

**Planning Board Meeting/Hearing  
Thursday, May 26, 2022; 7:00 P.M.  
Via Zoom**

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

Vice Chair Wayne Boardman called the meeting to order at 7:00 P.M. A quorum was determined with five people voting: Wayne Boardman, Board Secretary Gerry Runte, Al Cotton, Pete Smith, and alternate Ian Shaw, who was appointed as a voting member. Alternate Kenny Churchill was present but did not vote. Kathleen Kluger was not present. Land Use Planner DeCarlo Brown represented Town Hall staff. Chris Di Matteo was the peer reviewer. Patience Horton took minutes, working remotely. Votes were tallied via roll call.

Agenda items heard tonight:

- 1) Raydon Road Medical Facility
- 2) York Paddle Tennis and Pickleball Site Extension
- 3) Viewpoint Hotel

Agenda item not heard tonight:

- 4) 115 Joshiah Norton Subdivision

**Field Changes**

There were no field changes.

- Motion: Al Cotton moved to add a meeting/hearing for Thursday, July 7, 2022. Ian Shaw seconded the motion, which passed 5-0.
- Motion: Peter Smith moved to give a six-month extension of the temporary occupancy permit for 317-West Route 1 (O'Reilly Auto Parts). Gerry Runte seconded the motion. The motion passed 5-0.
- Motion: Peter Smith moved to grant an extension for 7 Hannaford Workforce Housing. Seconded by Ian Shaw, the motion passed 5-0.

**Public Forum**

Without objection, Wayne Boardman opened and closed the public forum. No one came forward to speak.

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**Application Reviews**

**Raydon Road Medical Facility, 66 Raydon Road  
Map/Lot 0091-0009-X owned by J. Hilary Rockett, Jr.  
Application is a preliminary plan for the development of a single-story building intended for use as a physical therapy/rehabilitation facility to be occupied by Northeast Rehabilitation. The proposed building is approximately 23,000 square feet.**

Larry Beals, Beals Associates Engineering  
Bryon Sutherland, Beals Associates  
Attorney Jason Howe, JHR Development

Jason Howe said that there is an outstanding question of whether a pin (also called a monument) can create a sideline. Town Counsel was asked if placing a monument can establish a corner. She was not asked to give an opinion of the presence of a side-yard or front-yard, he said, just on the placement of the monument.

43 According to her legal opinion, it is not possible, said Chris Di Matteo.

44 The purpose of the pin is to establish the property as a corner lot. If it can be deemed a corner lot, there  
45 would be a 50-foot setback in the northeasterly portion of Raydon Road (the front) and a 30-foot setback  
46 on the southeasterly portion of Raydon Road (the side). That would be good for the applicant. Without  
47 the corner, both the front and side of the building would have the same 50-foot setback wrapping around  
48 the two sides of the building—not so good. A 30-foot side setback along the side of the building is  
49 needed to maintain the integrity of the applicant’s design.

50 “This [fit] has exercised our cleverness to the maximum,” said Larry Beals. “We have made a concerted  
51 effort to comply with every single regulation. We will either come back to you and explain to you that  
52 we figured it out and moved a couple of parking spaces, or we will come back and demonstrate to you  
53 that we tried every single thing we could, and it’s been very difficult.”

54 This evening, Larry Beals took a different approach. He showed how the pin creates a physical  
55 intersection in the road—intersection being the operative word. The pin (a stake put in place by the  
56 applicant’s surveyor) was placed where Raydon Road bends. At that point, a passing car must decide  
57 which direction to take. The driver will decide whether to veer left along the bend on Raydon or turn  
58 right onto Donica. Those choices confirm a point of intersection. He showed a map and photos of the  
59 area to prove his point.

60 Applicant Attorney Howe has looked closely at the ordinance and found that, per Maine State case law,  
61 the Planning Board has the discretionary authority to determine which is the front-yard and which is the  
62 side-yard. There is a line of cases in which such discretionary decisions made by planning boards have  
63 held up in court, he said.

64 We want to make sure we can apply the ordinance fairly to everyone, said DeCarlo Brown.

65 In other activity, the applicant has scoured the parcel for the location of trees that have a diameter of 24”  
66 inches or greater. There are three, all White Pines. One tree is on the outside of the perimeter of the  
67 building footprint. One is on the edge, and one is directly inside. Those two will be removed.

