

1. Planning Board Meeting Materials

Documents:

2021-9-9 PB AGENDA.PDF
PLANNING BOARD DRAFT MINUTES_JULY 22, 2021_DRAFT.2.PDF
PLANNING BOARD DRAFT MINUTES_AUGUST 12, 2021_DRAFT.3.PDF
PLANNING BOARD DRAFT MINUTES_AUGUST 26, 2021.PDF
DRAFT FOF GARRETT HOMES AMEND_1.PDF
DRAFT FOF ATT WCF- 265 LONG BEACH (2).PDF
DRAFT FOF YORK BEACH SURF CLUB AMENDED SITE PLAN3.PDF
DRAFT FOF LONG SANDS VILLAGE -PRELIM PLAN DENIAL.PDF



AGENDA
York Planning Board Workshop
Thursday, September 9, 2021
7:00 PM
York Public Library

1. **Call to Order; Determination of Quorum; Appointment of Alternates**
2. **Field Changes**
3. **Public Forum**
4. **Discussion/Review-** Comprehensive Plan Update/Climate Action Plan
 - A. Update on Climate Action Plan Process
 - B. Update on Comprehensive Plan Process
5. **Discussion-** Possible Comprehensive Plan survey questions
6. **Review for Editing-** Site Plan and Subdivision Regulations Articles 1-4
7. **Review-** Findings of Fact
8. **Minutes**
9. **Other Business**
10. **Adjourn**

1 York Planning Board Workshop
2 Meeting Minutes
3 Thursday, July 22, 2021; 7:00 P.M.
4 York Public Library
5

6 Call to Order; Roll Call; Determination of Quorum; Appointment of Alternates
7

8 Chair Kathleen Kluger called the meeting to order at 7:00 P.M. A quorum was determined
9 with five people voting: Kathleen Kluger, Vice-chair Wayne Boardman, Board Secretary Gerry
10 Runte, Al Cotton, and Pete Smith. Alternate Ian Shaw was present, but did not vote. Alternate
11 Kenny Churchill was not present. Chris Di Matteo, principal of Longmeadow Planning and
12 Landscape Architecture, served as peer reviewer. (He determines completeness and prepares
13 applications for Board review.) Planning Director Dylan Smith represented staff. Patience
14 Horton was the recording secretary. Votes were tallied via roll call.
15

16 **Field Changes**

17 **York Beach Surf Club, 780 York Street**
18 **Tax Map 0038, Lots 0059-0069**
19 **Tim DeCoteau, Project Manager**
20

21 A field change request had been received from York Beach Surf Club. The field change
22 requested nine items change. Only two, Nos. 1 and 9, were acceptable to discharge as field
23 changes.

- 24 • Motion: Pete Smith moved to consider Nos. 1 and 9 as field changes from the York
25 Beach Surf Club, Tax Map 0038, Lots 0059-0069. Gerry Runte seconded. The motion
26 passed 5-0.
27

28 Mr. DeCoteau did not speak into the microphone when he described Item 1. His presentation of
29 Item 1 was inaudible.
30

31 For Item 9, he explained that a buffer that was changed in the approved plan was not agreeable
32 to the abutters. They wanted it kept the way it was but with a few trees added.
33

- 34 • Motion: Pete Smith moved to approve the field change requests from York Beach Surf
35 Club, 780 York Street, York Tax Map 0038, Lots 0059 and 0069. The request No. 1,
36 modular water crossing, is to be removed. Per Request No. 9, the existing landscape
37 buffer on the western side of Lot 0069 is to remain as is with supplemental bushes.
38 Wayne Boardman seconded. There was no discussion. The motion passed 5-0.
39

40 **Public Forum**
41

42 Torbert Macdonald, Fernald Avenue: One of main rights of the people is to petition their
43 government for redress of grievances. "If they don't like a piece of legislation, they have every
44 right in the world to tell you that even though it is the law of the land, it stinks."

45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88

Secondly, he said the key thing with the elderly housing application is the intrusion on the Fernald Avenue neighborhood, which the Comprehensive Plan describes as one of the last single-family neighborhoods left in the town. The current ordinance is a threat to that. The elderly housing development will proceed because it is legal to do so.

Duplexes are fine. If done correctly, every house in our neighborhood should be able to have a duplex. This is at least six-times as potent in density as anything else that could be put there.

Section 7.1 of the Site Plan Subdivision Regs, specifically Section 1.2.9, authorizes the Planning Board to interpret ordinances and the Comprehensive Plan. The Town Attorney has ruled that you cannot deny the application on the grounds that it doesn't meet the Comprehensive Plan. I hope you will see fit to plan to remove it from its application to 1.b and 1.a. It is too much.

Torbert referred to and agreed with Chris di Matteo's review of the landscaping, where it is indicated that more plantings are needed because of the changes that suddenly appeared. Twice Torbert recommended the Board visit the site before giving final approval so that members can re-envision what is on that land in terms of plantings, with special attention to the abutters' side where understory plantings are especially needed. Because of the acoustical impact the buildings will bring, an eight-foot fence should be mandated.

He gave his thoughts about stormwater performance. The applicant has asked for a waiver of the high intensity soil survey, but I do not see how it is possible to make a rational judgement about the nature of any of the drainage and stormwater apparatus without truly understanding the complete nature of the soils and their relation to the bedrock, he said, urging the Board to mandate a high intensity soil survey in order to understand the stormwater management plan. Is what is presented adequate to the task in the modern era of storms? I think not. Imagine such storms in March, when the ground is frozen. The notion that it is going to perform just fine is misled. It is a genuine threat to public health and safety in terms of the downward slope onto Long Sands Avenue.

Chair Kathleen Kluger closed the public forum.

Application Reviews

**Pinks Lobster Rolls, 1021 U.S. Route 1
Map/Lot 0030-A-0030 owned by Toby Gardner
The intent of this application is to amend a previously approved site plan to include a food truck on site.**

The applicants introduced themselves before the microphone was on.

Chris Di Matteo said the application is complete. The applicant is adding the accessory use of a food truck to a preexisting business, Southern Maine Lobster. Code Enforcement has reviewed

89 the plan and found that it is an acceptable use. The Fire Department and Public Works have
90 provided comments without objection. The elements of the application are minimal.

91

92 The spokesperson for the application said that she originally opened the food truck in Kittery
93 but had to shut down in 2020 due to the pandemic. They are moving from a commercial spot in
94 Kittery to a spot that is more community-oriented in York.

95

96 • Motion: Al Cotton moved to accept the application for Pinks Lobster Rolls, Map/Lot
97 0030-A-0030 as complete. Wayne Boardman seconded. There was no discussion. The
98 motion passed 5-0.

99

100 • Motion: Al Cotton moved to open the public hearing for Pinks Food Truck, Map/Lot
101 0030-A-0030. Gerry Runte seconded. The motion passed 5-0.

102

103 No one came forward to speak. The Chair closed the public hearing.

104

105 The applicant explained that next to the main business, there is a former parking lot that has
106 grown over to create a grassy knoll where the food truck will be. There is parking along the
107 front and side. Southern Maine Lobster will be the source of electricity. Bottles of drinking
108 water will be brought in. Gray water will be pumped into a tank and taken back to the State-
109 approved, commercial kitchen they own, where they will discharge the water. There are
110 propane tanks bolted to the trailer for boiling lobster water.

111

112 Kathleen Kluger: Chris Di Matteo has recommended the Board discuss this application as an
113 amendment to a previously-approved site plan, instead of a revised site plan. He said there are
114 four items for conditions of approval that could be incorporated in the Findings of Fact,
115 avoiding the requirement of a new site plan.

116

117 • Motion: Al Cotton moved to approve the application for Pinks Lobster Rolls Food
118 Truck at 1021 U.S. Route 1, Map/Lot 0030-A-0030.

119

120 In discussion, Kathleen Kluger asked the Board if the four items Chris Di Matteo
121 referred to shall be addressed in the Findings of Fact. There was no discussion. The
122 board members agreed to the action.

123

124 The Chair called for a vote. The motion passed 5-0.

125

126 **York River Landscaping, 272 U.S. Route 1**

127 **Map/Lot 0059-0004 owned by 18 York Street Realty LLC**

128 **The intent of this project is to provide a sketch plan of a potential landscaping**
129 **business/garden center.**

130 **Jim Fischer, Northeast Civil Solutions**

131 **Edward Campbell, York River Landscaping**

132

133 Jim Fischer: The applicant is proposing improvement of the site with a stormwater detention
134 area and better parking. There is a small wetland area. A culvert on the property is a drainage
135 swale that fills during 100-year storms. It is not a stream.

136

137 This is an established business that moved to the current address about a year-and-a-half ago.
138 There is a two-family house with a garage on the parcel, which is one-acre in size. This is a
139 seasonal business. The company of about 25 people and 15 vehicles takes care of residential
140 and commercial landscaping, lawn care, plantings, and gardens. In the winter season, they do
141 some snowplowing. Snow is not dumped on the property.

142

143 Customers do not come onto the site. It is not a garden center. In the unlikely event that they
144 do come in, they park in front. There is plenty of room for the commercial vehicles in the back.
145 They go out in the morning and come back in the evening. About half-a-dozen cars are on the
146 site during the day. Workers go directly to the work sites and park there. The house is reserved
147 for employees under a provision that they cannot keep cars there.

148

149 It is a narrow lot with 100 feet of Route 1 frontage. From Route 1, the only area that can be
150 seen is the façade of the house and the plantings in front of it. There are no signs out there
151 advertising the business, and a sign is not proposed. The abutters do not see anything that is
152 going on in the back, including bins of stocked materials. In one part, there is a 6-foot stockade
153 fence.

154

155 There is a gravel road being used that leads to the back of the property. It is not clear who owns
156 it. It provides a dynamic flow for vehicles and equipment to get to the back of the property. An
157 attorney is looking into the Right Title and Interest for using it.

158

- 159 • Motion: Pete Smith moved to open the public hearing for the application from York
160 River Landscaping, 272 U.S. Route 1, Tax Map 0059, Lot 0019. Al Cotton seconded.
161 There was no discussion. The motion passed 5-0.

162

163 Tim Kohl is an abutter at 254 Route 1, where he has lived for 40 years. The noise from the
164 property has been a huge problem. For a residential property, he said, the allowable maximum
165 daytime noise-level is 60 decibels. Measured from my deck, the noise level reaches 70
166 decibels.

167

168 The biggest culprits are frontend loaders, but large commercial blowers are used to blow debris
169 off the trucks and trailers. Small engines and vehicle motors are often left running. We can
170 hear this noise in our house even with the windows closed, he said.

171

172 Article 7 of the ordinance states our zone is intended to be primarily residential. Small
173 businesses are permitted if they fit into the quality of the neighborhood. York River
174 Landscaping has become a big business and is out of character of the mom-and-pop businesses
175 intended to operate in the zone. The business started as a home occupation that has grown into

176 a large business with a large storage and maintenance area, a dozen trucks, 10-or-more vehicles,
177 and more than a dozen small-engine machines.

178
179 Over a year ago, Tim Kohl continued, Edward Campbell, told me there is a nine-acre property
180 out toward the weigh station that is owned by Mike Lee. Apparently, Mr. Lee offered Mr.
181 Campbell to lease the acreage to move his business there. That would be an excellent way to
182 eliminate all the noise.

183
184 Citing Paragraph 3.7, Mr. Kohl asked the Planning Board to help bring the noise level and other
185 aspects of York River Landscaping's business in compliance with the ordinance or else revoke
186 their permit.

187
188 Wayne Boardman asked Mr. Kohl to submit his written remarks to the Chair.

189
190 Kathleen Kluger closed the public hearing.

191
192 Engineer Jim Fischer described York River Landscaping as a relatively benign business. He
193 will address the noise problem with Mr. Campbell. He said he would discuss expansion into the
194 nine-acre parcel owned by Mike Lee with Mr. Campbell. "You can only cram so many vehicles
195 into a particular area," said Jim Fischer. "The threshold has been reached."

196
197 Chris Di Matteo said the applicant should explore the Right Title and Interest in the use of the
198 driveway. The applicant should also define the nature of the residential use. Is it going to be
199 traditional residential use or part of the business? Code Enforcement should review the
200 intended use before the applicant returns to the Planning Board with a preliminary plan.

