

**York Planning Board
Meeting Minutes
Thursday, August 26, 2021; 7:00 P.M.
York Public Library**

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

Chair Kathleen Kluger called the meeting to order at 6:30 P.M. A quorum was determined with four people voting: Kathleen Kluger, Vice-chair Wayne Boardman, Al Cotton (who came in at 6:50 P.M.), and Pete Smith. Board Secretary Gerry Runte was absent, as were alternates Kenny Churchill and Ian Shaw. Planning Director Dylan Smith was absent. Chris Di Matteo, peer reviewer, represented Staff. Patience Horton was the recording secretary working remotely. Votes were tallied via roll call.

Field Changes

There were no field changes.

Public Forum

No one came forward to speak.

Application Reviews

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.

The intent of this application is to install one small wireless cell facility on a replacement utility pole.

Michael Dolan, Spokesperson

Michael Dolan said that this is one of three applications for small, wireless cell facilities that he brought before the Board on May 27, 2021. The other two have been approved. Because this facility is located on private property, the Planning Board put off this approval and directed him to secure a consent letter from the property owner. This has been done.

- Motion: Pete Smith moved to open the public hearing for AT&T Small Cell Facility, Map/Lot 0036-0096. Wayne Boardman seconded.

Martha Fenn King lives on Perkins Ave, what she called a “stone’s throw” from the water tank. She relayed information from studies about the negative effects of non-ionized radiation and electromagnetic frequencies. She said that precautionary guidance to minimize health risks has been updated. She recommended the Board read the new studies. To protect people, there should be a Town moratorium on cell antennas and monopole installations, she said.

Kathleen Kluger said that the Planning Board has no power to enact a moratorium.

Torbert Macdonald said that, because there are unfolding changes in the FCC regulations, there should be a change in the ordinance. He plans to lead his neighborhood in petitioning for the change. A Ninth District Court decision found the FCC was arbitrary and capricious in their inquiry into small cell facilities. He encouraged the Planning Board members to become familiar with the importance of this subject. Radiation is not neutral.

Torbert said that application refers to setbacks. The application says, "All wireless communications facilities shall be a minimum of 65 feet from any residential structure on any abutting property, unless the owner waives the requirement." He said that the Planning Board should not waive the setback requirement in the absence of a signed statement.

Chair Kathleen Kluger closed the public hearing. She said that there has been only one waiver request. It has to do with fencing.

Wayne Boardman referred to the ECP-2LLC letter of consent. It has been signed by property owner Raymond Ramsey and entered into the public record.

Michael Dolan said there will be a document that shows that predictive RS emissions will be below the FCC allowable limit. Once the unit is installed, a RS specialist will perform a field study and is expected to deem the emissions "well, well, well below 10% of the allowable limit."

Wayne Boardman said that the 65-foot waiver and referenced Section 1.9.f.6.a, has to do with the potential collapse of the facility and how that that might harm other properties. Chris Di Matteo said that the ordinance section has to do with large towers, and no waiver is necessary.

- Motion: Pete Smith moved to waive Section 1.9.h of the wireless ordinance. Al Cotton seconded. The motion passed 4-0.
- Motion: Al Cotton moved to approve the application for the AT&T Small Cell Facility, 265 Long Beach Avenue, Map/Lot 0036-0096. Pete Smith seconded. The motion passed 4-0.

**Garrett Homes, LLC – Mic Mac Motel, 317 U.S. Route 1
Map/Lot 0059-0004, owned by Kittery Indian LLC – Mark Dellapasqua
The intent of this application is to amend a previously approved site plan by changing the architectural appearance of one of the proposed retail business buildings.
Doug Grunert, Architect of Record
Gary Eucalitto, Garrett Homes**

This is continued from July 22, at which time the application was accepted as complete.

Architect Dave Grunert said that the plan had been changed to incorporate a full-peaked, full-pitched hip roof, which added three feet to the height of the building. The exterior materials

remain Hardee Board, but in the vertical elements, the siding has been changed to shingles. The roof and the shingles are the two changes that had been made. Chris Di Matteo said that the roofline was the most important change and the building now complies with the ordinance.

As he was requested to do at the prior meeting, Dave Grunert provided an elevation comparing the two buildings that have been developed for the site.

Kathleen Kluger requested additional landscaping on the side facing Rte. 1, the best face forward.

Pete Smith asked for an alternating color between the boards and the shakes, but then said, "I'm set. I'm okay."

Gary Eucalitto said that he would make the color change on the shakes, anyway.

