

**York, Maine**  
**Planning Board Meeting Minutes**  
**Thursday, May 13, 2021; 7:00 P.M.**  
**Remote Meeting via Zoom**

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

Chair 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 Ian Shaw and Kenny Churchill were present but did not vote. Planning Director Dylan Smith represented staff. Chris Di Matteo from Longmeadow Planning and Landscape Architecture served as peer reviewer. Patience Horton was the Recording Secretary and wrote this report. Votes were tallied via roll call. The meeting lasted three-and-a-half hours.

The meeting did not follow the order of the agenda.

**Field Changes**

There were no field changes.

**Public Forum**

Kathleen Kluger read a letter from Kevin O'Shaughnessy and Dr. Andrea Westinghouse into the record. The Board's discussion of this letter is recorded under "Other Business" in this document. Mr. O'Shaughnessy was not in the Zoom meeting during the public forum. He was available later in the meeting, but the public forum was closed. The letter says:

Re: The Proposed Elderly Housing Development on Fernald Ave.

We are formally requesting that the Planning Board hear our objections to the York zoning ordinance, as summarized below, at its earliest convenience. This is a follow-up to our letter dated April 21, 2021. We understand your assertion that the current zoning ordinance allows for elderly housing and that, while the ordinance contradicts the Comprehensive Plan, Maine courts have ruled that the ordinance supersedes the Comprehensive Plan. We assert that the ordinance is in direct conflict with the Comprehensive Plan and believe that the Town should remove elderly housing as a permitted use in zones RES-1A and RES-1B, as currently allowed under Section 4.1.1 (residential districts) of the ordinance. Our objections to the inclusion of elderly housing as a permitted use in zones RES-1A and RES-1B are based on the vague and problematic language, the lack of specific density requirements, and definitions of structures that could allow Mr. Paolini to develop a project five times the size of the zoning-compliant, non-elderly, residential development. If the ordinance is not amended, and Mr. Paolini succeeds, then homeowners in these districts face the possibility of developers' buying up single-family homes and taking advantage of the weaknesses of the ordinance to construct multi-structured developments in the guise of elderly housing.

Respectfully,

Kevin O'Shaughnessy  
Dr. Andrea Westinghouse  
45 Fernald (formerly 114 Long Stands Road), York

The Chair closed the public forum.

### **Application Reviews**

#### **York Sewer District, 21 Bay Haven Road**

**Map/Lot 0020-0052 owned by York Sewer District**

**The intent of this project is to amend an approved plan by reconstructing an existing administration building (Phase 1) and construction of a new two-bay garage (Phase 2)**

**Michael Guethle, Architect and Engineer, Wright-Pierce**

**Michael Stein, Wright-Pierce Project Manager**

**Tim Haskell, Superintendent of the York Sewer District**

**Phil Tucker, Assistant Superintendent**

#### Comment 1

Chris Di Matteo said there is an objection to the grading of the proposed driveway. Michael Guethle explained that to improve the situation, they will provide additional crowning of the roadway in the place where the road enters the noted area. Notes will be put on the plan to identify these concerns to the contractor.

#### Comment 5

In narrative attachment 2.7, there is conflict between the vertical data supplied in the existing conditions plan and the FEMA map. Michael Guethle said that Wright-Pierce will modify the plans to indicate that there is consistency between the FEMA map and the data indicated on the design plans.

#### Comment 7

The Wright-Pierce design had raised the soil around a 32" maple tree two-and-a-half feet and created in a tree well. Chris Di Matteo said that action would not adequately protect the tree. He recommended removing a parking space to give the tree more room. Michael Guethle said the Sewer District was amenable to the change. The development of the crown discussed in the first comment will also help solve the problem.

#### Comment

Chris suggested species of plantings that were more appropriate for screening the buffer area. Michael Guethle agreed that blending the species will break up the monotonous landscape.

#### Comment

Chris said that if there are flood lights, they must not point toward any abutters. Michael Guethle said that the flood lighting fixtures are small and dark sky compliant. The lights are driven by motion sensors and will respond mostly to maintenance and wildlife.

Al Cotton asked why the York Sewer District has not moved to higher ground. Tim Haskell said that because of the elevation, no storm has ever reached District property and only will when half of York is underwater.

#### Waivers

- 1) 6.3.9 requires a copy of the most recent deed of the property. Michael Guethle said the deed dates back “quite a way.” Dylan Smith agreed that the waiver was acceptable. The District has been an ongoing applicant and has gone through approvals before.
- 2) 6.3.10, proof of ownership or evidence of the developer’s right title to the property shall be submitted. Dylan said the same situation applies to this section.
- 3) 6.3.32. There were no objections to the waiver of the high intensity soil survey.

The waiver of 6.3.35, submission of the fee schedule, was removed from the waiver list.