201
202 **Garrett Homes, LLC—Mic Mac Motel, 317 U.S. Route 1**
203 **Map/Lot 0059-0004, Owned by Kittery Indian LLC—Mark Dellapasqua**
204 **The intent of this application is to amend a previously approved sit plan by changing the**
205 **architectural appearance of one of the proposed retail business buildings.**
206 **Doug Grunert, TKR Architects**
207 **Gary Eucalitto, Garrett Homes**
208 **Matt Eucalitto, Garrett Homes**
209 **Greg Orso, Attorney of Record**

210
211 Greg Orso: I am pinch hitting for the brains behind the operation, engineer Rick Lundborn. We
212 are looking at an aesthetic amendment of the O'Reilly business. The changes are requirements
213 of the O'Reilly business. They are asking for modification of the building colors, roofline, and
214 building materials. The Sherwin Williams side that is opposite on the site remains the same.
215 We believe this design meets the ordinance.

216
217 Architect Doug Grunert: With the amended design, the entry location and fenestration around
218 the building remain the same. The building color has changed to a light tan. The construction
219 materials are a brick base with Hardee Board trim and clapboard. The façade facing Route 1

220 shows the roofline and façade, which has eight-inch bump-out articulations. The roofline is
221 articulated by dormers and secondary gables. The hip roof has architectural shingles. The
222 roofline is accentuated on the entry side by a secondary hip roof. The roof is flat for the rooftop
223 equipment, which will not be seen from Route 1.

224

225 The doorway has the red proprietary trademark of the O'Reilly brand. Every corner has a 45-
226 degree hip roof. The Route 1 side has traditional fenestration of various sizes. We stuck to the
227 Greek Revival element, which is traditionally found in New England coastal architecture.

228

229 Chris Di Matteo: This is a limited amendment. The appropriate documents have been
230 submitted. The application is complete.

231

232 • Motion: Al Cotton moved to accept the application for a previously-approved plan for
233 Garrett Homes, LLC, Map/Lot 0059-0004 as complete for the purpose of review. Wayne
234 Boardman seconded. The motion passed 5-0.

235

236 Gary Eucalitto, 55 Proprietors Lane; Torrington, Connecticut: Last February, we sent O'Reilly
237 the Planning Board-approved elevation with a 10-day turnaround period for their approval.

238 There was no response. We moved forward. They didn't get back to us until this month, July.

239 They replied that they are not going along with the elevation plans the Planning Board

240 approved. They are not walking away from the lease—not now.

241

242 O'Reilly balked at the original blue color, he added. They said it was a NAPA color.

243

244 My situation with them has created a battle for me, Mr. Eucalitto continued. We have already
245 suggested new changes, but what we are presenting tonight is what they approved. Otherwise,

246 they will not come here. They say they can live with the gable, though it is not part of their

247 branding. If they have to make other changes, they say they will walk away from it.

248

249 Al Cotton: I went through 50 years of corporate branding, and I understand what you are going
250 through. O'Reilly has a certain look, and they are updating that look now. I hope we can live
251 with it, too.

252

253 • Motion: Al Cotton moved to open the public hearing for Garrett Homes, Map/Lot 0059-
254 0004. Wayne Boardman seconded. The motion passed 5-0.

255

256 No one came forward to speak. Chair Kathleen Kluger closed the public hearing.

257

258 Al Cotton: Defining the New England look has been the most difficult thing I've had to deal
259 with in the 10 years I've been on the Planning Board. If we want O'Reilly here, we are going to

260 have to do what they want. I am agreeable that we can go in the direction you have here.

261

262 Wayne Boardman: I don't see anything egregious about it. I think the old design looked New
263 England-y with the gable roof, rather than a hip roof. This is a commercial building, and I don't
264 see anything wrong with it—just yet, anyway.

265

266 Pete Smith: This design is for anywhere in the United States. I don't want to see that on Route
267 1. We have worked so hard with our ordinances and meetings trying to keep everything on
268 Route 1 as much to the theme of the town as possible. A lower roofline, a cupola taken off as a
269 decoration, a flat, long, straight roofline—that's not what the ordinance calls for. These
270 changes are attacking what we believe. I don't like it. I won't vote for it.

271

272 Gerry Runte: I am not concerned about the New England side of things. When you look at
273 what's across the road on Route 1, the storage place and the motel, it will be hard to say
274 everything there has a New England look to it.

275

276 Kathleen Kluger: Maybe "resent" is too strong a word. I don't appreciate the amount of work
277 the Board undertook with the applicant for the original design. I resent that O'Reilly missed
278 their deadline and now they are telling us how to do this. That is not the appropriate use of our
279 ordinances or the relationship between the Planning Board and the applicant. The reality of the
280 situation that they might go away if they don't get their way distresses me on several different
281 levels. I don't want York to miss out. I hope we can make a compromise.

282

283 Dylan Smith: When the Planning Board had previously gone through the process with this site
284 plan, you looked at the collective whole, the two buildings together. There has been significant
285 conversation about "best faces forward," and what that meant. There was a lot of work done to
286 get to that design and approval for those two buildings together. It captured the New England
287 feel. The original design looked great and it fit in. This does not.

288

289 Greg Orso: If this was the first plan, we wouldn't have a lot of resentment with this. We have
290 to determine if they are getting a fair review under the ordinance. How does an applicant know
291 what "New England" is?

292

293 Pete Smith: This does not meet 6.3.13.

294

295 Wayne Boardman: I think we should send it back and ask the applicant to try and negotiate a
296 more compatible design. We have had several of buildings with flat rooflines approved in the
297 last couple of years, like the marine building on Route 1.

298

299 Dylan: We changed the ordinance after the marine approval so now roofs have to be peaked.

300

301 Greg Orso: My client is doing his best to try to accommodate a difficult situation here.

302

303 Al Cotton: I don't think sending it back for a redesign is necessary. I think we can live with
304 this.

305

306 Chair Kathleen Kluger: Is there a motion to either approve, deny, or continue the application as
307 an amendment to a previously-approved plan?
308

- 309 • Motion: Al Cotton moved to approve the application for Garrett Homes, Map/Lot 0059-
310 0004 site plan review. There was no second.

311
312

Chair Kathleen Kluger said that the motion to approve has failed.

313
314

- 315 • Motion: Wayne Board moved to continue the application for Retail Shopping Center,
316 Garrett Homes, 317 U.S. Route 1, Tax Map 0059, Lot 0004 with feedback given to the
317 applicant. Pete Smith seconded.

318
319

In discussion, Greg Orso said the Board is asking the applicant to negotiate something
that does not have any parameters. We need exact direction of what the bottom line of
this is, he said. We have not been given any ideas about what we are going to negotiate
with the tenant.

320
321
322

Kathleen Kluger: You have two choices, a motion to continue or a motion to deny. I
don't know what else we can offer you.

323
324
325

Greg Orso: The applicant has to know what it has to do other than identifying with
Chris di Matteo's letter. That does not give us any ideas of how we are going to
negotiate with the tenant who has basically said we are unable to modify things even a
little bit.

326
327
328
329
330

Kathleen Kluger: What we are saying, and it is your opportunity to take it or not, is to
refer to the review and see if there is anything else to come to it. This is due process.
Take it back to the client. If the client says we don't care what the review says and this
is what we want—then that's what you will tell us next time. The Board interpreted it
one way. They applicant has interpreted it another way. This review is bringing up
points that need to be discussed with your client.

331
332
333

Greg Orso: To be fair to the applicant, you have to be able to tell the applicant what
they have to do to meet the ordinance. We believe we have met the ordinance.

334
335
336

Pete Smith: Mr. Orso insists he wants to know the criteria. I would like to read
6.3.13.5.

337
338
339

- 340 1. *"All the construction shall have pitched roofs, which may include a gable roof,
341 hip roof, and a type of a gamble roof."* I agree, said Pete, that this has one of
342 those.
- 343 2. *"Long continuous roofs that are uniform in height shall not be permitted."*
344 Bang, said Pete. There is one right there because that is what you have, a long,
345 continuous roof.
346
347
348
349

- 350 3. *“Roof design for linear buildings shall use variations in pitch and height and*
351 *utilize architectural elements to add visual interest, especially when that portion*
352 *of the building is visible to the street.”* I don’t see that in this design.
353 4. *“Variations of roofline are recommended at least every twenty-five linear feet.”*
354 No, said Pete, not with this design.
355 5. *“Use of cupolas, dormers, chimneys, and other projections are not required, but*
356 *encouraged.”* It is right there in the ordinance. That is what we want to see.
357

358 Dylan Smith: The plan also has to show how it fits in with the other building on the
359 site.

360
361 Kathleen Kluger: With the ordinance description that Mr. Smith just read, and with
362 the review by Mr. Di Matteo, does this fit in terms of the most opportunity for your
363 client, Mr. Orso? I think it does. I think it would circumvent due process if we just
364 made a decision now and didn’t give another opportunity to know the outcome of
365 our discussion.
366

367 Gary Eucalitto: You are saying to back to them and get a response.
368

369 Pete Smith: The motion to approve failed. That is an important piece to bring back
370 to them. There are two other options, one to continue to a date certain, or the other
371 to deny.
372

373 Kathleen Kluger: The opportunity to continue to a date certain has probably been
374 offered about 10 times.
375

376 Greg Orso: We have an architect that says the plan meets that section of the
377 ordinance. If the Town wants to rely on an additional expert, as Mr. Di Matteo
378 recommends, it would make sense to do that.
379

380 Dylan Smith: If the Board wants, I will seek the opinion of a third-party, certified
381 architect.
382

383 The Chair called for the original motion to be amended.
384

- 385 • Motion: Wayne Boardman moved to amend the motion for Garrett Homes, Map/Lot
386 0059-0004, to the date certain of August 26. Al Cotton seconded the amended motion.
387 There was no further discussion. The motion passed 5-0.
388

389 **Long Sands Village—Elderly Housing Development, 122 Long Sands Road**
390 **Map/Lot 0044-0038 owned by James Paolini**
391 **The intent of this project is to create a 10-unit elderly housing development.**
392 **Geoff Aleva, Civil Consultants**
393

394 **Jeff Paolini, Long Sands Village--York Harbor Builders**
395 **Greg Orso, Attorney of Record**

396
397 This review is continued from February 25, 2021.

398
399 Chris Di Matteo: The Board has already accepted the preliminary review. Comments have
400 been put in order.

401
402 Geoff Aleva: Because the applicant did not realize that improvements were not allowed while
403 the project is being reviewed, trees on the property were cut. They were cut in the perimeter,
404 where the buildings will be built, and where the access roads will go. Since then, surveyors
405 came in and located and marked every stump. They measured the diameter of the stump at the
406 cut and labeled the species of the trees. Some cut areas will be supplemented with additional
407 vegetation. Most trees that were cut were where buildings will be placed.

408
409 The Public Works Director has no additional comments about the project. Geoff said.

410
411 Initially the driveway came up from Long Sands Road. That has been changed to Fernald
412 Avenue, and the Sewer District is okay with making the sewer connection there. The manhole
413 and main line go through our property's parking lot. A small, residential pump station will
414 pump sewage from the existing house, and its septic system will be eliminated.

415
416 We have met with the Water District. There is a looped water main that comes off Fernald
417 Avenue and goes around the property. Water meters will be in the foyer areas that join each
418 pair of buildings, also where the tote-style trash receptacles will also go. The details of the
419 changes are included on the plan.

420
421 The landscape plan shows buffering, screening, and fencing of varying heights along the
422 neighbors' boundaries and throughout the property. It includes headlight protections. Plantings
423 will be added along the Long Sands side of the existing building. Plantings exceed the
424 requirement of the ordinance. The location of the buildings has not changed. The changes are
425 in the landscaping and the utilities.

426
427 Kathleen Kluger: Seeing that the original iteration and site alteration have changed this
428 redesign, how does the Board feel about having another site visit?

429
430 Geoff Aleva: The changes wouldn't warrant another site visit. There are no major changes to
431 the development. The buildings and the pavement stay the same. Only the utilities and the
432 landscaping have changed.