- Motion: Pete Smith moved to approve the amended site plan for Garrett Home. LLC, retail shopping center, 317 U.S. Route 1, Tax Map 59, Lot 4. Wayne Boardman seconded. There was no discussion. The motion passed 4-0.

**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.
Geoff Aleva, Civil Consultants
Greg Orso, Esq.**

James Paolini is the owner of this property. This review is continued from July 22. Chris Di Matteo said that the application is complete.

Kathleen Kluger said that the Planning Board conducted a site walk on August 5, 2021, from 9:00 to 9:33 A.M. Twenty-one people were there, including five members of the Planning Board. Four people came for the benefit of the applicant. Geoff Aleva was absent. The landscape architect was present.

Geoff Aleva said the new landscape plan came from review comments from Town Staff. Buffered screening was added along the northeasterly side and along the abutters' properties on the right-hand side. The one large tree on the site is to remain. Trees have been added at the bottom between the proposed homes. As required by staff, he has made a performance guarantee for the restoration of cut trees.

He said that approvals have been received from the Water and Sewer Districts. The condo documents have been updated and submitted. Tonight, he hopes for a waiver to skip the two-step process and receive both preliminary and final approvals.

Chris Di Matteo said that new landscaping estimates were provided to Gorrill Palmer, which has not reviewed them but, at this early point, has no comments. Anticipation of their pending approval might be considered as a condition of approval. He said that the applicant has expressed interest in using a bond to account for the landscaping performance guarantee.

- Motion: Al Cotton moved to open the public hearing for Long Sands Village, Map/Lot 0044-0038. Wayne Boardman seconded. There was no discussion. The motion passed 4-0.

Katherine Mulhern of 55 Fernald Ave., was on the site walk.

- 1) She has sent in a written request for a traffic study. Kathleen Kluger replied that this application does not rise to the level where a traffic study is required.
- 2) She understood that traffic will be coming in from the west and exiting to the east. When cars exit, will they be directed to turn one way or another, left or right?
- 3) The location of the mail boxes has not been identified.
- 4) Will guests be able to park on the street overnight?
- 5) The transformer on the left of the entrance has a fence, but is that enough to suppress the noise?
- 6) How are the condos being marketed, and what will the sales price be?
- 7) When will the homeowner documents be distributed? Kathleen answered that they are already posted online.

Torbert Macdonald said that there is a misconception of the Board's duties, which are to the public, not the applicant.

- 1) Waivers should not be given lightly. All the regulations have the same weight and count the same.
- 2) Section 7.2 says that the density of this monstrosity is out of proportion with the Fernald Ave neighborhood, the allowance of which is contrary to the Comprehensive Plan.
- 3) This ordinance should be struck from being applicable to 1.b.
- 4) Less and less real people can come and live in York. This is one of the last affordable neighborhoods and deserves recognition as such.
- 5) Section 7.3.1, preservation of existing tree--we know about that [referring to those trees the applicant already took down]. Removing those trees without permission is not the way things are supposed to work.
- 6) This applicant has not acted right. In 7.17.2, "site design shall minimize the possibility of noise pollution."
- 7) The project should be visibly opaque. You should beef up the shrubbery on their border.
- 8) You should put an eight-foot fence along each of the borders, not just north and south. There should also be a six-foot fence in front to insulate the neighborhood.
- 9) In 10.8.4.33 of the elderly congregate rules, the first 30 feet of the buffer are supposed to be retained in a natural state. That did not happen.
- 10) When interrupted by the Chair to wrap up his testimony, Torbert emphatically stated that he cannot redress the government of the Town when given a three-minute limit to speaking publicly.

- 11) With 9.8.2, Torbert said that water is going to come pouring off the site with this stormwater management design. He doesn't believe what is been planned will work.
- 12) In 7.11.1, which says the topsoil is going to remain--how is that going to happen?
- 13) Under 8.1.9, what about snow storage snow-removal? Is that on the plan?

Torbert concluded that it is a terrible ordinance and a terrible plan that deserves more scrutiny than it has received.

John Covino came forward to speak. He said he lives at 20 Field Avenue and drives Fernald every day. He was on the site walk.

- 1) He is concerned about the parking for the number of tradesmen, like plumbers and electricians, who will come to the site during construction. Will they be allowed to park on the street?
- 2) What consideration has there been for guest parking overnight or during the day? It is a narrow street with no shoulders.

Kathleen Kluger closed the public hearing.

Geoff Aleva addressed comments brought up during the public hearing.

