

COMPLIANCE
REVIEW LETTER

April 20 , 2023

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: Conceptual Design Review (Consideration of 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 Conservation Easement, 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 8/9/2022.
- 6) Plan entitled: *Proposed Conventional Subdivision, 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 4/10/2023.
- 7) Plan entitled: *Proposed Concept Layout, 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 (OPCS) requirements accompanied by plans of the site. The following is my understanding of what is required for a Conceptual Design Review (Sec. 7.6.1.E):

1. Section 7.6.1.B 1, 2 & 3, Factors to be considered for waiving OPSC. Though addressing in writing the factors the Board is supposed to consider when granting a OPCS waiver, is not explicitly a submittal requirement, it is the basis reflected in the ordinance for the applicant's required demonstration that the OPSC is *not a reasonable design option for the parcel to be subdivided*. This information has not been provided.
2. Section 7.6.1.C, Provide a narrative as to what the conservation theme for the open space will be. It appears the applicant is relying on the submitted letter by the Kittery Land Trust for this information. The ordinance appears to require this information to be based on a wildlife biologist report when setting aside open space for protection of habitat. It is not clear if this is the case and would be required.

3. Section 7.6.1.D, Evidence that the proposed holder of the conservation easement or fee owner is involved in the design. The above mentioned letter from the Kittery Land Trust supports this requirement.
4. Section 7.6.1.F, Existing Site Resources Map. A plan titled *Proposed Conservation Easement* appears to have the majority of the information required under this subsection.
5. Section 7.6.1.G, Proposed Open Space plan based on the above Resources Map and conservation theme that shows the limits of the proposed open space with no site design. The above mentioned plan does provide the majority of the information required under this subsection.
6. Section 7.6.1.I, Input by the York Conservation Commission. An email from the chair if the YCC has been submitted.
7. Section 7.6.1.H, Yield Plan, however, this is not required for the Conceptual Design Review Meeting, it has been discussed in the past that it would be more efficient and expeditious for the applicant if it was provided prior to the Preliminary Plan application. A plan titled *Proposed Conventional Subdivision* has been submitted.

The Board should review the submittal information and Section 7.6.1 of the Zoning ordinance and determine if it has received the information needed for a Conceptual Design Review application.

COMPLIANCE WITH THE TOWN'S ORDINANCES

ZONING ORDINANCE

It is during the Conceptual Design Review that the Board is authorized by the Zoning Ordinance to consider a waiver from the OSCS requirements, if it determines it is not a reasonable design option for the parcel. The Board may want to consider the following comments:

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. It is not apparent when considering the factors under Sec. 7.6.1.B, that there is a basis for demonstrating that the proposed *open space conservation subdivision is not a reasonable design option for the parcel to be subdivided*.

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, other than what is outlined in 7.6.1.B, 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. Open Space Design. A primary objective of the Conceptual Design Review is to determine the design of the proposed open space. Without any specific information on wildlife species that may be in and around the parcel it is difficult to determine if all the land proposed for

conservation supports the critical habitat for the wildlife in the area. A review by the Maine Department of Inland Fisheries and Wildlife would help in this matter.

8. Conditional Waiver. Staff recommends that if a waiver to Section 7.6 is approved by the Board that it is conditioned so that the application remains subject to Section 7.6 with the exception of Sec. 7.6.4.B Density.

CONCLUSION

The application submitted is for a Conceptual Design Review to initiate the Open Space Conservation Subdivision (OSCS) application process. The Planning Board needs to determine if all the information required by the ordinance has been submitted for a complete application. With consideration of the application and the applicant's presentation, and comments above, the Board needs to identify the rationale for the waiver request and how it is or is not supported by the ordinance.

Feel free to contact me with questions.

Best regards,



Christopher Di Matteo