433
434 Chris Di Matteo: I disagree with the way Geoff Aleva is describing the veg-line. The actual
435 veg-line is not as depicted on the plan. Normal practice is that if you are going to do any type
436 of earth work, the likelihood is that the roots are going to be damaged. Six inches of fill has a

437 big impact on the vegetation. In doing the work, specific trees should be pinpointed and
438 preserved. To avoid certain impact, manual tools should be used in place of heavy equipment.

439

440 Kathleen Kluger: The Board always requests a review of the Home Owners' Association
441 documents for special applications such as this housing for people over 62. The documents
442 have been supplied and are in good shape. A requirement is missing. The purchaser and at
443 least one person residing on the property have to be over 62. That is also be true for a leasee.
444 Those rules have to be included in the HOA documents. In 4.3.2, Parking Areas, I encourage
445 the HOA documents prohibit overflow parking on Fernald, because it is a narrow street.

446

447 Dylan Smith: On the current plan note, it says that an encroachment of 524 square feet is to be
448 removed. Elsewhere, an encroachment of 255 square feet is brought up, but it does not say it is
449 to be removed.

450

451 Geoff Aleva: That is a patio area. We did not have that section removed. It does not impact
452 the calculations.

453

454 • Motion: Al Cotton moved to open the public hearing for Long Sands Village—Elderly
455 Housing, Map/Lot 0044-0038. Pete Smith seconded. The motion passed 5-0.

456

457 Kevin O'Shaughnessy said that the application should be denied. Over 100 people have seen
458 the plan, and no one found it reasonable. Even if the two units closest to Fernald Avenue were
459 removed, it would still have twice the density of a commercial project—six units instead of
460 three.

461

462 My attorneys question if the plan complies with the ordinance. Given Fernald Avenue's narrow
463 width and blind curve, my attorneys recommend citing 7.6.3 to deny access to Fernald. During
464 a previous Planning Board meeting, it was wrongly suggested that seniors do not have
465 houseguests. Houseguest will overwhelm the overflow parking that is already overwhelmed.

466

467 The site will probably require blasting. We have no confidence in the builder's ability to do it
468 safely or effectively. Our homes are in jeopardy. We urge the Board to use its discretion and
469 reject the current proposal, said Kevin O'Shaughnessy.

470

471 Katherine Mulhern, 60 Fernald Avenue: It is an inappropriate site for elderly housing with two
472 access roads. It is a very narrow road. It is a very quiet neighborhood. The project should be
473 smaller and limited to six units. Instead, we have ten units in five structures.

474

475 After it was decided that there would be no traffic study, the entrance on Long Sands was
476 removed. That means all the traffic will be going in and out along Fernald Avenue. If there are
477 only four parking spaces on site, where will people park? Pedestrians and school children
478 frequent Long Sands Road. Traffic from the Plaza already causes gridlock. I request that you
479 hire a traffic and parking study.

480

481 Rebecca Boyle, 73 Fernald Avenue: I am concerned about drainage directly onto my property.
482 I am also concerned about privacy and plantings. Screening has to be substantial, not
483 superficial. Who is going to maintain the fence? Is the adequacy of the level lip spreader
484 properly used in this application? Permeable pavers should be used in the parking areas instead
485 of pavement. The pavers allow the water to flow down and out instead of toward my property,
486 which is what the plan shows now.

487

488 Deb Demmick, 62 Fernald Avenue: I have two concerns, tying the sewage line onto Fernald
489 Avenue and blasting. Many homes have stone foundations. The initial blasting for the sewer
490 line damaged my house. Could there be a blasting study to show what could happen to our
491 homes?

492

493 Rebecca Boyle: Could you have the four buildings closest to my property staked out for your
494 site walk? I want you to see how close the buildings are going to be to my house. You will also
495 want to see the vegetation line, or lack thereof.

496

497 Chair Kathleen Kluger closed the public hearing.

498

499 Greg Orso: It is peculiar to have another site walk because vegetation is the only issue hanging.

500

501 Geoff Aleva:

502

- Police, Fire, and Public Works have reviewed the project with no comments or concerns respecting the proposed design.
- There is a fence along the common property line.
- Parking meets the ordinance for the use.
- We don't have waiver requests for this project.
- We have had peer review of the standards for the development of stormwater.
- We have provided landscape plans that meet and go above and beyond the ordinance.
- We are ready for preliminary approval tonight.

503

504

505

506

507

508

509

510

511 Chris Di Matteo: The application is complete for receiving preliminary approval tonight.

512

513

- Motion: Pete Smith moved to give preliminary approval to the application for Long Sands Village, Tax Map 0044, Lot 0038, as presented. Al Cotton seconded.

514

515

516

In discussion,

517

518

Wayne Boardman: If preliminary approval is granted, what changes can still be made?

519

520

Dylan Smith: The landscaping plan can change. When they hand in final plan approval, they are supposed to hand in a detailed landscaping plan. That is when the Board makes the crucial decisions about the landscaping.

521

522

523

524 The Chair called the vote. The motion to grant preliminary approval failed. Pete Smith
525 and Al Cotton voted yes. Wayne Boardman, Gerry Runte, and Kathleen Kluger voted
526 no.

527

528 The decision was made to address preliminary approval after the site walk.

529

530 A site walk was Scheduled for August 5 @ 9:00.

531

532 • Motion: Pete Smith moved to continue the application for Long Sands Village, Tax
533 Map 0044, Lot 0038, to August 26, to review for preliminary and final approval. Gerry
534 Runte seconded. The motion passed 5-0.

535

536 **Public Hearing on Site Plan and Subdivision Regulations**

537 **Site Plan and Subdivision Regulations (fees)**

538 **Copies of the proposed amendment are available with the Town clerk at the York Town**
539 **Hall or on the Town's website at www.yorkmaine.org.**

540

541 • Motion: Al Cotton moved to open the public hearing for Site Plan and Subdivision
542 Regulations (fees). Pete Smith seconded. The motion passed 5-0.

543

544 No one was present for the public hearing. The Chair closed the public hearing.

545

546 • Motion: Al Cotton moved to approve Site Plan and Subdivision Regulations (fees).
547 Wayne Boardman seconded. There was no discussion. The motion passed 5-0.

548

549 **Minutes**

550

551 • Motion: Wayne Boardman moved to approve the Minutes of Thursday, July 8, 2021, as
552 amended. Gerry Runte seconded. The motion passed 5-0.

553

554 **Other Business**

555

556 CompFest! is next Thursday. The Board members who are coming to assist should be there at
557 5:15 P.M.

558

559 Adjourn

560 The time was 10:30.

561

562 Respectfully submitted,

563 Patience G. Horton

564 Recording Secretary

**York Planning Board Workshop
Meeting Minutes
Thursday, August 12, 2021; 7:00 P.M.
York Public Library**

Call to Order; Roll Call; Determination of Quorum; Appointment of Alternates

Chair Kathleen Kluger called the meeting to order at 7:00 P.M. A quorum was determined with four people voting: Kathleen Kluger, Vice-chair Wayne Boardman, Board Secretary Gerry Runte, and Pete Smith. Al Cotton was absent. Alternates Kenny Churchill and Ian Shaw were present, but did not vote. Planning Director Dylan Smith represented staff. Patience Horton was the recording secretary and worked remotely. Votes were tallied via roll call.

Field Changes

There were no field changes.

Public Forum

The forum was opened and closed. There was no one present to speak.

Discussion/Review—Comprehensive Plan Update/Climate Action Plan

A. Update on Climate Action Plan Process

Gerry Runte: The CAP Steering Committee meeting was held yesterday, Wednesday, August 11. Six working groups presented their top five recommended strategies. Education was the common element of all the strategies. There is a planned public event at the High School coming up on Sunday, October 3, the theme for which will be “Creative Futures: Visions of York through Art and Science.” As well as schools providing children’s art submissions, local artists will be invited to put their work on display. Gerry also said there was further discussion at the CAP meeting of how the community could be incentivized to reduce carbon emissions, the biggest challenge being that produced by buildings.

Wayne described the bottom line. If the goal is to reduce our climate emissions by 50% by 2030 and 100% by 2050, it can’t just be a few little changes that we make, he said. We are going to have to make some big changes or give up on the idea of meeting our emission goals.

B. Update on Comprehensive Plan Process

Kathleen Kluger: We have been thinking about a Comp-on-the-Road idea since April. After the energy we expended on *Compfest!*, the idea of repeating that level of activity is exhausting-- much less than should be desired. The ~~fall~~-calendar layout looks like this.

- 43 1) The next open house, the “Deeper Dive,” will be held at the York Community
- 44 Auditorium on Sunday, September 19 from 1:00 to 4:00 P.M. It will be an
- 45 informational presentation given by CivicMoxie with breakout discussion groups.
- 46 2) It will be followed two months later, November 14, with a broader presentation of
- 47 CivicMoxie’s research, including the results of the general survey the Planning Board
- 48 will have compiled. To prepare for that November open house, the results of our survey
- 49 will be due at CivicMoxie in mid-October.
- 50 3) There will be no in-person events in December.
- 51 4) The winter schedule has not been set.
- 52 5) We will have another *Compfest!* in May, 2022 - though probably with a different name -
- 53 the purpose of which will be to present the draft Comp Plan to the public.
- 54 6) The summer of 2022 will be dedicated to reviews and hearings.
- 55

56 **Discussion—Possible Comprehensive Plan survey questions**

57
58 If Board members have questions to put in the survey, please submit them to Kathleen. Survey
59 results have to be submitted to CivicMoxie by mid-October.

60
61 **Discussion/Review—Site Plan and Subdivision Regulations Articles 1-4**

62
63 Dylan said he does not want to inundate the Board with a lot of new policy changes to articles
64 in the Site/Sub Regs, so the work should be easy. The Appropriation of Fees was amended last
65 month, in July. More changes to Articles 1-4 should be light work, he said. Kathleen said that
66 at the next workshop in September, the Planning Board will go through the articles, item-by-
67 item.

68
69 **Discussion—Timeline of Open Space Subdivision Ordinance and Charettes for the York**
70 **Beach Corridor District (GEROD)**

71
72 Dylan: The [Green Enterprise/York Beach Corridor] Charette design process involves working
73 with architects, planners, and engineers to evaluate the process for creating design standards and
74 a regulation plan for the public realm. It will cost about \$130,000 and has to go through the
75 Budget protocol process in May 2022.

76
77 Kathleen: This encompasses so much more than the original York Beach Village concept.

78
79 ~~Pete Smith: It seems that too much work is being doled out to Planning Board members. It~~
80 ~~feels like we are working on one thing or another every single day.~~

81
82 ~~Kathleen: The heavy lifting for the CAP is a summer thing. The Comp Plan requires more~~
83 ~~work as we get ready for the spring ballot. Would the Green Enterprise work group like to put~~
84 ~~it off to the following year?~~

85
86 ~~Dylan: We’ll push for the November, 2022, ballot and see how that goes.~~

87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130

Review—Findings of Fact

- 1) Workforce Housing Development, 5 Hannaford Drive
Map/Lot 0053-0024
 - Motion: Pete Smith moved to approve the extension of the deadline of the Findings of Fact for JHR Development, LLC, Workforce Housing Development, 5 Hannaford Drive, York, Maine, Map/Lot 0053-0024, for 60 days, to expire on October 8, 2021. Gerry Runte seconded. The motion passed 4-0.

 - 2) Pinks Lobster Rolls, 1021 U.S. Route 1
Map/Lot 0030-A-0030
Applicant Pink Fisheries, LLC
 - Motion: Wayne Boardman moved to authorize the Chair to sign the Findings of Fact for Pinks Lobster Rolls, Tax Map 0030-A, Lot 0030, for Pink Fisheries, LLC. The Findings will be amended to include these five Conditions of Approval:
 - 1) Payment of all outstanding fees.
 - 2) The previously-approved Site Plan, entitled “Site Plan Amendment #1, Bus Parking Facility, 1021 U.S. Route 1, York, Maine, prepared by Attar Engineers, rev. date 12/15/2015” is further amended by the addition of a food truck for preparing and serving lobster rolls as an accessory use and structure.
 - 3) The food truck shall be located between the existing principal building and Rogers Road so as not to encroach into the 30-foot side-setback or the 50-foot front-setback.
 - 4) As an accessory use and structure, the food truck’s use shall remain subordinate to the principal commercial/seafood business use.
 - 5) Fire Department requirements for food trucks in the York Beach Fire Protection District will be met.
- Gerry Runte seconded. There was no discussion. The motion passed 4-0.

