



Final Report
Review of Multifamily Zoning Proposals
Town of Cape Elizabeth

Prepared for:
The Town of Cape Elizabeth
Planning Department

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Introduction

As part of its effort to develop zoning ordinance amendments to implement the Town's Comprehensive Plan, the Cape Elizabeth Planning Board and Maureen O'Meara, the Town Planner, developed preliminary concepts to allow for multifamily housing in the RB and RC zoning districts. The Town asked Planning Decisions to review the draft proposals and to provide feedback as to whether the proposals, if enacted, would be economically feasible for the development community. To provide the Town with feedback, we prepared a summary of the zoning proposals and asked two developers who are active in the construction of multifamily housing to review the proposals and to provide us with their reaction to the proposals and to suggest ways that they could be improved. We then took the developer feedback and prepared a summary of their comments and suggestions. Then based on that summary, we prepared some ideas for how the Planning Board could revise the draft amendments to make them more useable to the development community. This report documents the various steps in the process.

Initial Planning Board Proposals

To provide the developers with something that they could easily review and respond to, we took the draft proposals prepared by Maureen and the Planning Board and prepared a summary overview. The following overview was provided to the developers:

Cape Elizabeth is looking at creating provisions in their zoning ordinance that would allow multifamily housing in both their RB and RC Districts. Currently townhouse –style units with separate entrances are allowed with a maximum of 4-5 units per building but conventional multifamily housing with interior entrances is not allowed except in the Village Center.

There are a handful of larger, vacant parcels in the RB and RC Districts that may be appropriate for this use and might be available for development. Generally, these parcels are served by public water but public sewer would need to be extended to the sites. Typically, connection to the existing sewer system is available within a 1000-2000'.

Here is an outline of the basic elements of the proposal to allow multifamily housing in the RB and RC Districts:

1. Multifamily is a permitted use in both the RB and RC Districts
2. Since multiplex housing and eldercare facilities both require site plan review, a multifamily development proposal will also be subject to site plan review
3. The minimum lot size for a multifamily development will be 80,000 SF in the RB and 5 acres in the RC since those are the requirements for multiplex housing. This is gross lot area not net residential area

4. The density requirement for multifamily housing will be 15,000 SF of net residential area per unit in the RB and 10,000 SF of net residential area per unit in the RC or almost 3 units per net acre in the RB and a little more than 4 units per net acre in the RC District. Most of the land that is potentially developable for multifamily housing is located in the RB District
5. The calculation of net residential area requires the following deductions from the gross area:
 - a. Parking, streets and access – 15% of the lot or actual
 - b. Isolated portions of the site
 - c. Floodways or coastal high hazard areas
 - d. Waterbodies
 - e. Unsuitable land – RPI Critical Wetland District, slopes >25%, exposed bedrock
 - f. Easements or rights-of-way
6. A project will need to utilize public sewerage to achieve these densities
7. All dwelling units will be treated the same for density purposes. A small one-bedroom apartment will be considered a dwelling unit for density
8. There will be no density bonuses for the transfer of development rights including for development rights from agricultural land or for senior housing
9. The maximum building height as measured per the current definition (highest point of flat roof or midway on sloped roof) will be increased to 50 feet
10. The minimum setbacks from all property lines will be 20' plus 1' for each foot of height in the RB District and 10' plus 1' for each foot of height in the RC District. Therefore, a 30' tall building will require a 50' setback in the RB and 40' in the RC while a 50' tall building would require 70' in the RB and 60' in the RC
11. At least 40% of the gross area of the site will have to be set aside as common open space. If the building is more than 4 stories, the percentage of open space shall increase 5% for each floor over 4. At least one third of the open space shall be developable land per the net residential density calculation. There is no expectation that the open space will be improved beyond things like trails and there will be no requirement for recreational facilities (but a developer could chose to provide them)
12. A multifamily development will need to provide off-street parking as follows:

a. One bedroom unit	1.5 spaces
b. Two-bedroom unit	1.75 spaces
c. Three or more bedroom unit	2.00 spaces

Developer Feedback

We provided the two developers with the overview and asked them to address two primary questions:

1. Is there anything in the proposal that makes this essentially a waste of time for the Town – anything that will simply scare developers away from even considering multifamily housing?
2. What could be done to make it more likely that a developer would look at doing a multifamily project in Cape Elizabeth?

Each developer provided detailed feedback on the draft proposal including item-by-item responses to the overview. We took that feedback and prepared the following summary that was provided to Maureen and the Planning Board.

