

**York, Maine
Planning Board Meeting Minutes
Thursday, January 14, 2021; 7:00 P.M.
Remote Meeting via Zoom**

Call to Order; Roll Call; Determination of Quorum; Appointment of Alternates

Chairwoman Kathleen Kluger called the meeting to order at 7:00 P.M. A quorum was determined with five people voting: Kathleen Kluger, Vice-Chair Wayne Boardman, Board Secretary Gerry Runte, Al Cotton, and Pete Smith. Alternates Ken Churchill and Ian Shaw were present but did not vote. Planning Director Dylan Smith represented staff. Patience Horton took minutes. Chris DiMatteo, principle of Longmeadow Planning and Landscape Architecture, served as compliance and peer reviewer. Votes were tallied via roll call. The meeting lasted three hours.

Leslie Hinz, York Stormwater Manager, joined the conversation about stormwater management.

Public Forum

Chairwoman Kathleen Kluger opened the Public Forum. Joe Lipton said seasonal housing and food truck ordinance amendments that are in response to COVID-19 should be expedited. The Chair closed the Public Forum.

Field Changes

There were no Field Changes.

Application Review

Viewpoint Hotel Restaurant, 229 Nubble Road

Map/Lot 0025-00193-A owned by 229 Nubble Road LLC

The intent of this project is to revise an approved plan by adding an accessory restaurant use to the existing hotel.

Joe Lipton, 229 Nubble Road, LLC

Geoff Aleva, Civil Consultants

This matter was continued from the December 17, 2020, meeting, at which time the application was found complete. Chris DiMatteo said he has since received a parking layout, review comments, and the proposed conditions plan from Civil Consultants.

Item 1—Parking for the Hotel

Parking calculations have been revised. Parking for the hotel has been specified and is acceptable.

Item 2—Parking for the Restaurant

The calculations for restaurant parking across the street have been submitted. They show sufficient space for the additional 33 spaces that are required.

Item 3—Handicap Parking

- Chris DiMatteo: I don't believe the gravel parking and grade of the handicap parking space meets ADA rules. I recommend a no-parking sign for the aisle where the handicap parking space is located.
- Geoff Aleva: The slope will be reworked. A no-parking sign can be installed. As we work with Code and DPW, we will show sufficient space to create the handicap parking space in the correct location.
- Kathleen Kluger: Does the surface matter? Wheelchairs have a very tough time in gravel. If you could make a pad or platform for a wheelchair, it would be ideal.
- Chris DiMatteo: If the applicant finds out the area needs to be paved, would the Board need to review that again, or can they just go ahead?
- Al Cotton: We are not going to insist it be paved if it is not required.
- Joe Lipton: This is an interim stage. I will make sure the parking lot will have a paved handicap space when the application moves along and requires it.

Item 4—Food Truck Location

- Chris DiMatteo: Per Code, the View Point food truck is compliant to setback terms.

Item 5—Shoreland Zone

- Chris DiMatteo: Per 8.2.1.b, Limited Residential in the Shoreland Zone, there were questions about the portion of the property in the Shoreland Zone. The Code Office is okay with how that stands.
- Kathleen Kluger: That permit comes with Planning Board approval for the application and is not given out by Code.
- Geoff Aleva: We are not proposing any new development in the Shoreland Zone.

Items 6 and 7—Lighting

- Chris DiMatteo: The applicant is proposing low bollard lights near the crosswalk. They are adding adequate restaurant lighting.
- Geoff Aleva: We worked with DPW to make sure that the restaurant has enough illumination and that the refuge areas and crosswalks are lit well enough.

Item 8—Gorrill Palmer has reviewed the crosswalk and refuge lighting plan.

- They are satisfied with the plan.

Item 9—Zoning Information

- Chris DiMatteo: The note about zoning was revised and added to the plan.

Item 10—Tax Map Correction

- Geoff Aleva: We corrected the Map/Lot information on the plan.

Item 11—Placement of the property owner must be on the application.

- Joe Lipton: The property is owned by 229 Nubble Road LLC.

A short discussion and a comment

- **Kathleen Kluger:** Dean Lessard and the Police Department have approved the painted crosswalk. Will it be marked again after Nubble Road is repaired? **Geoff Aleva:** DPW is still looking at the design for that area, including the sidewalk. This is an interim phase.
- Geoff Aleva: This is a permanent request for restaurant use, not a short-termed use, as previously discussed.
- Motion: Pete Smith moved to approve the site plan amendment for the View Point Hotel, 229 Nubble Road LLC, Map/Lot 0025-0193-A, as presented with the following conditions:
 1. That within the next 17 days, the applicant shall submit a draft Findings of Fact to the Planning Office.
 2. Prior to the Chair signing the Findings of Fact, the site plan shall be revised.
 3. Prior to the issuance of a building permit, the applicant shall submit written approvals to the Code Enforcement Office from the Water and Sewer Districts related to servicing the site.
 4. Prior to the issuance of the building permit, the Code Enforcement Office shall review and approve the proposed use as it relates to ADA parking.
 5. That any and all outstanding fees due to the Town of York be paid prior to the issuance of the building permit.

