

Town of Yarmouth
MINUTES OF THE PLANNING BOARD MEETING OF
August 2, 2023

The Yarmouth Planning Board held a Hybrid in-person/remote access Business Meeting at **5:30** p.m. on Wednesday **August 2, 2023** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Susan Brita, Joanne Crowley, Ken Smith, Chris Vincent, Peter Slovak and Jim Saben (joined the meeting at about 6:50 PM)

Planning Board Absent: Will Rubenstein

Staff Present: Kathy Williams, Town Planner; and Mark Grylls, Building Commissioner

Applicant Representatives: Marian Rose, Singer & Singer; John Bologna, Coastal Engineering; Lance Walker, WATG; and Hollie Handrahan, Red Jacket Beach Resort Manager.

Guests: See attached list of remote participants

1. **Meeting Opening:** Chair Joanne Crowley opened the hybrid meeting at 5:31. All Planning Board members were in-person, except for Jim Saben who was remote and joined the meeting at about 6:50PM. All votes were roll call votes.
2. **CONTINUED PUBLIC HEARING - Design Review and Special Permit 118:** R.J. Resorts Beach Resort Owner, LLC (Red Jacket Beach Resort); 28 South Shore Drive, South Yarmouth; Assessor Map 19, Parcel 20.1; Zoning Districts R25 and HMOD2. The Applicant seeks to redevelop a portion of their hotel property using Zoning Bylaw Section 404.2 – Hotel/ Motel Overlay District 2 (HMOD2). Per Zoning Bylaw Section 404.2, the Applicant is seeking Design Review Approval to replace the existing outdoor pool and deck area with a reconfigured larger pool, spa, deck, cabanas and fencing; replace the existing temporary bar tent structure with a new permanent open-air pavilion and trellised area with bar, seating and fireplace; enlarge the existing interior pump room; add two unisex restrooms within the existing building with exterior doors; install one exterior shower; upgrade landscape plantings in pool area, the adjacent event lawn, at the Resort entrance and at the existing porte-cochere/lobby entrance, add trees in the existing parking lot islands, augment shrubs in north-west buffer area, and replace existing landscape plantings with native plantings for environmental mitigation; add two new crosswalks; and redesign/upgrade existing required handicapped parking spaces and accessible routes. The Applicant is also seeking a Special Permit for relief from Section 404.2.6 of the Zoning Bylaw for the project defined above for the existing site conditions and existing buildings which do not comply with the Yarmouth Architectural and Site Design Standards.
 - a. **Presentation:** Marian Rose of Singer & Singer noted the modifications to the fireplace stone as shown in the attached renderings. She also discussed her coordination with the neighbors, specifically Gateway Isles and noted a support letter was submitted to the Planning Board from the Gateway Isles president.

John Bologna of Coastal Engineering reviewed a site visit he had with Ken Smith regarding his knowledge of subsurface drainage and septic leaching fields in the vicinity of the proposed pool improvements. It appears there is subsurface drainage in the area of the Pavilion which can be relocated and will not impact the location of the Pavilion. However, the existing septic leaching field located north of the existing pool area needs to remain and will require some reconfiguration and relocation of the proposed pool further to the south and possible elimination of a row of cabanas or other pool deck amenities to ensure the proper separations between the existing leach field and the new pool. Although they are still working on what modifications will be needed, the thought is the pool would need to be moved south about 10'

or so. All the work would be contained within the "U" shape of the building and would not change the construction footprint, materials or intent of the project.

- b. **Written Comments Received:** Kathy Williams referenced the attached August 1, 2023 support letter from Richard Pomroy, President of the Gateway Isles Homeowner's Association (HOA). The letter noted the coordination with the Applicant to retain the HOA's easement rights, work towards a solution regarding the access gate and modified trash pickup schedule, and correcting the flood lights illuminating their neighborhood to which a condition has been agreed to by the applicant and HOA.
- c. **Public Comments:** No additional public comments.
- d. **Staff Report:** Kathy Williams briefly reviewed the attached July 27, 2023 Planner Memo highlighting additional findings and noting that the Planning Board needs to vote on the Design Review first as they are the Design Review Authority for HMOD2 projects. Afterwards, the relief being sought via the Special Permit can be addressed.
- e. **DESIGN REVIEW:** Kathy Williams reviewed the attached draft Design Review Comment Sheet which went through the Siting Strategies and Building Strategies from the Architectural & Site Design Standards. These standards were further broken down into the proposed project and the existing site and buildings not being improved as part of this project. In the Draft, the proposed work was all shown as meeting the standards or not applicable. The existing work was shown as not applicable or having discrepancies, except for the standards related to underground utilities and having a 2nd story which meets the standards. Joanne Crowley inquired as to whether the modifications previously discussed related to the existing leaching field would change the Draft Design Review Comment Sheet. After reviewing, arethy Williams indicated that it should not impact the draft determinations on the Siting and Building Strategies which is what the Planning Board would be voting upon.