68 There was a question about whether “nursing facility” is an appropriate term for the use at Raydon Road.  
69 McMann Associates, the applicant’s consultant, used ITE (Institute of Traffic Engineers) land codes and  
70 found nursing homes as the closest comparative use. The analysis was accepted by Gorrill Palmer when  
71 they made the peer review of the traffic study, and the matter was resolved.

72 Parking was also reanalyzed by McMann Associates by using ITE standards. A facility in Nashua was  
73 used as a predictable comparison. A census of 15 patients, 31 employees, and two non-patient visitors  
74 resulted in a demand for 43 parking spaces. With a similar quota of patients and personnel, the comparable  
75 Raydon Road plan is for 49 spaces. It will most likely have a smaller need. The applicant is confident 49  
76 spaces are adequate.

77 The study reveals that this site is not a high-volume traffic generator. There is a minimum amount of  
78 traffic. At the A.M. peak hour, there are 17 vehicle trips, about a car every three minutes. On Saturday,  
79 the peak hour generates about 10 trips. On Sunday, it is about four. These numbers do not trigger a need  
80 for a traffic assessment or a DOT permit.

- 81 • Motion: Peter Smith moved to open a public hearing for the Raydon Road Medical Facility, 66  
82 Raydon Road, Map/Lot 0091-0009. Ian Shaw seconded the motion, which passed 5-0.

83 Martin Meyers of Three Cranberry Lane is mostly concerned about the vernal pool, which he said will  
84 certainly be destroyed by the intrusion of the medical building. The ecology of the area, including two  
85 ponds, depends on the health of the vernal pool. He also said that the roads in that area form a bottleneck  
86 between the corners of Raydon Road, the daycare center, Donica Road, Raydon Road Ext, and the traffic

87 coming off the Davis property. Pedestrians are at risk. There are many walkers from Stonewall Kitchen  
88 to the Duck Pond. Will the new property have a sidewalk?

89 Wayne Boardman closed the public hearing.

90 Larry Beals responded to Martin Meyers. The law says that the vernal pool must be protected, and this  
91 vernal pool has been protected. The vernal pool is the impetus for developing 15% of the property and  
92 protecting 85%. Vernal pools dry out from time to time, but that is what vernal pools are supposed to do,  
93 he said. They provide essential habitat that won't support fish that prey on eggs. That is why they are  
94 great breeding grounds for reptiles and amphibians. He proposed putting up plaques containing  
95 educational information warning walkers to be careful about the sensitive, environmentally-unique  
96 features of the site.

97 Chris Di Matteo said that the Board is happy with the landscaping plan. There are outstanding details  
98 concerning landscaping, grading in the bufferyard, and a proposed wall. Jason Howe assured the board  
99 members that the final plan will reflect the landscaping they hope to see on the site.

100 Chris Di Matteo said the stormwater structure meets the ordinance. Bryon Sutherland replied. "The  
101 preliminary plan review includes the overall stormwater. However, the final plan requires more in-depth  
102 review, which includes calculations and details of the stormwater management system. All that  
103 information will be included in the final plan. The preliminary plan is just an overview of the system  
104 showing where the stormwater will be collected, how it will be treated, and where it will be discharged  
105 from the site.

106 He said that DPW has received the revised traffic information but has not completed reviewing it.

107 Wayne Boardman said a site walk is not necessary.

108

- 109       • Motion: Peter Smith moved to continue the review of Raydon Road Medical Facility, Map/Lot  
110       0091-0009-X to the meeting on July 7. Seconded by Ian Shaw, the motion passed 5-0.

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112 **York Paddle Tennis and Pickleball Site Expansion, 28 Mill Lane**  
113 **Map/Log 0089/0037-D, owned by York Paddle Tennis Club, Inc.**  
114 **Application is an expansion of the York Paddle Tennis and Pickleball property. Proposed**  
115 **expansion includes a clubhouse addition and new pavilion.**

116 Jeff Aleva, Civil Consultants

117 Geoff Aleva reported on the current status of the application.

118 The expansion consists of two new pickleball courts on the north side of the property, the rebuilding of a  
119 raised tennis platform court, and the addition of a third raised platform court. Two open air pavilions will  
120 be available where players can wait their turns at the courts and socialize. The expansion of the  
121 clubhouse might be phased because of finances.

