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February 26, 2007

Edgecomb Planning Board
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*Re: Midcoast Cohousing proposal on River Road:
Building Permit Applications to convert four (4) structures into four (4) separate single-family dwelling units*

Dear Planning Board Members and John:

I have reviewed with my clients your (John's) letter dated February 7th. I write now to try to get some additional clarification. I am assuming that the Board would be referring these questions to John, so I have written this letter to both the Board and John.

Regarding the potential conversion of the four outbuildings, my clients have been working in good faith with Town officials for some time in an effort to determine what they could properly do without triggering the need for subdivision review.

John's letter has clarified that site plan review is not required here, but the letter concluded that subdivision review was required, given the current elements of my client's plans. This is where we need some clarification, because my clients had specifically made their current proposed plans based on what they understood to be the rules that applied to the conversion of such outbuildings. Several of my clients had previously had several conversations with the Town Code Enforcement Officer (CEO) in which they had posed a variety of questions, and they had been given answers on which they then based their plans. Some of this history is recited in Judith Burke's recent letter to the Planning Board, dated February 12, 2007, a copy of the text of which is attached hereto, for your easy reference. Some of this history is also shown in correspondence (primarily e-mails), between my clients and the CEO. For your information, Grace Goldberg will presently forward to you copies of the most pertinent items of this correspondence. Moreover, my clients understood that the CEO's information and advice was based on his consultations with MMA.

Thus, my clients had developed specific plans for their conversion of these buildings based on statements and information given to them by the Town CEO.

Now, having arrived, by a somewhat circuitous route, back in front of the Planning Board, and with the Board having asked questions of the Town's lawyer, we are apparently being told that something in my client's plans has caused the Town's lawyer to conclude that subdivision approval is necessary.

In this vein, please let me make a couple of comments. **First**, as to the first criterion cited in John's letter (see top two lines of p. 3 of his letter, and bottom paragraph of p. 3), I would suggest that this statutory language ("division of new structure or structures") does not apply here, because there is no division of new structure or structures. Apparently John is taking the view that these four structures are "new structures,"¹ but even if that were so, there is no division of any of them, so I don't see how that statutory criterion would apply.

Second, if the first criterion does not apply, then, for any subdivision review to be necessary, the second criterion cited in John's letter would need to apply (*i.e.*, "the construction or placement of 3 or more dwelling units on a single tract or parcel of land"). If the building units already exist, how can there be a "construction or placement" of them, within the meaning of the statute? In this connection, my clients had previously asked the CEO what they could do with these existing outbuildings, without the need for subdivision review:

- Could they move them?
- Put a basement under them?
- Add a porch or a deck (either inside or beyond the existing footprint of the building)?
- Could they change the roof lines?
- Could they replace unsafe and unsound portions of the structures? (For example the cement block walls of the greenhouse are crumbling, and there are portions of the roofs of some of the structures that are rotten or unsafe or do not conform to currently accepted codes, *e.g.*, the use of non-safety glass in the roof.)
- Could they add windows and doors?
- Could they add stairs and ramps for life safety and handicap accessibility?

And my clients understood the Town CEO to have answered "yes" to all these questions. That

¹Title 30-A M.R.S.A. §4401, 5, reads as follows:

5. New structure or structures. "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

Thus, if there were an expansion of an existing structure, I would agree that the expanded structure would be a "new structure," but that does **not** create a **division** of that structure.

is, yes, they could do these things **without needing subdivision review**, and indeed, he said he was not concerned with the amount of living space as long as the building was less than 35 feet high.

If these answers are now being revised, we need to know exactly what it is that is triggering the need for subdivision review, since my clients did not intend to propose something that would need subdivision review. Is there something that would now cause the town to say there was a “construction or placement of 3 or more dwelling units on a single tract or parcel of land”?

Also, if there is now some limitation on gross living area (GLA) based on the existing structure, they would like to know:

- Can they adjust the footprint and exchange a portion of the footprint for the same amount of GLA (*e.g.*, by adding a loft or second floor)?

It is my understanding that the CEO told them that, to avert the need for subdivision review, they would need to use the existing walls of the existing buildings (which they plan to do), but that otherwise, they could do any of the other options about which they had inquired (*i.e.*, moving a building, putting a basement underneath one, putting a deck or a porch on, adding windows and doors, stairs and ramps, etc.). If this is not so, we need clarification at this point as to what, if any, elements in the proposed plans are, in the Town’s view, triggering the need for subdivision review. Based on what my clients had learned in prior conversations with the Town CEO, it was their **intention** to submit a proposal which would **not require subdivision review**. They thought that they had a sufficient understanding, from the statements given to them by the CEO, so that their plans for the conversion of these four buildings would not require subdivision review.

Note also that they asked the CEO the following two questions which were answered in the negative, and, since prior answers are being reviewed here (and perhaps revised), they would like final answers to these questions:

- Can they replace the existing structures with others that would be more energy efficient? (They asked this in part because one of their members had hired a builder to consult on the conversion of the garage in which she was interested, and he said they would be better off if they tore down the existing structures and carted them off and started from scratch than to try to rehabilitate what is there.)
- Can they physically divide the large garage into two separate buildings, each of which would be a single family dwelling?

Lastly, regarding the potential for moving buildings, **if** they can not move them to totally different locations on the property (although they see nothing in the ordinance to prevent that), can they move slightly, keeping them roughly in the same location, but reorienting them, to set them back some from the road and to improve the orientation to take advantage of solar energy?

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John B. Shumadine, Esq.

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Could you (Board members and John) please review this matter, and provide us with some clarification, so that my clients can know exactly what it is they can do with the existing buildings **without** triggering the need for subdivision review?

We appreciate your assistance here. Thank you very much.

Sincerely,

Eliot Field

Enclosure

cc: Client