Minutes

There were no Minutes to review.

Other Business

- 1) Kathleen: The Steering Committee will have an extra meeting every month without CivicMoxie.
- 2) Kathleen: In the phrase on our agendas that currently reads “All meetings shall be adjourned no later than 10:30 PM, except with agreement of the *majority* of the Board,” the word “majority” should be “unanimous.” The change of that word was made in the bylaws.

- 131 3) Wayne: Many of the things the [Harbor] Board of Design Review rules on is in
132 duplication of what the PB already does, like drainage and parking. Dylan responded
133 that suggested changes of this kind are matters that should go before the Selectboard.
134 4) Kathleen: We are coming up on four public meetings for the capital budget planning
135 season, led by Steve Burns. The first one is Thursday, August 19 from 9:00 A.M. to
136 noon. Ian Shaw said he would volunteer to represent the Planning Board at those
137 meetings.
138 5) Kathleen: The August 26 applications meeting will begin at 6:30 P.M. Six applications
|139 have ~~ereeped~~crept up on us.
140

141 **Adjourn**

142 The time was 9:30.

143

144 Respectfully submitted,

145 Patience G. Horton

146 Recording Secretary

1 **York Planning Board Workshop**
2 **Meeting Minutes**
3 **Thursday, August 26, 2021; 7:00 P.M.**
4 **York Public Library**
5

6 **Call to Order; Roll Call; Determination of Quorum; Appointment of Alternates**
7

8 Chair Kathleen Kluger called the meeting to order at 6:30 P.M. A quorum was determined
9 with four people voting: Kathleen Kluger, Vice-chair Wayne Boardman, Al Cotton (who came
10 in at 6:50 P.M.), and Pete Smith. Board Secretary Gerry Runte was absent, as were alternates
11 Kenny Churchill and Ian Shaw. Planning Director Dylan Smith was absent. Chris Di Matteo,
12 peer reviewer, represented Staff. Patience Horton was the recording secretary working
13 remotely. Votes were tallied via roll call.
14

15 **Field Changes**

16 There were no field changes.
17

18 **Public Forum**

19 No one came forward to speak.
20

21 **Application Reviews**
22

23 **AT&T Small Cell Facility, within the public right-of-way near 265 Long Beach Avenue**
24 **(Near) Map/Lot: 0036-0096, owned by Central Maine Power.**

25 **The intent of this application is to install one small wireless cell facility on a replacement**
26 **utility pole.**

27 **Michael Dolan, Spokesperson**
28

29 Michael Dolan said that this is one of three applications for small, wireless cell facilities that he
30 brought before the Board on May 27, 2021. The other two have been approved. Because this
31 facility is located on private property, the Planning Board put off this approval and directed him
32 to secure a consent letter from the property owner. This has been done.
33

- 34 • Motion: Pete Smith moved to open the public hearing for AT&T Small Cell Facility,
35 Map/Lot 0036-0096. Wayne Boardman seconded.
36

37 Martha Fenn King lives on Perkins Ave, what she called a “stone’s throw” from the water tank.
38 She relayed information from studies about the negative effects of non-ionized radiation and
39 electromagnetic frequencies. She said that precautionary guidance to minimize health risks has
40 been updated. She recommended the Board read the new studies. To protect people, there
41 should be a Town moratorium on cell antennas and monopole installations, she said.
42

43 Kathleen Kluger said that the Planning Board has no power to enact a moratorium.
44

45 Torbert Macdonald said that, because there are unfolding changes in the FCC regulations, there
46 should be a change in the ordinance. He plans to lead his neighborhood in petitioning for the
47 change. A Ninth District Court decision found the FCC was arbitrary and capricious in their
48 inquiry into small cell facilities. He encouraged the Planning Board members to become
49 familiar with the importance of this subject. Radiation is not neutral.

50

51 Torbert said that application refers to setbacks. The application says, “All wireless
52 communications facilities shall be a minimum of 65 feet from any residential structure on any
53 abutting property, unless the owner waives the requirement.” He said that the Planning Board
54 should not waive the setback requirement in the absence of a signed statement.

55

56 Chair Kathleen Kluger closed the public hearing. She said that there has been only one waiver
57 request. It has to do with fencing.

58

59 Wayne Boardman referred to the ECP-2LLC letter of consent. It has been signed by property
60 owner Raymond Ramsey and entered into the public record.

61

62 Michael Dolan said there will be a document that shows that predictive RS emissions will be
63 below the FCC allowable limit. Once the unit is installed, a RS specialist will perform a field
64 study and is expected to deem the emissions “well, well, well below 10% of the allowable
65 limit.”

66

67 Wayne Boardman said that the 65-foot waiver and referenced Section 1.9.f.6.a, has to do with
68 the potential collapse of the facility and how that that might harm other properties. Chris Di
69 Matteo said that the ordinance section has to do with large towers, and no waiver is necessary.

70

71 • Motion: Pete Smith moved to waive Section 1.9.h of the wireless ordinance. Al Cotton
72 seconded. The motion passed 4-0.

73

74 • Motion: Al Cotton moved to approve the application for the AT&T Small Cell Facility,
75 265 Long Beach Avenue, Map/Lot 0036-0096. Pete Smith seconded. The motion
76 passed 4-0.

77

78 **Garrett Homes, LLC – Mic Mac Motel, 317 U.S. Route 1**

79 **Map/Lot 0059-0004, owned by Kittery Indian LLC – Mark Dellapasqua**

80 **The intent of this application is to amend a previously approved site plan by changing the**
81 **architectural appearance of one of the proposed retail business buildings.**

82 **Doug Grunert, Architect of Record**

83 **Gary Eucalitto, Garrett Homes**

84

85 This is continued from July 22, at which time the application was accepted as complete.

86

87 Architect Dave Grunert said that the plan had been changed to incorporate a full-peaked, full-
88 pitched hip roof, which added three feet to the height of the building. The exterior materials

89 remain Hardee Board, but in the vertical elements, the siding has been changed to shingles. The
90 roof and the shingles are the two changes that had been made. Chris Di Matteo said that the
91 roofline was the most important change and the building now complies with the ordinance.
92

93 As he was requested to do at the prior meeting, Dave Grunert provided an elevation comparing
94 the two buildings that have been developed for the site.
95

96 Kathleen Kluger requested additional landscaping on the side facing Rte. 1, the best face
97 forward.
98

99 Pete Smith asked for an alternating color between the boards and the shakes, but then said, “I’m
100 set. I’m okay.”
101

102 Gary Eucalitto said that he would make the color change on the shakes, anyway.
103

- 104 • Motion: Pete Smith moved to approve the amended site plan for Garrett Home. LLC,
105 retail shopping center, 317 U.S. Route 1, Tax Map 59, Lot 4. Wayne Boardman
106 seconded. There was no discussion. The motion passed 4-0.
107

108 **Long Sands Village – Elderly Housing Development, 122 Long Sands Road**
109 **Map/Lot 0044-0038, owned by James Paolini**

110 **The intent of this project is to create a 10-unit elderly housing development.**

111 **Geoff Aleva, Civil Consultants**

112 **Greg Orso, Esq.**
113

114 James Paolini is the owner of this property. This review is continued from July 22. Chris Di
115 Matteo said that the application is complete.
116

117 Kathleen Kluger said that the Planning Board conducted a site walk on August 5, 2021, from
118 9:00 to 9:33 A.M. Twenty-one people were there, including five members of the Planning
119 Board. Four people came for the benefit of the applicant. Geoff Aleva was absent. The
120 landscape architect was present.
121

122 Geoff Aleva said the new landscape plan came from review comments from Town Staff.
123 Buffered screening was added along the northeasterly side and along the abutters’ properties on
124 the right-hand side. The one large tree on the site is to remain. Trees have been added at the
125 bottom between the proposed homes. As required by staff, he has made a performance
126 guarantee for the restoration of cut trees.
127

128 He said that approvals have been received from the Water and Sewer Districts. The condo
129 documents have been updated and submitted. Tonight, he hopes for a waiver to skip the two-
130 step process and receive both preliminary and final approvals.
131

132 Chris Di Matteo said that new landscaping estimates were provided to Gorrill Palmer, which
133 has not reviewed them but, at this early point, has no comments. Anticipation of their pending
134 approval might be considered as a condition of approval. He said that the applicant has
135 expressed interest in using a bond to account for the landscaping performance guarantee.
136

- 137 • Motion: Al Cotton moved to open the public hearing for Long Sands Village, Map/Lot
138 0044-0038. Wayne Boardman seconded. There was no discussion. The motion passed
139 4-0.
140

141 Katherine Mulhern of 55 Fernald Ave., was on the site walk.

- 142 1) She has sent in a written request for a traffic study. Kathleen Kluger replied that this
143 application does not rise to the level where a traffic study is required.
- 144 2) She understood that traffic will be coming in from the west and exiting to the east.
145 When cars exit, will they be directed to turn one way or another, left or right?
- 146 3) The location of the mail boxes has not been identified.
- 147 4) Will guests be able to park on the street overnight?
- 148 5) The transformer on the left of the entrance has a fence, but is that enough to suppress the
149 noise?
- 150 6) How are the condos being marketed, and what will the sales price be?
- 151 7) When will the homeowner documents be distributed? Kathleen answered that they are
152 already posted online.
153

154 Torbert Macdonald said that there is a misconception of the Board's duties, which are to the
155 public, not the applicant.

- 156 1) Waivers should not be given lightly. All the regulations have the same weight and count
157 the same.
- 158 2) Section 7.2 says that the density of this monstrosity is out of proportion with the Fernald
159 Ave neighborhood, the allowance of which is contrary to the Comprehensive Plan.
- 160 3) This ordinance should be struck from being applicable to 1.b.
- 161 4) Less and less people can come and live in York. This is one of the last affordable
162 neighborhoods and deserves recognition as such.
- 163 5) Section 7.3.1, preservation of existing tree--we know about that [referring to those trees
164 the applicant already took down]. Removing those trees without permission is not the
165 way things are supposed to work.
- 166 6) This applicant has not acted right. In 7.17.2, "site design shall minimize the possibility
167 of noise pollution."
- 168 7) The project should be visibly opaque. You should beef up the shrubbery on their border.
- 169 8) You should put an eight-foot fence along each of the borders, not just north and south.
170 There should also be a six-foot fence in front to insulate the neighborhood.
- 171 9) In 10.8.4.33 of the elderly congregate rules, the first 30 feet of the buffer are supposed to
172 be retained in a natural state. That did not happen.
- 173 10) When interrupted by the Chair to wrap up his testimony, Torbert emphatically stated that
174 he cannot redress the government of the Town when given a three-minute limit to
175 speaking publicly.

- 176 11) With 9.8.2, Torbert said that water is going to come pouring off the site with this
177 stormwater management design. He doesn't believe what is been planned will work.
178 12) In 7.11.1, which says the topsoil is going to remain--how is that going to happen?
179 13) Under 8.1.9, what about snow storage snow-removal? Is that on the plan?
180

181 Torbert concluded that it is a terrible ordinance and a terrible plan that deserves more scrutiny
182 than it has received.
183

184 John Covino came forward to speak. He said he lives at 20 Field Avenue and drives Fernald
185 every day. He was on the site walk.

- 186 1) He is concerned about the parking for the number of tradesmen, like plumbers and
187 electricians, who will come to the site during construction. Will they be allowed to park
188 on the street?
189 2) What consideration has there been for guest parking overnight or during the day? It is a
190 narrow street with no shoulders.
191

192 Kathleen Kluger closed the public hearing.
193

194 Geoff Aleva addressed comments brought up during the public hearing.

- 195 • It was deemed by Public Works that, based on the ordinance, the traffic study was not
196 required.
197 • There are no restrictions for somebody to go left or right out of the development onto
198 Fernald Ave.
199 • Mailboxes will be on the units.
200 • There will be a note on the plan and in the condo documents that there is no parking on
201 Fernald Avenue.
202 • The transformer will be buffered and surrounded by landscaping. There also is a fence
203 line at the top of the area along Fernald Avenue that will hide the transformer and
204 deaden any humming sound that might come from it.
205 • The prices of the condos are up to the developer. Geoff said that he did not know the
206 amounts.
207 • Condo documents that address all staff comments, including age restrictions, were
208 provided to Town Staff on August 19.
209 • They are not requesting any waivers.
210 • They are following the ordinance regarding density requirements.
211 • They have updated the landscaping on the sides of the buildings and between the
212 abutters. The buffering exceeds the requirements detailed in the ordinance. They have
213 documented the trees that were cut. Those trees were cut inside the development area.
214 The applicant has provided additional trees to supplement them.
215 • Stormwater has been reviewed by Gorrill Palmer, a Maine professional engineer. They
216 have provided a stormwater management report and a stormwater maintenance report.
217 • Per the ordinance, topsoil is to remain. He said that topsoil that is not capable of being
218 used will be removed from the construction site.

