

COMPLIANCE
REVIEW LETTER

May 20, 2023 **(REVISED)**

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

Application: Pine Ledge Residential Subdivision Amendment – York Housing Authority
4 Turner Drive

Tax Map 99 Lots 135; 122; 115; 103; 121; and 119

Revisions to an Approved Plan

Review Status: New application. (second attempt)
(updates since December 2022 in red)

Board members and Mr. Brown,

The following application information has been provided for review:

1. Application form dated 11/17/2022.
2. Cover Letter: *RE: Application for a Revision to A Previously Approved Plan, Pine Ledge Subdivision, Turner Drive, Cape Neddick, York County Registry of Deeds – Book 365, Pages 3 through 27.* York Housing Authority. Includes exhibits and deeds.
3. Previously Approved Plan entitled: *Pine Ledge, Cape Neddick, Maine.* Prepared by Attar Engineering, Inc, Revision Date 12/13/2013.
4. **Previously Amended Plan: Amended Subdivision Plan, Pine Ledge, 4 Turner Drive, Cape Neddick, Maine. Prepared by Attar Engineering, Inc, Revision Date 11/18/22.**
5. **Proposed Amended Plan: Amended Subdivision Plan, Pine Ledge, 4 Turner Drive, Cape Neddick, Maine. Prepared by Attar Engineering, Inc, Revision Date 3/21/23.**
6. **Letter from Pine Ledge Homeowners Association to York Housing Authority dated March 4, 2023, concerning the application.**
7. **Draft Findings of Fact**
8. **Email request to be on the Planning Board Agenda, dated May 8, 2023.**
9. **Waiver Requests: *Re Revision to a Previously Approved Plan: York Housing Authority / Pine Ledge Residential Subdivision, dated May 19, 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 application is a proposed revision to the previously approved Pine Ledge Subdivision Plan, approved in 2013 (YCRD BK 365 PG 3). The proposed amendment is to remove plan note #9 that requires the development to provide for at least 15% of the approved dwellings as workforce affordable dwelling units.

COMPLETENESS REVIEW

The application is before the Planning Board as required by Section 5.5.4 of the Site Plan and Subdivision Regulations.

Since this is a plan amendment that has a narrow scope, not all the submittal requirements are applicable. The applicant has not provided a check list for final plan submittal items, however, other than possibly the following, there does not appear to be a need for all of submittal requirements under the Site Plan and Subdivision Regulations. The Board, however, may identify pertinent requirements that I have not listed above and can discuss with the applicant at the meeting.

1. 5.6.2 The applicant shall submit a copy of the approved plan, as well as the ten copies of the proposed revisions. The application shall also include supporting documentation for any and all aspects of the revised plan that fall under the jurisdiction of these Regulations. All submissions shall be in the format described in the Submissions sections of these Regulations (Article 6.3 and 6.4). The previously approved plan from 2013 has been provided, however, a proposed plan has not. **A proposed plan has been submitted.**
2. 6.4.22 Signatory Blocks on plans This has not been provided. **This has been provided.**
3. 6.4.27 Draft Findings of Fact. This has not been provided. **A draft has been submitted.**
4. 6.4.23 All requests for waivers from strict compliance with any of these regulations. **This has been provided.**

COMPLIANCE WITH THE TOWN’S ORDINANCES

The subdivision that the subject lots are part of was before the Board in July and August of this year by the developer DLJ Corporation for an application to amend a previously approved plan without sharing any plans to not construct the affordable housing cited in plan note #9. It’s unfortunate this matter was not dealt with then.

Changing or removing plan notes of previously approved plans, especially those approved by board members that are no longer part of the Board (with the exception of Mr. Smith), can be difficult if the context of the note is not clear. In addition to this there is also the need to determine what effect of removing the note will have, and if it would run counter to the Town's requirements and regulations.

The following comments and questions the Board may want to consider in determining what action to take:

