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February 7, 2007

Erin Cooperrider, Chair
Planning Board
Town of Edgecomb
P.O. Box 139
Edgecomb, ME 04556

RE: Midcoast Co-Housing Building Permit Applications

Dear Erin:

On or about December 23, 2006, Midcoast Cohousing submitted applications for building permits to relocate and then expand four existing structures on its property in the Town of Edgecomb. The Planning Board has asked this firm to offer an opinion about the Midcoast Cohousing project. Specifically, although the Board notes that the project requires building permits, the Board has asked whether the project also requires subdivision and site plan approvals. As discussed below, the Midcoast Cohousing project requires subdivision approval, but does not require site plan approval before the building permits may be issued.

FACTS

Midcoast Cohousing owns property located within the Town of Edgecomb. That property contains several buildings, including a main building that had been used as a single family residence, a cottage that also had been in single family use, and a number of associated outbuildings. It is not clear from the current record when the structures were created, though it is likely that all of the structures were constructed before 1988.

In its present application, Midcoast Cohousing proposes alterations and expansions to four of the outbuildings on the property. The structures at issue in the Midcoast Cohousing project are the south garage, the potting shed/greenhouse, the east garage, and the north garage. Midcoast Cohousing's plans call for the construction of a single family dwelling unit within each outbuilding. None of those outbuildings is currently used as a dwelling unit.

In addition to converting the outbuildings into single family dwelling units, Midcoast Cohousing intends to move all of the four buildings involved to completely new locations. As part of the move, the footprints of each outbuilding will be enlarged by approximately a foot in each direction. The

plans also call for the addition of decks and porches onto each building. Those decks and porches range from 60 to 400 square feet in size. Finally, the roof lines will be changed significantly. All of the structures will be larger, and three will more than double in height.

DISCUSSION

Midcoast Cohousing has applied to the Edgecomb Code Enforcement Officer for building permits to allow the changes to its outbuildings. At issue is whether Midcoast Cohousing must receive subdivision and site plan approvals from the Planning Board before the CEO can issue building permits. Based upon my review of the relevant ordinances and statutes as well as the specific facts presented in the Midcoast Cohousing building permit applications, Midcoast Cohousing must receive subdivision approval before it can receive building permits for its proposed conversion of the four outbuildings on its property. However, because the plain language of the site plan provisions in the Edgecomb Ordinance exempt single-family dwellings from site plan review, site plan approval is not required.

I. The Midcoast Cohousing proposal requires subdivision approval before it can receive a building permit.

Under Maine law, the term “[s]ubdivision” means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise.” 30-A M.R.S.A. § 4401(4). Section 4401(4) further defines “subdivision” to

include[] the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

Id.

There is no dispute that the Midcoast Cohousing project will not be dividing its current property into lots, per se. At issue, therefore, is whether the

project involves either (1) "the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period"; (2) "the construction or placement of 3 or more dwelling units on a single tract or parcel of land"; or (3) "the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period." *Id.*

The project that Midcoast Cohousing has proposed will result in the division of a "new structure or structures" into 3 or more dwelling units or, alternatively, involves the "construction or placement" of 3 or more dwelling units on their property.

Section 4401 defines "new structure or structures" as "any structure for which construction begins on or after September 23, 1988." *Id.* § 4401(5). In a previous application, Midcoast Cohousing proposed dividing its main building into four condominium units and converting three outbuildings into single family condominium units. At that time, Midcoast Cohousing asserted that its buildings had been in existence before 1988.

The MMA reviewed the proposal and determined that it would not create a subdivision under Maine law. However, there is an important distinction between the earlier and current Midcoast Cohousing applications. In the earlier proposal, Midcoast Cohousing planned only to convert existing buildings into dwelling units. The MMA opinion did not indicate that any expansions or alterations were included as part of that proposal.

Midcoast Cohousing's current proposal is different from that earlier one. As part of its current application, Midcoast Cohousing will be relocating and then expanding the four outbuildings as part of the conversion into dwelling units. Under § 4401(5), the "area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter." 30-A M.R.S.A. § 4401(5). Therefore, by relocating and expanding the outbuildings, Midcoast Cohousing will be creating "new structures."

As a result, the Midcoast Cohousing project will be dividing "new" structures into four dwelling units. It is equally arguable that the expansion and relocation mean that Midcoast Cohousing is also constructing or placing four dwelling units on its property. In either case, under § 4401(4), Midcoast Cohousing is proposing a subdivision. Before they can receive any building

permits, they must first receive subdivision approval from the Edgecomb Planning Board.

II. The Midcoast Co-Housing proposal does not require site plan approval before it can receive a building permit.

Although the Edgecomb site plan standards apply to a wide variety of proposed construction, they contain an important exemption within the first line of the "Applicability" section of the Ordinance:

Except for single-family dwellings and uses customarily accessory thereto, including home occupations, no building permit shall be issued for a new building, major remodeling, reconstruction, enlargement or move of an existing building ... until the plans, drawings, sketches and other documents required under Section 3.5 have been reviewed and approved by the Planning Board in conformity with the criteria and standards specified in Section 3.4.

Edgecomb Land Use Ordinance, Art. IV. § 3.2.1 (emphasis added). Midcoast Cohousing argues that because its project proposes the creation of "single-family dwellings," it falls within the "Except for single-family dwellings" exemption in § 3.2.1.

Midcoast Cohousing is correct in its reading of the Ordinance. The Ordinance defines a "single-family dwelling" as "[a] building designed or intended to be used exclusively for residential occupancy by one family only and containing only one residential dwelling unit." *Edgecomb Land Use Ordinance*, Art. I § 8. There is no dispute that, individually, each of the four buildings that Midcoast Cohousing proposes is a single-family dwelling. As a result, if Midcoast Cohousing had applied for one building permit to convert only one of its structures, there would be no basis for requiring site plan review before issuing that building permit.

Therefore, the only issue is whether it matters that Midcoast Cohousing intends to build four single-family dwellings at the same time. Nothing in the site plan standards suggest that applying for multiple building permits is an

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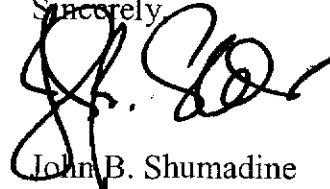
independent reason to require site plan approval.¹ It is true that Midcoast Cohousing intends to turn its *property* into a multifamily development through these four building permits. However, the exemption specifically applies to "single-family dwellings." As defined in the Ordinance, that term relates to *buildings*, not *properties*. In other words, even though after construction Midcoast Cohousing will have four new dwellings on its property, each will still be a single-family dwelling. Under the plain language of § 3.2.1 of the site plan standards, the Midcoast Cohousing project does not require site plan review.

CONCLUSION

As discussed above, Midcoast Cohousing must receive subdivision approval before the Edgecomb CEO can issue the requested building permits. However, Midcoast Cohousing is not required to receive site plan approval as well. In reaching those conclusions, this letter addresses only the specific project as Midcoast Cohousing has presented it in its building permit applications. This opinion is restricted to those facts only.

Thank you for your attention. Please let me know if I can be of further assistance.

Sincerely,



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JBS/dmw

cc: Eliot Field, Esq.

¹ As discussed above, Midcoast Cohousing's project requires subdivision approval. That requirement also supports the conclusion that site plan approval is not required. One of the purposes of Edgecomb's site plan review standards is "[t]o exempt conventional lot-by-lot residential subdivisions already regulated under the Town's Subdivision Review Standards." *Edgecomb Ordinance*, Art. IV, § 3.1.2.