In this memo I have summarized their feedback both pro and con on the elements of the proposal. In addition, I have provides some “analysis” of their feedback. At the outset, it is important to remember that they are developers who are in business to make money therefore they look at local zoning requirements from that perspective – do the rules allow me to develop a profitable project with minimum risk. That perspective needs to be considered when looking at their feedback.

Overall Response to the Proposal

I would summarize their feedback on the proposal as “lukewarm”. While the basic approach is fine, both raised concerns about the density at which multifamily housing would be allowed. One developer responded “Not a total waste of time but don’t expect big things from it.” He went on to say that he probably wouldn’t pursue a development but that “. . . some high-end condo developer probably will.” The other developer noted “If you give a developer certainty (making it a permitted use with clear design guidelines) and really good density (that can actually fit on the site) – that should attract interest of developers regardless.”

A second theme in the feedback is that the combination of the requirements (lot size, setbacks, sewer connection, etc.) will likely result in large buildings that “sit out there on their own” in the middle of a parcel and it will make it hard to integrate multifamily housing into the surrounding pattern of development. This is seen as a policy choice for the Town but runs counter to what many communities are trying to do.

Specific Concerns about the Proposal

Both developers provided feedback on the various elements of the proposal as outlined in the overview. Here is a summary of those concerns:

1. **Minimum Lot Size** – Both developers raised concerns about the 80,000 SF and 5 acre minimum lot size provisions. They noted that this forces any multifamily development into large projects and eliminates the possibility for smaller scale projects that creates more of a nice streetscape with different buildings along the street.

2. **Density** – The primary concern of both developers was the proposed maximum

density and whether this would permit a financially viable project to be developed. A sense of the comments was that a reasonable density allows developers to do more. As one said in the feedback “You can be more creative with design – more affordability, more amenities, more quality open space, more tax value, etc.” Both developers suggested that the Town consider ways to create incentives that would allow higher densities for projects that the Town wants to encourage. One suggested including density bonuses for senior housing, for affordable senior housing, and for whatever the Town would like to see. He also supported allowing for the transfer of development rights to multifamily housing. The other suggested treating small dwelling units as fractional units for density purposes similar to what Scarborough and Topsham do.

3. Public Sewers – The idea of having to connect to the public sewer system to develop at a higher density was generally acceptable but it was noted that there might be some options to use new high tech disposal systems if connecting to the public sewer system is cost prohibitive.

4. Development Scale – One developer raised the idea that the combination of the minimum lot size requirements and the cost of extending public sewerage along with the other factors, creates a situation that will result in only a large complex being able to be built. Small-scale projects will not be feasible. He suggested focusing on the quality and design of any project more than trying to minimize what can be built.

5. Building Height – One developer noted that the 50 foot height limit probably translates into 4 floors which is OK but suggested increasing the maximum height to 60’ if parking is located under the building.

6. Open Space – One developer suggested that the open space set-aside is OK but that the focus should be on the quality of the open space not the quantity. He also suggested requiring the developer to do “something nice” with it.

7. Setbacks – One developer suggested that this goes against “all of the trends in planning/smart growth”.

Other Feedback on the Proposal

Most of the other elements in the proposal outline were seen as being reasonable. There was a sense that the proposal should focus on producing well-designed, quality developments. The design standards are seen as a key element to assure that any multifamily development is a quality project – “do a really good job with Item #13 so you can ensure the development looks good. The more specific/objective –

the less wishy washy/subjective – the better the developer and designer know what they should design and present”.

Issues Raised by the Feedback

I think the feedback raises two fundamental policy questions for the Town that we should resolve before we work on fine tuning the proposal and converting it into ordinance language. Here they are:

1. What type of multifamily housing does the Town want to try to accommodate through the ordinance amendments? The developers (or at least one of them but probably both of them) feel that the combined impact of the various provisions will mean that only a large, free-standing project that is set well back from the road (and adjacent properties) will be able to be built – sort of a free-standing building in the middle of a parcel surrounded by open space model. They raise the question of whether the Town wants to also allow for multifamily development that is more in character with the Town – smaller projects or buildings, laid out in more of a “village pattern” with buildings located closer to the road/street, and more connected to the adjacent neighborhood. This is a fundamental policy question that emerges from their feedback.

