

PEER REVIEW  
LETTER

July 8, 2022

York Planning Board  
DeCarlo Brown, Land Use Planner  
Town of York  
186 York Street  
York, Maine 03909

Application: Viewpoint Hotel Expansion– 229 Nubble Road, LLC  
229 and 226 – 238 Nubble Road and 24 – 28 Spring Street (Locus Tax Map 25 Lot 193A)

**Site Plan Review – Amendment (Hotel Expansion)**

Review Status: Revised Final Plan Application (Approved Preliminary on 4/14/2022).

Board members and Mr. Brown,

The following application information has been provided for review:

1. Application form dated 3/29/2022 ,narrative and submittal information entitled: *Viewpoint Hotel- Site Plan Amendment, York, Maine, Final Plan Submission*. Prepared by Civil Consultants and dated 5/4/2022. [includes response-to-comments, checklist, waiver requests, evidence of sending preliminary plan to specified department heads, stormwater narrative, Request for comment/capacity letters to department heads and sewer/water, and architectural renderings]
2. Proposed Plan set entitled: *Site Plan Amendment Plan - Viewpoint Hotel Expansion, (Map 25, Lot 193A) (Map 25, Lots 201, 202, 203, 204, 220, 221, 222, 223) York, Maine. Prepared for 229 Nubble Road, LLC, P.O. Box 700, York Beach, ME 03910*. Prepared by Civil Consultants. Cover Sheet dated 5/4/22, Site Plan REV date 5/9/22.
3. Previously Approved Plan entitled: *Site Plan Amendment Plan - Viewpoint Hotel, 229 Nubble Road, LLC, Nubble Road/Spring Street, York, York County, Maine Prepared for CJ Hospitality Group...REV. Date 1/7/2021*. Prepared by Civil Consultants.
4. Draft Findings of Fact.
5. **Response to comments: Memorandums responding to LMP&LA and Gorrill Palmer comments prepared by Civil Consultants dated 6/27/22.**
6. **Attorney Letter and attachments concerning lot coverage by Ballou & Bedell dated June 27, 2022.**
7. **Revised Plans: Amended Site Plan – 40.6% West Side and Amended Site Plan – 35% West Side; Sheets L1-Wb, prepared by Civil Consultants dated 6/27/22.**

With review of the above information and the Town’s Zoning ordinance and the Site Plan and Subdivision regulations, and in collaboration with civil engineers Gorrill Palmer, I offer the following comments on compliance with the Town’s ordinances.

## **PROJECT DESCRIPTION**

The project site is the ViewPoint Hotel at 229 Nubble Road located in the Residential 5 (RES-5) District, with a portion of the property within the Shoreland Overlay Zone. The applicant owns property across the street (west side of Nubble Road) and is also included in the project site. The property received approval for a Site Plan Amendment in 2010 for the development of a new 15-unit motel and amended again in 2020 with the addition of a restaurant use (outdoor seating only with a food truck for food preparation and cooking) in lieu of constructing 6 of the previously approved motel units.

**This amendment** is to expand the current 9 hotel units to 15 within a renovated existing building, and the addition of 7 hotels units as part of two new buildings constructed within the portion of the property that lies within the Shoreland Overlay District. In addition, there is planned for an innkeeper’s home on the property across the street owned by applicant that includes a gravel parking lot and two existing buildings, one of which is a hotel unit. This would bring the total number of hotel units to 23 (currently 10).

## **REVIEW SUMMARY/HIGHLIGHTS**

The application is before the Planning Board as required by sections 18.15.B.1.D of the Zoning Ordinance and 5.5.6 of the Site Plan and Subdivision Regulations as an amendment to an approved plan. In addition, the proposed development is also subject to Section 18.15.B.1 of the Zoning Ordinance since it results in 5,000 SF or more of building gross floor area. With this in mind, the Board may want to consider following a two-step process.