Al Cotton seconded. The motion passed unanimously.

Public Hearing on Zoning Ordinance Amendments

The Stormwater Management Facility Setback Exemption

Dylan Smith: **Article 10 Amendment.** The Town hereby ordains to amend the Zoning Ordinance, specifically amending Footnote K in Section 5.2, Schedule of Dimensional Regulations Regarding Exemptions for Stormwater Management Facilities in Yard Setbacks. **Statement of Fact.** The purpose of this amendment is to clarify which stormwater management facilities, as defined in the zoning ordinance, may be exempt from front-, side-, and rear-yard setbacks and are within the schedule of dimensional regulations in the Zoning Ordinance.

This amendment allows biofilters, drain manholes, and catch basins to be acceptable stormwater management facilities in yard setbacks, said Kathleen Kluger.

- Motion: Al Cotton moved to open the public hearing. Pete Smith seconded. The motion passed unanimously.

Janet Drew: People are wondering how this kind of swale affects neighboring yards.

Kathleen Kluger: It will not affect the abutter at all. This has to do with a visual impact.

- Motion: Al Cotton moved to close the public hearing. Pete Smith seconded. The motion passed unanimously.

Discussion

York Stormwater Manager **Leslie Hinz** shared diagrams and pictures of bio-filters, which are configured of underground piping covered with organic medium below the surface. Bio-filters have cleanout structures that popup aboveground. **Dylan Smith:** Biofilters, manholes, and catch basins are objects we are considering allowing. **Pete Smith:** A drain manhole is predominately underground. It has a cover at the surface of the ground or slightly above it. It should be exempt [allowed]. **Gerry Runte:** A biofilter extends slightly above the ground. Drain manholes are even less visually obvious. If one is allowed, the other should be, too. **Kathleen Kluger:** Al Cotton and I already objected to having biofilters [see 12/10/20 Minutes], and thereby manhole covers. The point is that these are in setbacks. They are not prohibited everywhere, just in the setback. **Pete Smith:** Footnote K addresses the notion that if you are going to have stormwater management facility, it shouldn't encroach the abutters' view. **Dylan Smith:** Footnote K responds to the definition of "structure," which is "anything that is built or constructed, and is attached to or in the ground." Footnote K looks at stormwater management facilities as structures. It is important to realize that biofilters are a key approach to treating stormwater. Though biofilters have their cleanout structure above ground, at the will of the Planning Board, they can be exempt per Footnote K, allowing them in the setback. If the Planning Board does not want to see stormwater facilities in the setback, biofilters and the others will be recognized as structures and disallowed. **Ken Churchill:** If vegetation blocks the view of it, would it be more acceptable? **Kathleen Kluger:** In order for it to do its job, the pipe that comes up above ground cannot be obstructed. **Leslie Hinz** showed a diagram of the above-ground feature that exists for cleaning sediment out of the unit. **Gerry Runte:** Do you put limits on how much above ground a unit is acceptable, or do you opt out that nothing is visually allowed at all? **Kathleen Kluger:** I have issues that go beyond the structure itself. The vegetative screening might die. Backup in the system might be neglected. **Ken Churchill:** You have to go back and look at the purpose and value of the setback in the first place. It was to avoid stuff like that. **Leslie Hinz:** The contours of the area dictate what method should be used. **Dylan Smith:** Septic systems with three-foot-high candy-cane-shaped pipes are in the setback areas right now. The Town accepts certain things in setbacks, including sheds. Footnote K minimizes the visual component of above-ground structural facilities in setback areas. Biofilters are LID components. The large subdivisions and nonresidential [commercial] developers want LID components in the setbacks. **Al Cotton:** What are the developers' concerns that makes them want us to change Footnote K? Are they saying this will slow down development, or are they just trying to simplify the process to make life easier? **Dylan Smith:** They are saying it is too large a constraint. A lot of developers develop their stormwater management facilities with grading in the setbacks.

- Motion: Wayne Boardman moved to forward to the Selectboard for their February hearing the amendment Stormwater Management Facility Setback Exemption as shown on the draft

amendment with the following strikeouts: biofilters, catch basins, and drain manholes. Al Cotton seconded. The motion passed 4-1 with Kathleen Kluger opposed.

Discussion/Review of Findings of Fact using the new template

Kathleen thanked Pete (especially), Chris, and Dylan for coming up with a terrific Findings template. Pete will work with Chris on some format changes Pete has in mind. Ideas from Board members should be sent to Pete.

