

York, Maine
Planning Board Meeting Minutes
Thursday, January 28, 2021; 7:00 P.M.
Remote Meeting via Zoom

1. 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 Peter Smith. Alternates Kenny Churchill (who arrived five minutes late) and Ian Shaw were present but did not vote. Planning Director Dylan Smith represented staff. Chris Di Matteo, principle of Longmeadow Planning and Landscape Architecture, served as compliance and peer reviewer. Patience Horton took Minutes. Votes were tallied via roll call. The meeting lasted three-and-a-half hours.

2. Field Changes

There were no field changes.

3. Public Forum

Kathleen Kluger opened the Public Forum without objection. No one came forward to speak. Kathleen closed the Public Forum.

4. Application Review

A. 53 Rogers Road Subdivision, 53 Rogers Road
Map/Lot 0094-0083 owned by Beach Side Cove LLC
Open Space Conservation Subdivision application for 12 Residential units
Gary Woods, Beach Side Cove, LLC
Norm Chamberlain, Project Engineer
Bill Walsh, Walsh Engineering

The Applicant had come up with a conventional yield plan that the Planning Board agreed to. Chris Di Matteo said that the applicant provided a good cover letter and layout plan.

Norm Chamberlain presented the conceptual design. Within the shoreland zone, there is only enough shore frontage for nine lots. There is an added space big enough for a duplex without having to pay the State for impacts on the two-hundred-fifty-foot vernal pool buffer. The duplex is outside the shoreland zone set 50 feet back from the right-of-way. The road is shorter. There is a no-cut area between Units 3 and 4 to provide critter access. The plan still features an approved hammerhead turnaround for firetrucks. Snow will be pushed into the yards beside the units.

Because they have not been able to find anybody willing to “take” the open space, they are asking for a waiver to the Open Space Conservation Subdivision. [Al Cotton later stated that the applicant went to nine different sources.] The HOA documents will have deed restrictions preventing

encroachment into the open space area. Gary Woods said that deed restriction had been discussed with an attorney. To supply adequate funds, he is going to front a \$2,500 initial assessment for two years plus the max \$1,000 fee. That way he is fronting the HOA budget with \$6,000 up front. It will help get them started, he said. The \$1,000 max fee will be put into the HOA'S annual budget to keep the inspection process in perpetuity, which will be conditioned in the deed and covenants. It is the homeowners' responsibility to make sure stormwater will be monitored with no encroachment. An annual report will be given to the Conservation Commission, or similar agency.

Chris Di Matteo: The land is not conserved land per 7.6 of the Zoning Ordinance. There is productive open space and deference to the habitat fostered there. **Norm Chamberlain:** Much of this land is in the Shoreland Zone. **Dylan Smith:** Per 7.6.1.b.3, the Board would grant a waiver based on the design being presented. The applicant will show the open space area through deed restriction and on the plan. Monitoring the space would be the responsibility of the Conservation Commission, or some similar agency. If there were a violation of the approved plan, the Conservation Commission would report to the HOA and the Code Enforcement Office. **Gary Woods:** I am willing to pay to have the inspection and monitoring service done by Jones Associates. The Board was amenable. **Dylan:** The Board can consider granting the waiver based on the applicant's third-party monitoring, deed restricting, and how it is shown on the plan.

- Motion: Peter Smith moved to waive the 7.6 open space conservation subdivision ordinance. The requirement for a conservation easement on the open space of this application based on the ordinance Section 7.6.1.b.3 is such that the open space conservation design would not meet the intended purpose specified in Zoning Section 7.1.3.12 concerning open space conservation subdivision. Seconded by Wayne, the motion passed unanimously.

Chris Di Matteo: DPW had a comment about sidewalks. **Dylan Smith:** You want to assure a safe pedestrian safety zone to get across the street to the wider sidewalk. **Gary Woods:** I will work with Dean Lessard on something like a pedestrian entrance to the end of the road.

Dylan Smith: Are you going to use these for short term residential rentals? **Gary Woods:** I am leaving that up to the HOA to decide. It will depend on the buyers. Some people have indicated this will be their primary residence. **Kathleen Kluger:** If STRRs are your intention, there are other considerations like parking, access, and the issue of the open space being more vulnerable to misuse. We might need a maximum of one-, three-, or six-months that someone might rent out their place. It is not in the ordinance, but that is what some HOAs have done to accommodate other issues.

