

BALLOU & BEDELL

ATTORNEYS AT LAW

David J. Ballou
Kathryn Bedell

Tel. (207) 363-5300
Fax (207) 363-1143
www.balloubedell.com

June 27, 2022

Dylan Smith
Planning Director
York Town Hall
186 York Street
York, Maine 03909

RE: Lot Coverage Calculations for York Tax Map 139, Lots 429, 431, 433, 435, 463, 465, 467, 469

Dear Mr. Smith:

As you may, I am a local Maine real estate attorney with over thirty years of experience in land development, mostly centered on land development projects in the town of York where my law firm has always been located.

I represent 229 Nubble Road LLC in connection with its pending application before the York Planning Board (the "Board") for development of the eight lots referenced above. Title to all eight lots are now consolidated in the name of the applicant, 229 Nubble Road LLC. This letter will address the subject of lot coverage, specifically, including where relevant, the chronology of improvements and the existing condition of lot coverage on each of the lots in order to determine "Area of Coverage" per 4.6 of the Regulations. This question is important because it impacts the scope and extent to which the applicant can alter and build on the land. This review relies on the calculations of lot coverage established by the project engineers from Civil Consultants as shown on the attached plans. We are unaware of any competing data on the subject of lot coverage applicable to these lots and rely on the work of Civil Consultants and its calculations of existing lot coverage. This letter will review the lot coverage applicable to each parcel and concludes that the aggregated current allowable lot coverage available for land development on the land is forty-one and six-tenths percent (41.6%).

All eight lots are located in York's RES-5 zoning district. The minimum dimensional requirements for development of lots located in RES-5 are declared in a table at Article 5.2.1 of the York Zoning Ordinance (the "Ordinance"), which establishes the maximum lot coverage at thirty percent (30%). The Ordinance defines "Lot Coverage" as "(Used to calculate the lot coverage percentage). The maximum projected horizontal area of all buildings or structures of a lot at or above ground level. No land located below the normal high water mark of a body of water located below sea level shall be used in the calculation of lot coverage"

Regulation 4.6 discusses "Area of Coverage" and provides that "Plans submitted pursuant to these Regulations shall depict the entire area and boundary of the property". In short, the Ordinance and Regulations require the applicant to provide the Board with lot coverage information. The plans depict this information and this letter will detail in narrative form, the manner in which the lot coverage was calculated for each individual lot, which, due to the historical, legal use of each lot, in the aggregate yields a total combined allowable lot coverage for the project of 41.6%.

You might ask, how can the aggregate maximum lot coverage exceed 30% if that is what's required in the RES-5 Zone. The answer is that some of the lots, particularly those lots that have street frontage on Nubble Road were improved and otherwise developed before March of 1992 when the town adopted the Ordinance. This scenario is sometimes referred to as a legal non-conforming design or grandfathered situation. The Ordinance defines "Non-Conforming Design" and cites "excessive lot coverage" as an example of a use of a lot that was lawful when established but that does not currently comply with the requirement of the Ordinance. Article 17.1.1 of the Ordinance allows non-conforming uses to continue: "A non-conforming use which is otherwise lawful according to all applicable regulations may continue in accordance with this Article and other applicable regulations."

Four improved lots with frontage on Nubble Road have grandfathered lot coverage in excess of 30%

There are four lots that have street frontage on Nubble Road, namely, Lots 463, 465, 467 and 469. These lots, which include the former location of "Brown's Ice Cream" and two house lots have grandfathered lot coverage as follows:

Lot 463: see Exhibit A which highlights the total lot area and the existing improved areas, primarily the parking lot. This lot is owned by the applicant 229 Nubble Road, LLC (see Exhibit A-1, deed Book 17486, Page 42) and is the former location of Brown's Ice Cream parking lot. It has a total land area of 15,963, most of which had been legally improved with crushed stone & gravel covering **10,003 square feet** of the lot dating back before adoption of the Ordinance, and is therefore grandfathered. The applicant has no intention of expanding the lot coverage of this lot and therefore lot coverage on this land shall remain at **10,003 square feet**.

