

**York Planning Board**  
**Thursday, October 8, 2015, 7:00 P.M.**  
**York Public Library**

**Call to Order, Determination of Presence of Quorum; Appointment of Alternates**

Chairman Pete Smith called the meeting to order at 7:00. A quorum was determined with five people voting: Chairman Pete Smith; Vice Chairman Amy Phalon, Esq.; Lew Stowe; Gordon Eldridge, who represents York Beach; Al Cotton; and alternates Kathleen Kluger and Wayne Boardman, who were present but did not vote. Assistant Planner Scott Hastings and Director of Planning Dylan Smith represented staff. This was Dylan Smith's last application review hearing. [He is not leaving the planning office.] Scott Hastings will facilitate applicant reviews from now on. Patience Horton took Minutes.

**Public Forum**

No one came forward to speak.

**Minutes** The September 10, 2015 minutes were reviewed. Changes were requested.

- **Motion:** Lew Stowe made the motion to accept the Minutes for September 10, 2015, as presented. Gordon Eldridge seconded. The motion passed 5-0.

**Minutes** The September 24, 2015 minutes were reviewed and changes were requested.

- **Motion:** Lew Stowe made the motion to accept the Minutes for September 24, 2015, as amended. Al Cotton seconded the motion. The motion passed 5-0.

**Field Changes** There were no field changes

**Application Reviews and Public Hearings**

**Kearsarge House, 6 Railroad Avenue. Map & Lot: 0024-0015; Owner Elaine and Michael Morgillo. The proposal is to demolish the existing building and build a new mixed use building.**

Director of Planning Dylan Smith introduced the application, continued from September 10, 2015. The focus of the application is on parking calculations for 16 lockout units and 25 dwelling units. An agreement for overspill parking has been made with York's Wild Kingdom.

The Applicant Representative is Rick Lounborn from CLD Consulting Engineers. His final parking calculation includes 25 dwellings @ 1.5 spaces each; 16 lockouts @ 1.25

spaces each; and one 2-bedroom with two total spaces required. All units combined require 58 spaces, he said. There are 41 dedicated spaces in the Four Main Street parking lot, and an additional 17 spaces have been leased from York's Wild Kingdom. Those combined parking spaces total 58 spaces, and 58 is what's needed, he said. A proposed drop off area that was described at an earlier hearing is no longer part of this application. That decision will eventually go before the Board of Selectmen.

This building will have a series of gutters, catch basins, and filter pods to treat storm-water. This pod design is what York will use for all catch basins. It is in keeping with the EPA's MS4 program. It addresses bacteria outfalls on the beach.

Project Architect Mark Moeller of JSA Architects presented an elevation illustrating the primary materials for the building, cementitious siding and composite PVC trim. The window sills will be made in the factory and will custom fit each window individually. There is an additional entrance planned for Railroad Avenue. It goes into the retail area. Each retail store has its own walkup from the outside. The ramp on Ocean Avenue is ADA compliant. The corner has been chamfered. Additional windows have been added to the Railroad Avenue side, as the board requested.

Mr. Moeller said there will not be off-site construction. Though building offsite would be faster, there are OSHA regulations that prevent the contractor from lifting things with a crane when the wind might exceed certain speeds. The building is going to be conventionally stick build, building all the walls from within and tipping them up, level by level. Roof trusses will be lifted with a crane [on calm days].

Engineer Nick Lounbourn explained building elevation. The elevation of the building being torn down is 12.4 feet above sea level. Because FEMA is expected to raise the flood elevation to 13 feet, the finished floor of the new Kearsarge building will be 13.1 feet. Lew Stowe said has seen two feet of sea foam come up against that building many times.

Nick described how the building will rest on "Geo-Piers," instead of standard wood or steel piles that have to be driven down. The method is to auger out holes "to depth," stick metal tubes into those holes, and compact stone and concrete into the tubes. The stone mushrooms out into the ground, making outstanding bearing surfaces for the foundation.