- Motion: Peter Smith moved to open the Public Hearing. Seconded by Al Cotton. The motion passed unanimously. No one came forward to speak. The Chair closed the Public Hearing.

Chris Di Matteo: The Board already granted preliminary approval. **Norm Chamberlain:** We were in for final approval at the last hearing. We submitted draft Findings of Facts then.

- Motion: Peter Smith moved to continue this application to our meeting of February 25, 2021, for final review. Al Cotton seconded. The motion passed unanimously.

**B. Garrett Homes, LLC—Mic Mac Motel 317 U.S. Route 1
Map/Lot 0059-0004, owned by Kittery Indian LLC—Mark Dellapasqua
Route 1 use permit/site plan application to redevelop the existing lot into a retail shopping center containing two buildings
Rick Lundborn, Fuss & O’Neill
Douglas Grunert, BKR Architects
Gary Eucalitto, Garrett Homes
Matt Eucalitto, Garrett Homes**

This is a revised preliminary application continued from December 10, 2020, when it was accepted as complete.

Item 1

Chris Di Matteo: Per 6.3.1, there are clarifications needed regarding quantities that don’t match up. There is riprap along Route 1 with visual considerations. Vegetation might be used as a screen. **Rick Lundborn:** The landscape architect at Woodburn and Associates will work on the screening issue. Some riprap changes are possible and others aren’t.

Item 2

Chris Di Matteo: The overhead electricity line does not provide service. The pole will be removed, per 6.3.2. **Rick Lundborn:** There is a second pole that will also come out.

Item 3

Chris Di Matteo: Per 6.3.13 and 6.3.13.4 of the Buildings and Site Design Requirements, the façade has been changed. The best face is toward Route 1. A pedestrian sidewalk enters the property from Route 1. **Rick Lundborn:** The color of the O’Reilly building has been changed to Boothbay Blue. The siding alters clapboards and shingles with windows, dormers, and cupulas for both buildings. The former red metal frontage of the O’Reilly building has been changed to red Hardie Plank. The grey Sherwin Williams building is trimmed with stone and metal awnings. The third space, which was designed for an unknown tenant, has been eliminated.

Item 4

Chris Di Matteo: The applicant is not planning to provide open space.

Item 5

Chris Di Matteo: Offsite improvements, which are sidewalks, are being provided.

Item 6

Chris Di Matteo: Performance guarantee. The applicant states that the information is planned to be submitted once items are solidified.

Item 7

Chris Di Matteo: Regarding net buildable site acreage, soils were addressed as part of the drainage report.

Lighting Standards

Chris Di Matteo: A photometric plan was submitted. **Rick Lundborn:** The height of the two poles holding the lights in the parking area will be lowered by a couple of feet, if recommended.

Off-street Parking

Chris Di Matteo: Reduction of the overall required spaces has gotten smaller with the reduction of buildings on the site. **Rick Lundborn:** We have moved five spaces away from the setback and closer to the building. The overall number of 47 spaces have been changed to 45. Fifty-two were needed by the square footage calculation. We are asking for a seven-space reduction. **Owner Matt Eucalitto:** We can add those back in, but we would like to keep those five spaces away from the abutters as much as possible.

Site Plan and Subdivision Comments

Chris Di Matteo: Dean Lessard and Gorrill Palmer have reviewed the traffic study. **Rick Lundborn:** The trip generation calculation has been adjusted to accommodate uses for two buildings. Even with three, it did not trigger a traffic movement permit with DOT.

Item 23, Gorrill Palmer

Chris Di Matteo: Gorrill Palmer recommended that the driveway be aligned opposite the existing driveway on Route 1. That has been revised, and the driveways are aligned.

Item 24, Gorrill Palmer

Chris Di Matteo: Per Gorrill Palmer, a safety evaluation of Route 1 along the project's section of frontage should be provided. The applicant has provided that in the traffic study.

Item 25, Gorrill Palmer

Chris Di Matteo: Per Gorrill Palmer, a left-turn traffic lane should be evaluated. If warranted, a center turn lane should be located to the east of the site. The applicant has determined that the left-turn lane is not warranted. The DPW director recommended an extension of the center turn lane. **Gerry Runte** said there is a huge bottleneck in that location, and the third turn lane should be considered. **Rick Lundborn:** The Planning Board would decide if that is needed. A permit for it would come from the Town of York, and the DOT would not get involved. The expense would go to the applicant. **Owner Gary Eucalitto:** I have created many projects and I understand the reasons for the Board's recommendations over many requirements. I will provide the extra travel lane, as long as you say it is needed. The Board knows the summertime traffic better than I do. We don't want accidents.

