

1 **Planning Board Meeting/Hearing**
2 **Thursday, June 9, 2022; 7:00 P.M.**
3 **York Public Library**

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

5 Chair Kathleen Kluger called the meeting to order at 7:00 P.M. A quorum was determined with
6 five people voting: Kathleen Kluger, Vice-Chair Wayne Boardman, Board Secretary Gerry
7 Runte, Al Cotton, and Peter Smith. Alternates Ian Shaw and Kenny Churchill were not present.
8 Planning Director Dylan Smith represented Town Hall Staff for the Proposed November 2022
9 Zoning Ordinance amendments. Land Use Planner DeCarlo Brown represented Town Hall Staff
10 for the application reviews. Chris Di Matteo was the peer reviewer. Patience Horton took
11 Minutes working remotely off the stream. Votes were tallied via roll call.

12 There was a camera issue. There was no sweep or zoom. The camera could not focus on the
13 applicants' displays.

14 Applications heard tonight:

- 15 1) 115 Josiah Norton Subdivision
- 16 2) AT&T Small Cell—CRAN_RCTB_YORK_06
- 17 3) Mixed use Restaurant and Apartment Building
- 18 4) Elderly Housing Development

19 **Field Changes**

20 There were no field changes.

21 **Public Forum**

22 Kathleen Kluger opened the public forum without objection. No one came forward to speak.
23 She closed the public forum.

24
25 **Public Hearings – Proposed November 2022 Zoning Ordinance Amendments**

26 **A. Outdoor Dining for Restaurant Uses in Town**

27 **B. Electric Vehicle (EV) Infrastructure Ordinance**

28 **Outdoor Dining for Restaurant Uses in Town**

29 In April, the Selectboard tasked the PB (Planning Board) to update the amendment for outdoor
30 dining in restaurant uses. An amendment had originally been established help restaurants
31 expand their businesses during Covid restrictions.

- 32 • Motion: Al Cotton moved to open a public hearing for outdoor dining restaurant uses in
33 town. Pete Smith seconded the motion, which passed 5-0.

34 No one came forward to speak. Kathleen Kluger closed the public hearing and opened
35 discussion. The PB members had been sent the amendment previously, and they already
36 returned suggestions and corrections to Dylan Smith. There were no additional comments.

- 37 • Motion: Al Cotton moved to forward the amendment for outdoor dining in restaurant
38 uses to the Selectboard. Gerry Runte seconded the motion, which passed 5-0.

39 **Electric Vehicle (EV) Infrastructure Ordinance**

40 The purpose of this amendment is to facilitate and encourage the use of EV (electric vehicles)
41 with EV charging stations. The amendment establishes an appropriate way of assuring that EV
42 infrastructure is in place when certain types of development are being proposed. The
43 amendment gives guidance for installing this type of infrastructure.

44 The ordinance amendment was the influenced by the Municipal EV Readiness Toolkit.

45 Wayne Boardman and Dylan Smith formed the workgroup for this project and will finetune it
46 before submission to the Selectboard.

- 47 • Motion: Al Cotton moved to open the public hearing for the amendment concerning the
48 EV infrastructure ordinance amendment. Wayne Boardman seconded the motion, which
49 passed 5-0.

50 Harry Mussman represented the York Energy Steering Committee. The prior night, June 8, his
51 committee voted to endorse the proposed EV draft ordinance. The transition to EV is vital to the
52 community, he said. Charging stations must be available.

53 It had become important to add the word “universal” when describing this type of infrastructure.
54 Mr. Mussman was in favor of adding it. Dylan Smith and Wayne Boardman will work it into
55 the body of the text. It is not expected to change the meaning of the document.

56 Kathleen Kluger closed the public hearing. The PB went over the document page-by-page and
57 made appropriate changes.

- 58 • Motion: Pete Smith moved to forward the proposed ordinance for Electric Vehicle
59 Infrastructure to the Selectboard, as amended. Wayne seconded the motion, which
60 passed 5-0.