- 219 • There is a note on the plan that indicates that excess snow will be removed from the site
220 and disposed of properly.
221 • There is adequate parking for tradesman in the fourteen-space lot on the property. They
222 will be made to understand that there is no street parking for them on Fernald.
223

224 Kathleen said that the parking prohibition exists so owners of the units don't assume they can
225 put their second car on Fernald.
226

227 Peter Smith said that, despite the condo documents, residents have civil rights and should be
228 allowed to park on Fernald. He said that there are very few streets in York where it is illegal to
229 park between 1:00 A.M. and 5:00 A.M. Fernald does not have such signage.
230

- 231 • Motion: Pete Smith moved to accept this application for Long Sands Village, Tax Map
232 44, Lot 38, as a preliminary review. Wayne Boardman seconded. There was no
233 discussion. The motion passed 4-0.
234

235 Chris Di Matteo reviewed his comments, point-by-point.
236

237 Comment 1

238 Because the of abutting situations, the Board might want to consider categorizing the property
239 as non-conforming as a condition of approval.
240

241 Attorney Greg Orso replied that such an approval might take years to enact. A dispute
242 resolution might go to court, a five-year wait. Kathleen Kluger said that the non-conforming
243 situation could and should be avoided.
244

245 Comment 2

246 Chris said that he provided the applicant with the landscaping suggestions addressing Section
247 7.8.2.3. Would the Board recommend that the applicant adhere closer to Chris's plan?
248

249 Geoff Aleva replied that there are features of the landscaping plan that address and respond to
250 Chris's recommendations. He said that landscaping is the applicant's prevue, and it has been
251 sufficiently addressed.
252

253 Comment 4

254 Chris said that he cannot confirm that Gorrill Palmer has reviewed the final plan set.
255

256 Comment 5

257 Chris said that the applicant needs to be clearer with condominium declarations in Section 7.8.3.
258 Geoff said that the condo documents address age restrictions.
259

260 Comment 6

261 This comment addresses and instructs the applicant's reference to the plot plan.
262

263 Comment 7

264 Section 12.1 should be subject to requirements of the improved Site and Subdivision plan.
265 Chris said that he was not sure if that was addressed or not. Geoff said that it will be added.

266

267 Comment 8

268 Chris said that the documents should address the applicant's responsibility to replace buffer
269 plants that die. Geoff responded that there is a long-term condition that goes with the project
270 that the perimeter buffer will be maintained by the homeowners' association. It is reflected in
271 the condo docs. Chris Di Matteo responded back that it is important that the homeowners'
272 responsibility to the buffers is clearly communicated. Geoff answered that he will speak to the
273 attorney to make sure that it is clear.

274

275 Comment 9

276 Geoff said that the responsibility of trash and recycling will be up to the homeowners.

277

278 Comment 10

279 He said that the Town Assessor will revise the street addresses after the plans are reviewed.

280

281 Comment 12

282 Geoff said that a recording block has been added to the plan.

283

284 Comment 13

285 Geoff said that he will integrate the plan notes into the plan.

286

287 There was a five-minute break, after which Kathleen disclosed that she had spoken with a
288 citizen during the break that might be misconstrued as ex parte. When asked, she confirmed to
289 that person that the Code Enforcement Officer had visited the site based on a report Kathleen
290 made to her that the site might have been altered. Code determined that nothing had happened.

291

292 Kathleen distributed and read from a multi-page document describing her views of the
293 application. It said that the project would result in too much density for the area; it won't
294 provide adequate parking or snow management; and it goes against the intent of the
295 Comprehensive Plan, which, in this case, she believes should supersede things otherwise
296 allowable by the ordinance.

297

298 She said that this application is based on ordinance and site/sub regs. The absolute, according
299 to State statute, is that broad interpretation is conferred upon the Planning Board in terms of
300 making sure that every application conforms to the Comp Plan.

301

302 Greg Orso said that in Town of Fryberg, Maine, 2009, case #96782D702, the Maine Supreme
303 Court struck that exact argument down. The Court said that the Fryberg Comprehensive Plan is
304 visionary, not regulatory.

305

306 Kathleen responded that there are other cases, as well, that go the other way.

- 307 • Motion: Al Cotton moved to give preliminary approval to the application for Long
308 Sands Village, owned by James Paolini, Tax Map 44, Lot 38. Pete Smith seconded.
309 There was no discussion. The motion granting preliminary approval did not pass. Pete
310 Smith and Al Cotton voted yes. Wayne Boardman and Kathleen Kluger voted no.

311

312 Greg Orso confirmed with Kathleen Kluger that the basis for denial was the multi-page
313 document that was handed to him and from which Kathleen had read.

314

315 **York Paddle (Tennis and Pickleball) Club, 28 Mill Lane**

316 **Map/Lot 0089-0037-D, owned by York Paddle Tennis Club, Inc.**

317 **The intent of this sketch plan is to show an expansion of the clubhouse, provide a new**
318 **pavilion, new courts, and a larger parking area.**

319 **Geoff Aleva, Civil Consultants**

320 **Mary Delong, York Paddle (Tennis and Pickleball) Club**

321

322 This property with clubhouse, pickleball, and winter-time platform tennis courts is located off
323 Route 91. This change will bring about maximum buildout. The courts will be raised high
324 enough for propane heaters to go underneath.

325

326 This property is surrounded by residences, and club parking is already pushed against the
327 property line. The gravel entrance leads to a gravel parking area. It will be revised to one-way-
328 in, one-way-out. Forty-two spaces will be provided. In order to maximize parking, they are
329 looking for a waiver from the buffer setback. They will also need a waiver to raise the lights
330 from 15' to 18'. There might be a waiver so mature trees in the setback can be taken down.
331 They might ask for a waiver for stormwater drainage.

332

333 Kathleen Kluger did not open a public hearing. It was deferred to the applicant's next
334 appearance for preliminary plan review. At that time, as well as receiving live public comment,
335 she will see that written correspondence is entered into the record.

336

337 **York Beach Surf Club, 780 York Street**

338 **Map/Lot 0038-0059, owned by York Beach Surf Club LLC**

339 **The intent of this project is to revise an approved plan by modifying the landscaping plan,**
340 **lot coverage and calculations, including above ground propane tanks, expansion of the**
341 **entry to the 49 units, and modification of the stairs near the office.**

342 **Tim DeCoteau, Project Manager**

343 **Brian Nielson, Attar Engineering**

344

345 Tim DeCoteau said that he applied for field changes for these items and others during the July 8
346 meeting, but the Board felt these particular items were too complicated to be field changes. Tim
347 said that he has brought them forward as amendments, instead. In these amendments he is
348 making the following changes.

349

1) Expansion of the entry

350

2) Addition of rear stairs to the office

- 351 3) Addition of a 125-gallon propane tank to the rear of the office
352 4) Placement of existing propane tanks behind Hotel Building A on the existing plan
353 5) Replacement of the underground propane tank with a 1,000-gallon above-ground tank
354 6) Addition of updated coverage calculations to reflect the site revisions to the plan
355 7) Removal of two oak trees adjacent to Seven Parker Street
356 8) Replacement of the original Existing Conditions plan that adds staired-entries of Units
357 47 and 48
358

359 Chris Di Matteo said that absence of Existing Conditions makes the application incomplete.
360

361 • Motion: Pete Smith moved to accept the application for York Beach Surf Club, LLC,
362 Amendment No. 3; Tax Map 124, Lot 299 Tax Map 124, Lot 323, for review. Al Cotton
363 seconded. The motion passed 4-0.
364

365 • Motion: Pete Smith moved to open the public hearing for York Beach Surf Club, Map
366 124, Lot 299, Lot 124, Lot 323. Wayne Boardman seconded. The motion passed 4-0.
367

368 Edward Barber lives at Five Parker Street. At first, he was told trees were going to be moved
369 next to the condos along the side of the driveway. Then he heard that four of the six existing
370 trees were going to be removed. He is seeking clarification.
371

372 Frank McGovern of Seven Parker Street said he was guaranteed input about types and
373 positioning of the trees. About a month ago, without notification, very messy trees were planted
374 on his property line. They will require yard cleanup of acorns and leaves every fall on his part.
375 He wants the messy trees moved as far away from his property as possible.
376

377 Chair Kathleen Kluger closed the public hearing.
378

379 Engineer Brian Neilson asked for additional time to speak to the landscape architect about the
380 trees and come back with another plan. Kathleen said it was a good idea.
381

382 • Motion: Pete Smith moved to approve Amendment No. 3 for York Beach Surf Club,
383 LLC, Tax Map 124, Lot 299, Tax Map 124, Lot 323 with condition that they will add a
384 plan exhibit that the shown modifications to the lot calculations as a result of changes of
385 the existing plan. Wayne Boardman seconded. The motion passed 4-0.
386

387 **Bristol Points #2, 294 York Street**

388 **Map/Lot 0050-0122, owned by Bristol Pointe LLC**

389 **The intent of this project is to demolish the existing residence/office space and construct a**
390 **new mixed-use, two-story building above a parking level.**

391 **Chris Duplantis, Project Manager**

392 **Brud Weger, Weger Architects**
393

394 This one-half hour discussion was originally slated as preliminary review but switched to sketch
395 plan because the applicant fell short with submittals. From 3.2, there was no letter from the Fire
396 Chief nor capacity letters from the Districts. The impact statement (11.3) was missing. The
397 configuration of the commercial/residential space percentages affecting parking spaces was also
398 missing. The discussion largely centered on the term “crossing,” (11.3) and evaluation of the
399 wetlands (11.4).

400

- 401 • Motion: Wayne Boardman moved to accept Bristol Pointe No. 2, 294 York Street, Tax
402 Map 115, Lot 233, for sketch plan review. Pete Smith seconded. There was no
403 discussion. The motion passed 4-0.

404

405 Chris Duplantis said with the way the driveway has been designed, no parking protrudes into
406 the wetland, and, per 11.3, it is acceptable. He read from 11.3.2. “Utilities, driveways, and
407 road *crossings* may be permitted, provided impacts are minimized and conditions are specified
408 as in 11.4 of this ordinance.” He also had a misconception of 11.4.2, where it reads, “The
409 amount of wetland impacted shall be calculated. The accumulated amount of all impacts over
410 time, including those actions that predate this provision, shall be not more than 4,300 square
411 feet on an individual lot.”

412

413 Chris De Matteo rebounded, saying that “crossings” is the key word in 11.3.2. The driveway
414 that is proposed is not a crossing. A crossing is from Point A to Point B. This had been an
415 issue during the prior application for Bristol Pointe # 1, he said. At that time, the Code
416 Enforcement Officer was brought in to provide an opinion. The CEO said that the impact the
417 applicant proposes was not supported in the code.

418

419 Brud said that he believed the Board is allowed to grant some leeway on the fill. Kathleen
420 Kluger answered that Section 11.3.2 doesn’t support this idea. Code will not give a permit.
421 It is going to become a Code, not Planning Board, decision.

422

423 Brud said, “You can’t override Code?”

424

425 Brud said that his understanding of the word “crossing” is crucial to the architecture and
426 footprint of the building. This conflicts with his design plan and limits access to the parking
427 cellar of the building. Wayne Boardman responded that the footprint of the building can be
428 changed.

429

430 When Brud asked if it could go to the Appeals Board, Kathleen replied that that would be true if
431 there is a formal decision that has been turned down. At this point, there is no formal decision.