122 The HDC has reviewed their application but has not gotten back. The State has no concerns for historic  
123 issues at the site.

124 There is a waiver request for the high intensity soil survey. The site does not need a septic system. There  
125 is no water supply. Port-a-potties are in use.

126 Trash is carry-in and carry-out by members.

127 The hours of operation are basically 9:00 A.M. to 9:15 P.M.

128 Parking has a requirement of 15 feet from the edge of the right-of-way. A waiver request will be  
129 submitted for a distance of 11.5 feet.

130 Sound and light disturbance are being addressed with vegetation along Mill Lane, the addition of a solid  
131 fence, and a blanket on the wall of one pickleball court. LED lights will be shielded and downlit.

- 132 • Motion: Pete Smith moved to accept York Paddle Tennis and Pickleball Site Expansion,  
133 Map/Lot 0089/0037-D as complete for purpose of preliminary review. Ian Shaw seconded the  
134 motion, which passed 5-0.

135 The site will be accessed with a one-way-in, one-way-out traffic pattern. The design has safe sight  
136 distances. This proposal has been reviewed and accepted by the Fire Chief. DPW did not have any  
137 comments or concerns. The Police Department has concerns about noise, but not about the traffic  
138 pattern.

139 The large trees have been identified. None are affected by the proposed development.

140 The main thing is the sound, said Geoff Aleva. A sound consultant was hired, and his report has been  
141 submitted. He conducted tests many different times. He set up a base ambient sound value when there  
142 was no one playing on the courts. He then took sound readings when all four courts were in use. The  
143 tests determined that at one area of the southern property line, the DBs (decibels) reached 61. The  
144 ordinance says, 60, said Geoff Aleva. The sound engineer came back with recommendations for sound  
145 blankets that would bring the DBs below the zoning allowance of 60.

146 Board member Gerry Runte commented that a 1-DB change is not trivial. Geoff Aleva suggested having  
147 the Code Office conduct a follow-up study as a condition of approval.

- 148 • Motion: Al Cotton moved to open the public hearing for the York Paddle Tennis Club, 28 Mill  
149 Lane, Map/Lot 0089/0037-D. Gerry Runte seconded the motion. The motion passed 5-0.

150 Attorney Gordon Smith represented Bob and Janet Ellis of 5 Mill Lane. He had submitted comments and  
151 a letter to the Planner and the Code Office. There was also a September 2021 letter from the  
152 neighborhood with 75 signatures. He questions the validity of the study. He said that there are many flaws  
153 in the report, and he described the ordinance rules about variables in the decibel levels. He said that the  
154 study does not take into account the fact that this is a particular type of sound that, at the State level, is  
155 called, “a short duration of repetitive sound.” Mr. Smith insisted the Board hire an expert peer reviewer to  
156 assess the sound report and the analysis of the technical matters already made. These things are regulated  
157 in a particular way the applicant’s report does not take into account, he said.

158 He went on to say that there are violations in the setbacks that are noted in the peer review. The  
159 easement of the parking area is in violation. It has been grandfathered but should not have been. The  
160 parking should meet the 50-foot front side back requirement. Having a current violation of the zoning  
161 ordinance should disallow the Board from granting site plan approval. Attorney Gordon Smith finished  
162 his comments.

163 Deborah Morris is a direct abutter to a pickleball court. Except for some shrubs, there is no kind of  
164 buffer between her property and the courts. When she first moved here in 2007, there were only raised  
165 paddle tennis courts used only in winter. It was not so bad. Pickleball courts were added, and they create  
166 the noise problem. She asked the board members to imagine four loud ping pong games going on at the  
167 same time, 12 hours a day, seven days a week. It is so disruptive that we can’t have barbeques or use the  
168 pool. We have a right to quiet and peaceful enjoyment of our property. I suggested putting a structure  
169 around the courts but never heard anything back. I have a tape of the noise, if you want to hear it.

170 George Gendron, 427 Cider Hill Road. How could the club be built legally without a septic system? The  
171 clubhouse does not have a septic system. When he built his house, he had to go through extreme lengths  
172

173 with the Town with a septic system design. Why didn't they? Regarding noise, if he is going to sell his  
174 house and move to his retirement house, he wants to make sure to bring the real estate agent over on a  
175 rainy day when pickleball is not being played. His house is about one-half mile away. For him, it is not  
176 as loud. It's just annoying. It is like a drip-drip-drip that never ceases. The problem is with the timing of  
177 the sound and the frequency. It is never ending from nine-to-nine. He also hears people drying off the  
178 courts with leaf blowers before they play.