1. The Town Attorney is of the understanding that being owner of some of the lots in the subdivision does not provide sufficient right-title-interest to have request the amendment and that consent by the development's homeowner's association. This is either the property owners or the developer, as determined by the homeowner's association by-laws. In addition, it is not clear of the capacity of who is signing or representing the owner/applicant York Housing Authority. Information as to Jud Knox's authority to sign on behalf of the owner as well as authorizing Kathleen Kluger to be the agent for the application.
2. If the York Housing Authority (YHA) did not own the subject lots, would constructing workforce affordable housing in this part of town still be the goal and objective? This is a question because the applicant describes the ownership of the lots as unintended, however, it doesn't appear from the application that there has been legal due diligence in determining if YHA must remain the owner of the lots and return the ownership to the developer. The deed appears to be conditioned that the owner must be a member of the association and pay associated fees, and has accepted the deed. Are all of these in effect? Has the applicant received legal counsel regarding this matter?
3. Does the amendment create a nonconformity? The subdivision conforms to the current ordinance, including Sec. 7.6.4.C of the Zoning Ordinance, the workforce affordable housing requirement for at least 10% of the total dwelling units. It is the Town Attorney's understanding that unless the amendment proposed was subject to subdivision, that is the creation of three or more lots/dwellings within a five-year period, that the current Sec. 7.6 Open Space Conservation Subdivision provisions do not apply. It is important to note, however, that Sec. 7.6.4 Development Standards was last amended in 2018 and before that on 11/05/2013. The subdivision plan received final approval on 12/12/2013. Perhaps the proximity of dates provides the context of the plan note #9. The Town files may provide more information.
4. The applicant states that some of the lots are not buildable. Though some of the lots appear to be smaller in size, however, the plan only reflects buildable lots. The Board may want more elaboration on this to understand how the lots are not buildable. Is this related to conformance to the Code or is it a feasibility/economic matter? Staff has inquired the status of the lots with Code Enforcement, and the office considers them all buildable. See attached.

5. As with other applications, part of the Board’s review and determination is a positive finding on the approval criteria, Sec. 1.2 of the Site and Subdivision Regulations. Sec. 1.2.9 includes conformity with local ordinances and plans, including the Comprehensive Plan.

WAIVER REQUESTS

The applicant requested has requested no waivers. **The applicant requests waivers from the following Site Plan and Subdivision Regulations:**

Sections 6.4.2 through 6.4.18; Sections 6.4.20 through 6.4.21; Sections 6.4.24 through 6.4.26; and Section 6.4.28

CONCLUSION

The submitted application for a revision to an approved plan is modest in scale, however, it is not clear that the applicant has standing to apply and there is some missing submittal information the Board may consider relevant for its application review. The Board may want a better understanding of the context of the plan note to be removed prior to making its determination. Understanding why, for example, the plan note requirement for workforce affordable housing was approved as part of the plan may be pertinent to the Board’s deliberation of the amendment. **The applicant has requested to be on the Planning Board’s agenda and has submitted outstanding submittal information; however, the application remains without sufficient standing for the Board’s review. As indicated by Town Attorney’s opinion, there is not sufficient right, title and interest since the other owners of the subdivision development are not represented in the application. The applicant, York Housing Authority, has been unable to receive consent from the development’s homeowners association, which, the Town Attorney states, is required since the plan amendment that is sought involves the entire subdivision development, not just the lots the applicant has title to.**

Feel free to contact me with questions.

Best regards,



Christopher Di Matteo

Subject: FW: Pine Ledge Amendment Application help! Reply needed!
Date: Friday, May 12, 2023 at 10:11:44 AM Eastern Daylight Time
From: DeCarlo Brown <dbrown@yorkmaine.org>
To: Christopher DiMatteo <cdimatteo@longmeadowpla.com>

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Mary E. Costigan <mcostigan@bernsteinshur.com>
Sent: Wednesday, March 29, 2023 1:33 PM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Cc: Dylan Smith <dsmith@yorkmaine.org>
Subject: RE: Pine Ledge Amendment Application help! Reply needed!

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Hi DeCarlo –

Regardless of what was done in the past regarding amendments by the developer, a single landowner in the subdivision should have consent of the HOA or all other landowners in order to request an amendment that removes a condition of the entire subdivision.

Mary

Mary E. Costigan

BERNSTEINSHUR - Shareholder

207 228-7147 direct

[My Bio](#) | [Portland, ME](#)

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From: DeCarlo Brown <dbrown@yorkmaine.org>
Sent: Wednesday, March 29, 2023 9:52 AM
To: Mary E. Costigan <mcostigan@bernsteinshur.com>
Cc: Dylan Smith <dsmith@yorkmaine.org>
Subject: FW: Pine Ledge Amendment Application help! Reply needed!

Hi Mary,

Thank you for your quick response! I believe there is a follow up question by YHA on the application that I have been asked to forward.

-DeCarlo

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Kathleen Kluger <kkluger@mindspring.com>
Sent: Wednesday, March 29, 2023 9:46 AM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: Re: Pine Ledge Amendment Application help! Reply needed!

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Understood.

This is the clarification the YHA Board will want to know:

Every amendment to Pine Ledge that has been submitted and approved by the PB recently has been for DLJ Corp as "owner/applicant" - including the most recent Amendments. The HOA was not listed listed anywhere, nor did the HOA contribute comment or consent.

How is it that DLJ Corp was treated as the "owner of the development" then, but not now?

Thank you, DeCarlo
Kathleen

On Mar 29, 2023, at 9:38 AM, DeCarlo Brown <dbrown@yorkmaine.org> wrote:

Hi Kathleen,

I can send your clarifying questions on to Mary on prior applications, but I have to stick with the answers I've received on this application.