432

433 Brud said that it all comes down to parking. He asked if the Board would be willing to give a
434 parking decompensation for his commercial spaces. The board members said that was possible,
435 but because it was 10:30, the discussion was left to the next hearing.

436

437 “It is not a total loss,” Brud said.

438

439 **Minutes**

440

441 Minutes were not reviewed.

442

443 **Other Business**

444

445 There was no other business.

446

447 The next Comp Plan Steering Committee meeting is Thursday, September 2.

448 The next Planning Board meetings are September 9th and 23rd.

449

450 **Adjourn**

451 The time was 10:30.

452

453 Respectfully submitted,

454 Patience G. Horton

455 Recording Secretary

Findings of Fact, Conclusions of Law, & Decisions
Planning Board, Town of York, Maine

Regarding an application for
317 US Route 1 Retail Shopping Center
Tax Map 59 Lot 4

Applicant
Garrett Homes, LLC

Findings of Fact

Street address:

317 US Route 1, York Maine

Property ownership:

Garrett Homes, LLC.

Other parties to the application:

Fuss & O'Neill

Description of the existing use(s) of the property:

The site is located in the Route One-3 District, southeast of US Route 1, currently vacant though included the former two-story Mic Mac Motel.

Description of the proposed use(s) of the property and the nature of the application:

The commercial development with two buildings and associated parking was recently approved in March of this year. The Applicant is seeking to amend the architectural design for one of the proposed buildings.

Base zoning district:

Route One Zone 3 Zoning District

Overlay zoning district(s):

N/A

Other relevant regulatory districts:

MS4 Urbanized Area

List of materials submitted at each stage of the application process:

Materials submitted for the July 16, 2020 Planning Board Meeting:

1. Application form dated 6/23/2021

2. Cover Letter: Narrative prepared by Rick Lundborn, PE, Fuss & O'Neill, dated 6/23/2021.
3. Previously approved Architectural elevations (O'rielly Autoparts) prepared by BKA Architects, dated 2/11/2021.
4. Proposed amended Architectural elevations (O'rielly Autoparts) prepared by BKA Architects, dated 5/4/2021.
5. Proposed Architectural renderings, views from Route 1 (O'rielly Autoparts) prepared by BKA Architects, dated 6/15/2021.

Materials submitted for the July 16, 2020 Planning Board Meeting:

6. Revised Proposed Architectural renderings, views from Route 1 (O'rielly Autoparts) prepared by BKA Architects, dated 7/30/2021.
7. Revised Proposed amended Architectural elevations (O'rielly Autoparts) prepared by BKA Architects, dated 8/12/2021.
8. Proposed Architectural renderings, views from Route 1 (O'rielly Autoparts and Sherwin Williams) prepared by BKA Architects, dated 8/18/2021.

Date(s) on which the Board met to consider the application:

7/22/2021 & 8/26/2021

Date(s) on which the Board conducted a public hearing on the application:

7/22/2021

Brief description of substantive materials and testimony received at the public hearing:

None

List of public comment via letters and email.

None

List of staff and peer-review reports and Town Attorney legal opinions.

1. Peer-review letters prepared by Long Meadow Planning & Landscape Architecture, LLC, dated 7/16/2020 and 8/18/2021.

Conclusions of Law

Planning Board Jurisdiction

Statutes:

None

Ordinances:

York Zoning Ordinance, Section 18.15.B.1.A

Site Plan and Subdivision Regulations:

Section 1.2 and all other applicable provisions related to Major Subdivision Application

Permits Required:

Route One Use Permit (YZO Section 18.1)

Planning Board Approval Criteria

(Site Plan and Subdivision Regulations Article 1 Section 2)

This amendment does not change the conclusions from previously approved Findings of Fact and approval criteria.

Decisions

Date Application Accepted as Complete for Review:

July 22, 2021.

Waiver(s) Granted:

None

Decision(s) voted on by Planning Board:

(From the 7/22/2021 minutes)

Motion to accept the application for a previously-approved plan for Garrett Homes, LLC, Map/Lot 0059-0004 as complete for the purpose of review. The motion passed 5-0.

(From the 8/26/2021 minutes)

Motion: to approve the amended site plan for Garrett Home. LLC, retail shopping center, 317 U.S. Route 1, Tax Map 59, Lot 4. There was no discussion. The motion passed 4-0.

Final Plan Approval Date:

August 26, 2021

Conditions for Final Approval:

None

Expiration Date (if conditions are not satisfied):

"A conditional approval shall be valid for a period of 60 days from the date on which the vote was taken. If the applicant fails to satisfy all conditions precedent within this timeframe, the board may vote to deny without prejudice. Both of these standards shall be expressly stated in the findings of fact."

Chair, Planning Board

Date

Findings of Fact, Conclusions of Law, & Decisions
Planning Board, Town of York, Maine

Regarding an application for
AT&T Wireless Communications Facility – 265 Long Beach Ave.
(Adjacent to) Tax Map 36 Lot 96

Applicant
New Cingular Wireless PCS, LLC

Findings of Fact

Street address:

Adjacent to 265 Long Beach Avenue

Property ownership:

Town of York (Street Right Of Way);

Other parties to the application:

Central Maine Power (Utility Pole)

Description of the existing use(s) of the property:

Public street right of way, utility pole.

Description of the proposed use(s) of the property and the nature of the application:

The proposal is to add a small cell wireless facility on a replacement (existing) utility pole owned by Central Main Power and located within the public Right Of Way for Long Beach Avenue. The proposed facility is a small pole-mounted equipment cabinet (39" x 22" x 15") and a pole top antenna (60" x 16" dia.).

Base zoning district:

Residential-7

Overlay zoning district(s):

Shoreland Overlay

Other relevant regulatory districts:

None

List of materials submitted at each stage of the application process:

Materials submitted for the May 27, 2021 Planning Board Meeting:

1. Application Form dated 4/1/2021.
2. Cover letter/Narrative: RE: Application of a New Cingular Wireless PCS, LLC (d/b/a AT&T) for Site Plan Approval – Small Wireless Facility on s Replacement Utility Pole Located near 265 Long Beach Avenue, York, Maine. Prepared by Brown Rudnick, LLP,

- April 1, 2021. Contains submittal information, including FCC license, photographs and waiver requests.
3. Plans entitled: AT&T SITE ID: CRAN_RCTB_YORK_06, 265 LONG BEACH AVE., YORK, ME 03909. Prepared by Centerline Communications, REV. Date 1/12/2021.
 4. Emissions Report entitled: Re: Installation of a proposed AT&T Mobility “Small Cell” personal wireless services facility to be located on a pole in York, ME. Prepared by Donald L. Haes, Jr., CHP, Radiation Safety Specialist, March 30, 2021.
 5. Structural Report: Structural Analysis Report, AT&T Site ID: cran_rctb_york_06, Pole Number: 91S, 265 LONG BEACH AVE., York, ME 03909. Prepared by Centerline Communications, Date 1/18/2021.
 6. Consent Agreement: Letter dated July 27, 2021 from Centerline Communications to ECP Two LLC, Regarding AT&T Installation of Equipment on Utility Pole

Date(s) on which the Board met to consider the application:

May 27, 2021 and August 22, 2021

Date(s) on which the Board conducted a public hearing on the application:

May 27, 2021 and August 22, 2021

Brief description of substantive materials and testimony received at the public hearing:

Public testimony included the following topics from the following abutters:

- Torbert Macdonald: The Planning Board should not waive the minimum 65-foot setback from abutting residential structures.

List of staff and peer-review reports and Town Attorney legal opinions.

1. Compliance review letter prepared by Long Meadow Planning & Landscape Architecture, LLC dated 5/19/2021 and 8/18/ 2021

Conclusions of Law

Planning Board Jurisdiction

Statutes:

Title 47 US Code §332(c)(7){Preservation of local zoning authority}

Ordinances:

Section 1.5.B Wireless Communications Facilities Ordinance

Site Plan and Subdivision Regulations:

None

Permits Required:

None issued by the Planning Board

Planning Board Approval Criteria

(Wireless Communications Facilities Ordinance Section 1.9)

Qualification of Applicant and Right to Build:

The applicant has submitted pertinent documents that demonstrate compliance with this standard.

Priority for WCF Location:

The proposed WCF is considered a priority 2, collocation on an existing support structure.

Placement on Municipal Property:

The applicant shall obtain approval by the Board of Selectmen as a condition of Planning Board approval.

Design for Collocation:

The WCF is proposed for an existing utility pole that has limited space for collocation.

Height:

The WCF will extend above the height of the support structure (replacement utility pole) by 5'-1" less than the ten (10) foot maximum height standard.

Setbacks:

The WCF will not extend more than three (3) feet horizontally from the edge of the support structure and does encroach upon the abutting property, making it exempt from setback requirement per Sec. 1.9.H.6 (b).

Visual Impact:

The WCF will not extend more than three (3) feet horizontally from the edge of the support structure, less than the ten (10) foot maximum height standard, located 12 feet above the ground and will be painted a color that resembles the color of the utility pole.

Fencing:

The Planning Board granted a waiver for the fencing requirement considering the support structure is a utility pole located in the public street right of way where a fence is not appropriate.

Structural Standards:

A structural analysis report certified by a professional engineer, has been submitted and demonstrates compliance with applicable standards of American Nation Standards Institute (ANSI), including ANSI EIA/TIA Standard 222 entitled 'Structural Standards for Steel Antenna and Tower and Antenna Supporting Structures.'

Certifications from Applicant:

A certification from a professional engineer has been submitted that states the WCF complies with FCC regulations including radio frequency emission regulations at the times identified in subsection 1.9.J.

Interference with Other Signals:

A certification from a professional engineer has been submitted that states the WCF will not interfere with adjacent or neighboring transmission or reception functions , as identified in subsection 1.9.K.

Decisions

Date Application Accepted as Complete for Review:

May 27, 2021

Waiver(s) Granted:

Wireless Communications Facility Ordinance (WCF), Section 1.9.H Fencing.

Decision(s) voted on by Planning Board:

(From 8/26/21 meeting minutes)

Motion to waive Section 1.9.h of the wireless ordinance. The motion passed 4-0.

Motion to approve the application for the AT&T Small Cell Facility, 265 Long Beach Avenue, Map/Lot 0036-0096. The motion passed 4-0.

Application Approval Date:

August 26, 2021

Conditions for Final Approval:

None

Expiration Date (if conditions are not satisfied):

“A conditional approval shall be valid for a period of 60 days from the date on which the vote was taken. If the applicant fails to satisfy all conditions precedent within this timeframe, the board may vote to deny without prejudice. Both of these standards shall be expressly stated in the findings of fact.”

Chair, Planning Board

Date

Findings of Fact, Conclusions of Law, & Decisions
Planning Board, Town of York, Maine

Regarding an application for
York Beach Surf Club Amended Site Plan
Tax Map 38 Lot 59

Applicant
York Beach Surf Club, LLC

Findings of Fact

Street address:
780 York Street

Property ownership:
York Beach Surf Club, LLC.

Other parties to the application:
Carlton Street Holdings, LLC (12 Carlton St – Tax Map 38 Lot 369)

Description of the existing use(s) of the property:
Motel (780 York St.) and vacant parcel (12 Carlton St.)

Description of the proposed use(s) of the property and the nature of the application:
The property most recently received Site Plan amendment (#2) in April of this year, forgoing plans to build a new motel building, and instead remove and/or relocate existing smaller buildings and cottages on site and construct additional parking on the Carlton Street property out back. The proposed amendments include:

- 1) An expanded entry on unit #49; 2) Additions to stairs at the rear of the Office; 3) A 125-gallon propane tank to the rear of the Office; 4) Two existing propane tanks shown behind Motel Building A; 5) Underground propane tank to be replaced with a 1,000 gallon above ground tank; 6) Units 47 & 48 entry stairs updated to depict existing conditions; 7) Coverage calculations updated to reflect requested plan Revisions; and 8) Removal of two proposed Pin Oak trees adjacent to 7 Parker Street at the abutter's request.

Base zoning district:
Business -2 (BUS-2)

Overlay zoning district(s):
A portion of the property lies within the Limited Residential and Stream Protection subdistricts within the Shoreland Overlay District.