Item 26, Gorrill Palmer

Chris Di Matteo: The revised design requires a sidewalk. That has been revised.

Item 27, Gorrill Palmer

Chris Di Matteo: Regarding access to parking spaces, the parking layout has been revised.

Item 28, Gorrill Palmer

Chris Di Matteo: Regarding parking calculations, the plan has been revised.

Item 29, Gorrill Palmer

Chris Di Matteo: The applicant has received a letter of concurrence from Maine DOT for trip generation. They have indicated that the traffic moving permit will not be required. The applicant has met with Maine DEP with regard to amending their application. They do not anticipate any stormwater issues. Permits will not be required from either agency.

General Discussion

Dylan Smith: Are the buildings showing their best face toward Route 1? **Kathleen Kluger:** That is an excellent visual experience as we're driving along Route 1. **Pete:** I recommend windows and dormers to break up the long flat wall. **Dylan** agreed. **Architect Douglas Grunert:** I am willing to add the dormers and windows to break up the roof line.

Rick Lundborn reviewed the balance of the Gorrill Palmer report. The erosion control apparatus comes out as "everything" grows in. The sanitary sewer will either be deeper or insulated. The DEP stormwater calculation will indicate the surface area of the underground soil filter. The calculated timing of the water quality volume will be met.

The Board and Rick Lundborn talked extensively about the two lines of riprap in the front by Route 1. **Dylan** said riprap is something we were trying to prevent in the setback. It does not go with the idea of best face toward Route 1. **Rick Lundborn** said the drain closest to the road could be moved. The other could be altered, but not moved—but he would get it out of the setback. He saw a place where some landscaping could be applied.

- Motion: Peter Smith moved to open the public hearing for Garrett Homes, LLC, 317 U.S. Route 1, Map/Lot 0059-0004. Gerry Runte seconded. The motion passed 5-0.

Barbara Levy, 15 Greenacre Drive.

1. She liked the landscaping and the buildings. She was concerned about the plan to move the emergency spillway from the Route 1 side to the back side. Nothing should drain backwards into my property, she said. Would that create more drainage issues? [Rick Lundborn answered that the emergency spillway would not impact the properties in her vicinity.]
2. Please don't put a light in the cupola, she said. [Rick Lundborn: The applicant is happy not to put a light in the cupola.]
3. Lowering the height of the light poles would be good. [Rick: Not an issue.]
4. I have underground utilities. Will I be notified if there is digging in my area? [Rick: It is required that CMP, Water, and Sewer contact you when they locate the utilities.]

5. The dumpsters are near my bedroom. Can they be moved to the Sherwin Williams side?
[Rick: The dumpster at O'Reilly will be eliminated. It will be moved to the Sherwin Williams side.]

Robert Van Alstyne, Barbara's neighbor

1. Would changing the front drainage create more drainage issues?
2. Eliminating seven parking spaces is not significantly impactful with the loss of the third store, so he echoed support for creating 45 parking spaces.
3. The profile that faces Route 1 looks good. These will be two of the nicer buildings along that stretch of Route 1.
4. He suggested looking at the left-hand turn lane. Traffic along Route 1 in that area can be bad in the summer--especially Fridays northbound and Sundays going south. One person trying to turn into the stores could back up traffic even farther.
5. In an effort to preserve more dark sky, lowering the center pole lights would be great.
6. He suggested planting taller trees to help block light, muffle noise, and fight road pollution.
7. He wanted to see the dumpsters moved and put in an enclosure that matches the outside of the buildings so they are hidden.

[Rick answered: Gary Eucalitto had offered to do the left-turn lane that would go up from the driveway and taper back to Route 1. The dumpsters have enclosures and will look like they belong.]

Kathleen closed the Public Hearing.

Waivers

- Motion: Al Cotton moved to waive 6.3.13.32, the High Intensity Soil Survey. Peter Smith seconded. The motion passed. Unanimously
- Motion: Al Cotton moved to waive 6.3.13.3, the requirement to show the best face toward Route 1 and the pedestrian entrance into the building. Peter Smith seconded. The motion passed unanimously.
- Motion: Al Cotton moved to waive 6.3.13.4, all new construction shall have a building exterior that is wood clapboard, wood shingles, stone, or brick. Wayne Boardman seconded. The motion passed 5-0.