The following is a summary of the review comments:

1. The Planning Board accepted the final application at its May 26th meeting.
2. Revised drawings have been submitted, however, there are pertinent issues that remain unresolved.
  - a. Existing coverage calculations continues not reflect previous development that applicant states did not occur while they owned it, Code Enforcement does not concur;
  - b. Clearing of vegetation in the shoreland zone where it is not permitted;
  - c. Accessible parking proposed does not appear to conform to ADA.
3. Code Enforcement is requesting the applicant on a yearly basis demonstrates through financial statements that the restaurant use is accessory to the hotel use. The applicant does not concur with this requirement.

## **COMPLETENESS REVIEW**

Preliminary application was accepted at the April 14, 2022 meeting and Final application was accepted on May 26, 2022.

## **COMPLIANCE WITH THE TOWN'S ORDINANCES**

### ZONING ORDINANCE

The plans have been revised after the May 26<sup>th</sup> meeting together with Civil Consultant's 6/27/22 response-to-comments memo and many of the previous comments have been addressed. The following are remaining and new comments.

Maximum Coverage / Impervious Surface Ratio.

1. Westside of Nubble Road: The applicant has consulted with the Code Enforcement Office concerning the percentage of impervious area. The correspondence (attached) indicates that with review of aerial photographs and other information provided to Code Enforcement, 35% coverage appears to be what is legally non-conforming.
2. The applicant's attorney's opinion. As part of the revised application Attorney Ballou has provided for the Planning Board's consideration a legal opinion on why the legally non-conforming coverage is 41.6%. It is not clear from the opinion or from the information provided demonstrates the clearing and new parking that was created sometime between 2016 and 2018 was approved. This is essentially the issue at hand, not that land (former lots) had been developed prior to 1996 and has *grandfathered* or legally nonconforming status. The latter is not in dispute, it is that the 40.6% coverage constitutes an increase to what is legally nonconforming, which is not permitted under the zoning ordinance. If the Board is interested in considering/vetting Attorney Ballou's opinion, review by the Town Attorney prior to a Board decision is recommended.
3. Nonconforming Lots of Record. The applicant's attorney focuses on establishing grandfathered status for some of the lots developed prior to 1995 on an individual basis then applies it to the determining lot coverage for the entire parcel. This applies to oranges approach does not appear to be appropriate, especially since the lots (at least most of them) should have been combined since they were under common ownership per Section 17.3.1.B on the zoning ordinance.
4. Existing Conditions and Lot Coverage Plans. The plans remain difficult to discern related to comprehending the exiting and proposed coverages for the site. Other than for the argument the applicant's attorney is making, it does not make sense to organize by current individual lots since it is my understanding that it is to be treated as one lot, one site. The coverage tables on the plans should be tied to the plan areas by keynote symbols, and the entire impervious or pervious area for the site should be shaded on the plans. These additional efforts would provide for much needed clarity.
5. Existing Coverage for the Site. It is recommended, based on aerial information and lack of evidence that the increase of parking that was created sometime after 2016 was approved

by the Town, that the plans should be revised to reflect the 2015 existing conditions. This results in an existing coverage for the site (west of Nubble Road) at 35%.

#### Accessible Parking

6. In the revised application the applicant states that the accessible parking is to be paved. It should be demonstrated why the location proposed cannot be closer to the building. An accessible route from the accessible parking to the new and redeveloped hotel buildings has not been indicated. From the plans there does not appear to be any tip-down/curb-cuts/sidewalk ramps that are typical in establishing an accessible route, nor is it clear where the accessible entrance is to the existing building. Typically the accessible parking space aisle is connected to a sidewalk that connects to an accessible building entrance. It appears from the plan that this should be possible, allowing for the shortest accessible route, which is required by the ADA.
7. The plan notes an accessible parking space along the northside of the building. This should be delineated on the plan and striped and signed as part of the project.
8. On the west side of Nubble Road the plan depicts a building labeled "Wedding Space". Does this area require public accommodation? If so, an accessible space should be provided.

#### Accessory Use

9. Restaurant Use. The outdoor restaurant is proposed as an accessory use. The Code Enforcement Office is requesting that financial statements shall be submitted on a yearly basis to the office to demonstrate compliance; that the principal (hotel use) is not subordinated by the accessory (restaurant) use. The applicant has expressed that this is not necessary and provides an alternative based on *relative area of uses*. The areas provided and the result should be vetted by the Code Enforcement Office. It appears that areas for parking is not figured into the calculation, which seems to be applicable.

