

**Planning Board Meeting/Hearing  
Thursday, May 26, 2022; 7:00 P.M.  
York Public Library**

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

Vice Chair Wayne Boardman called the meeting to order at 7:00 P.M. A quorum was determined with five people voting: Wayne Boardman, Board Secretary Gerry Runte, Al Cotton, Pete Smith, and alternate Ian Shaw, who was appointed as a voting member. Alternate Kenny Churchill was present but did not vote. Kathleen Kluger was not present. Land Use Planner DeCarlo Brown represented Town Hall staff. Chris Di Matteo was the peer reviewer. Patience Horton took minutes, working remotely. Votes were tallied via roll call.

Agenda items heard tonight:

- 1) Raydon Road Medical Facility
- 2) York Paddle Tennis and Pickleball Site Extension
- 3) Viewpoint Hotel

Agenda item not heard tonight:

- 4) 115 Joshiah Norton Subdivision

**Field Changes**

There were no field changes.

- Motion: Al Cotton moved to add a meeting/hearing for Thursday, July 7, 2022. Ian Shaw seconded the motion, which passed 5-0.
- Motion: Peter Smith moved to give a six-month extension of the temporary occupancy permit for 317-West Route 1 (O'Reilly Auto Parts). Gerry Runte seconded the motion. The motion passed 5-0.
- Motion: Peter Smith moved to grant an extension for 7 Hannaford Workforce Housing. Seconded by Ian Shaw, the motion passed 5-0.

**Public Forum**

Without objection, Wayne Boardman opened and closed the public forum. No one came forward to speak.

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**Application Reviews**

**Raydon Road Medical Facility, 66 Raydon Road  
Map/Lot 0091-0009-X owned by J. Hilary Rockett, Jr.**

**Application is a preliminary plan for the development of a single-story building intended for use as a physical therapy/rehabilitation facility to be occupied by Northeast Rehabilitation. The proposed building is approximately 23,000 square feet.**

Larry Beals, Beals Associates Engineering  
Bryon Sutherland, Beals Associates  
Attorney Jason Howe, JHR Development

Jason Howe said that there is an outstanding question of whether a pin (also called a monument) can create a sideline. Town Counsel was asked if placing a monument can establish a corner. She was not asked to give an opinion of the presence of a side-yard or front-yard, he said, just on the placement of the monument.

According to her legal opinion, it is not possible, said Chris Di Matteo.

The purpose of the pin is to establish the property as a corner lot. If it can be deemed a corner lot, there would be a 50-foot setback in the northeasterly portion of Raydon Road (the front) and a 30-foot setback on the southeasterly portion of Raydon Road (the side). Without the corner, both the front and side of the building would have the same 50-foot setback wrapping around the two sides of the building. A 30-foot side setback along the side of the building is needed to maintain the integrity of the applicant's design.

"This [fit] has exercised our cleverness to the maximum," said Larry Beals. "We have made a concerted effort to comply with every single regulation. We will either come back to you and explain to you that we figured it out and moved a couple of parking spaces, or we will come back and demonstrate to you that we tried every single thing we could, and it's been very difficult."

This evening, Larry Beals took a different approach. He showed how the pin creates a physical intersection in the road—intersection being the operative word. The pin (a stake put in place by the applicant's surveyor) was placed where Raydon Road bends. At that point, a passing car must decide which direction to take. The driver will decide whether to veer left along the bend on Raydon or turn right onto Donica. Those choices confirm a point of intersection. He showed a map and photos of the area to prove his point.

Applicant Attorney Howe has looked closely at the ordinance and found that, per Maine State case law, the Planning Board has the discretionary authority to determine which is the front-yard and which is the side-yard. There is a line of cases in which such discretionary decisions made by planning boards have held up in court, he said.

We want to make sure we can apply the ordinance fairly to everyone, said DeCarlo Brown.