Findings of Fact

Gulf Hill Subdivision, 1780 U.S. Route 1

DLJ Corporation

Map/Lot 0100-0027

- Motion: Al Cotton moved to authorize the Chair to sign the Findings of Fact for DLJ Corporation, Map/Lot 0100-0027, street address 1780 U.S. Route 1. Pete Smith seconded. The motion passed 5-0.

Corrections: Kathleen: The name of the application, Gulf Hill, should be at the top. The date at the top should be eliminated; it only matters at the end. The application name should have a line of its own above the street address.

Findings of Fact

Stones Throw--Parking Waiver Request

123 Long Beach Ave, LLC

Map/Lot 0031-0024

Corrections: There was an error in the 12/17/20 Minutes that was repeated in the Findings. It said to reduce the parking from 16-to-1. It should be 12-to-1. [It was corrected in the Minutes.] It will be corrected in the Findings.

- Motion: Pete Smith moved to authorize the Chair to sign the Findings of Fact for 123 Long Beach Ave, LLC; Map/Lot 0031-0024 as amended. Al Cotton seconded. The motion passed 5-0.

Findings of Fact

69 Middle Pond Road Special Use Permit

Map/Lot 0093-0048-D owned by Carrie Mayo

- Motion: Pete Smith moved to authorize the Chair to sign the Findings of Fact for the application from Carrie Mayo, 69 Middle Pond Road, Map /Lot 0093-0048-D, as written. Gerry Runte seconded. The motion passed 5-0.

**Findings of Fact
York Beach Surf Club Revision LLC
780 York Street
Map/Lot 0038-0059**

Corrections. Pete found the reference to the December 17, 2020, Minutes inappropriate. A reader should not have to go to another document for information, he said. The questions from the public hearing of December 17 were not substantive, anyway, and do not belong in the Findings, he said. However, the fact that there was a public hearing should be in the Findings.

- Motion: Pete Smith moved to authorize the Chair to sign the Findings of Facts for York Beach Surf Club Revision, 780 York Street, Map/Lot 0038-0059, with the removal of the testimony on Page 2. Al Cotton seconded. The motion passed 5-0.

**Findings of Fact
Stonewall Kitchen Revision
Two Stonewall Lane
Map/Lot 0042-0009-A**

- Motion: Pete Smith moved to authorize the Chair to sign the Findings of Fact for Stonewall Kitchen LLC, Two Stonewall Lane, Map/Lot 0042-0009-A as written. Al Cotton seconded. The motion passed 5-0.

Discussion/Review Planning Board Bylaws

2.4.2 Reinstating voting for temporarily absent or disqualified members

Kathleen had sent out the relevant weblink and had gotten comments back. **Wayne** had suggested following the Planning Board Manual of Legal Perspective published by the Maine Minutes Association. It suggests that “if a Board has associate members [alternates], the Chairperson shall appoint an associate member to act for a regular member who is either disqualified from voting, unable to attend a hearing, or absent from a substantial portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.” This is in our bylaws at 2.4.2, said **Kathleen**. **Wayne**: Once the permanent member is ready or back at the meeting, then that person should resume as a voting member at that time. There have been times when a member shows up late and is not given their voting rights again. **Kathleen**: The associate member would still be assigned to the application if the Board is still working on it. The regular member would be participating in every other issue that follows. **Wayne**: If somebody comes in late or has technical difficulties, an alternate has been appointed. If the full member comes back, and the particular issue is done, the full member should be reassigned to voting status. **Kathleen**: If there are technical difficulties, you never know when they are going to happen again. That is the issue, especially with Zoom. **Gerry**: Tonight, we had the View Point Restaurant application, which was reviewed at the last meeting. I had been replaced by alternate Ian Shaw for the entire meeting due to technical difficulties. Ian voted in my place on the View Point at the last meeting, but I voted on it this evening. **Kathleen**: Then Ian should have continued with and voted on the

View Point tonight. **Pete:** If Gerry came forth and verified that he had studied and understood the whole application, then he should have gone forward tonight, as he did. **Al:** This is a Zoom issue, which is a temporary situation. I don't think we should change the Bylaws because of a temporary situation. **Kathleen:** In the future I will ask the returning member if they are up to speed with the application and allow them to vote if they are.

2.7.1 Method of tallying votes

Wayne: When voting, why not having an option of asking for a show of hands unless the Chair asks for a roll call vote? **Pete:** An option is to do what the Selectboard does, which is to always call votes with a roll call. We should do that. It provides more evidence for the record. **Wayne:** It might be easier for the recording secretary.

- Motion: Pete Smith made a motion to change Item 2.7.1 in the Bylaws to state that all matters shall be decided by a roll call vote. Al Cotton seconded. The motion passed unanimously.