179 James Morris spoke next. The noise goes on 12 hours a day, 84 hours a week! He invited the board  
180 members to come over for coffee so they could sit outside and listen. It is horrendous, he said.

181 James Williams, 80 Mill Lane. He lives one-half mile away through the woods. Even that far away, from  
182 his back deck he can hear ping-ping-ping-ping. It is not just the ping pong sound, it is also the hooting,  
183 hollering, and cursing (some). They are having little bonfires. They're socializing. They're drinking. It is  
184 a much louder social situation that when it was wintertime paddle tennis alone.

185 Clint Ellis lives directly across the street, 60-yards from the courts. It is a loud, constant noise. There is  
186 more than pickleball going on. There are parties. He had to put sound machines in his four-year-old  
187 daughter's room so she can sleep. He said there are alternative paddles and balls that make less noise.  
188 The Club land is near the Bell Marsh reservoir. Wildlife has declined since the pickleball courts came in.  
189 We used to have wild turkeys, ducks, and deer. It is affecting more than just us. It is affecting the whole  
190 environment, he said.

191 Jim Cronin spoke as a member of the club. Pickleball is the fastest growing sport in the U.S. The Club  
192 has a positive impact on the community. It is social and inclusive. You see generations of families  
193 playing at all kinds of levels. Friendships develop there. The Club raised \$13,000 for the York Hospital  
194 Living with Cancer Fund. Members keep the site very tidy.

195 Bob Ellis: "If this club has so much money, why don't they go buy somewhere else where they won't be  
196 in someone's neighborhood like this? If they want to stay, they can build a building to encapsulate the  
197 whole sound!"

198 Wayne Boardman closed the public hearing without objection.

199 DeCarlo Brown commented that he was not sure if restroom facilities are a requirement.

200 Geoff Aleva said he understands the noise condition and its impact on the abutters. That is what drove  
201 the club to hire a sound engineer. The vegetation and fencing along Mill Lane will help reduce the sound  
202 impact. A blanket and appropriate sound insulation on the courts will deflect the sound. Upgrades in  
203 equipment can help reduce the impact.

204 The Code Officer has deemed that there is a pickleball court that encroaches the side setback, but it is  
205 grandfathered.

206 Parking is allowed within the front building setback. Geoff has put in a waiver request to reduce the 15-  
207 foot buffer to 11.5 feet. The buffer would span from the right-of-way to the edge of the parking lot.

208 He clarified that the construction of the clubhouse, the raised courts, and the pickleball courts were  
209 originally permitted through Code Enforcement. The work did not require site plan review.

210 Chris Di Matteo said that the sound ordinance that relates to this project is a requirement that the Board  
211 does not see very often. There is no noise specialist on staff. Peer review is recommended. It is the most  
212 expeditious way to get through it.

- 213       • Moton: Pete Smith moved that the Board asks that Planning Staff provides a peer review as the  
214       results of York Paddle Tennis and Pickleball Site Expansion, 28 Mill Lane, Map/Lot 0089/0037-  
215       D, as it relates to excessive sound. Ian Shaw seconded the motion, which passed 5-0.

216 DeCarlo Brown assured all that the subject matter review will take place before the next hearing.

217       • Motion: Peter Smith moved to arrange a site walk for June 16, 2022, at 11:00 A.M. at the York  
218 Paddle Tennis Club, 28 Mill Lane. Ian Shaw seconded the motion. The motion passed 5-0.

219       • Motion: Peter Smith moved to continue the review of York Paddle Tennis Club Facility  
220 Expansion, Map/Lot 0089/0037-D to a date certain of July 14, 2022. Al Cotton seconded the  
221 motion, which passed 5-0.