In other activity, the applicant has scoured the parcel for the location of trees that have a diameter of 24" inches or greater. There are three, all White Pines. One tree is outside of the perimeter of the building footprint. One is on the edge, and one is directly inside. Those two will be removed.

There was a question about whether "nursing facility" is an appropriate term for the use at Raydon Road. McMann Associates, the applicant's consultant, used ITE (Institute of Traffic Engineers) land codes and found nursing homes as the closest comparative use. The analysis was accepted by Gorrill Palmer when they made the peer review of the traffic study, and the matter was resolved.

Parking was also reanalyzed by McMann Associates by using ITE standards. A facility in Nashua was used as a predictable comparison. A census of 15 patients, 31 employees, and two non-patient visitors resulted in a demand for 43 parking spaces. With a similar quota of patients and personnel, the comparable Raydon Road plan is for 49 spaces. It will most likely have a smaller need. The applicant is confident 49 spaces are adequate.

The study reveals that this site is not a high-volume traffic generator. There is a minimum amount of traffic. At the A.M. peak hour, there are 17 vehicle trips, about a car every three minutes. On Saturday, the peak hour generates about 10 trips. On Sunday, it is about four. These numbers do not trigger a need for a traffic assessment or a DOT permit.

- Motion: Peter Smith moved to open a public hearing for the Raydon Road Medical Facility, 66 Raydon Road, Map/Lot 0091-0009. Ian Shaw seconded the motion, which passed 5-0.

Martin Meyers of Three Cranberry Lane is mostly concerned about the vernal pool, which he said will certainly be destroyed by the intrusion of the medical building. The ecology of the area, including two ponds, depends on the health of the vernal pool. He also said that the roads in that area form a bottleneck between the corners of Raydon Road, the daycare center, Donica Road, Raydon Road Ext, and the traffic

coming off the Davis property. Pedestrians are at risk. There are many walkers from Stonewall Kitchen to the Duck Pond. Will the new property have a sidewalk?

Wayne Boardman closed the public hearing.

Larry Beals responded to Martin Meyers. The law says that the vernal pool must be protected, and this vernal pool has been protected. The vernal pool is the impetus for developing 15% of the property and protecting 85%. Vernal pools dry out from time to time, but that is what vernal pools are supposed to do, he said. They provide essential habitat that won't support fish that prey on eggs. That is why they are great breeding grounds for reptiles and amphibians. He proposed putting up plaques containing educational information warning walkers to be careful about the sensitive, environmentally-unique features of the site.

Chris Di Matteo said that the Board is happy with the landscaping plan. There are outstanding details concerning landscaping, grading in the bufferyard, and a proposed wall. Jason Howe assured the board members that the final plan will reflect the landscaping they hope to see on the site.

Chris Di Matteo said the stormwater structure meets the ordinance. Bryon Sutherland replied. "The preliminary plan review includes the stormwater overview. However, the final plan requires more in-depth review, which includes calculations and details of the stormwater management system. All that information will be included in the final plan. The preliminary plan is just an overview of the system showing where the stormwater will be collected, how it will be treated, and where it will be discharged from the site.

He said that DPW has received the revised traffic information but has not completed reviewing it. After polling the board members, Wayne Boardman said a site walk is not necessary.

- Motion: Peter Smith moved to continue the review of Raydon Road Medical Facility, Map/Lot 0091-0009-X to the meeting on July 7. Seconded by Ian Shaw, the motion passed 5-0.

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**York Paddle Tennis and Pickleball Site Expansion, 28 Mill Lane  
Map/Log 0089/0037-D, owned by York Paddle Tennis Club, Inc.  
Application is an expansion of the York Paddle Tennis and Pickleball property. Proposed  
expansion includes a clubhouse addition and new pavilion.**

Jeff Aleva, Civil Consultants

Geoff Aleva reported on the current status of the application.