VOTE: On a motion by Susan Brita, and seconded by Peter Slovak, the Planning Board voted (5-0) to approve the proposed improvements as shown in the submitted plans as having met the provisions of the Yarmouth Architectural & Site Design Standards, and to deny Design Review approval of the existing remaining elements which do not meet all of the Yarmouth Architectural & Site Design Standards and require relief from the Planning Board via a Special Permit, with Chris Vincent, Susan Brita, Peter Slovak, Ken Smith and Joanne Crowley voting in favor.

- f. **SPECIAL PERMIT 118:** Subsequent to the vote on the Design Review, the Planning Board took up the Special Permit appeal requesting relief from the Design Review denial for the existing site and buildings not being modified. Kathy Williams reviewed the three conditions included in her July 27, 2023 Memo related to modifying exterior lighting, augmenting the shrub buffer on the northeastern parking lot buffer and installing irrigation for the new planting areas.

The Board also discussed the addition of a condition to the Special Permit to address the unexpected issue related to an existing leach field located north of the pool which will require some modifications to the pool location and pool deck area. After discussion, the Board agreed to incorporate a condition regarding administrative overview which will determine whether the Applicant would need to come back to the Planning Board or if additional relief is required.

VOTE: On a motion by Susan Brita and seconded by Chris Vincent, the Planning Board voted 5-0 to approve Planning Board Special Permit Petition #118, submitted by RJ Resorts Beach Resort Owner LLC for 28 South Shore Drive, to grant relief from Section 404.2.6 of the Yarmouth Zoning Bylaw for existing buildings and site conditions that do not comply with the Yarmouth Architectural and Site Design Standards as outlined in the Design Review Comment Sheet, with the following conditions:

1. To redesign and/or replace exterior lighting for parking areas as needed to meet the requirements of Yarmouth Zoning By-Law section 301.4.10 with the expressed intent of limiting undue glare on neighboring properties to the north of the Resort. The Applicant expressly agrees to redesign or replace parking area lighting attached to the hotel structure to meet the by-law standards as is necessary to reduce undue glare to the neighboring properties to the north of the Resort.
2. To augment existing shrub plantings along the northeasterly parking lot buffer abutting Barkentine Circle with native species in a manner consistent with the shrub buffer plantings proposed along the northwestern parking lot buffer as shown in submitted proposed condition landscape plans.
3. To provide irrigation to the existing parking lot islands and buffers where new plantings are proposed.
4. Adjustments to the pool location within the "U" shape of the building may be required to accommodate an existing leaching field north of the pool. Minor amendments to the pool location and deck amenities can be approved by the Building Commissioner without needing to come back to the Planning Board if deemed minor in nature and no further relief is needed. Prior to issuance of the Building Permit, the Building Commissioner shall coordinate with the Town Planner.

g. Close the Public Hearing:

VOTE: On a motion by Peter Slovak and seconded by Susan Brita, the Planning Board voted (5-0) to close the Public Hearing for the R.J. Resorts Beach Resort Owner, LLC Design Review and Special Permit #118, with Chris Vincent, Susan Brita, Peter Slovak, Ken Smith and Joanne Crowley voting in favor.

3. **Lot Re-Release for Definitive Subdivision 1057S:** Re-release of Lot 104 (3 Cordick Road, South Yarmouth) from the Planning Board Covenant, Land Court Document 60919.

Kathy Williams explained that this is a re-release of the lot which was done in 2012 but never recorded. She noted the attached previous correspondence and due diligence done by Interim Town Planner Elizabeth Hude in 2012.

VOTE: On a motion by Susan Brita, and seconded by Ken Smith, the Planning Board voted (5-0) to approve the request for a re-release of Lot 104, otherwise known as 3 Cordick Road in South Yarmouth, from the Covenant associated with Land Court Plan 11622-J, with Chris Vincent, Susan Brita, Peter Slovak, Ken Smith and Joanne Crowley voting in favor.

4. **Accessory Apartment Zoning Bylaw Amendments:** Continued discussion on zoning amendments related to Accessory Apartments/Accessory Dwelling Units (ADUs) with an emphasis on modifications to the amendment based on input received to date.