-DeCarlo

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Kathleen Kluger <kkluger@mindspring.com>
Sent: Wednesday, March 29, 2023 9:24 AM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: Re: Pine Ledge Amendment Application help! Reply needed!

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Got it, about #1; I will work on getting the HOA to give actual consent. (I do not have high hopes for success, and we are likely at stalemate).

Curiosity Q, Re the "ownership" of the land:

I get it, BUT every amendment to Pine Ledge that has been submitted and approved by the PB recently has been for DLJ Corp as "owner/applicant" - including the most recent Amendments. The HOA was not listed anywhere, nor did the HOA contribute comment or consent.

How is it that DLJ Corp was treated as the "owner of the development" then, but not now?

Thanks again,
Kathleen

On Mar 29, 2023, at 9:07 AM, DeCarlo Brown <dbrown@yorkmaine.org> wrote:

Hi Kathleen,

This is my understanding-

1. Yes, or means the HOA or every individual owner of lots within subdivision
2. DLJ does not own the subdivision. Once the subdivision is created and lots are sold DLJ no longer owns the land. The HOA becomes representation of the owners within the lots. DLJ in the HOA documents/deeds has a right to change the HOA covenants, but they do not own the subdivision.

-DeCarlo

DeCarlo Brown

Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Kathleen Kluger <kkluger@mindspring.com>
Sent: Wednesday, March 29, 2023 8:52 AM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Cc: Dylan Smith <dsmith@yorkmaine.org>
Subject: Re: Pine Ledge Amendment Application help! Reply needed!

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DeCarlo - thank you for passing this on....

1). Clarification needed:
is the last sentence an "or" - meaning consent from every landowner OR the HOA?

And -

2). DLJ Corp is still the registered owner of the subdivision, and DLJ Corp conveyed the lots to YHA. Why is their ownership not sufficient "Right, Title and Interest"?

Thanks again,
Kathleen

On Mar 29, 2023, at 8:30 AM, DeCarlo Brown <dbrown@yorkmaine.org> wrote:

Hi Kathleen,

Legal contributed last time so I needed to get them to quickly contribute again.
Please see below regarding the HOA letter submitted as a part of your packet.

-DeCarlo

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Mary E. Costigan <mcostigan@bernsteinshur.com>
Sent: Tuesday, March 28, 2023 6:13 PM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: RE: Pine Ledge Amendment Application help! Reply needed!

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Hi DeCarlo-

I have reviewed the letter from the Homeowner's Association. Unfortunately, it does not provide sufficient consent for the Housing Authority to move forward with the request to remove a condition from the subdivision. Because the condition effects the entire subdivision and not just the Housing Authority lots, they do not have sufficient right, title or interest to move forward without the consent of the HOA or the consent of each landowner in the subdivision.

Mary

Mary E. Costigan

Shareholder

207 228-7147 direct

207 774-1200 main

207-774-1127 fax

[My Bio](#) | [LinkedIn](#) | [Twitter](#)

BERNSTEINSHUR

Portland, ME | Manchester, NH | Augusta, ME | bernsteinshur.com

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From: DeCarlo Brown <dbrown@yorkmaine.org>
Sent: Tuesday, March 28, 2023 4:12 PM
To: Mary E. Costigan <mcostigan@bernsteinshur.com>
Subject: Pine Ledge Amendment Application help! Reply needed!

EXTERNAL EMAIL

Hi Mary,

We have an application that was just submitted to amend a previously approved subdivision. The applicant owns 5 lots within the subdivision but is seeking to remove a condition on the entire subdivision for affordable housing. I requested the applicant get sign off from the HOA to go forward with the application. The attached pdf includes a letter from the HOA. Does this application have right, title, and/or interest to apply for this amendment?

We need this answer fairly quickly. Are you able to assist?

Thank you!

-DeCarlo

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Scanner <scanner@yorkmaine.org>
Sent: Tuesday, March 28, 2023 4:08 PM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: Message from KM_C759

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Subject: FW: YHA and Pine Ledge

Date: Friday, May 12, 2023 at 10:02:40 AM Eastern Daylight Time

From: DeCarlo Brown <dbrown@yorkmaine.org>

To: Christopher DiMatteo <cdimatteo@longmeadowpla.com>

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

-----Original Message-----

From: Kathleen Kluger <kkluger@mindspring.com>

Sent: Monday, May 8, 2023 6:53 AM

To: DeCarlo Brown <dbrown@yorkmaine.org>

Subject: Re: YHA and Pine Ledge

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning, DeCarlo -

YHA wishes to proceed with review of the application for an amendment to the previously approved Pine Ledge Residential Development, and to be considered for the next open slot on the Agenda of the Planning Board.