The expansion consists of two new pickleball courts on the north side of the property, the rebuilding of a raised tennis platform court, and the addition of a third raised platform court. Two open air pavilions will be available where players can wait their turns at the courts and socialize. The expansion of the clubhouse might be phased because of finances.

The York HDC has reviewed their application but has not gotten back. The State Historic Preservation Commission has no concerns for historic issues at the site.

There is a waiver request for the high intensity soil survey. The site does not currently need a septic system. There is no water supply. Port-a-potties are in use.

Trash is carry-in and carry-out by members.

The hours of operation are basically 9:00 A.M. to 9:15 P.M.

Parking areas must be a minimum of 15 feet from the right-of-way. A waiver request will be submitted to allow a distance of 11.5 feet.

Sound and light disturbance will be addressed with vegetation along Mill Lane, the addition of a solid fence, and a blanket on the wall of one pickleball court. LED lights will be shielded and downlit.

- Motion: Pete Smith moved to accept York Paddle Tennis and Pickleball Site Expansion, Map/Lot 0089/0037-D as complete for purpose of preliminary review. Ian Shaw seconded the motion, which passed 5-0.

The site will be accessed with a one-way-in, one-way-out traffic pattern. The design has safe sight distances. This proposal has been reviewed and accepted by the Fire Chief. DPW did not have any comments or concerns. The Police Department has concerns about noise, but not about the traffic pattern.

The large trees have been identified. None are affected by the proposed development.

The main thing is the sound, said Geoff Aleva. A sound consultant was hired, and his report has been submitted. He conducted tests many different times. He set up a base ambient sound value when there was no one playing on the courts. He then took sound readings when all four courts were in use. The tests determined that at one area of the southern property line, the DBs (decibels) reached 61. The ordinance says, 60, said Geoff Aleva. The sound engineer came back with recommendations for sound blankets that would bring the DBs below the zoning allowance of 60.

Board member Gerry Runte commented that a 1-DB change is not trivial. Geoff Aleva suggested having the Code Office conduct a follow-up study as a condition of approval.

- Motion: Al Cotton moved to open the public hearing for the York Paddle Tennis Club, 28 Mill Lane, Map/Lot 0089/0037-D. Gerry Runte seconded the motion. The motion passed 5-0.

Attorney Gordon Smith represented Bob and Janet Ellis of 5 Mill Lane. He had submitted comments and a letter to the Planner and the Code Office. There was also a September 2021 letter from the neighborhood with 75 signatures. He questions the validity of the study. He said that there are many flaws in the report, and he described the ordinance rules about variables in the decibel levels. He said that the study does not take into account the fact that this is a particular type of sound that, at the State level, is called, "a short duration of repetitive sound." Mr. Smith insisted the Board hire an expert peer reviewer to assess the sound report and the analysis of the technical matters already made. These things are regulated in a particular way the applicant's report does not take into account, he said.

He went on to say that there are violations in the setbacks that are noted in the peer review. The easement of the parking area is in violation. It has been grandfathered but should not have been. The parking should meet the 50-foot front side back requirement. Having a current violation of the zoning ordinance should disallow the Board from granting site plan approval. Attorney Gordon Smith finished his comments.

Deborah Morris is a direct abutter to a pickleball court. Except for some shrubs, there is no kind of buffer between her property and the courts. When she first moved here in 2007, there were only raised paddle tennis courts used only in winter. It was not so bad. Pickleball courts were added, and they create the noise problem. She asked the board members to imagine four loud ping pong games going on at the same time, 12 hours a day, seven days a week. It is so disruptive that we can't have barbeques or use the pool. We have a right to quiet and peaceful enjoyment of our property. I suggested putting a structure around the courts but never heard anything back. I have a tape of the noise, if you want to hear it.