- It was deemed by Public Works that, based on the ordinance, the traffic study was not required.
- There are no restrictions for somebody to go left or right out of the development onto Fernald Ave.
- Mailboxes will be on the units.
- There will be a note on the plan and in the condo documents that there is no parking on Fernald Avenue.
- The transformer will be buffered and surrounded by landscaping. There also is a fence line at the top of the area along Fernald Avenue that will hide the transformer and deaden any humming sound that might come from it.
- The prices of the condos are up to the developer. Geoff said that he did not know the amounts.
- Condo documents that address all staff comments, including age restrictions, were provided to Town Staff on August 19.
- They are not requesting any waivers.
- They are following the ordinance regarding density requirements.
- They have updated the landscaping on the sides of the buildings and between the abutters. The buffering exceeds the requirements detailed in the ordinance. They have documented the trees that were cut. Those trees were cut inside the development area. The applicant has provided additional trees to supplement them.
- Stormwater has been reviewed by Gorrill Palmer, a Maine professional engineer. They have provided a stormwater management report and a stormwater maintenance report.
- Per the ordinance, topsoil is to remain. He said that topsoil that is not capable of being used will be removed from the construction site.

- There is a note on the plan that indicates that excess snow will be removed from the site and disposed of properly.
- There is adequate parking for tradesman in the fourteen-space lot on the property. They will be made to understand that there is no street parking for them on Fernald.

Kathleen said that the parking prohibition exists so owners of the units don't assume they can put their second car on Fernald.

Peter Smith said that, despite the condo documents, residents have civil rights and should be allowed to park on Fernald. He said that there are very few streets in York where it is illegal to park between 1:00 A.M. and 5:00 A.M. Fernald does not have such signage.

- Motion: Pete Smith moved to accept this application for Long Sands Village, Tax Map 44, Lot 38, as a preliminary review. Wayne Boardman seconded. There was no discussion. The motion passed 4-0.

Chris Di Matteo reviewed his comments, point-by-point.

Comment 1

Because of the abutting situations, the Board might want to consider categorizing the property as non-conforming as a condition of approval.

Attorney Greg Orso replied that such an approval might take years to enact. A dispute resolution might go to court, a five-year wait. Kathleen Kluger said that the non-conforming situation could and should be avoided.

Comment 2

Chris said that he provided the applicant with the landscaping suggestions addressing Section 7.8.2.3. Would the Board recommend that the applicant adhere closer to Chris's plan?

Geoff Aleva replied that there are features of the landscaping plan that address and respond to Chris's recommendations. He said that landscaping is the applicant's prevue, and it has been sufficiently addressed.

Comment 4

Chris said that he cannot confirm that Gorrill Palmer has reviewed the final plan set.

Comment 5

Chris said that the applicant needs to be clearer with condominium declarations in Section 7.8.3. Geoff said that the condo documents address age restrictions.

Comment 6

This comment addresses and instructs the applicant's reference to the plot plan.

Comment 7

Section 12.1 should be subject to requirements of the improved Site and Subdivision plan. Chris said that he was not sure if that was addressed or not. Geoff said that it will be added.

Comment 8

Chris said that the documents should address the applicant's responsibility to replace buffer plants that die. Geoff responded that there is a long-term condition that goes with the project that the perimeter buffer will be maintained by the homeowners' association. It is reflected in the condo docs. Chris Di Matteo responded back that it is important that the homeowners' responsibility to the buffers is clearly communicated. Geoff answered that he will speak to the attorney to make sure that it is clear.

Comment 9

Geoff said that the responsibility of trash and recycling will be up to the homeowners.

Comment 10

He said that the Town Assessor will revise the street addresses after the plans are reviewed.

Comment 12

Geoff said that a recording block has been added to the plan.

Comment 13

Geoff said that he will integrate the plan notes into the plan.

Kathleen handed out a document she had written. She gave it to the Board and the applicant's attorney, Greg Orso.

There was a five-minute break, after which Kathleen disclosed that she had spoken with a citizen during the break, and the conversation might be misconstrued as ex parte. When asked, she confirmed to that person that the Code Enforcement Officer had visited the elderly housing site based on a report Kathleen had made that the site might have been altered. The code officer determined that nothing had happened.

When the Board reconvened, Kathleen referred to the document she had handed out. [Greg Orso later estimated it was ten pages long.] She said that it contained issues with certain Site and Sub Regulations and ordinances as they relate to this application.