The perpetuity of the leased parking spaces at York's Wild Kingdom "shall be binding upon the respective successors and assigned." Applicant Attorney Michael Noonan was present. Nick said the lease could be recorded at the registry but the idea was not pursued and was not part of the approval.

Lew Stowe said the Board should make a definition of the word "lockout." "If we don't define it, we can't regulate it." Dylan Smith said that "lockout" resembles the hotel/motel, transient-type use.

Chairman Peter Smith opened the **Public Hearing**.

**Tate Duffy** owns the Sands by the Sea Motel in Short Sands. Tate said, by definition, there are only two categories of lodging. Either you have a dwelling or a hotel/motel unit. That's it.

There is not enough parking in the Beach, he said. The police write a lot of tickets. **Speaking into the record**, Tate said he hopes the Morgillos do very well.

**Into the record**, Tate Duffy said that in another year or two, he plans to come to the Planning Board to put in a parking garage on the Sands by the Sea property. He will lease spaces out to people in town—at some point the Morgillos might need them. The chairman closed the **Public Hearing**.

**Motion:** Al Cotton moved that we approve the Preliminary and Final approval to the proposed plan at 6 Railroad Avenue in York Beach for development of a mixed-use project, with retail and restaurant uses on the first floor, and residential units on the upper floors. Amy Phalon seconded. The motion passed 5-0.

**The Cliff House Resort and Spa. 591 Shore Road**

**Map & Lot 0004-0029. Owner RBDD Cliff House Acquisitions, LLC. The site plan revision is to reorganize access to the site, modify and rebuild existing buildings as well as revise the outdoor use areas and landscaping plan on both the ocean and landward side of the development**

York Director of Planning Dylan Smith introduced the application, which was continued from September 10. At the Planning Board's request, the Town Attorney had reviewed submittals, including those from the Applicant Attorney, the 2000 Planning Board approval and the Cliff Top height variance approval made by the Board of Appeals--both in 2000. The Town Attorney's finding was key to this 2015 Planning Board's decision that the application is vested. Having reviewed the information, Al Cotton said that the Town Attorney's finding clearly considers the application vested. "There is nothing I would disagree with." The rest of the board conceded that the application is vested.

Dylan Smith confirmed that in the case of this application, for every 5 feet of setback, an additional 2 feet in height could be added to the buildings. This information came from examining the original application, the Board of Appeals file, the [2000] Planning Board file, and Steve Burns's memorandum review. He was Town Planner at that time.

Wayne Boardman noted that the ordinance changed after the 2000 site plan was approved. The new ordinance does not affect the subject building with the elevator feature, as long as it is considered part of the original site plan. Dylan Smith added that this situation is defined in the Amendment Process and the Retroactivity Clause.

York Assistant Planner Scott Hasting's research included Footnote *N*. Scott said that all the building heights being used today are heights approved in 2000. In 2000, the Board

of Appeals heard a dispute to the elevator top height in Building D, Cliff Top, 124 feet above sea level. The ruling at that time was in favor of the applicant based on the approved plan. Scott alluded to Footnote *N*. It pertains specifically to hip, gable, or gambrel roofs, not flat roofs, so it does not pertain to Cliff Top.

Dylan discussed his memorandum addressed to the applicant. A note must be added to the plan saying trees in the trail area that are larger than four inches in diameter will not be cut. The stormwater plan design has changed and has to be changed on the plan. In some places, the lighting bleeds into abutting parcels.

Applicant Representative Al Palmer said that all memo comments have been addressed. Lighting has been adjusted away from property lines. All department head letters have been received. A note saying that no four-inch trees will be removed from the trail area and a note assuring that valet parking is available have been added to the plan. Professional certification stamps have been added.

Mr. Palmer continued. Cliff Top is being torn down and reconstructed in the same location. The square footage will change. On the landside, Cliff Top is getting larger. Within the shoreland zone, however, it will be constructed to the same size in the same exact location as it was.