George Gendron, 427 Cider Hill Road. How could the club be built legally without a septic system? The clubhouse does not have a septic system. When he built his house, he had to go through extreme lengths

with the Town with a septic system design. Why didn't they? Regarding noise, if he is going to sell his house and move to his retirement house, he wants to make sure to bring the real estate agent over on a rainy day when pickleball is not being played. His house is about one-half mile away. For him, it is not as loud. It's just annoying. It is like a drip-drip-drip that never ceases. The problem is with the timing of the sound and the frequency. It is never ending from nine-to-nine. He also hears people drying off the courts with leaf blowers before they play.

James Morris spoke next. The noise goes on 12 hours a day, 84 hours a week! He invited the board members to come over for coffee so they could sit outside and listen. It is horrendous, he said.

James Williams, 80 Mill Lane. He lives one-half mile away through the woods. Even that far away, from his back deck he can hear ping-ping-ping-ping. It is not just the ping pong sound, it is also the hooting, hollering, and cursing (some). They are having little bonfires. They're socializing. They're drinking. It is a much louder social situation than when it was wintertime paddle tennis alone.

Clint Ellis lives directly across the street, 60-yards from the courts. It is a loud, constant noise. There is more than pickleball going on. There are parties. He had to put sound machines in his four-year-old daughter's room so she can sleep. He said there are alternative paddles and balls that make less noise. The Club land is near the Bell Marsh reservoir. Wildlife has declined since the pickleball courts came in. We used to have wild turkeys, ducks, and deer. It is affecting more than just us. It is affecting the whole environment, he said.

Jim Cronin spoke as a member of the club. Pickleball is the fastest growing sport in the U.S. The Club has a positive impact on the community. It is social and inclusive. You see generations of families playing at all kinds of levels. Friendships develop there. The Club raised \$13,000 for the York Hospital Living with Cancer Fund. Members keep the site very tidy.

Bob Ellis: "If this club has so much money, why don't they go buy somewhere else where they won't be in someone's neighborhood like this? If they want to stay, they can build a building to encapsulate the whole sound!"

Wayne Boardman closed the public hearing without objection.

DeCarlo Brown commented that he was not sure if restroom facilities are a requirement.

Geoff Aleva said he understands the noise condition and its impact on the abutters. That is what drove the club to hire a sound engineer. The vegetation and fencing along Mill Lane will help reduce the sound impact. A blanket and appropriate sound insulation on the courts will deflect the sound. Upgrades in equipment can help reduce the impact.

The Code Officer has deemed that there is a pickleball court that encroaches the side setback, but it is grandfathered.

Parking is allowed within the front building setback. Geoff has put in a waiver request to reduce the 15-foot buffer to 11.5 feet. The buffer would span from the right-of-way to the edge of the parking lot.

He clarified that the construction of the clubhouse, the raised courts, and the pickleball courts were originally permitted through Code Enforcement. The work did not require site plan review.

Chris Di Matteo said that the sound ordinance that relates to this project is a requirement that the Board does not see very often. There is no noise specialist on staff. Peer review is recommended. It is the most expeditious way to get through it.

- Motion: Pete Smith moved that the Board ask that the Planning Staff to provide a peer review of the York Paddle Tennis and Pickleball Site Expansion, 28 Mill Lane, Map/Lot 0089/0037-D, as it relates to excessive sound. Ian Shaw seconded the motion, which passed 5-0.

DeCarlo Brown assured all that the subject matter review will take place before the next hearing.

- Motion: Peter Smith moved to arrange a site walk for June 16, 2022, at 11:00 A.M. at the York Paddle Tennis Club, 28 Mill Lane. Ian Shaw seconded the motion. The motion passed 5-0.
- Motion: Peter Smith moved to continue the review of York Paddle Tennis Club Facility Expansion, Map/Lot 0089/0037-D to a date certain of July 14, 2022. Al Cotton seconded the motion, which passed 5-0.