Preliminary Approval

- Motion: Al Cotton moved to approve the preliminary application for the retail shopping center, Garrett Homes, 317 U.S. Route 1, Map/Lot 0059-004 with the three waivers previously approved. Peter Smith seconded the motion.

**C. Long Sands Village—Elderly Housing Development, 222 Long Sands Road
Map/Lot 0044-0038 owned by James Paolini**

**The intent of this project is to create a 10-unit elderly housing development
Geoff Aleva, Civil Consultants**

Chairwoman Kathleen Kluger: This application was accepted as complete on December 17, 2020. The Planning Board conducted a site walk on January 7, 2021. The site walk lasted one hour and concluded at 12:00 Noon. James Paolini and Scott Stryner represented the application. All five members and both alternates of the Planning Board were present. Peer reviewer Chris Di Matteo was also present. Eleven abutters were present. Their questions and concerns included:

1. The slope
2. Stormwater discharge
3. Buffer plantings at the driveway
4. Added impervious surfaces that would alter stormwater discharge capability
5. The number of parking spaces that might promote visitors with a second car to park on Fernald Ave.
6. Inadequate proposed buffer plantings to shield the parking lot
7. The possibility of temporary short-term rentals or parttime use of the units by others than the owners
8. The potential for an increased number of dogs in the neighborhood

Item 1, Density

Chris Di Matteo: The Code Office sees the proposed buildings as single structures with two units. That is part of the density issue. The Applicant and Planning Board might want to consider a different building design that would present a smaller overall development using traditional duplexes, multi-family buildings, or perhaps by adding on to the existing building. These approaches would provide less density and overall space. That might allow for a more effective buffer and transition between the development and the established single-family neighborhood.

Geoff Aleva: The applicant would like to proceed with the design as indicated on the plan. We feel that with the plans presented, we can adequately address the stormwater, buffering, and the traffic. However, we can come up with a different design that can fit into the neighborhood and meet the ordinance requirements. This property could be redeveloped for three houses. That is because there are three lots that make up this project. There could be three single-family houses with garages that in essence could be close to the same square footage of the buildings we have now proposed. But, staying away from that for now, we would like to proceed with our review with the duplex structures with one-way parking coming in as indicated on the plan.

Item 2, Rights-of-Way and Access

Chris Di Matteo: With regard to Section 3.1.10, the Planning Board should review and discuss Subsection 2, Other Areas of Rights-of-way and Access, to determine if the vehicular and pedestrian access on the site should be deducted in the developable calculation. There are examples on past subdivisions where land-area occupied by access is deducted. This is an important item that affects density. The Board should determine how this application should proceed.

Kathleen: Section 3.1.10 discusses the Net Developable Acreage minus:

1. Areas for rights-of-ways for streets
2. Other areas of rights-of-ways and access
3. Areas unsuitable for development according to Section 7.4, which deals with the slope at 20%.

Dylan: We did this with the Davis Property. Access was taken out for the rights-of-way calculation. **Geoff:** This is not a dedicated right-of-way. This driveway is not used to gain frontage for any kind of purpose. I have worked on other projects in town that did not have access deducted from the density calculation. It is not clear in the ordinance what an accessway is. It talks about slopes, rights-of-way, and dedicated rights-of ways that are used for other purposes. It doesn't clearly indicate the requirement for vehicular access. **Kathleen:** I don't think Item No. 1 applies. However, Item No. 2, where it says "other areas of rights-of-way and access," applies because the access to the property is in two places, the driveway comes up from Long Sands Road and what you are calling the back, Fernald Ave. The semi-circular driveway, is an access. **Geoff:** We need some kind of determination from the Town Attorney about how the ordinance reads on that. Obviously, I am going to disagree with the aspect of the driveway that it needs to be deducted from your developable area. We would like to get the Town Attorney's opinion on what is included in that discussion of the driveway or access.

Kathleen: It think that is a fair request. **Wayne:** I guess it all boils down to what's an access and what's a driveway. In the Davis property we didn't subtract driveways. We subtracted the access road. I agree that it is not 100% clear. **Dylan:** Think of Hannaford Drive as an accessway to the parking lot. There was an office development that you recently approved that connected to Hannaford drive. That was an accessway to a parking lot. I believe accessways to parking areas are part of that deduction. I believe I have been consistent about that. Where driveways are defined differently in the zoning ordinance, there is a separate definition of driveway. **Geoff:** I am thinking of past projects I've been involved with here in front of the Board where an access deduction had not come into play with respect to figuring out the developable area for density.