Project Architect Nate Williams used the BH-1 plan [Building Height-1], a rendering made in 2000. It was the key component of the Master Plan and remains as such. He explained the two heights of Cliff Top. The height of the overall, flat roof is 118 feet. The height of the elevator part is 124 feet, a number that comes from a combined calculation of the approved 118 foot height and the building setback, which states for every 5 feet of setback, an additional 2 feet in height is added.

Al Palmer relayed all the buildings heights from left to right. The elevations have three components, the average grade around the building, the 35 foot height factor, and the height increase allowed by the 5 to 2 rule. The height of the building is the distance above sea level, he said.

These building heights are all are in compliance with the 2000 approval.

**Building A**--Cliff Spa, though it qualifies for the maximum height of 125.2,  
The 2000 plans approves 118 feet

**Building B**—The north side of Cliff Top, 118 feet

The south side of Cliff Top, 124 feet, per Appeals Board approval

**Building C**--The waterside next to Cliff Top, 100.6 feet

Four **Ledges Sections**, based on average grade for each section, plus the 5 to 2 setback

**Section D**--110 feet, in compliance with 2000 approval

**Section E**--Also 110 feet in compliance with 2000 approval

**Section F**--Also 110 feet in compliance with 2000 approval

**Section G**--Also 110 feet in compliance with 2000 approval

The Chairman opened the **Public Hearing**.

Attorney **Pat Bedard, representing Bob and Alice Abrams** of 87 Bald Head Cliff Road. Is there is a finding that 25% of the materials and work had been done and that the phases were completed on time? The commercial and residential uses should be separated. One building has been torn down. Was the replacement moved back as far as practical? Mr. Abrams would like solid evidence of the approved heights of the buildings. Mr. Bedard asked that everything he has submitted on behalf of Mr. Abrams will be **part of the record**.

**Mark Johnson** is concerned that if this applicant is approved for 100 foot buildings, what about the next person who wants to build that high? "Is that what we want"? He asked if unlimited building permits should be a precedent.

Applicant Attorney **Alyssa Tibbitts** addressed the "25% rule," an ordinance requirement that substantial commencement of public improvements occurs within three years of the approval. For this property, she said, the public improvements were water line and sewer line extensions. They were completed within 3 years. The water line was installed at the cost of \$850,000. The sewer line cost close to \$1,000,000.

**Ned Neal**, 105 Bald Head Cliff, said that Katherine Weir meant to complete this project, and he has sent proof of that in a letter to the Town Planner. Ned said a part-owner of the Cliff House recently came to Ned's deck and agreed that the view will become very ugly when the Ledges are built.

**Peter Anastis**, part-owner of Cliff House Acquisitions, said he understands Mr. Neal's concern, but the law says that when the project is approved, the project is allowed to finish.

The Chairman closed the **Public Hearing**.

In Board discussion, Lew Stowe said he believed that the 2000 York Planning Board never approved the Cliff House application. The evidence he gathered to this point consisted of 6 documents, including BH-1. When the planning board was going through their review process, they didn't even look at the Ledges, he said.

Wayne Boardman said that the two heights, 118 feet and 124 feet, were approved by the Board of Appeals. There isn't an option of overriding the previous approval made for BH-1 showing the height for Cliff Top. Kathleen Kruger said that the project moved forward and was ultimately approved by the Planning Board at that time. The Appeals Board did approve the variance. BH-1 is the working document. The variance was for the elevator and not the whole roof.

**Motion:** Al Cotton moved to give preliminary and final approval to the revised site plan for the Cliff House, 591 Shore Road, and Map & Lot 0024-0029. Amy Phalon seconded. The motion passed, 3-2, with Gordon Eldridge and Lew Stowe opposed.

### **Other Business**

Municipal board legal training is scheduled for Tuesday, October 20, 2015, in the Community Room of the Library. It will last from 3:00 to about 6:00.

Kathleen Kruger said the term "lockout units" should be defined. It is easier to lay the groundwork than it is to go back and try and fix something, she said.

### **Adjourn**

10:05