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**Viewpoint Hotel, 229 Nubble Road**

**Map 0025, Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223**

**Owned by 229 Nubble Road, LLC.**

**Application is a Site Plan Amendment to create 13 additional hotel units and an innkeeper dwelling. Seven Units will be located within two new structures. Six units will be added to the existing nine-unit hotel.**

Geoff Aleva, Civil Consultants

- Motion: Ian Shaw moved to accept the application for Viewpoint Hotel expansion, 229 Nubble Road, Map 0025, Lots Map 0025-/Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223, as complete for final review. Gerry Runte seconded the motion, which passed 5-0.

Items have been updated based on comments from the Planner and the Board. The existing conditions plan was updated and submitted for the ocean-side of the plan. Lot coverage has also been updated on the existing conditions plan. The sight line shift on the ocean side is also shown on the plan.

The restaurant is an accessory use to the hotel. That was approved two years ago. The restaurant is seasonal and closes down during the off-season. The food truck is a registered vehicle. It and the bar-service trailer have to have the ability to move off the property. The status of their registrations has to be reported to the CEO on a yearly basis.

A plan note has been added to document the existing vegetation on the eastern side of the property. It includes vegetation to hide the transformer. There have been some changes to address ADA parking and ADA requirements for the pathways.

The applicant has received the letter from the sewer department. There are no issues.

On the western side of the property, where Brown's Ice Cream was, the maximum allowable lot coverage is 30%. We are at 35%, said Geoff Aleva. The calculation of 35% comes from laying the 2005 and 2015 aerial GIS maps over the current survey. We are trying to bring lot coverage below 35% by converting existing gravel into landscaping and lawn areas. The owner has started adding plantings along the Spring Street buffer.

There is a slight change to the proposed buildings on the ocean side. At the recommendation of the Code Office, the buildings were made slightly smaller and moved slightly to maintain the existing vegetation that is along the buffer line.

- Motion: Al Cotton moved to open the public hearing for Viewpoint Hotel, 229 Nubble Road Map 0025, Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223. Ian Shaw seconded the motion. The motion passed 5-0.

Connie Doto is a direct abutter. The project is in poor taste for a historic site and beautiful ocean front. Code told her to remove stones from her patio area and replace them with grass. If this place gets by with a green roof, maybe she should have just painted the rocks green. Unjustly, trees were taken down from

her property without permission. Is the runoff from the hotel going to cause problems on her property? The sound on Saturday nights “rocks” her house. With the upgrades, she expects to hear more noise from the weddings and the restaurant.

Wayne Boardman closed the public hearing without objection.

Geoff Aleva showed the existing conditions plan. The roofs of the new buildings will be covered with green vegetation, not painted green. The top building will have a sod lawn area and a glass rail. The second roof will have perennials and low grasses, however, the green roofs will be counted as lot coverage.

Drainage from the new buildings will be percolated into the soil and discharged into the ocean. None of the stormwater will go onto abutting property.

The Viewpoint has a view easement over Connie Doto’s property. Connie Doto does not have a view easement over the hotel. The Viewpoint is able to take care of the trees. Trees that were cut were along the property line.

Chris Di Matteo’s comments concern three components of ADA compliance: the parking, the route to the two new buildings, and the route to the main hotel. Geoff Aleva went over the engineering details of the changes that will bring those areas to the correct standard.

Geoff Aleva said he has a letter from the bank stating the project has financial capacity.

- Motion: Peter Smith moved continue the application for Viewpoint Hotel expansion, 29 Nubble Road, Map 0025, Lots 0193-A, 0201, 0202, 0203, 0204, 0219, 0220, 0221, 0222 & 0223, to July 7, 2022. Gerry Runte seconded the motion, which passed 5-0.

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~~115 Josiah Norton Subdivision, 115 Josiah Norton Road  
Map/Lot 0099-0053 A owned by Richard Moody and Sons Construction Co.  
Application is a subdivision for the creatin of two new lots designed as an open space conservation  
development.~~

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### **Minutes**

Minutes were not reviewed.

### **Other Business**

There was no other business.

### **Adjourn**

10:30

Respectfully submitted,  
Patience G. Horton