61

62 **Application Reviews**

63 **115 Josiah Norton Subdivision, 115 Josiah Norton Road**
64 **Map/Lot 0099-0052-A, owned by Richard Moody and Sons Construction Co.**
65 **Application is a subdivision for the creation of two new lots designed as an Open Space**
66 **Conservation Development.**

67 Isaiah Plante, Kimbell Surveying and Design

68 Erik Saari, Altus Engineering

69 This is a two-lot subdivision that was split in 2021. The York Land Trust has agreed to handle
70 the conservation piece.

- 71 • Motion: Wayne Boardman moved to accept the application for 115 Josiah Norton Road,
72 Richard Moody and Sons Construction, Tax Map 99, Lot 52-A as complete for review.
73 Gerry Runte seconded the motion, which passed 5-0.

- 74 • Motion: Pete Smith moved to open the public hearing. Gerry Runte seconded the
75 motion, which passed 5-0.

76 No one came forward to speak. Kathleen Kluger closed the public hearing.

- 77 • Motion: Peter Smith moved to approve the following waivers for the application Josiah
78 Norton Road two-lot subdivision, Tax Map 99, Lot 52-A.

- 79 1) §6.3.3.a.2 Elevation Contours
80 2) §6.3.3.a.5 Ledge Outcropping
81 3) §6.3.3.a.4 Vegetation
82 4) §6.3.7 Grading and Landscape Design
83 5) §6.3.16 Undeveloped Habitat Blocks
84 6) §6.3.27 Sketch and Narrative Description
85 7) §6.3.29 Temporary Markers
86 8) §6.3.32 High Intensity Soil Survey
87 9) §6.4.6 Landscape Plan Meeting Standards of 7.17
88 10) §6.4.15 Soil Erosion and Sedimentation Control Plan
89 11) §6.4.16 Stormwater Management Plan
90 12) §6.4.18 List of Construction Items and Cost Estimates
91 13) §6.4.20 Two-foot Contour Lines
92 14) §6.4.28 Financial Capacity

93
94 The motion to grant the waivers was seconded by Wayne Boardman and passed 5-0.

- 95 • Motion: Wayne Boardman moved to approve the application for Josiah Norton Road
96 two-lot subdivision, Richard Moody and Sons Construction Co., Tax Map 99, Lot 52-A.
97 Pete Smith seconded the motion.

98 Pete Smith amended the motion to include the payment of outstanding fees. Wayne
99 Boardman accepted the amendment.

100 The motion passed 5- 0.

101

102 **AT&T Small Cell—CRAN_RCTB_YORK_06, 265 Long Beach Road**
103 **Map/Lot 0036-0096 (Within Public Right-of-Way)**

104 **Application is a Wireless Communication Facility that consists of one small cell facility on a**
105 **preplacement wooden utility pole in the public right-of-way. The small cell installation will**
106 **include: fiber optic cable(s); remote nodes in a small equipment cabinet 36” in height by**
107 **23” wide by 22” deep (1.22 cubic feet in volume) mounted to the pole at least 12’ above**
108 **ground level; an unobtrusive pole top mounted antenna measuring 24.9” long and 10” in**
109 **diameter (1.22 cubic feet); conduits and cable protectors; and an electrical meter at least 4’**
110 **above ground level as measured to the center of the meter.**

111 Attorney Michael Dolan, AT&T Small Cell

112 An original application for this project was previously approved by the PB during the summer of
113 2021. The approved application placed the SCF (small cell facility) pole on private property

114

115 owned by the S&SR (Sun and Surf Restaurant). The applicant had secured consent from that
116 private property owner, and everything was set to go forward on those terms.

117 However, as a condition of the permitting process, the Code Office found that the pole was
118 actually located in the public right-of-way, not on S&SR private land. If so, this situation calls
119 for a different set of conditions of the of the SCF agreement requirements. With this revised
120 application, the attorney for AT&T has prepared a totally new application that acknowledges the
121 public right-of-way. He came forward tonight to receive instructions about the next step.