She said that in Site and Sub Reg 7.6.1, the lot size, width, depth, shape, and orientations in the building setback shall be appropriate to the location and type of development and use contemplated. She said she believed that, with the type of construction, that number of units and the proportion of the units placed on the lot were not appropriate to the location. Because all other construction on the abutting streets are single-family houses, she felt that the development was out of scale for the neighborhood.

She continued. Regulation 7.2 says that conformance with the Comprehensive Plan has more restricted standards and shall govern.

She said that Site and Sub Reg 7.6.2, which addresses lot configuration in areas, shall be designed to provide adequate off-street parking and service facilities based on the type of development contemplated. She said that there is inadequate space for parking. There is inadequate space for snow removal and storage. She said she understands that snow will be removed rather than allowed to accumulate, but she did not believe that there is enough room between storing it and getting it out of the area.

She asked a question about Zoning Ordinance 7.8.2.5 to project engineer Geoff Aleva. In consideration of removal of the driveway for the existing home, the ordinance states that elderly housing project shall have a minimum of one means of ingress and egress to the site which provides safe access to and from public and private streets, and that, if the project has either 50 or more elderly housing units, which this does not, or if there is 400-or-more-feet-of-depth from the street frontage to any unit, the applicant shall provide a divided entranceway for the single means of ingress and egress for a minimum of 50 feet. She asked Geoff if that changes the calculation.

Geoff answered no. There are ten units. Fifty units would be required to enact that ordinance. The revised plans have been reviewed by Public Works, the Fire Department, and Police Department.

Kathleen moved on to the next issue, Zoning Ordinance 15.1.1.2, which is about parking. It states that a minimal off-street parking requirement shall be provided and maintained for any new construction, alteration, and change of use. This application refers to elderly housing, which allows for one parking space for one unit, she said. The number of spaces meet and exceed the ordinance requirement, but she believed it is unreasonable to expect that every unit owner will have just one vehicle, and/or that only four guests for the entire ten units will visit at one time. It is unreasonable to expect that people will not park on Fernald Avenue as a back-up, she said. She believed that it is unreasonable to expect the enforcement of no-overflow-parking on Fernald Avenue. She said it is unreasonable to expect that visitors or extended family will park along Long Sands Road at Long Sands Plaza and walk up the hill to visit their family and neighbors at the new development. She believed that the site layout is too undersized to allow for adequate parking.

She said that her biggest issue was how this application conforms to the Comprehensive Plan. There had been a [negative] legal opinion regarding this conformance. When this question was submitted to the Town Attorney, many of the references that she just made were not submitted with it. Among others, there are nine regulations, ordinances, or state statutes that the Planning Board is required to consider when reviewing an application for approval.

Five regulations, ordinances, and State statutes, listed below, designate the primacy of the Comprehensive Plan as the basis for judging all other Site Plan and Subdivision Ordinances.

They show that the Planning Board has the authority to interpret the conformance of an application with the Comprehensive Plan.

- 1) Site and Site Regulation 1.2.9
- 2) Site and Sub Reg 7.2
- 3) Zoning Ordinance 1.3.1
- 4) State of Maine Statute Title 30-A, Section 4404
- 5) State of Maine Statute Title 30-A, Section 4352

Three regulations and state statutes require the Planning Board to confirm that the application is consistent with the Comprehensive Plan in the review for the criteria for the approval of an application. When the question was originally submitted to the Town Attorney, none of these documents were sent. Kathleen said that she had a real problem with being on the Planning Board and working on updating the Comprehensive Plan, when it can't be upheld in an application. "I don't understand that, and I do not approve of this."

Greg Orso said that the Maine Supreme Court has addressed it. In the Town of Fryberg, Maine, 2009, case #96782D702, the Maine Supreme Court decided that,

;

[Quote] The Comprehensive Plan and the Land Use Ordinance are complimentary, but their preferences are different. The Comprehensive Plan sets out to say what is to be accomplished. The ordinance sets out to ensure that the plan objectives are realized. The two are not meant to be interchangeable. A Comprehensive Plan is imposed on an obligation of the Town, not on private citizens or applicants. [That is] not permitted. It dictates how the Town effectuates its land use planning obligation. The ordinance is a translation of the Comprehensive goals and the measurable requirements. So, the Comprehensive Plan does not apply. [The extent to which it applies] is already in the ordinance. If we disagree with how the ordinance has created the requirements implemented in the Comprehensive Plan, we change the ordinance. The Maine Supreme Court has told us very clearly the Comprehensive Plan does not apply to individual applicants. What applies to individual applicants is the ordinance. [End Quote]

Kathleen answered that the ordinance confers the right to determine if an application is compliant with the ordinance. That is the judgment of the Planning Board. Applications are based on Ordinance and Site and Sub Regs. The absolute, according to state statute and her citations, is that a broad interpretation is conferred upon the Planning Board in terms of making sure that every application conforms to the Comprehensive Plan.