2. Should the Town create some density incentives that would encourage multifamily development while meeting other Town objectives? Here are some options that could be considered:

- a. Allow development rights to be transferred from agricultural land under the current TDR program and be used to increase the density of multifamily housing in both the RB and RC Districts. This approach might create interest in someone trying to purchase the development rights off of agricultural land and at the same time, increase the feasibility of multifamily development.
- b. Creating a density bonus for multifamily development that preserves a larger percentage of the site as protected open space.
- c. Creating a density bonus or lower lot area requirement for housing that is limited to occupancy by seniors (62+)
- d. Treating small dwelling units with 1 or 2 bedrooms as a fraction of a dwelling unit for density purposes. For example, Scarborough treats small one-bedroom units as half a dwelling unit and a small two-bedroom as two-thirds of a unit. This could encourage the construction of a broader range of housing types including units that might appeal to different demographic groups.

In addition to these two broad policy issues, the feedback suggests that we should review the following elements of the proposal:

1. Minimum Lot Sizes – Do the 80,000 SF and 5 acre minimum lot size provisions make sense in terms of the Town’s objectives?
2. Building Height – Should the maximum building height be increased if all or most of the ground floor under the building is used for parking so there could still be four habitable floors?
3. Setbacks – Should the setbacks be reduced especially the front setback on interior streets or on existing town roads where the established setback pattern is less than the draft standard?
4. Design Standards – What are the key elements that need to be addressed to make the building compatible with the adjacent neighborhood and be a “good-looking” building?

Suggestions for Possible Revisions to the Draft Amendments

As a follow-up to the summary of the feedback from the developers, we suggested a number of ways that the zoning proposals for multifamily housing could be revised to improve them and enhance the likelihood that the development community might consider building multifamily housing in the community if the amendments are adopted. These suggestions included:

1. Keep the basic density as proposed but provide a variety of ways a developer can get a higher density - see 3, 4 and 5 below.
2. Reduce the minimum lot size to say 3 or 4 times the per unit lot area requirement so the opportunity is there to do a smaller project or buildings on separate lots (sometimes developers like to do this for financing or future sale of buildings - for example, the OceanView retirement community has a number of separate lots with different ownership interests to allow individual buildings to be financed through different sources each of whom wants a lot to go with the building).
3. Consider counting small dwelling units as a fractional unit for density purposes similar to Scarborough and some other communities as an incentive to do smaller and thus less expensive units. Typically small units have very limited impacts on the town and the neighborhood and can help diversify the population.
4. Allow development rights to be transferred from agricultural land to multifamily housing in both the RB and RC to increase the maximum density by up to 50% - if

you can build say 20 units by right, you could build up to 30 units with development transfer. This might accomplish two purposes.

5. Provide density bonuses for enhanced open space along the following lines:

- a 10% bonus if more than 50% of the site is protected open space
- a 25% bonus if more than 60% of the site is protected open space
- a 25% bonus if at least 50% of the open space will be open to public access/use

So if you set aside 60% of the site as open space and allowed public access on at least 30% of the site you'd get a 50% density bonus.

6. Include a provision for an alternative front setback along an existing public street that is the same as for a single-family home if the building is no more than 3 stories and has a residential design and maybe 25 or 30 feet from an interior street or private way.

7. Allow for smaller side yards within a development and for reduced side setbacks adjacent to the perimeter of the development if there is a residential design (as in 5).

If you look at how an ordinance with these provisions would play out and say that the base density is 3 units per net acre, a developer who did small units might be able to do 4 or 4.5 units per net acre. And then if they transferred development rights from agricultural land, they could go to 6-7 units per net acre. And if they got an open space bonus, they might get up to 8-10 small units per net acre with preserved agricultural land and lots of open space with public access to at least some of it. If this is too high, the compounding of the bonuses could be capped - Scarborough does this. They allow for 2 or 3 different density bonuses but say that you can only increase the density by a maximum amount that is less than the cumulative sum of all of the individual bonuses. This approach has the advantage of giving the good/smart developers the opportunity to get a higher density by doing what the community wants while providing some protection from the builder/developer who just wants to build what is allowed.

Examples of Multifamily Housing

To help illustrate the design concepts that will be included in the ordinance, we supplied photos of two multifamily projects, a multifamily senior rental housing project in Topsham and a larger multifamily condominium development in Kittery.

TOPSHAM

This is a sketch of the River Landing senior housing project now under construction in Topsham. The building is located on Elm Street in the National Register Historic District. The building was designed to fit in with the neighboring buildings some of which are large, historic single-family homes.



Kittery

The Shepard's Cove development in Kittery was built about 10 years ago and consists of a mix of multifamily buildings and cottages with one or two dwelling units. The parking for the multifamily units is located underneath the building.



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