4.2.2 Order of agenda items

Kathleen: Because we were [also] bogged down a long time ago, we moved Minutes Review to the end of the meeting. We moved them to better accommodate our presenters. **Al:** Should we change the agenda to match the way the rules are stated? **Pete:** You should recognize that there are items in the Minutes that address current business being brought up in the current meeting.

Kathleen: I believe the Minutes should become the sixth item on the agenda, before Other Business. "Old Business" and "New Business" should be changed to "Other Business" as one item and should be last on the agenda.

- Motion: Pete Smith moved to change Item 4.2.2 of the Planning Board Bylaws to have the meeting sequence as follows:

Item 1: Call to Order, Determination of Quorum: Appointment of Alternates
Item 2: Field Changes
Item 3: Public Forum
Item 4: Public Hearings or Workshop Actions
Item 5: Minutes
Item 6: Other Business

Al Cotton seconded. The motion passed unanimously.

Dylan Smith said that per Bylaws 5.1, there has to be a public hearing on the Bylaw changes that are being made, because they are changes in planning action. **Wayne** argued that changing the Bylaws is not a planning action, to which Dylan agreed. **Kathleen:** If we find out we need a public hearing about this, we will schedule one.

4.2.3 Adjournment--Extending meetings beyond 10:30 P.M. with unanimous consent

Kathleen: I don't think we should be extending a meeting when we've not yet started an application review, as we did with the View Point Restaurant hearing on December 17, 2020. Believing there would not be a public hearing, someone might have departed the meeting. We need to ask ourselves if extending the meeting completes our action. Is it fair for staff? Is it fair for Board members? It seems fair if we are completing an application, and it appears it won't take long. **Gerry:** If we extend the meeting, let's do that by unanimous consent. **Kathleen:** Unanimous consent is when someone doesn't object. I propose that Item 4.2.3 states that all meetings will adjourn no later than 10:30 P.M., when no public hearing remains. **Pete** proposed replacing the phrase "when no public hearing remains" with "when there is unanimous consent of the Board." He said, what if Joe Lipton is there, it is 10:20, and someone asks if we are going to go forward. At that point, Joe might say he wants a public hearing. Someone on the Board might say, "go ahead," when someone else says, "no." In that case, with unanimous consent, it doesn't matter what Joe wants to do.

- Motion: Pete Smith moved to change the York Planning Board Bylaw Item 4.2.3 to state all meetings shall be adjourned no later than 10:30 P.M., except by the unanimous consent of the Board. Al Cotton seconded. The motion passed unanimously.

Picking up an earlier conversation, **Dylan** said that Article 9, Amendments, describes how amendments to Bylaws are made. If the Board members are notified of the amendment changes, that notification is all that is necessary. No public hearing is needed.

Minutes

- Motion: Al Cotton moved to approve the Minutes of December 10, 2020 minutes as corrected. Spelling errors were corrected. The word "reopening" was used to describe the reopening of the Public Forum. Gerry Runte seconded. The motion passed unanimously.
- Motion: Al Cotton moved to approve the Minutes of Thursday December 17, 2020, as amended. The description of duplex structures was specified. Names were corrected. Gerry Runte seconded. The motion passed unanimously.

Other Business

1. Kathleen: A discussion of the Comprehensive Plan update has been moved to January 21. It will be the sole topic. We will be talking to Susan Silberberg of CivicMoxie. At that time, we will discuss how everyone will get on the same page.
2. Kathleen: On Monday Evening, January 11, the Selectboard formed a Hospitality Task Force. It consists of the Selectmen, the Chamber of Commerce Chairwoman, several area businesspeople, and me, as the Planning Board Chair. The purpose of the meeting was to discuss a survey that had been conducted by the Chamber examining business survival. We discussed how hospitality businesses might navigate the 2021 tourist season. Some attendees suggested that zoning relief will help accommodate their endeavors. That will require the assistance of the Planning Board. As such, the Planning Board will be tasked with accommodating business owners in the fastest way possible. In reality, we cannot act on

- anything until specific items are brought forward. This will be an ongoing discussion for the Task Force.
3. Kathleen: We received a request from the Recycling Committee to consider green waste recycling. They want to piggyback on a contract that Hannaford has for green waste removal. It is very complicated. The Committee was hoping for an amendment to go on the May ballot, which is unlikely. They might come up with an ordinance proposal, or maybe they'll let it drop.
 4. Kathleen: The Selectboard does not want to be involved with a food truck ordinance. I suggested a permanent food truck ordinance can be developed for 2022, but at this time, food truck owners should be able to explore whatever they might think will save their businesses. It would be a temporary policy.

Public Forum Reopened

Janet Drew was allowed to make a comment.

1. A food trucks are a significant investment for their owners.
2. People want to put solar in Parish Woods. That must be prevented.

Adjourn

The meeting adjourned at 10:15.

Respectfully submitted,

Patience G. Horton

Recording Secretary