#### Shoreland Overlay District.

10. Removal of vegetation. The Code Enforcement office states in the 5/10/22 email that the vegetation adjacent to the proposed buildings needs to remain. The applicant states that the building location has been revised and moved further away from the existing vegetation in order to maintain it. Comparing the EC-E plan (Exist. Cond. East) and the L1 plan (Amend. Site Plan), it does not appear all the vegetation is being maintained and the existing vegetation line changes in extent between the two plans. The proposed buildings were moved approximately two feet. There appears to be ample space to move the buildings so that the building and the associated earthwork around the buildings clear the existing vegetation that is to be maintained.

## Lighting

11. The Board indicated it would consider a waiver regarding requiring a photometrics plan. The applicant has not requested one.

## SITE PLAN AND SUBDIVISION REGULATIONS

12. Gorrill Palmer peer-review comments are attached.
13. Landscape plantings on the westside. It is difficult to determine what proposed and what is existing. Please provide additional plan as what has been done for the eastside.

## **WAIVER REQUESTS**

The following waivers are requested. The Board should review the application for the rationale provided for each request. Staff does not recommend waivers for 6.4.25.

1. Section 6.3.32 - A high intensity soil survey signed and sealed by a Maine Certified Soil Scientist.
2. Section 6.4.20 - The Final Plan shall show 2 foot contour lines of both existing and proposed topography in relation to the NGVD of 1929.
3. Section 6.4.25 - The identification of the type of the required performance guarantee .
4. Section 10-H.5.m – Lighting Photometrics Plan

## **CONCLUSION**

While there have been some revisions made to address previous comments, there appears to remain a couple of pertinent issues that need to be resolved prior to final approval. Determining logistics on how these issues are resolved should be discussed, and if the Board wants to consider the applicant's attorney's opinion, it should seek input from the Town Attorney first. The Board should review the application for conformance and determine if it concurs with the comments and if revisions will be required prior to approval.

Feel free to contact me with questions.

Best regards,



Christopher Di Matteo  
Licensed Landscape Architect  
cdimatteo@longmeadowpla.com  
207.604.4245

**Subject:** 3281.28 Viewpoint Hotel Peer Review  
**Date:** Thursday, June 30, 2022 at 3:29:39 PM Eastern Daylight Time  
**From:** Will Haskell <whaskell@gorrillpalmer.com>  
**To:** DeCarlo Brown <dbrown@yorkmaine.org>, Christopher DiMatteo <cdimatteo@longmeadowpla.com>  
**CC:** James Attianese <jattianese@gorrillpalmer.com>  
**Attachments:** image001.png

Hi DeCarlo and Chris,

We reviewed the following materials that were downloaded from the Applicant. We assume you will forward our comments to the Applicant/Design Engineer or incorporate them into your comments.

- Draft Final Findings of Fact, prepared by Civil Consultants
- Response Memo – Gorrill Palmer, prepared by Civil Consultants, dated 6-27-22
- Response Memo – DiMatteo. Prepared by Civil Consultants, dated 6-27-22
- Viewpoint Hotel – Final Site Plans, prepared by Civil Consultants, dated 5-4-22
- Atty Ballou Letter, prepared by David Ballou, dated 6-27-22
- Exhibits to Ballou Letter
- Viewpoint-West-Siteplan-35 Percent Lot Coverage, prepared by Civil Consultants, dated 6-27-22

We have reviewed the materials for conformance with the technical engineering portions of the Town of York Ordinance and generally accepted civil engineering standards and offer the following comments:

1. Provide a construction entrance for the construction of the Innkeepers residence.
2. Show silt fence between the Innkeepers residence construction and the Valet Parking area.
3. The Town should consider whether the steep connecting drive at the west side parking should be paved to limit the potential for erosion of the steep gravel surface.

Thank you,

William C. Haskell | Principal



707 Sable Oaks Drive, Suite 30 | South Portland, ME 04106  
207.772.2515 x235 (office) | 207.318.7052 (mobile)  
[www.gorrillpalmer.com](http://www.gorrillpalmer.com)