- 4) 6.4.25, identification of the type and amount of the required performance guarantee. Dylan’s opinion was that it was an acceptable waiver request.
- 5) 6.4.28, financial capacity. Dylan said this section closely resembles the prior one.

- Motion: Peter Smith moved to waive Site Plan/Subdivision Regulations:

- 1) Section 6.3.9, submission of a copy of the deed;
- 2) Section 6.3.10, submission of proof of ownership of the property;
- 3) Section 6.3.32, requirement of the high intensity soil survey;
- 4) Section 6.4.25, requirement of the identification of the type and amount of a performance guarantee; and
- 5) Section 6.4.28, requirement for documentation of financial capacity.

Seconded by Gerry Runte, the motion passed 5-0.

#### Approval

- Motion: Peter Smith moved to give preliminary and final approval to the application from the York Sewer District, Map/Lot 0020-0052, 21 Bay Haven Road, for the administration building reconstruction with the following conditions.
  - 1) That on plan C-1, they indicate consistency between the FEMA map and the design plan relative to vertical data.
  - 2) That on plan C-5, they eliminate the parking space closest to the 32” maple tree and make a substantive driveway change to minimize stormwater flow on Bay Haven Road.

- 3) That on plan C-5, they change the plantings to include five spruce trees.
- 4) That any and all outstanding fees will be paid prior to the signing of the Mylars.
- 5) That prior to the Chair signing the Findings of Fact, the applicant will submit a draft Findings of Fact based on the approved template.
- 6) That an approval letter from the Fire Chief will be submitted.
- 7) That a revised plan will be submitted that addresses staff, peer review, and Board members' comments for review by the Planning Office, including a photometric plan and fixture information that demonstrate compliance to Article 10.h.
- 8) Prior to issuance of a building permit, the applicant shall submit responses to the Code Office from the Maine Historic Preservation Commission and the York Historic District Commission regarding historic and archeological resources.

Moved by Peter Smith, amended by Chair Kathleen Kluger, and seconded by Gerry Runte, the motion for preliminary and final review to grant approval to the York Sewer District reconstruction, 21 Bay Haven Road, Map/Lot 0020-0052, passed 5-0.

**Dockside Restaurant, 22 Harris Island Road**

**Map/Lot 0063-0002 owned by Harris Island INC**

**The intent of this project is to amend an approved plan by constructing an exterior patio for outdoor dining.**

**Geoff Aleva, Civil Consultants**

Chris Di Matteo: This is an amendment to a previously-approved plan. The 22 x 32 deck/patio and fire pit are outside the shoreland setback in the Shoreland Overlay zone.

Geoff Aleva: We are offering an option to accommodate 85 guests, the limit for the restaurant, inside or outside. This request is not asking to increase that seating allowance. The deck/patio is off the restaurant and has nothing to do with the Tiki bar. The fire pit is separated from the restaurant. It is available to guests of the Inn.

- Motion: Peter Smith moved to accept the application from Dockside Restaurant, 22 Harris Island Road, Map/Lot 0063-0002, for review. Gerry Runte seconded. The motion passed 5-0.
- Motion: Peter Smith moved to open the public hearing for Dockside Restaurant, Map/Lot 0063-0002. Wayne Boardman seconded. The motion passed 5-0.

Chair Kathleen Kluger read a letter from Bobby McCann who wrote this is an extension of the Dockside Restaurant and the same restrictions should apply to this that are in place for the Tiki bar: 1) No outside music. 2) No sound amplification systems. 3) Close of service at 8:30 P.M. Geoff responded that this amenity is connected to the restaurant, not the Tiki bar, and will follow the same rules, including closing time, as the restaurant.

- Motion: Al Cotton moved to close the public hearing. Pete Smith seconded. The motion passed 5-0.

At Chris Di Matteo's request, Geoff had provided the calculation for the lot coverage and arranged for a surveyor's stamp to go on the plans.

There were no waiver requests.

#### Approval

- Motion: Pete Smith moved to approve the application for a site plan amendment for Dockside Restaurant, 22 Harris Island, Map/Lot 0063-0002, with the following conditions of approval:
  - 1) That within 17 days of the next scheduled Planning Board meeting, the applicant shall submit a draft Findings of Fact to the planning office.
  - 2) That prior to the Board's signing of the final plan, the applicant shall submit all outstanding review fees to the planning office.
  - 3) That the Dockside Restaurant shall not exceed the number of existing seats as identified on the final plan without prior Planning Board approval.

Al Cotton seconded. The motion passed 5-0.