Greg Orso replied,

- [Quote] That is not true. That is the holding of this direct opposite of that. I am going to ask the Board to make this part of the record, because the Town Attorney will say this. You don't have to listen to me, and that's fine. It says that the specific holding of this

case is that the Town of Fryberg put additional requirement, beyond the ordinance, and said that here is an additional requirement that comes from the Comprehensive Plan. The Maine Supreme Court struck that exact argument down. This is the exact thing I want to make sure is for the record. Town of Fryberg, #96782D702, Maine, 2009. And what they say [is] that based on the language of the principal statute, the Comprehensive Plan and the ordinance. We conclude that the Fryberg Comprehensive Plan is visionary, not regulatory, and therefore, the Superior Court erred in opposing the requirement from permit approval from the Comprehensive Plan, beyond that set out by the ordinance.
[End Quote]

Kathleen said that depending on how the Board votes for this, anybody is free to appeal this decision. She said that is in her preview to state her concerns about this application.

Al Cotton said that a few years ago, he attended a Municipal Association training program in Sanford. The lawyer representing Maine Municipal made it very clear that the ordinances apply, not the Comprehensive Plan. The lawyer cited the same Fryberg case, Al believed.

Kathleen stated that the next step is to ask what the applicant wants to do with the application. Do they want to continue with the Preliminary Plan, or would they prefer to waive the two-step process?

Geoff Aleva said that they would like to go for preliminary approval tonight, addressing the comments with the condo documents and then come forward to a future meeting for final review.

- Motion: Al Cotton moved to give preliminary approval to the application for Long Sands Village, owned by James Paolini, Tax Map 44, Lot 38. Pete Smith seconded. There was no discussion. The motion granting preliminary approval did not pass. Pete Smith and Al Cotton voted yes. Wayne Boardman and Kathleen Kluger voted no.

Greg Orso asked for Findings of Fact for what went on tonight. He confirmed with Kathleen Kluger that the basis for denial was the multi-page document that was handed to him, put into the record, and from which Kathleen had read.

**York Paddle (Tennis and Pickleball) Club, 28 Mill Lane
Map/Lot 0089-0037-D, owned by York Paddle Tennis Club, Inc.
The intent of this sketch plan is to show an expansion of the clubhouse, provide a new pavilion, new courts, and a larger parking area.
Geoff Aleva, Civil Consultants
Mary Delong, York Paddle (Tennis and Pickleball) Club**

This property with clubhouse, pickleball, and winter-time platform tennis courts is located off Route 91. This change will bring about maximum buildout. The courts will be raised high enough for propane heaters to go underneath.

This property is surrounded by residences, and club parking is already pushed against the property line. The gravel entrance leads to a gravel parking area. It will be revised to one-way-in, one-way-out. Forty-two spaces will be provided. In order to maximize parking, they are looking for a waiver from the buffer setback. They will also need a waiver to raise the lights from 15' to 18'. There might be a waiver so mature trees in the setback can be taken down. They might ask for a waiver for stormwater drainage.

Kathleen Kluger did not open a public hearing. It was deferred to the applicant's next appearance for preliminary plan review. At that time, as well as receiving live public comment, she will see that written correspondence is entered into the record.

York Beach Surf Club, 780 York Street

Map/Lot 0038-0059, owned by York Beach Surf Club LLC

The intent of this project is to revise an approved plan by modifying the landscaping plan, lot coverage and calculations, including above ground propane tanks, expansion of the entry to the 49 units, and modification of the stairs near the office.

Tim DeCoteau, Project Manager

Brian Nielson, Attar Engineering

Tim DeCoteau said that he applied for field changes for these items and others during the July 8 meeting, but the Board felt these particular items were too complicated to be field changes. Tim said that he has brought them forward as amendments, instead. In these amendments he is making the following changes.

- 1) Expansion of the entry
- 2) Addition of rear stairs to the office
- 3) Addition of a 125-gallon propane tank to the rear of the office
- 4) Placement of existing propane tanks behind Hotel Building A on the existing plan
- 5) Replacement of the underground propane tank with a 1,000-gallon above-ground tank
- 6) Addition of updated coverage calculations to reflect the site revisions to the plan
- 7) Removal of two oak trees adjacent to Seven Parker Street
- 8) Replacement of the original Existing Conditions plan that adds staired-entries of Units 47 and 48

Chris Di Matteo said that absence of Existing Conditions makes the application incomplete.