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223 **Viewpoint Hotel, 229 Nubble Road**

224 **Map 0025, Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223**

225 **Owned by 229 Nubble Road, LLC.**

226 **Application is a Site Plan Amendment to create 13 additional hotel units and an innkeeper**  
227 **dwelling. Seven Units will be located within two new structures. Six units will be added to the**  
228 **existing nine-unit hotel.**

229 Geoff Aleva, Civil Consultants

230       • Motion: Ian Shaw moved to accept the application for Viewpoint Hotel expansion, 229 Nubble  
231 Road, Map 0025, Lots Map 0025-/Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221,  
232 0222 & 0223, as complete for final review. Gerry Runte seconded the motion, which passed 5-0.

233 Items have been updated based on comments from the Planner and the Board. The existing conditions  
234 plan was updated and submitted for the ocean-side of the plan. Lot coverage has also been updated on  
235 the existing conditions plan. The slight line shift on the ocean side is also shown on the plan.

236 The restaurant is an accessory use to the hotel. That was approved two years ago. The restaurant is  
237 seasonal and closes down during the off-season. The food truck is a registered vehicle. It and the bar-  
238 service trailer have to have the ability to move off the property. This status of their registrations has to be  
239 reported to the CEO on a yearly basis.

240 A plan note has been added to demonstrate the existing vegetation on the eastern side of the property. It  
241 includes vegetation to hide the transformer. There have been some changes to address ADA parking and  
242 ADA requirements for the pathways.

243 The applicant has received the letter from the sewer department. There are no issues.

244 On the western side of the property, where Brown's Ice Cream was, the maximum allowable lot  
245 coverage is 30%. We are at 35%, said Geoff Aleva. The calculation of 35% comes from laying the 2005  
246 and 2015 aerial GIS maps over the current survey. We are trying to bring lot coverage below 35% by  
247 converting existing gravel it into landscaping and lawn areas. The owner has started adding plantings  
248 along the Sprint Street buffer.

249 There is a slight change to the proposed buildings on the ocean side. At the recommendation of the Code  
250 Office, the buildings were made slightly smaller and moved slightly to maintain the existing vegetation  
251 that is along the buffer line.

252       • Motion: Al Cotton moved to open the public hearing for Viewpoint Hotel, 229 Nubble Road  
253 Map 0025, Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223. Ian Shaw  
254 seconded the motion. The motion passed 5-0.

255 Connie Doto is a direct abutter. The project is in poor taste for a historic site and beautiful ocean front.  
256 Code told her to remove stones from her patio area and replace them with grass. If this place gets by with  
257 a green roof, maybe she should have just painted the rocks green. Unjustly, trees were taken down from

258 her property without permission. Is the runoff from the hotel going to cause problems on her property?  
259 The sound on Saturday nights “rocks” her house. With the upgrades, she expects to hear more noise from  
260 the weddings and the restaurant.

261 Wayne Boardman closed the public hearing without objection.

262 Geoff Aleva showed the existing conditions plan. The roofs of the new buildings will be covered with  
263 green vegetation, not painted green. The top building will have a sod lawn area and a glass rail. The  
264 second roof will have perennials and low grasses. The green roofs will be counted as lot coverage.

265 Drainage from the new buildings will be percolated into the soil and discharged into the ocean. None of  
266 the stormwater will go onto abutting property.

267 The Viewpoint has a view easement over Connie Doto’s property. Connie Doto does not have a view  
268 easement over the hotel. The Viewpoint is able to take care of the trees. Trees were cut were along the  
269 property line.

270 Chris Di Matteo’s comments concern three components of ADA compliance: the parking, the route to  
271 the two new buildings, and the route to the main hotel. Geoff Aleva went over the engineering details of  
272 the changes that will bring those areas to the correct standard.

273 Geoff Aleva said he has a letter from the bank stating the project has financial capacity.

- 274 • Motion: Peter Smith moved continue the application for Viewpoint Hotel expansion, 29 Nubble  
275 Road, Map 0025, Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223, to July  
276 7, 2022. Gerry Runte seconded the motion, which passed 5-0.

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278 ~~115 Josiah Norton Subdivision, 115 Josiah Norton Road~~  
279 ~~Map/Lot 0099-0053-A owned by Richard Moody and Sons Construction Co.~~  
280 ~~Application is a subdivision for the creatin of two new lots designed as an open space conservation~~  
281 ~~development.~~

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283 **Minutes**

284 Minutes were not reviewed.

285 **Other Business**

286 There was no other business.

287 **Adjourn**

288 10:30

289 Respectfully submitted,

290 Patience G. Horton