information may not be adequate for approval of a project. Discussion ensued on the additional information that could be requested of the applicant within a substantive review of the project.

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

Motion for Completeness

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of BRKR LLC which includes Rob Barrett, Karina Napier-Anderson, and Bennett Morris, for Major Subdivision Review and a resource Protection Permit to construct 18 condominiums located at 90 Ocean House Rd be deemed complete.

Mr. Huebener seconded the motion. With no further discussion, the motion passed, 6 in favor and one opposed (Palmer).

A site walk was scheduled for September 4, 2024 at 5:00 p.m. Mr. Sahrbeck noted that members of the public are encouraged to attend.

Mr. Sahrbeck made a Motion to Table with Public Hearing.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of BRKR LLC which includes Rob Barrett, Karina Napier-Anderson, and Bennett Morris, for Major Subdivision Review and a resource Protection Permit to construct 18 condominiums located at 90 Ocean House Rd be tabled to either the September 17, 2024 meeting of the Planning Board or the date upon which the applicant submits material for preliminary approval of the Blue Meadow project.

Mr. Gilbert seconded the motion. With no further discussion, the motion passed, 7-0.

OTHER BUSINESS

Public Comment – Mr. Sahrbeck opened the floor for public comment. With no comment, Mr. Sahrbeck closed the floor.

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

The meeting adjourned at approximately 9:55 p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary