

York, Maine
Planning Board Meeting Minutes
Thursday, May 27, 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 Kenny Churchill and Ian Shaw were absent. Planning Director Dylan Smith represented staff. Chris Di Matteo from Longmeadow Planning and Landscape Architecture served as peer reviewer, determined completion, and prepared each application for the Board's review. 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 Board did not have time to listen to the application for Long Sands Village--Elderly Housing Development, Map/Lot 0044-0038. That hearing was continued to June 24, 2021.

Field Changes

Field Change

Molly O's

2 Main Street

Deb Weeks, Project Manager

The owner wishes to put an Italian Ice cart in front of her property/store, tucked up against the front door where it will not impede foot traffic. Someone will be attending the cart, which will be brought indoors every night until October, when Molly O's closes for the season.

- Motion: Al Cotton moved to approve the requested field change for Molly O's, 2 Main Street. Peter Smith seconded. The motion passed 5-0.

Field Change

York Beach Surf Club, 780 York Street

Map/Lot 0147-0299

Tim DeCoteau, Project Manager

Brian Nielsen, Attar Engineering

This is the follow-up of two conditions of approval that were made on April 22, 2021.

- 5) Prior to signing the final plans, a revised Existing Conditions plan that identifies and certifies the current impervious area on both properties will be submitted to the Code Officer for review and approval. It will contain a revised calculation plan that clearly

identifies and enumerates the proposed impervious areas for both properties. The information will be organized by base overlay zones for both properties, and it will provide totals and calculations that support the information on Plan Note 5 of the amended site plan.

Tim DeCoteau announced that the Code Officer found that the porous pavers count for 75% lot coverage allotment. Gorrill Palmer has also reviewed and approved the calculations. For approval, the plan had to be modified by removing one parking space. Now there are nine. Before there were 10. Now there are four extra spaces. The turnaround at the end of the parking lot has been reduced. The project is in compliance with 24.86% lot coverage.

Secondly, Tim DeCoteau reported on Condition 4) from the April 22 Approval with Conditions.

4) Prior to signing the final plans, the COE will review and approve the proposed expansions to the non-conforming structures located at the rear and side setbacks pursuant to Article 17.

He said that approval by the Code Officer for Condition 4 has also been met.

- Motion: Al Cotton moved to approve the field changes for York Beach Surf Club; Map/Lot 0038-0059. Peter Smith seconded. The motion passed 5-0.

A third matter was discussed. Project architect Chris Reynolds said that the original siding was going to consist of individual boards. Because of supply problems, the boards were no longer available. They had to switch to the same product in panels, instead of boards. The panels are fastened differently, but there is no change in the material or color.

- Motion: Al Cotton moved to approve the field change from individual boards to panels for York Beach Surf Club; Map/Lot 0038-0059. Peter Smith seconded. The motion passed 5-0.

Public Forum

No one came forward to speak. Without objection, the Chair closed the public forum.

Application Reviews

**AT&T Small Cell Facility, within the Public Right of Way near 1 Main Street
(Near) Map/Lot: 0024-0042 owned by Central Maine Power
To install one small wireless cell facility on an existing utility pole that is in the public
right-of-way.**

Michael Dolan, Project Manager

Don Haes, Expert

This is located in the vicinity of the Goldenrod.

Michael Dolan: AT&T has licenses issued by the FCC to operate a wireless network throughout the country. This is a small antennae installation on a replacement utility pole in the public way that is owned by Central Maine Power. The facility consists of a small antenna on the top of the pole. The cylindrical antenna is 60” long and 16” in diameter, bringing the height of the pole to 38’6”. An equipment cabinet is fixed to the side of the pole twelve feet off the ground. There is a small electric meter shut-off toward the lower portion of the pole. Fiberoptic cables and conduit connect the equipment. Everything that is already on the old pole, like lights, is being transferred to the new pole by the utility.

- Motion: Peter Smith moved to accept the application for AT&T Small Cell Facility, (near) Map/Lot: 0024-0042 as complete for purposes of review. Gerry Runte seconded. The motion passed 5-0.
- Motion: Wayne Boardman moved to open the public hearing for AT&T Small Cell Facility, (near) Map/Lot: 0024-0042. Seconded by Peter Smith, the motion passed 5-0.

Caroline Macdonald read a memo written by her husband, Torbert Macdonald. It said that this is a multi-billion-dollar corporate interest trying to build out a radio frequency monopoly before the Town has the chance to consider it. It has not been reviewed by qualified experts. Section 1.6 of the Town Wireless Communication ordinance allows the Planning Board to obtain services of professional engineers to review the applicant’s proposal. The Selectboard should not apply a routine signature, but should treat it as a policy item. “Please stop. You are over your heads. Sincerely, Torbert Macdonald.”

Janet Drew said we need a robust planning department, not a piecemeal consultant for a piecemeal application. Research should be done. An ordinance should be put in place. This is inefficient and hazardous. Fiberoptics is a safe, alternative route.

- Motion: Peter Smith moved to close the public hearing for AT&T Small Cell Facility, (near) Map/Lot: 0024-0042. Seconded by Wayne Boardman, the motion passed 5-0.

Kathleen Kluger: We have a Wireless Communication Facilities ordinance, enacted in 2002 and amended in 2009, 2011, and 2016. That is the background information we have to go on. It is our job to evaluate those ordinances and the application and make decisions based on that.

Michael Dolan: The health effects from FCC licensed telecommunications facilities are not grounds for denial of a requested approval.

Don Haes, an independent consultant emissions expert in the area of radiation safety, said [for an example of safety] that because of the demand for wireless networking, the Dana Farber Cancer Institute has [with great confidence] installed microcells like these at the ends of every floor of their building. These facilities are fully compliant will FCC regulations regarding RF emissions. A fiberoptic system cannot accomplish the same goal.

Chris Di Matteo: Our Wireless Communications Facility ordinance incorrectly references Site Plan and Subdivision Regulations for part of the Planning Board's review. Those Site/Sub Regs should not be part of this review.

Kathleen Kluger: There is a waiver request for 1.9.h, fencing. I don't know what you would be fencing or what the fence would be attached to.

Chris Di Matteo: Because the AT&T installations are in the public rights-of-way, the Selectboard has to review and approve these applications.

- Motion: Gerry Runte moved to approve the AT&T Small Cell Facility near 1 Main Street, (near) Map/Lot 0024-0042, subject to the approval requirements as outlined in the statement from Longmeadow Planning and Landscape. This is to include a waiver of Section 1.9.h of the Wireless Telecommunication Facility ordinance, as there is no need for fencing for this installation. The following conditions apply.
 - 1) Prior to signing the Findings of Fact, all outstanding fees shall be paid to the Town;
 - 2) Prior to signing the Findings of Fact, a structural analysis report shall be revised to certify compliance with National Standards Institute/Electronic Industries Alliance/Telecommunications Industry Standard 222, entitled Structural Standards for Steel Antennae Towers and Antennae Supporting Structures for Current Revisions or Versions and submitted to the Planning Director;
 - 3) Prior to signing the Findings of Fact, a signed statement certifying that the Wireless Communications Facility complies with all Federal Communications Commission regulations, as outlined in Section 1.9.j of the Wireless Telecommunications Facility ordinance, shall be submitted to the Planning Director; and finally,
 - 4) Prior to issuance of a public building permit by the Code Enforcement Officer, the members of the Selectboard shall review and approve a lease agreement between the applicant and the Town.

Moved by Gerry Runte, and seconded by Peter Smith, approval of the application with the Waiver and Conditions of Approval, as stated, passed 5-0.

**AT&T Small Cell Facility, within the Public Right of Way near 265 Long Beach Avenue (Near) Map/Lot: 0036-0096, owned by Central Maine Power
To install one small wireless cell facility on an existing utility pole that is in the public right of way.
Michael Dolan, Project Manager
Don Haes, Expert**

This is another small cell antennae facility of similar design on top of a pole with equipment on the side. It is located in vicinity of Sun & Surf.

- Motion: Al Cotton moved to accept the application for AT&T Small Cell Facility, (Near) Map/Lot: 0036-0096 as complete for purposes of review. Seconded by Peter Smith, the motion passed 5-0.
- Motion: Al Cotton moved to open the public hearing for the application for AT&T Small Cell Facility, (Near) Map/Lot: 0036-0096. Seconded by Peter Smith, the motion passed 5-0.

Attorney Joe Siviski spoke on behalf of Sun & Surf Restaurant to make a clarification for the record. A couple of years ago, Central Maine Power determined that the ownership of this strip of land (between the sidewalk along the seaward edge of Long Sands Road and Sun & Surf property), where the pole is going to go, is private property owned by Sun & Surf, and not in the public right-of-way. CMP has an easement—or right—to be on the Sun & Surf property.

Secondly, Mr. Siviski expects a waiver for fencing, which would be inappropriate for this location. A fence would be out of character for the area.

Thirdly, Joe Siviski said that Michael Dolan has reassured him that there would be no interference, that the AT&T facility will operate under a frequency that does not interfere with any technology in the area. There is a standard in the ordinance, Section 1.9.k, that addresses interference and provides that there is certification by the applicant that the operation will not interfere with other adjacent transmission or reception functions. There is a mechanism by which the Code Enforcement Officer can enforce the provision of the ordinance. I [Joe Siviski] would ask that the applicant make that certification for the record and also, in the rare event that there is any interference of this kind, take the necessary steps to enforce this particular provision.

Michael Dolan: Mr. Siviski has presented some sound research. Central Maine Power has told us that they own the property underneath the pole. They had us sign a license consistent with a master agreement that contemplates the situation. We defer to the Planning Board on this issue. If it is in the right-of-way, we will go before the Selectboard. Otherwise, we would not have to.

The public hearing continued.

Janet Drew asked the Board to table the application until more information is available about dose response.

- Motion: Peter Smith moved to close the public hearing for AT&T Small Cell Facility, (Near) Map/Lot: 0036-0096. Seconded by Gerry Runte, the motion passed 5-0.

Dylan Smith: If there is a question of land ownership, then the owner [Sun & Surf] should sign off on the application.

Joe Siviski: I do not have the authorization to sign off on anything. If CMP has an easement, I don't know if the owner has to sign off on the application.

Kathleen Kluger: There has to be a clear idea of the chain of ownership, lease agreement, and easement. This will require work between the Town Attorney, Mr. Dolan, and Sun & Surf's attorney.

Without any objection from the Board, she moved the application to the date certain of June 24, 2021.

**AT&T Small Cell Facility, within the Public Right of Way near 125 Long Beach Avenue (Near) Map/Lot: 0031-0022, owned by Central Maine Power
To install one small wireless cell facility on an existing utility pole that is in the public right of way.
Michael Dolan, Project Manager
Don Haes, Expert**

This is another small cell antennae facility of similar design on top of a pole with equipment on the side.

- Motion: Al Cotton moved to accept the application for AT&T Small Cell Facility, (Near) Map/Lot: 0031-0022 as complete for purposes of review. Seconded by Peter Smith, the motion passed 5-0.
- Motion: Al Cotton moved to open the public hearing for the application for AT&T Small Cell Facility, (Near) Map/Lot: 0031-0022. Seconded by Peter Smith, the motion passed 5-0.

Janet Drew said that if the second application was tabled, this application should also be tabled.

- Motion: Peter Smith moved to close the public hearing for AT&T Small Cell Facility, (Near) Map/Lot: 0036-0096. Seconded by Al Cotton, the motion passed 5-0.

Michael Dolan: This is in the right-of-way, and that is not disputed.

- Motion: Peter Smith moved to approve the waiver request for the Wireless Communication ordinance Section 1.9.h for AT&T Small Cell Facility, within the Public Right of Way near 125 Long Beach Avenue, (Near) Map/Lot: 0031-0022.

Moved by Peter Smith, seconded by Gerry Runte, the motion for waiver request of Section 1.9.h of the Wireless Communications Facility ordinance passed 5-0.

- Motion: Gerry Runte moved to approve the application for a Small Cell Wireless Facility from New Singular Wireless, PCS, LLC, located near 125 Long Beach Avenue, Map/Lot 0031-0022, subject to the following conditions.
 - 1) Prior to signing the Findings of Fact, all outstanding fees shall be paid to the Town;
 - 2) Prior to signing the Findings of Fact, a structural analysis report shall be revised to certify compliance with National Standards Institute/Electronic Industries Alliance/Telecommunications Industry Standard 222, entitled Structural Standards for Steel Antennae Towers and Antennae Supporting Structures for Current Revisions or Versions and submitted to the Planning Director;
 - 3) Prior to signing the Findings of Fact, a signed statement certifying that the Small Cell Wireless Facility complies with all Federal Communications Commission regulations, as outlined in Section 1.9.j of the Wireless Telecommunications Facility ordinance, shall be submitted to the Planning Director; and finally,
 - 4) Prior to issuance of a public building permit by the Code Enforcement Officer, the members of the Selectboard shall review and approve a lease agreement between the applicant and the Town.

Moved by Gerry Runte, seconded by Peter Smith, the motion to approve the Small Cell Facility, 125 Long Beach Avenue right-of-way, opposite Tax Map 0031, Lot 132, passed 5-0.

**Workforce Housing Development, 5 Hannaford Drive
Map/Lot 0053-0024 owned by Hannaford Bros.**

The intent of this project is to develop a three-story, 63-unit workforce housing development within a 4.67-acre subdivided parcel.

Bryan Sutherlin, Beals Associates Engineers

Jason G. Howe, Esq., Applicant's Attorney

Larry Beals, Beals Associates Engineers

Ben Enos, Beales Associates Engineers

David Sherborne, Architect, Opechee Construction

Absent: J. Hilary Rockett, Jr., JHR Development LLC

Chris Di Matteo: This application is complete. The applicant is hoping for final approval.

Jason Howe: We have presented you with a draft agreement which concludes that there is a single-purpose entity that will own the building. That is Workforce Housing Partners, a subsidiary of JHR Development. Maine Housing has recommended the contracting party that will oversee compliancy to workforce housing regulations.

- Motion: Peter Smith moved to accept the application for Workforce Housing Development, Map/Lot 0053-0024, as complete for purposes of review. Seconded by Al Cotton, the motion passed 5-0.

Bryan Sutherlin responded to comments given March 25.

- I spoke to the Sewer District about the problem with the proposed sewer easement. We relocated that easement five feet to the west, which allows space between our parcel and the Hannaford parcel to maintain the desired landscape buffer.
- Market research has determined that, because it will lead to a decrease in overall units, we should not increase the number of two-bedroom units.
- The project will utilize a highly effective, low-ambient heat pump system with remote condensers located on the roof. The system will utilize electric power and will not burn any fossil fuels. This equipment on the roof, plus HVAC equipment, precludes the ability to install an appreciable number of solar panels.
- Gorrill Palmer finds the sight distance calculations for this project acceptable.
- We have shifted the building two feet to the west to maintain the awning overhangs along the setback. The shift does not alter calculations for utilities or stormwater.
- The dumpster has been relocated within the building.
- ADA parking spaces are adjacent to the front entrance. They allow access to the entire building and elevators.
- Bike racks have been added in three places: at the front entrance; to the south of the building; and to the north, where the dumpsters were. There are 16 bike spaces (serving 30% capacity).
- The sidewalk runs from the truck access drive along Hannaford Drive, connecting to sidewalks leading to Route 1. Dean Lessard has made sure that there will be raised sidewalk curbing and a crosswalk across the Hannaford access drive. The stormwater management for the raised sidewalk area will be managed with a raingarden.
- The wetland resource does not meet or exceed 4 acres. We recommend the area for passive wetland use, perhaps dog walking, accessible by crossing the truck route and a drainage swale that was constructed by the original development.
- The 20' light poles are being maintained to show congruency with the Hannaford lot, Hannaford Drive, and Police Station lighting design. We are not producing light pollution on the adjacent properties. We will go to 15' at the discretion of the Planning Board.
- He presented a rendering of the building from the Hannaford parking lot.

Jason Howe spoke about the non-profit housing corporation and the performance guarantee.

- JHR Development will ultimately hold the real estate. They will be contracting with a Maine non-profit housing corporation that will be set up to determine if people meet the threshold standards to live in the building. (The definition of said non-profit housing corporation is missing from State Statute 30.a MRSA Section 5002.13.) Everyone who comes in as renters has to be vetted and verified for the moderate-income standard. Maine Housing directed us to Avesta Housing and the Caleb Group. They are qualified as charitable 501.c non-profits, like York Housing, which would also qualify.

- Having an irrevocable letter of credit or bond in advance of approval is difficult because we would be basically taking a loan in advance of owning the property. We would like to see the performance guarantee as a condition of approval.
- Motion: Al Cotton moved to open the public hearing for Workforce Housing Development, Map/Lot 0053-0024. Seconded by Wayne Boardman, the motion passed 5-0.

Janet Drew asked what moderate income means. Will seasonal workers qualify to live there? Mr. Howe answered that moderate income is between 50% and 120% of the average family income in the York/Kittery/South Berwick metropolitan finance area, but he did not know the specific amount.

- Motion: Peter Smith moved to close the public hearing for Workforce Housing Development, Map/Lot 0053-0024. Seconded by Wayne Boardman, the motion passed 5-0.

Wayne Boardman: Seasonal workforce housing is an important, separate issue the Planning Board has been looking at and will continue to look at. Al Cotton: Our work on the Green Enterprise district would indicate that we are going to be able to have some significant seasonal employee housing in that district.

Kathleen Kluger: We cannot sign off on this until the non-profit authority for the workforce housing is fully determined. It has to be completely bias-free and have the proper authority to make determinations and assess qualifications.

Dylan Smith: You want to have strong government standards over the assurance of affordability and perpetuity for the people who come in and out of those units. The agreements and covenants have to be satisfactory to the Planning Board. Why isn't York Housing being considered?

Jason Howe said he believes the Caleb Group is going to agree to do the work. He asked for a condition of approval that, if neither Avesta Housing or Caleb Group take on the job, he will come back to the Board, but he expects to have a signed agreement at the next hearing. When pressed to explain why York Housing was not chosen, he hesitated and said, "Yes. We didn't exactly get warm welcome."

Wayne Boardman: The Hannaford lights are nonconforming, as they are. They are old lights that are not fully shielded. There will be light trespass on the residents of this development. People with bedrooms on the back side of this building will have to deal with light pollution from the Hannaford parking lot until Hannaford comes into compliance with the ordinance.

Chris Di Matteo: Because they are part of the site, the Hannaford lights that are along the service drive to the loading dock are part of the Board's purview and can be upgraded as part of this site plan review.

Pete Smith: We should stick to our initial request that the light poles be reduced to 15' and that, if possible, the light poles along Hannaford Drive be matched up with new, proper downlighting of 15'.

Bryan Sutherlin: We can accept a condition of approval to reduce those light poles to 15', and we can also take a look to see, regarding control of those existing light poles along the access route, if they are subject to our ownership. If they are, we will revise those to be compliant.

Jason Howe: Hannaford is retaining a right-of-way over that area. Control of the lighting might be a portion of their existing conditions. JHR would own the real estate, but Hannaford would retain an easement not only for travel and passage, but for maintenance and repair of their existing light structures. Hannaford considers those as a necessary component of their entire space.

Wayne Boardman: I think we should request that the lights be brought into compliance, but I am not saying we should hold up the whole project for it.

Bryan Sutherlin: The site plan will be revised to show a 15 MPH limit.

Kathleen Kluger: Are the cost estimates for the public improvements, like erosion control and sediment and site stabilization, known to you? That is the basis of the performance guarantee.

Bryan Sutherlin: We have provided a letter to the Planning Board stating that the construction process, which encompasses the building design, general conditions, and site work, is estimated to be \$10,764,162.

Dylan Smith: We are not looking for an irrevocable letter of credit or total construction costs. We are looking for specifications about costs related to the public improvements (like erosion control and stormwater management) so costs will be covered if the site is abandoned and the Town has to come in and button things up. You need to work with Dean Lessard and Gorrill Palmer to get that amount.

Bryan Sutherlin: We can have construction break out the line items and run through the verification process as part of a condition.

Kathleen Kluger: The sidewalk design will be reviewed by DPW.

Bryan Sutherlin: We are working with our surveyor to get the details of the number of dwelling units finalized and put on the subdivision plan.

At 10:15, Kathleen asked the Board if there is an objection to continuing past 10:30. Pete and Al said yes.

Bryan Sutherlin: The Map and Lot numbers will be changed so this project will receive its own lot number.

Chris Di Matteo: At the next meeting, we can finalize the signatory blocks, Town plan notes, and conditions of approval.

Bryan Sutherlin: The impervious surface ratio calculations have been prepared and are being put on the site plan. Because of minor details, letters from the Sewer and Water Districts are still outstanding. We can get the light pole height done so it does not have to be a condition of approval.

Kathleen Kluger: The remaining conditions of approval will be carried over to the next meeting. If the organization providing authority for the workforce housing is fully determined, we will not have to pass the issue to the Town Attorney. Jason Howe: We will come in with something by then.

Bryan Sutherlin: We will continue to work with Dean Lessard about the design and location of the proposed public sidewalk.

Kathleen Kluger: Prior to the issuance of the building permit, the cost estimate has to be submitted. Bryan Sutherlin: We will do that.

Kathleen Kluger: This application is continued to June 10. Information shall be submitted by Monday, June 7.

**Long Sands Village—Elderly Housing Development, 122 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.**

Kathleen Kluger: We will not be moving ahead on the agenda.

Dylan Smith: There are a lot of people who are attending right now for this application. We are not going to open the application. Would you like the applicant to work with Chris Di Matteo and progress the application?

Kathleen Kluger: We already know there has been a violation of site preparation work. It has taken place before approval of the plan. It is in violation of Site/Sub Reg. 5.1.5. That has to be rectified by the applicant's submission of a revised Existing Conditions plan. All work is to be stopped on that site until new submissions are handled through our peer reviewer, Chris Di Matteo.

This is continued to June 24.

Minutes

Minutes of were not reviewed.

Other Business

There was no other business.

Adjourn

- Motion: Al Cotton and Pete Smith moved and seconded to adjourn.
- The next Planning Board meeting, a hybrid application/workshop meeting, will be held Thursday, June 10.
- The next application hearing will be held Thursday, June 24.
- The next Comp Plan Steering Committee meeting will be Monday, June 7.

Submitted by Patience G. Horton
Recording Secretary