122 It is uncertain who owns the land.

123 Joe Siviski, counsel for S&SR, believes the land is owned by his client.

124 • Motion: Al Cotton moved to accept AT&T Small Cell—CRAN_RCTB_YORK_06, 265
125 Long Beach Road, Map/Lot 0036-0096 (within the public right-of-way) as complete for
126 review. Wayne Boardman seconded the motion.

127 In review, Pete Smith stated that the review of the application should include the
128 requirements of §6.3 and §6.4.

129 DeCarlo Brown said Article 1.8.d of the Wireless Facilities Ordinance states “persons
130 seeking approval from the CEO or the Planning Board under this ordinance shall submit
131 an application that shall include all of the information and materials required for site plan
132 approval.”

133 Kathleen Kluger responded that the PB was not conducting a site plan review.

134 • Motion: Pete Smith moved to waive the requirements for §6.3 and §6.4 with regard to
135 approval of Small Cell Wireless Facility near Tax Map 36, Lot 96. The motion passed 4-
136 1 with Al Cotton, Wayne Boardman, Gerry Runte, and Kathleen Kluger voting yes. Peter
137 Smith voted no.

138 • Motion: Al Cotton moved to open the public hearing. Wayne Boardman seconded the
139 motion, which passed 5-0.

140 Attorney Joe Siviski represented the owner of the S&SR, whose “island” was regarded as private
141 property before the designation was changed to right-of-way. Essentially, the disputed property
142 is a triangle of land functioning like an island of concrete curbing filled with mulch and a row of
143 shrubs. It is adjacent to the S&SR parking lot. He has sent a letter to the Planner showing a
144 depiction of a 1965 Dept. of Transportation right-of-way map. It is based on 1890 findings by
145 County Commissioners. The 1965 map shows that when the road was widened, the right-of-way
146 was pushed onto the disputed property. Ownership is significant to the restaurant owner, who has
147 been paying taxes on the land since at least 1979. Attorney Siviski believes that the island is not
148 in the right-of-way. He is comfortable with the approval that was issued last summer and would
149 like it to stay in place.

150 Kathleen Kluger closed the public hearing. She said that the Planning Board cannot decide the
151 legality of the ownership of the property.

152 DeCarlo Brown said it is up to the CEO to decide. The logical step is to know where the actual
153 improvement of the property is going to be. Because a survey was not included in the first
154 application, additional information will be asked to be provided at time of permitting.

155 Kathleen Kluger suggested the applicant request an extension of six months. It will give him
156 time to go to the Code Office and follow up with their instructions.

- 157 • Motion: Peter Smith moved to continue this application for Small Cell Wireless facility,
158 Long Beach Avenue, near Tax Map 36, Lot 96, to a date to be determined. Gerry Runte
159 seconded the motion, which passed 5-0.

160

161 **Mixed Use Restaurant and Apartment Building, 985 & 995 US Route 1**
162 **Map 94 Lot 75A and Map 30A Lots 18 & 29 owned by Andrew Q. Wang and Wendy Chan**
163 **The intent of this sketch plan is to construct a 6,352-sf building containing 125 seat**
164 **restaurant and four (4) two-bedroom apartment units.**

165 Geoff Aleva, Civil Consultants

166 There are three lots involved with this project. Two lots are proposed for the building. It will
167 have 40 parking spaces accessed from Route 1. The recently-purchased third lot is called the
168 back section. It will provide separate access to the apartments from Rogers Road.

169 The building will have municipal water from Route 1. The applicant has spoken with the York
170 Water District about a hookup. There seems to be no problem with it. There are wetlands on the
171 property that Geoff Aleva will have to work around.

172 The proposed building will be sided with gray Hardee Plank with green composite trim (waivers
173 needed). Stonework will be a feature on the front and sides. There are good sight lines in both
174 directions. There is room for a sidewalk but will most likely not be needed.