Other relevant regulatory districts:

Flood Management Ordinance and MDEP Sand Dune District

List of materials submitted at each stage of the application process:

Materials submitted for the August 26, 2021 Planning Board Meeting:

1. Application form dated 7/30/2021.
2. Narrative/summary prepared/compiled by Tim DeCoteau.
3. Written response to application submittal requirements for Sections 6.3 and 6.4.
4. Plan Set entitled: *York Beach Surf Club, 780 York Street, York Harbor, Maine, 03909, prepared for York Beach Surf Club, LLC, 197 Long Sands Road, York, Maine 03909.* Prepared by Attar Engineering, Inc, Rev. date 7/30/2021.
5. Landscape Plans entitled: *Phase One Planning Submission, York Beach Surf Club, 780 York Street, York Harbor, ME, 03909.* Prepared by ALA Aceto Landscape Architects. Rev. date: 7/30/2021. Includes Planting Plan and Planting Details (Sheets L 3-00, L 5-01)
6. Architectural Plans entitled: *Phase 1 Planning Submission, York Beach Surf Club, 780 York Street, York Harbor, ME, 03909.* Prepared by wow design group/Greco Works. Rev. date: 7/30/2021. Includes Renovation Rendering and Exterior Elevations for Building A and Bungalow Units and Pool Area (Sheets A01, A02, A03, A04, A06, A07)

Date(s) on which the Board met to consider the application:

August 26, 2021.

Date(s) on which the Board conducted a public hearing on the application:

August 26, 2021.

Brief description of substantive materials and testimony received at the public hearing:

Public testimony from the 8/26/2021 meeting included the following topics from the following abutters:

- Tree species and quantity along property line concern mature height and messiness, e.g. acorns, etc...
- Edward Barber and Frank McGovern

List of staff and peer-review reports and Town Attorney legal opinions.

1. Peer-review letters prepared by Long Meadow Planning & Landscape Architecture, LLC dated 8/20/2021

Conclusions of Law

Planning Board Jurisdiction

Statutes:

None applicable

Ordinances:

Section 18.15.B.1.D of the Zoning Ordinance

Site Plan and Subdivision Regulations:

Section 5.5.4 Final Approval and Filing

Permits Required:

None issued by the Planning Board

Planning Board Approval Criteria

(Site Plan and Subdivision Regulations Article 1 Section 2)

This amendment does not change the conclusions from previously approved Findings of Fact and approval criteria.

Decisions

Date Application Accepted as Complete for Review:

August 26, 2021

Waiver(s) Requested:

None

Decision(s) voted on by Planning Board:

(From 8/26/21 meeting minutes)

Motion to accept the application for York Beach Surf Club, LLC, Amendment No. 3; Tax Map 124, Lot 299 Tax Map 124, Lot 323, for review. The motion passed 4-0.

Motion to approve Amendment No. 3 for York Beach Surf Club, LLC, Tax Map 124, Lot 299, Tax Map 124, Lot 323 with condition that they will add a plan exhibit that the shown modifications to the lot calculations as a result of changes of the existing plan. The motion passed 4-0.

Application Preliminary and Final Approval Date:

August 26, 2021

Conditions for Final Approval:

1. Prior to signing the final plans a plan exhibit with the corresponding math that arrives at the revised values in the table, Note #5, Sheet 1.1, shall be prepared and submitted for review by the Planning Department.

Expiration Date (if conditions are not satisfied):

“A conditional approval shall be valid for a period of 60 days from the date on which the vote was taken. If the applicant fails to satisfy all conditions precedent within this timeframe, the board may vote to deny without prejudice. Both of these standards shall be expressly stated in the findings of fact.”

Chair, Planning Board

Date

1 ***Findings of Fact, Conclusions of Law, & Decisions***
2 ***Planning Board, Town of York, Maine***

3
4 *Regarding an application for*

5 **Long Sands Village – Elderly Homes Development**

6 ***Tax Map 44 Lots 38, 38-A & 38-B***

7
8 *Applicant*

9 **James M. Paolini**

10
11 ***Findings of Fact***

12
13 ***Street address:***

14 122 Long Sands Road (Map 44 Lot 38)

15 47 Fernald Avenue (Map 44 Lot 38-A)

16 61 Fernald Avenue (Map 44 Lot 38-B)

17
18 ***Property ownership:***

19 James M. Paolini

20
21 ***Other parties to the application:***

22 None

23
24 ***Description of the existing use(s) of the property:***

25 Single family residential with access from Long Sands Road

26
27 ***Description of the proposed use(s) of the property and the nature of the application:***

28 The proposal is to develop 10 Elderly Housing units through the conversion of the existing
29 dwelling into a two-family building and construct 8 additional two-family buildings, along with
30 associated parking with access to/from Fernald Ave.

31
32 ***Base zoning district:***

33 Residential-1B

34
35 ***Overlay zoning district(s):***

36 None.

37
38 ***Other relevant regulatory districts:***

39 None

40
41 ***List of materials submitted at each stage of the application process:***

42 ***Preliminary Plan:***

43 ***Materials submitted for the October 22, 2020 Planning Board Meeting:***

- 44 1. Application Submission book entitled: *Preliminary/Final Site Plan Application, York*
45 *Maine, Prepared for James Paolini, 40 Godfrey Cove Rd., York, Maine 03909,*
46 *September 2020.* prepared by Civil Consultants.

- 47 2. Plan set entitled: *Site Plan, Long Sands Village Elderly Housing Development; 122 Long*
48 *Sands Road (Map 120, Lot 139) York Maine. Prepared for James Paolini, 40 Godfrey*
49 *Cove Rd., York, Maine 03909. Prepared by Civil Consultants. Date 9/25/2020.*
50 3. Stormwater Management book entitled: *Preliminary/Final Site Plan Application,*
51 *Stormwater Management Plan, York Maine, Prepared for James Paolini, 40 Godfrey*
52 *Cove Rd., York, Maine 03909, September 2020. prepared by Civil Consultants.*

53 *Materials submitted for the December 17, 2020 Planning Board Meeting:*

- 54 4. Item #1 referenced above, revised *Preliminary Site Plan Application...November 2020.*
55 5. Item #2 referenced above, revised, dated 11/30/2020
56 6. Item #3 referenced above, revised *November 2020.*
57 7. Plan entitled: *Site Lighting Plan, Proposed Development, Tax Map 44, Lot 38, 122 Long*
58 *Sands Road, York Maine. Prepared by Scott Strynar, Landscape Architect, LLC. Date*
59 *7/17/2020.*
60 8. Plan entitled: *Site Lighting Details, Proposed Development, Tax Map 44, Lot 38, 122*
61 *Long Sands Road, York Maine. Prepared by Scott Strynar, Landscape Architect, LLC.*
62 *Date 7/17/2020.*

63 *Materials submitted for the January 28, 2021 Planning Board Meeting:*

- 64 9. Item #2 referenced above, revised, REV date 1/14/2021.
65 10. Item #3 referenced above, revised *January 2021.*
66 11. Response to Comments: *Civil Consultants Memorandum, Site Plan and Subdivision*
67 *Review – Elderly Housing – Review comment/response. Dated 1/14/2021*

68 *Materials submitted for the February 25, 2021 Planning Board Meeting:*

69 (No new materials submitted)

70 *Materials submitted for the May 27, 2021 Planning Board Meeting:*

- 71 12. Application Submission book entitled: *Preliminary/Final Site Plan Application, York*
72 *Maine, Prepared for James Paolini, 40 Godfrey Cove Rd., York, Maine 03909, April*
73 *2021. prepared by Civil Consultants.*
74 13. Item #2 referenced above, revised, REV date 4/29/2021.
75 14. Item #3 referenced above, revised *April 2021.*

76 *Materials submitted for the June 24, 2021 Planning Board Meeting:*

77 (No new materials submitted)

78 *Materials submitted for the July 22, 2021 Planning Board Meeting:*

- 79 15. Response to Comments: *Civil Consultants Memorandum, 122 Long Sands Road –*
80 *Elderly Homes Development –Peer response memo. Dated 7/2/2021*
81 16. Item #2 referenced above, revised, REV date 7/2/2021.
82 17. Draft Findings of Fact
83 18. Email from Christopher Balentine, York Fire Department, dated 5/24/2021

84 *Materials submitted for the August 25, 2021 Planning Board Meeting:*

- 85 19. Item #2 referenced above, revised, REV date 8/16/2021.
86 20. Email from Phil Tucker, York Sewer District, dated 8/11/2021
87 21. Declarations Long Sands Village Condominium
88 22. Letter from the York Water District dated 8/16/2021

- 89 23. Updated Cost Construction Cost Estimate for Performance Guarantee
90 24. Item #21 above revised. (Emailed 8/25 and discussed at the meeting)
91 25. Plan entitled: *Landscape Plan, Proposed Development, Tax Map 44, Lot 38, 122 Long*
92 *Sands Road, York Maine*. Prepared by Scott Strynar, Landscape Architect, LLC. Date
93 7/17/2020. Plot Date 8/24/2021. (Emailed 8/25 and presented at the meeting)
94

95 ***Date(s) on which the Board met to consider the application:***

96 *Sketch Plan:* October 22, 2020 (Reviewed as such, due to incomplete application)

97 *Preliminary Plan:* December 17, 2020; February 25, 2021; May 27, 2021*; and
98 August 26, 2021

99 *Site Visit:* January 7, 2021; August 5, 2021

100 *Final Plan:* TBD

101 *No substantive review due to site clearing violation, application continued to June 24, 2021
102 conditioned on submittal of revised Existing Conditions Survey.
103

104 ***Date(s) on which the Board conducted a public hearing on the application:***

105 October 22, 2020; December 17, 2020; and August 26, 2021
106

107 ***Brief description of substantive materials and testimony received at the public hearing:***

108 Public testimony included the following topics from the following abutters:

109 October 22, 2020

- 110 1. The areas of the abutting driveway located on the site as it relates to density calculations
- 111 2. Exasperating current flooded basement problems
- 112 3. The impact from on-site blasting of ledge
- 113 4. Frontage should be from Fernald Ave not Long Sands Road.
- 114 5. Different configuration that meets setback better
- 115 6. Site's suitability for Elderly Housing considering the steep slopes
- 116 7. The need for Traffic Study
- 117 8. Stormwater management, soils do not allow for adequate drainage, and the need for a
118 high intensity soil survey
- 119 9. The proposed 24.98% impervious surface of the site calculated to meet the 25%
120 standard.
- 121 10. Calculations for the net-developable acreage
- 122 11. Sign off from Fire Chief

123

124 Kevin O'Shaughnessy, Monica Kaiser (Atty), Kathern Mulhern, Rebecca Boyle, and Torbert
125 Macdonald.

126 December 17, 2020

- 127 1. Frontage should be from Fernald Ave with 75-foot setback and a 20-foot setback from
128 Long Sands Road.
- 129 2. Density is too intense
- 130 3. Stormwater management and drainage, and its design and maintenance
- 131 4. Blasting
- 132 5. Speed limit on Fernald Ave should be lower than 25mph

- 133 6. Proposed duplexes should not be considered as one building
134 7. It is not clear if the proposed level-lip spreader will work
135 8. A loophole that is a detriment to the neighborhood
136 9. Site's suitability for Elderly Housing considering the steep slopes
137 10. Mailbox and trash logistics
138 11. Part-time residents as it relates to Elderly Housing
139 12. A single access rather than two on Fernald Ave.
140 13. The Town attorney should be consulted
141 14. Developable acreage percent too marginal
142 15. Details on the proposed level-spreader
143 16. Erosion control
144 17. Fencing and buffering
145 18. Parking for guests and for residents that own more than one car
146

147 Kevin O'Shaughnessy, Monica Kaiser (Atty), Ross Cutlets (O'Shaughnessy's engineer), Kathern
148 Mulhern, Rebecca Boyle, Torbert Macdonald and Carolyn Macdonald.
149

150 August 26, 2021

- 151 1. Traffic Study
152 2. Direction of entering and exiting traffic
153 3. Location of mailboxes
154 4. Overnight and day parking on Fernald Ave for guests
155 5. Transformer noise
156 6. Density is too intense
157 7. Fencing and buffering
158 8. Stormwater management
159 9. Snow storage/removal
160 10. Parking during construction (trades)
161

162 Kathern Mulhern, Torbert Macdonald and John Covino.

163

164 ***List of staff and peer-review reports and Town Attorney legal opinions.***

- 165 1. Email dated 9/2/2020 from Luke Vigue, Code Enforcement (confirming proposed
166 building type as two units in one building)
167 2. Peer-review letter prepared by Christopher Di Matteo – Licensed Landscape Architect,
168 dated 10/19/2020. (Includes Engineering peer-review by Gorrill Palmer)
169 3. Peer-review letters prepared by Long Meadow Planning & Landscape Architecture, LLC
170 dated 12/14/2020, 1/22/2021, 5/22/2021, 7/17/202, and 8/19/2021
171 4. Ber, Stein & Shur Memorandum dated 2/11/2021
172 5. Code references and comments compiled by the Board Chair Kathleen Kluger
173 presented/provided to board members and applicant on 8/26/2021
174

175

Conclusions of Law

Planning Board Jurisdiction

Statutes:

Title 30-M.R.S.A. § 4403 - §4404

Ordinances:

York Zoning Ordinance: Section 4.1 *Base Zone Requirements*, subsection A. *Residential Use Categories*, Sec. 4.3.C *Additional Requirements*, subsection 2 *The construction of 3 or more units for lease, rent or sale*; and applicable provisions of Sec. 7.8 *Elderly Housing*

Site Plan and Subdivision Regulations:

Section 1.2 and all other applicable provisions related to Major Subdivision Application

Permits Required:

None issued by the Planning Board

Planning Board Approval Criteria

(Site Plan and Subdivision Regulations, Article 1 - Section 2)

Pollution:

The proposed development will not contribute to pollution. The site has also been designed to meet the Town's stormwater regulations. The project will not result in undue water or air pollution.