At this time, YHA is not submitting additional materials.

Thank you,
Kathleen
207.475.6512

>

>> On Mar 29, 2023, at 3:18 PM, DeCarlo Brown <dbrown@yorkmaine.org> wrote:

>>

>> Hi Kathleen,

>>

>> This is received. I'll keep you on the schedule. We're going to hold off on doing a review of this until I check in with you on the 10th, so you're not charged. Is that ok?

>>

>> -DeCarlo

>>

>> DeCarlo Brown

>> Land Use Planner

>> Town of York

>> 186 York Street

>> York, Maine 03909

>> 207 363-9847

>>

>> -----Original Message-----

>> From: Kathleen Kluger <kkluger@mindspring.com>

>> Sent: Wednesday, March 29, 2023 11:34 AM

>> To: DeCarlo Brown <dbrown@yorkmaine.org>

>> Subject: Voice mail

>>

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>>

>>

>> Hi DeCarlo -

>> This is just a formal follow-up to the voicemail I just left for you....

>>

>> YHA has arranged another meeting with the Pine Ledge HOA for the purpose of obtaining proper consent to remove Plan Note 9, and wishes to remain on the PB Agenda April 27, if possible. It is our hope to either submit the consent in advance or bring it to the meeting (depending on timing). If YHA does not secure the appropriate consent from the HOA prior to that meeting, we will withdraw the request to be on that Agenda.

>>

>> Thank you for the Board's consideration,

>>

>> Kathleen

>>

>

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Subject: FW: YHA / Pine Ledge supplemental information
Date: Friday, May 12, 2023 at 10:01:38 AM Eastern Daylight Time
From: DeCarlo Brown <dbrown@yorkmaine.org>
To: Christopher DiMatteo <cdimatteo@longmeadowpla.com>

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Kathleen Kluger <kkluger@mindspring.com>
Sent: Monday, May 8, 2023 2:56 PM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: Re: YHA / Pine Ledge supplemental information

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I noticed that, too. This attorney and Patricia Martine write the Waivers of Affordability for the 2013 approval, so I will seek clarification from the attorney.

Thanks again,
Kathleen

On May 8, 2023, at 2:33 PM, DeCarlo Brown <dbrown@yorkmaine.org> wrote:

Absolutely.

The original approval 2013 is not included in the submitted materials. This predates all the mentioned materials. Note 9 is present.

-DeCarlo

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Kathleen Kluger <kkluger@mindspring.com>
Sent: Monday, May 8, 2023 1:04 PM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: Fwd: YHA / Pine Ledge supplemental information

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Hello again, DeCarlo -

I just this minute received this communication from the YHA attorney regarding the five Pine Ledge lots.

If course, this should be included with the application for Chris's review.

Thank you,
Kathleen

Begin forwarded message:

From: patricia@yorkhousing.info
Date: May 8, 2023 at 11:56:52 AM EDT
To: Kathleen Kluger <kkluger@mindspring.com>
Subject: **FW: Pine Ledge Subdivision, Cape Neddick - York Housing owned lots**

From: Marcia Corradini <mcorradini207@live.com>
Sent: Monday, May 8, 2023 10:59 AM
To: Patricia Martine <patricia@yorkhousing.info>
Cc: Fiona McQuaide <fiona@yorkhousing.info>
Subject: Pine Ledge Subdivision, Cape Neddick - York Housing owned lots

8 May 23

Patricia:

The attached table clarifies the relative instruments and their order of priority, according to recording dates.

You will find that the deeds to YHA were recorded prior to the Amended Subdivision Plan, which is where Note 9 requires 15% of units to be approved workforce housing homes.

While recorded prior to the YHA deeds, neither the Protective Covenants nor original subdivision plan included workforce housing restrictions; and HOA Bylaws were recorded after the YHA deeds and have no such restriction.

Therefore, I disagree with Costigan that Note 9 effects our lots and I disagree that the HOA or individual homeowners have authority over the YHA sale of lots. I am not even sure that the Town of Cape Neddick or Town of York have any authority..

YHA, the umbrella organization, will use proceeds of the lot sales to further its mission to provide elderly and workforce housing in York.

Thanks,
Marcia

From: Patricia Martine <patricia@yorkhousing.info>
Sent: Friday, May 5, 2023 3:47 PM
To: 'Marcia Corradini' <mcorradini207@live.com>
Subject: FW: FW: York Housing owned lots

Here's a chain of emails that contains the response from the HOA

Patricia Martine
York Housing
Mailing Address: 4 Pine Grove Lane
Physical Address: 117 Long Sands Rd.
York, Maine 03909
207-363-8444
Cell – 603-828-5141

<image001.jpg>

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<Pine Ledge Recorded Plan 2013 B365 P3.pdf>