Lot 465: see Exhibit B. Title to this lot is held by the applicant, 229 Nubble Road LLC (see Exhibit B-1, deed Book 18026, Page 88) and is the former location of Brown's Ice Cream building. The lot has a total land area of 15,013 square feet, and grandfathered lot coverage of **6,923 square feet**.

Lot 467: see Exhibit C. This built lot is owned by the applicant, 229 Nubble Road LLC (see Exhibit C-1, deed at Book 17403, Page 466), contains a total land area of 7,500 square feet, and is improved with a dwelling and other improvements providing grandfathered lot coverage of **2,339 square feet**.

Lot 469: see Exhibit D. This built lot is owned by 229 Nubble Road LLC (see Exhibit D-1, deed Book 17485, Page 799), contains 7500 square feet in total land area upon which sits a dwelling and other improvements providing grandfathered lot coverage of **3,564 square feet**.

The combined four lots on Spring Street have an allowable lot coverage of 30%

Lot 429: see Exhibit E. This lot is owned by 229 Nubble Road LLC (see Exhibit E-1, deed Book 17403, Page 473), contains 11,307 square feet in area, is improved with gravel and has been used as additional parking for the ViewPoint Hotel. The current total impervious area on this lot is 7,981, exceeding the allowable impervious area of **3,392 square feet**.

Lot 431: see Exhibit F. This lot is owned by 229 Nubble Road, LLC, (see Exhibit F-1, deed Book 18026 Page 86). This vacant/unimproved lot is 5,213, square feet in area and applying the 30% lot coverage rule yields an allowable coverage of **1,564 square feet**.

Lot 433: see Exhibit G. This vacant/unimproved lot is owned by the applicant, 229 Nubble Road LLC, (see Exhibit G-1, deed Book 17486, Page 42) has a land area of 5,149, and applying the 30% lot coverage rule yields an allowable coverage of **1,545 square feet**.

Lot 435: see Exhibit H. This lot is owned by 229 Nubble Road LLC (see Exhibit H-1, deed Book 18026, Page 86) a portion of which is improved with gravel not exceeding allowable coverage and is otherwise unbuilt. This lot consists of a land area of 10,136 square feet and applying the 30% lot coverage rule yields an allowable coverage of **3,041 square feet**.

In 2021, the Planning Board approved the applicant's parking plan, see Exhibit I and Exhibit I-1, attached.

See Exhibit J providing detail regarding applicant's (and affiliated companies) lot ownership from 2017 to present.

See Exhibit L, attached, which illustrates the four Nubble Road lots with historical lot coverage before 1992 Ordinance; and the undeveloped lots fronting on Spring Street, which are allowed up to 30% lot coverage.

The total land area of the eight lots is 77,781 s.f., the total of allowable lot coverage is 32,371 s.f., resulting in a **total allowable lot coverage of 41.6%**. See Exhibit K, attached. Below is a chart summarizing and totaling the allowable lot coverage per lot and the total aggregated lot coverage for all eight lots of 31,968 square feet:

Lot 463 = 10,003

Lot 465 = 6,923

Lot 467 = 2,339

Lot 469 = 3,564

Lot 429 = 3,392

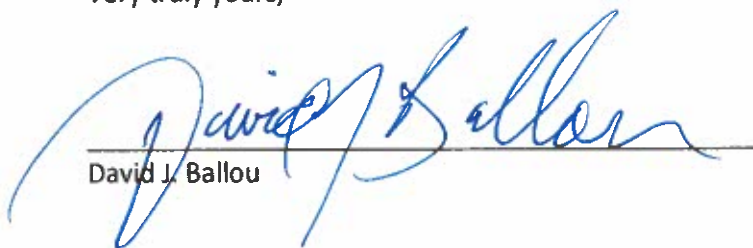
Lot 431 = 1,564

Lot 433 = 1,545

Lot 435 = 3,041

Total = 32,371 sf. = 41.6% allowable lot coverage.

Very truly yours,



David J. Ballou