

COMPLIANCE
REVIEW LETTER

March 17 , 2022

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

Application: 1 US Route 1 Elderly Housing Development — James Paolini
(Tax Map 87 Lot 67 and Lot 68 (73 Southside Road))

Open Space Conservation Subdivision Review

Review Status: Sketch Plan to review potential Sec. 7.6 waiver

Board members and Mr. Brown,

The following information has been provided for preliminary and final plan review:

- 1) Application form dated 1/30/2023.
- 2) Narrative *Waiver request for Open Space Conservation Subdivision*.
- 3) Excerpts from the Town's comprehensive Plan.
- 4) Email from the Conservation Commission dated 1/25/2023.
- 5) Plan entitled: *Proposed Concept Plan, Land of C-Coast Properties, LLC, Tax Map 87 Lots 67 & 68, US Route 1 York, York County, Maine, Prepared For: James Paolini...*Prepared by Civil Consultants, dated 1/27/2023.

With review of the above information and the Town's Zoning ordinance and the Site Plan and Subdivision regulations, I offer the following comments on compliance with the Town's ordinances.

PROJECT DESCRIPTION

The predominantly undeveloped 27± acre project site is located in the vicinity of, and portions abutting, the Town's boundary with the Town of Kittery. The lot (67) fronting Route 1 is 12± acres located within the Route One-1 base zone, while the other lot, 14± acres, is within the Residential 1-A base zone. A large portion of the project site lies within the Resource Protection, Shoreland Overlay District. There is access to public water and sewer within US Route 1. The proposal is to construct 32 plus Elderly Housing units; in the form of 16 duplex buildings and 2 multi-family buildings with access to US Route 1.

REVIEW SUMMARY/HIGHLIGHTS

The application is before the Planning Board as required by the Zoning Ordinance (Sec. 4.3) for review of the construction of three or more dwelling units (subdivision). The following is a summary of the review comments:

1. The site was last before the Board in October of last year as a Sketch Plan/Conservation Open Space Subdivision waiver request.
2. The applicant is seeking another consideration of waiving the requirements of the Open Space Conservation Subdivision per Sec. 7.6.1.B.
3. Prior to any action by the Board regarding the waiver, an application that includes all the information required for Conceptual Design Review needs to be submitted and accepted by the Planning Board, as anticipated by Sec. 7.6.1.E.

COMPLETENESS REVIEW

The applicant has submitted a narrative for the rationale to waive the Open Space Conservation Subdivision requirements accompanied by plans of the site. For a simple sketch plan, not the required Conceptual Design Review (Sec. 7.6.1.E), the application appears to be complete.

COMPLIANCE WITH THE TOWN'S ORDINANCES

ZONING ORDINANCE

1. Section 7.6.1 Procedures. The applicant is seeking a waiver from the requirements of Section 7.6 in the zoning ordinance as allowed by Sec. 7.6.1.B. This provision states:

The Planning Board may waive the open space conservation subdivision requirement if the applicant can demonstrate why the open space conservation subdivision is not a reasonable design option for the parcel to be subdivided. When making this determination the Board shall consider the following:

1. *Lot shape/configuration;*
2. *Protection of natural features such as slopes greater than 20%, wetlands, vernal pools, surface waters and stream location(s) on the lot would not benefit from an open space conservation design;*
3. *The open space conservation design would not meet the intended purposes specified in zoning §1.3.12 - Concerning Open Space Conservation Subdivision.*

The applicant has submitted a narrative 'Waiver Request' that describes a rationale for the waiver, however, addressing why the open space conservation subdivision (OSCS) is not a *reasonable design option* for this site and the factors (above) listed under Sec. 7.6.1.B for the Planning Board to consider, is **not** included. The Board should keep in mind these factors along

with any other reasons for granting or denying the waiver, when the Board formerly considers the waiver, will need to be clearly identified and based on Sec. 7.6.1.B so that they can be supported in a Findings Fact, as stated in Sec. 7.6.1.E. The Board may want to consider the following comments:

2. Elderly Housing Standards (Sec. 7.8) The applicant states that being able to use these standards (in lieu of Sec. 7.6) is the reason for the waiver, in that without the density (1 unit/5,000 SF and 1 unit/3,000 SF) *it would not be financially feasible to build elderly housing*. The applicant should elaborate on this. Is it the construction of elderly housing or any housing? And why? In addition, the Board should determine if this is a factor to consider as it relates to Section 7.6.1.B in determining if the OSCS is not a reasonable design for the proposed subdivision. Cost does not appear to be included in the factors to be considered.
3. The Comprehensive Plan. The applicant states the recently adopted comprehensive plan seeks to address the needs of York's older population. This is, as the applicant points out, a goal of the Plan. It is not clear, however, that the objective cannot be achieved by Section 7.6 and that achieving the objective through Section 7.8 is the best or only alternative. Again, the Board, as with the item above, should determine if the town's comprehensive plan should be used, and in what manner, to consider the waiver request.
4. Affordable Housing. It should be noted that the Elderly Housing provision, Sec. 7.8, does not require any affordable housing, while the OSCS under Sec. 7.6 does. It requires a minimum of 10% and 25% if a density bonus is used.
5. Growth Areas in Town. The applicant points out the adopted changes to the Comprehensive Plan do include this portion of Town as part of the Town's Growth Area. This may or may not want to be considered by the Planning Board when it is contemplating on the increased density of the Elderly Housing Standards have over the base districts and OSCS standards.
6. Findings of Fact. Section 7.6.1.E anticipates that details on the reasons for and against a waiver need to be documented in the eventual Findings of Fact for the application if approved. The Board should keep this in mind as the reasoning for waiver is deliberated.
7. Alternative Development Design. The predominant building type proposed is a traditional duplex, however, perhaps modest to larger single-family homes on small lots that could accommodate ADU units can achieve a higher number of overall units than the base zoning allows, however, still lower than the proposed 36 plus dwelling units. It appears the base zoning (Route One -1 and RES-1A) would yield approximately 12 units. However, with clustering and allowed reduction of dimensional standards, 12 lots (14 with the Affordable Housing bonus) can be accommodated, and perhaps the density increased to 24 by providing for ADUs on the lots (as Sec. 7.17 allows for without Planning Board approval). This development option could provide for what many seniors are looking for in that the ADU

can be the owner-occupied unit while the large dwelling is rented out; downsizing while having additional revenue sources. This scenario may yield less impact to the site and more conserved land, a primary objective of the OSCS. It is not clear how the inability to maximize the number of dwelling units on the property is a basis for a waiver that Section 7.6 of the zoning ordinance anticipates.

8. Conditional Waiver. Staff recommends that if a waiver to Section 7.6 is approved by the Board that it is conditioned so that only the density section (7.6.4.B) is not adhered to leaving the remaining provisions in place.

CONCLUSION

The information submitted is not sufficient for a Conceptual Design Review and initiate the Open Space Conservation Subdivision (OSCS) application, but is enough as a Sketch Plan to enable a discussion between the applicant and the Planning Board. It is my understanding that the Board cannot act on the requested waiver as part of this sketch plan application. With consideration of the comments above and other comments and questions from Board members and the applicant, the Board should provide the applicant with its expectations for the subsequent application submittals and review.

Feel free to contact me with questions.

Best regards,



Christopher Di Matteo