175

176 **Elderly Housing Development, 1 US Route 1**
177 **Map 0087, Lots 0067 & 0068, owned by James Paolini—York Harbor Builders, LLC**
178 **The intent of this sketch plan application is to construct 12 two-bedroom elderly housing**
179 **units with associated access and drainage improvements. Existing Lot 67 to be subdivided**
180 **into two parcels. (These lands are also known as Map/Lots 204/83 and 85 in the prior tax**
181 **assessing system.)**

182 Geoff Aleva, Civic Consultants

183 Jamie Paolini, York Harbor Builders

184 This is a 29-acre parcel. The developer wants to divide the parcel into two lots, the front lot and
185 the back lot. A third lot has been purchased for possible development, but it is near the
186 Kittery/York town line, which is referred to as “no man’s land.” The property lines are clearly
187 distinct, but the two towns have a dispute over the nearby boundary line. Perhaps it is a matter
188 of which town gets the taxes, said Jamie Paolini.

189 Kittery has agreed to accept sewer service for the project. York Sewer District is aware of that
190 arrangement and has okayed it. Town water runs on the south side of Route 1 in that area.

191 Elderly housing is proposed for the four-and-a-half-acre front lot.

192 A subdivision is being triggered, said Chris Di Matteo. The ordinance is very clear that
193 conservation or open space is required. Geoff Aleva said he would like a waiver request to
194 provide open space for both properties combined on the back lot, if such a waiver exists.

195 As the PB discussed, for any waiver, it is up to the developer to prove that the land is not
196 suitable for acceptance from a conservation group. It has to be shown in writing that the land
197 features no valuable conservation land according to the Conservation Commission or the Land
198 Trust. Proof of an earnest effort for acceptance must be given. Who knows? Someone might be
199 interested, said Kathleen Kluger.

200 If a subdivision cannot be a conservation subdivision, it will be a subdivision with open space,
201 said Wayne Boardman.

202 Precedence shows that when land fails to be accepted by conservation groups, the developer
203 becomes responsible for maintaining open space. The open space would be established with
204 deed restrictions for the residents. They would not be able to recreate on that piece of land, and
205 there would be other restrictions, as well.

206 Chris Di Matteo said it would be smartest to put together a full parcel design of both lots
207 together. The entire parcel can be designed as an open space subdivision. Now is the time to do
208 it, he said. Calculations can be made to determine where is the best place to conserve land. The
209 project can then be phased out. The back parcel with the conserved land or open space can be
210 developed later. The applicant is not locked into the design and can always come back to change
211 the plan.

212 James Paolini referred to a failed project he had on Mountain Road for which he could not get
213 land trust interest or support. Because of that, he gave up the project. Perhaps if he had known
214 about this waiver approach, the project could have been saved, he said.

215

216 **Minutes**

- 217 • Motion: Al Cotton moved to approve the Minutes of May 26, 2022. Wayne Boardman
218 seconded the motion, which passed 4-0-1, with Chair Kathleen Kluger abstaining
219 (absent).

220 **Other Business**

221 Findings of Fact, Conclusions of Law, and Decisions
222 Planning Board, Town of York, Maine
223 Regarding an application for AT&T Wireless Communications Facility
224 Church Street Right-of-Way near Pole No. 14
225 Adjacent to Tax Map 27, Lot 48
226 The applicant is Singular Wireless, PCS, LLC

- 227 • Motion: Al Cotton moved to approve the Findings of Fact for AT&T Wireless
228 Communications Facility adjacent to Tax Map 27, Lot 48. Gerry Runte seconded the
229 motion.

230 In discussion, Wayne Boardman amended the motion to authorize the Chair to sign the
231 Findings of Fact. Al Cotton accepted the amendment

232 The motion passed 5-0.

233 1) The Planning Board has been asked to send a representative to the next Capital Planning
234 Committee. Ian Shaw did it for this year. A volunteer would be appreciated.

235 2) Al Cotton bid farewell to the Planning Board. He has served for 10 years with 16
236 different board members and four staff members. Everyone was totally dedicated to this
237 Town. He appreciated having been part of it. Board members gave him thanks and
238 praise. He will remain involved with the Short Sands project and serve on the economics
239 board, he said

240 Adjourn

241 10:20

242 Respectfully submitted,

243 Patience G. Horton