Sufficient Water:

Serviced by public water.

Municipal Water Supply:

The development will not cause an unreasonable burden of an existing water supply. The York Water District has provided an email indicating final approval. Final Plans shall be signed by the Water District.

Erosion:

The project has been planned and designed by professionals who have experience and training in erosion control and stormwater management, requiring erosion control both during and after construction. An erosion and sediment control plan has been submitted and reviewed by the Town's Peer-review Engineer.

Traffic:

An assessment of traffic impact has been prepared for this project. The predicted traffic generated from the development is less than the threshold required for a full traffic study and the Director of Public Works and the Town's Peer-review Engineer have reviewed the application. The proposed development eliminates the vehicular access from Long Sands Road and creates new access to and from Fernald Ave. The following are aspects related to traffic that do not conform to the Town's ordinances and regulations:

1. Parking area is insufficient in size for the proposed development's probable demand* and as such, and considering there is no on-street parking permitted on Long Sands

217 Road, will likely contribute to on-street parking issues on Fernald Avenue.
218 2. Parking area is insufficient in size for prompt storage and removal of snow *in such a*
219 *manner as to safeguard against hazards to traffic and pedestrians in existing streets*
220 *and within the development...*(Site/Sub Regs Sec. 8.1) as required by Section 8.1.9 of
221 the Site Plan and Subdivision Regulations.
222 *(not consistent with Comprehensive Plan, see *Conformity with Local Ordinances and Plans*)

223 ***Sewage Disposal:***

224 The property is serviced by public sewer. The development will provide for adequate
225 sewage waste disposal and will not cause an unreasonable burden on municipal services.
226 The York Sewer District has provided an email indicating final approval. Final Plans shall
227 be signed by the Sewer District.

228 ***Municipal Solid Waste Disposal:***

229 All construction waste and that generated by the premises will be the responsibility of the
230 property owner. All routine solid water from the development will disposed of by contracted
231 haulers at licensed facilities, having no burden on the Town's solid waste program.

232 Compliance to the Town's Refuse Ordinances: *Collection, Transportation and Disposal of*
233 *Refuse from Residences; Document # 4885 and Solid Waste Collection, Recycling, and*
234 *Disposal Ordinance; Document # 733 is not demonstrated.*

235 1. Section 4.2 PLACEMENT FOR COLLECTION OF REFUSE CONTAINERS
236 (*Document # 4885*). *Each residence shall place all refuse in a Town approved*
237 *container. The container(s) shall be placed at the back edge of the property side of the*
238 *sidewalk (blocking of a sidewalk is prohibited), or where there is no sidewalk, three (3)*
239 *to ten (10) feet from the edge of pavements or unpaved road, before 7:00 A.M. on the*
240 *day of collection, but not before 4:00 A.M. of the scheduled day of pick-up service.*
241 There is no indication from the plans where typical trash and recycling containers/tubs
242 can be stored without conflict.

243 2. Section 4.3 PLACEMENT FOR COLLECTION OF OTHER MATERIALS (*Document*
244 *# 4885*). *Materials other than refuse which are subject to the Town curbside collection*
245 *service shall be placed at the back edge of the property side of the sidewalk (blocking of*
246 *sidewalk is prohibited), or where there is no sidewalk, three (3) to ten (10) feet from the*
247 *edge of the pavement or unpaved road. Materials shall be placed at curbside before*
248 *7:00 A.M. on the day of collection, and shall not be placed at curbside before dusk of*
249 *the day before scheduled pick-up service.*

250 3. Sec. 1.2 REQUIRE AND ENCOURAGE RECYCLING (*Document # 733*). To allow
251 the Town to mandate and encourage the recycling of solid waste materials, to ensure
252 that State goals regarding recycling are met, lessen degradation to the environment by
253 reducing the volume of waste placed in landfills or burned at waste-to-energy plants and
254 to manage solid waste disposal.

255 There is no indication from the plans where typical trash and recycling containers/tubs can be
256 stored inside the buildings without conflict typical and safe access to said buildings. It is not
257 reasonable to have such storage out in front of the dwelling units without appropriate measures.
258 Furthermore, this ordinance is applicable to both private and town contracted haulers.

259 ***Aesthetic, Cultural and Natural Values:***

260 The development is not in the vicinity of any scenic or natural beauty of the area,

261 aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland
262 Fishers and Wildlife or the municipality, or rare and irreplaceable natural areas or any
263 public rights for physical or visual access to the shoreline, and thus will not have an undue
264 adverse effect.

265 ***Conformity with Local Ordinances and Plans:***

266 No waivers requested for the proposed development. As required and authorized by Title 30-
267 M.R.S.A. §4404.9 and Site Plan and Subdivision Regulations (SPSR) Sec. 1.2.9 and on the
268 basis that the more restrictive provision shall prevail, Sec. 2.4.2, SPSR and Sec. 21.1, York
269 Zoning Ordinance (YZO), The Planning Board makes the following findings and conclusions.
270 The following are aspects of the proposed development that **do not conform** to the Town's
271 plans, ordinances and regulations:

272 1. The proposed development's 2-unit structure elderly housing and associated density of
273 1 unit/5,000 SF is not consistent with the Town's Comprehensive Plan (CP) for this
274 portion of town (Land Use Area #11). The CP includes objectives for the
275 predominantly single-family use in the area to be protected as such. Plan
276 Recommendation #1 reads (page 130 of Volume I, Section 3):

277 *Establish the area as a protected residential zoning district. Only single family*
278 *housing and Class 1 home occupations should be allowed. Density should*
279 *remain moderate.*

280 2. Per Section 7.2, Article 7 General Standards, SPSR, the Planning Board is required to
281 consider conformance with the Comprehensive Plan and Section 1.29 authorizes the
282 Planning Board to interpret ordinances and the Comprehensive Plan. Furthermore, per
283 Section 2.4.2 of the same regulations requires the more restrictive, that which imposes
284 *higher standards or requirements shall govern.* Article Twenty-one of the York
285 Zoning Ordinance supports this provision.

286 3. Section 7.6.1 (Sec. 7.6 LOTS, SPSR) requires ...*The lot size, width, depth, shape and*
287 *orientation and the minimum building setback lines shall be appropriate for the*
288 *location and type of development and use contemplated...*In considering the proposed
289 development's type of construction, number of dwelling units and their proportion as it
290 relates to the size of the lot, conformance to this provision has not been demonstrated.
291 Furthermore, per Sec. 7.2 and Sec. 2.4.2, conformance with the CP, the more
292 restrictive, shall govern.

293 4. Section 7.6.2 (Sec. 7.6 LOTS, SPSR) requires the *Lot configuration and area shall be*
294 *designed to provide for adequate off-street parking and service facilities based upon*
295 *the type of development contemplated.* As stated under approval criterion *Traffic*
296 above, there is insufficient space on the lot for the proposed development's parking
297 needs and service facilities such as snow storage and removal operations, and the
298 storage of refuse/solid waste and recycling containers per the Town's Refuse
299 Ordinance: *Collection, Transportation and Disposal of Refuse from Residences;*
300 *Document # 4885.*

301 5. Section 8.1.9 (Art. 8 Access Control and Traffic Impacts, Sec. 8.1 GENERAL, SPSR)
302 requires the *Areas suitable for snow storage shall be designated on the plan, and*
303 *removal of snow from the site may be required if insufficient storage is provided. The*
304 *landscaping and snow removal plans must work in harmony with on[e] another.* The
305 plans depict inadequate sized areas for snow storage and their limited number and

306 location will likely require specific logistics in place for safety of the residents within
307 the development and the immediate neighborhood. Snow removal operations are not
308 clear from the application, including the Condominium Declarations.

309 ***Technical and Financial Capacity:***

310 The applicant has engaged with a professional engineer to provided technical assistance and has
311 shown financial capacity through previous housing developments and has submitted a letter
312 from a financial institution to the Town. The applicant has indicated that a Performance
313 Guarantee per Article 10, SPSR (Not §10.1.4 and §10.6) shall be established.

314 ***Surface Waters:***

315 There are no surface waters on site, including ponds, lakes and wetlands.

316 ***Ground Water:***

317 The development will not adversely affect the quality or quantity of groundwater. No infiltration
318 BMPs are proposed. Connection to municipal water will ensure that the site does not
319 excessively remove groundwater.

320 ***Flood Areas:***

321 The site is not subject to flooding The property is located in FEMA Flood Zone X, which is
322 defined as areas outside the 500-year floodplain.

323 ***Freshwater Wetlands:***

324 There are no freshwater wetlands on site.

325 ***River, Stream or Brook:***

326 There are no rivers, streams, or brooks on site.

327 ***Stormwater:***

328 The proposed development will provide for adequate stormwater management on-site through
329 LIDs that include a gravel drip edge around the new buildings, a new level lip spreader, and a
330 berm to reduce the potential impact to the abutting property to the east. The Stormwater
331 Management Plan has been prepared pursuant to Sec. 9.8, SPSR, and has been reviewed by the
332 Town's Peer-review Engineer.

333 ***Spaghetti Lots Prohibited:***

334 Not applicable.

335 ***Lake Phosphorous Concentration:***

336 Not applicable (not in the watershed of a Great Pond).

337 ***Impact on Adjoining Municipality:***

338 Not applicable.

339

340

Decisions

341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380

Date Application Accepted as Complete for Review:

Preliminary Plan: December 17, 2020 and August 26, 2021

Final Plan: TBD

Waiver(s) Granted:

None.

Decision(s) voted on by Planning Board:

(From 12/17/20 meeting minutes)

Motion: Pete Smith moved to accept the plan for Long Sands Village, Map/Lot 0044- 0038, as complete for purposes of review. Wayne Boardman seconded. The motion passed unanimously.

(From 8/26/21 meeting minutes)

Motion: Pete Smith moved to accept this application for Long Sands Village, Tax Map Lot 38, as a preliminary review. Wayne Boardman seconded. There was no discussion. The motion passed 4-0.

Motion: Al Cotton moved to give preliminary approval to the application for Long Sands Village, owned by James Paolini, Tax Map 44, Lot 38. Pete Smith seconded. There was no discussion. The motion granting preliminary approval did not pass. Pete Smith and Al Cotton voted yes. Wayne Boardman and Kathleen Kluger voted no.

Application Approval Date:

TBD

Conditions for Final Approval:

TBD

Expiration Date (if conditions are not satisfied):

"A conditional approval shall be valid for a period of 60 days from the date on which the vote was taken. If the applicant fails to satisfy all conditions precedent within this timeframe, the board may vote to deny without prejudice. Both of these standards shall be expressly stated in the findings of fact."

Chair, Planning Board

Date