#### Review of Findings of Fact

- 1) Findings of Fact, Conclusions of Law, and Decisions  
Cliff House Gate House, 591 Shore Road  
Tax Map 0156, Lot 0015  
Applicant RBDD Cliff House Acquisitions LLC
  - Motion: Peter Smith moved to authorize the Chair to sign the Findings of Fact for the Cliff House Gate House amended site plan, Tax Map 0156, Lot 0015, as amended. Seconded by Wayne Boardman, the motion passed 5-0.
- 2) Findings of Fact, Conclusions of Law, and Decisions  
Dunne's Ice Cream, 214 Nubble Road  
Map/Lot 0139-0473  
Applicant Hattrick LLC
  - Motion: Peter Smith moved to authorize the Chair to sign the Findings of Fact for Dunne's Ice Cream amended site plan, Map 0139, Lot 0473, as amended. Seconded by Wayne Boardman, the motion passed 5-0.
- 3) Findings of Fact, Conclusions of Law, and Decisions

Garrett Homes, 317 U.S. Route 1  
Tax Map 0102, Lot 0031  
Applicant Garrett Homes, LLC

- Motion: Peter Smith moved to authorize the Chair to sign the Findings of Fact for 317 U.S. Route 1 Retail Shopping Center, Map 0102, Lot 0031, as amended. Seconded by Wayne Boardman, the motion passed 5-0.
- 4) Findings of Fact, Conclusions of Law, and Decisions  
York Beach Surf Club, 780 York Street  
Map/Lot 0124-0299  
Applicant York Beach Surf Club LLC
- Motion: Peter Smith moved to authorize the Chair to sign the Findings of Fact for York Beach Surf Club amended site plan, Map 0124, Lot 0299, as amended. Seconded by Wayne Boardman, the motion passed 5-0.

#### **Discussion/Review—Comprehensive Plan Update/Climate Action Plan**

- **Update on Comprehensive Plan Process**

Kathleen Kluger, Comp Plan Update Chair

The Comp Plan steering committee met on Monday, May 3 from 6:00 to 7:30 P.M. A public information description and presentation event by CivicMoxie is aimed for July. The first public outreach event is planned for mid-June and will hopefully be held outdoors. Nan Graves and Stephanie Byrne volunteered to manage community comment, lists, and email distribution. Because a special tie to the Town Manager is necessary, Kathleen Kluger has become the public information officer. Kathleen wants a member of the Planning Board to step forward to be the event schedule organizer. Not everything is built around engaging the public, she said.

- **Update on Climate Action Plan Process**

Wayne Boardman, Climate Action Plan Chair

The CAP steering committee met on Wednesday, May 5. Time was spent on the development of the draft communications outreach plan, the methodology of the greenhouse gas inventory, and the evaluation of adaptation strategies. We are getting ready to get into the meat of the analysis, identifying issues, and making solutions. Susan Glick, Ron McAllister, and Laurie McDonough have stepped forward to assist with the communications and outreach plan. We hope to set up a series of Zoom presentations with subject-matter experts in collaboration with the Library.

#### **Discussion/Review—Potential New Ordinances for November 2021**

- **York Beach Corridor District (Green Enterprise Overlay)**

This was continued to the next workshop. It will not go on the November ballot.

- **Open Space Conservation Subdistrict Development Ordinance**

Kathleen Kluger: I appreciate the work that has gone into it, but I have many reservations about this draft. It seems the current ordinance has only been reorganized and reworked. Another step has unfortunately been added for the Planning Board.

Dylan Smith: I recommend you hold a hearing on the second draft. I sent that to you today. You can make modifications or table it then.

- **Article 10.h Outdoor Lighting Ordinance (Clarification)**

This will be scheduled for the upcoming public hearing.

### **Other Business**

Dylan Smith: The Planning Board should discuss the email read into the record regarding the request for a zoning change that would disallow elderly housing, including elderly congregate housing, as a permitted use in RES-1A and RES-1B districts.

Al Cotton: I am offended that anyone wants to reduce the few opportunities we have in this town for senior citizens to get acceptable, affordable housing. Pete Smith agreed.

Gerry Runte: The Comp Plan talks about this amendment. One of the recommendations in the Comp Plan is to follow the ordinance eliminating such housing. Are we going to ignore the Comp Plan? That is what is fundamentally being discussed.

Wayne Boardman: The letter sounds like there is hope that by changing the ordinance, it would stop this particular development.

Dylan Smith: In many communities, especially York, committees like to layer more policies on existing policies, and the existing policies get lost. The Comp Plan does say that in RES-1A and RES-1B, single-family and two-family residences should be discouraged to maintain a certain character and feel.

I talked to the Town Attorney today, and she said that when an application is in process before the Board, you can't say no and suddenly change your mind. There is plenty of court legal reference and opinion to that. This has to be looked at in terms of density during the Comprehensive Plan process.

Kathleen Kluger: Retroactively, nothing can be changed for this particular application.

Dylan Smith: You could hold a hearing in June to get public comment on it.

## **Minutes**

Neither the April 22 or April 28 Minutes were reviewed.

## **Adjourn**

The meeting adjourned at 10:30.

The next CP Steering Committee meeting will be Monday, June 7, 2021.

The next PB meetings will be Thursdays, May 27, 2021, and June 10, 2021.

Submitted by Patience G. Horton

Recording Secretary