- Motion: Pete Smith moved to accept the application for York Beach Surf Club, LLC, Amendment No. 3; Tax Map 124, Lot 299 Tax Map 124, Lot 323, for review. Al Cotton seconded. The motion passed 4-0.
- Motion: Pete Smith moved to open the public hearing for York Beach Surf Club, Map 124, Lot 299, Lot 124, Lot 323. Wayne Boardman seconded. The motion passed 4-0.

Edward Barber lives at Five Parker Street. At first, he was told trees were going to be moved next to the condos along the side of the driveway. Then he heard that four of the six existing trees were going to be removed. He is seeking clarification.

Frank McGovern of Seven Parker Street said he was guaranteed input about types and positioning of the trees. About a month ago, without notification, very messy trees were planted on his property line. They will require yard cleanup of acorns and leaves every fall on his part. He wants the messy trees moved as far away from his property as possible.

Chair Kathleen Kluger closed the public hearing.

Engineer Brian Neilson asked for additional time to speak to the landscape architect about the trees and come back with another plan. Kathleen said it was a good idea.

- Motion: Pete Smith moved to approve Amendment No. 3 for York Beach Surf Club, LLC, Tax Map 124, Lot 299, Tax Map 124, Lot 323 with condition that they will add a plan exhibit that the shown modifications to the lot calculations as a result of changes of the existing plan. Wayne Boardman seconded. The motion passed 4-0.

Bristol Points #2, 294 York Street

Map/Lot 0050-0122, owned by Bristol Pointe LLC

The intent of this project is to demolish the existing residence/office space and construct a new mixed-use, two-story building above a parking level.

Chris Duplantis, Project Manager

Brud Weger, Weger Architects

This one-half hour discussion was originally slated as preliminary review but switched to sketch plan because the applicant fell short with submittals. From 3.2, there was no letter from the Fire Chief nor capacity letters from the Districts. The impact statement (11.3) was missing. The configuration of the commercial/residential space percentages affecting parking spaces was also missing. The discussion largely centered on the term “crossing,” (11.3) and evaluation of the wetlands (11.4).

- Motion: Wayne Boardman moved to accept Bristol Pointe No. 2, 294 York Street, Tax Map 115, Lot 233, for sketch plan review. Pete Smith seconded. There was no discussion. The motion passed 4-0.

Chris Duplantis said with the way the driveway has been designed, no parking protrudes into the wetland, and, per 11.3, it is acceptable. He read from 11.3.2. “Utilities, driveways, and road *crossings* may be permitted, provided impacts are minimized and conditions are specified as in 11.4 of this ordinance.” He also had a misconception of 11.4.2, where it reads, “The amount of wetland impacted shall be calculated. The accumulated amount of all impacts over time, including those actions that predate this provision, shall be not more than 4,300 square feet on an individual lot.”

Chris De Matteo responded, saying that “crossings” is the key word in 11.3.2. The driveway that is proposed is not a crossing. A crossing is from Point A to Point B. This had been an issue during the prior application for Bristol Pointe # 1, he said. At that time, the Code Enforcement Officer was brought in to provide an opinion. The CEO said that the impact the applicant proposes was not supported in the code.

Brud said that he believed the Board is allowed to grant some leeway on the fill. Kathleen Kluger answered that Section 11.3.2 doesn’t support this idea. Code will not give a permit. It is going to become a Code, not Planning Board, decision.

Brud said, “You can’t override Code?”

Brud said that his understanding of the word “crossing” is crucial to the architecture and footprint of the building. This conflicts with his design plan and limits access to the parking cellar of the building. Wayne Boardman responded that the footprint of the building can be changed.

When Brud asked if it could go to the Appeals Board, Kathleen replied that that would be true if there is a formal decision that has been turned down. At this point, there is no formal decision.

Brud said that it all comes down to parking. He asked if the Board would be willing to give a parking decompensation for his commercial spaces. The board members said that was possible, but because it was 10:30, the discussion was left to the next hearing.

“It is not a total loss,” Brud said.

Minutes

Minutes were not reviewed.

Other Business

There was no other business.

The next Comp Plan Steering Committee meeting is Thursday, September 2.
The next Planning Board meetings are September 9th and 23rd.

Adjourn

The time was 10:30.

Respectfully submitted,
Patience G. Horton
Recording Secretary