Kathleen: I think that your suggestion of seeking an opinion from the Town Attorney of just what access means in the context of that regulation would be valuable for us to know. **Geoff:** What we are clarifying in Section 3.1.10 is question No. 2, areas of rights-of-ways and access. That is where we are. We don't have any other rights-of-way through the property. **Kathleen:** When we ask for the opinion, it will be for Items 1, 2, and 3 in context. **Geoff:** In context with the whole ordinance, not in context with this project. **Kathleen:** Correct. It is not just going after this calculation. It is for the meaning of this Site/Sub Reg 3.1.10. **Dylan:** It is easement of passage. It is really 7.4. Easement of passage.

Kathleen: We need to know both. Let's move on.

Item No. 3 Buffers and Landscaping

Chris Di Matteo: The requirement for trees larger than 24” in diameter. The plans have been revised to include that information.

Item 4 The 30-foot-wide buffer

Chris Di Matteo: I made a comment that that can be discussed later.

Item 5, Parking Design

Chris Di Matteo: We are looking at changing the parking design.

Item 6, Landscape Plan

Chris Di Matteo: The Planning Board should determine if preserving the existing vegetation within the setbacks along the limited new landscape is sufficient to adequately screen or buffer the proposed development from adjacent properties.

Item 7 Fencing and Plantings

Chris Di Matteo: There is a stretch where the combination of fencing and plantings may be considered. **Geoff:** Let me work on that with the landscape architect.

Item 8, Revised Plans

Plans have been revised.

Item 10 Gorrill Palmer’s Comments

Chris Di Matteo: Gorrill Palmer had issues about the control of runoff along the Long Sands Road sidewalk. **Geoff:** I met with an abutter’s engineer onsite, and we looked at the way the water currently flows. Water collects off our roofs and drip edges and hits a low spot on the abutter’s property before it discharges onto Long Sands. We are going to direct it into a ditch line and berm and shoot the water down the property line so it avoids the low spot on the neighbor’s property. It will automatically discharge onto Long Sands Road.

The time was 10:15. Kathleen said there are significant portions of this review left with many more comments. I suggest that we continue this review to another date because we have requested the opinion of the Town Attorney on the issue of access and net developable acreage, she said.

“So moved,” said Al Cotton. “Second,” said Peter Smith.

Gerry: “It might be useful if when the Town Attorney looks at this other issue, that perhaps she would consider the intent and the letter of the law with regard to Comp Plan’s applicability to this application.” **Kathleen:** I received an opinion from the Maine Municipal Association on this issue. In Maine, the Comp Plan does not trump an ordinance in place at the time of the application. It wouldn’t hurt to have another from the Town Attorney, but it would say the same thing.

Gerry talked about the waiver request for 8.1.3. **Gerry:** “Chris had made a comment to the effect of that the provision focusing on impacts of traffic is at odds with other provisions that focus on impacts to the neighborhood. If there is something there, maybe that can go on the list for the attorney.”

Kathleen said that we have a motion to continue the meeting to a date certain. She asked Al Cotton to restate the motion.

- Motion: Al Cotton moved to continue the application for Long Sands Village—Elderly Housing Development, 122 Long Sands Road, Map/Lot 0044-0038, to the date certain February 25. Peter Smith seconded.

In discussion, Kathleen said that we will also correspond with the attorney regarding the issue of net developable acreage. The other item to be explored is Section 8.1.3, she said.

The motion passed 5-0.

Dylan Smith asked Kathleen to contact him and discuss what should be asked of the Town Attorney.

**C. “Moorehouse Place” Workforce Housing 296 U.S. Route 1
Map/Lot 0059-0021 owned by Moorehouse Place LLC
The intent of this project is for final plan review of a workforce housing development
Patricia Martine, York Housing Authority**

Kathleen said the Moorehouse Place application will move to the February 25 meeting.

Dylan asked if there was unanimous consent to let the meeting stretch longer. No. Peter and Al were against it.

Applicant Patricia Martine: We have “closings like dominoes” riding on the application. Could the Board quickly look at the few bullet points that remain from the last hearing? Kathleen answered that the bullet points were not likely to be quick and that the hearing would be continued to February 25.

Minutes

Minutes were not reviewed.

Other Business

A meeting for Thursday, February, 4 has been added to the schedule.

Adjourn

The meeting adjourned at 10:30.

Respectfully submitted,

Patience G. Horton

Recording Secretary