Kathy Williams reviewed the attached Draft #13 which was further amended with comments from Town Counsel and Town Staff, and distributed to the Planning Board at the meeting. The Board reviewed what constituted finished storage, suggested the elimination of the reference to "other means" for providing parking screening, confirmed the inclusion of special permit requirements for all accessory apartments and eliminating the by-right options, addition that tenants are to make the apartment their primary residence, eliminate the need to notarize affidavits or set a specific time of year for submission to promote use of the automation in the on-line permitting program OpenGov, refinement of what is required in the affidavit, and extension of the transfer upon sale timeline from 45-days to 90-days. The Board spent the most time discussing the provision to allow non-resident homeowners the opportunity to construct an accessory apartment and Town Counsels amendments to the owner definition noting we cannot discriminate or differentiate based upon form of ownership and need to include LLCs and Corporations. The Board was divided on including 2nd homeowners and the inclusion of LLCs and Corporations noting that the public presentations were all owner occupied and potential issues with enforcement of off-site

property owners, while also noting the option would expand the opportunity for the creation of more accessory apartments by increasing eligible properties and the provision that the owner-occupied unit cannot be rented in any manner still remains. Mark Grylls noted the different definitions for owners and homeowners in the Building Code. Kathy Williams will coordinate with Town Counsel for more detailed discussions on ownership issues. This appeared to be the one remaining outstanding issue amongst the Board members.

5. **Signage Amendments:** Discussion on modifications to the Sign Bylaw to allow for signage related to naming rights, sponsorships and donations on town owned properties.

Kathy Williams reviewed the attached potential amendments to the sign bylaw which would regulate signs related to naming rights, sponsorships, and donations on town owned properties through a Board of Selectmen Policy rather than the Zoning Bylaw. This is already done for banners, ladder-slat signs and fundraiser/special event signs. This could provide alternative revenues for the Town and offer sign opportunities related to sponsorships not currently addressed in the zoning bylaw. This is being proposed for the fall Special Town Meeting to allow for solicitation for the Riverwalk Park over the winter. A draft of the BOS Policy will also need to be developed. In general, the Board did not see this as a major issue and agreed to proceed with an Article for the fall STM.

6. **Meeting Minutes:**

- a. July 12, 2023 – Meeting with Zoning Board of Appeals: On a motion by Susan Brita, and seconded by Ken Smith, the Planning Board voted (4-0-1) to approve the meeting minutes of July 12, 2023, with Susan Brita, Peter Slovak, Ken Smith and Joanne Crowley voting in favor, and Chris Vincent abstaining.
- b. July 19, 2023: On a motion by Susan Brita, and seconded by Ken Smith, the Planning Board voted (3-0-2) to approve the meeting minutes of July 19, 2023, with Susan Brita, Ken Smith and Joanne Crowley voting in favor, and Chris Vincent and Peter Slovak abstaining.

7. **Board of Appeals Agenda & Decisions:** The attached Agenda and ZBA meeting summary was sent via email to the Planning Board.

8. **Committee Updates from Board Members:**

- a. **Community & Economic Development Committee (CEDC):** Peter Slovak noted the CEDC voted to provide a memo to the Planning Board recommending the proposed ROAD 2023-1 project for JMart at 1272-1282 Route 28. Mr. Slovak abstained from the vote as he is an abutter and will not be voting when the project comes before the Planning Board. Kathy Williams also indicated the CEDC kindly voted \$100,000 in Tourism Revenue Preservation Funds to help offset the costs for the event space infrastructure at the Riverwalk Park.
- b. **Community Preservation Committee (CPC):** Joanne Crowley indicated the Request for Proposals for grant funding through the CPC has gone out with proposals due on September 20th.

9. **Board Member Items:** None.

10. **Correspondence:** The attached correspondence was sent to the Planning Board via e-mail.

11. **Staff Updates:** Kathy Williams gave a brief update on the Community Housing Committee's presentation of the Housing Production Plan (HPP) at the 8/1/23 Board of Selectmen (BOS) meeting. The BOS had some comments/edits they would like to have considered and scheduling a workshop was discussed. With additional edits being made, the HPP may need to come back to the Planning Board for Approval. She also noted that the Yarmouth Housing Authority would be holding a meeting on their Forest Road housing proposal on August 14th at the Senior Center.

Kathy Williams gave an overview of the draft Open Space & Recreation Plan which will be coming before the Planning Board on September 6th and the Conservation Commission on September 7th and going before the BOS tentatively in October.

Susan Brita inquired about the Ch 40B project proposed for 897 Route 28 for which the Planning Board provided a comment letter to the BOS. Kathy Williams indicated the BOS reviewed a draft letter prepared by the Assistant Town Administrator which summarized comments received from multiple boards and town staff. The information is included in the BOS meeting packet for 8/1/23.

12. **Upcoming Meetings:** The Planning Board reviewed upcoming meetings, business items and the attached Special Town Meeting (STM) calendar.
 - a. August 16, 2023: ROAD Application 2023-1 Public Hearing for 1272-1282 Route 28 and final review of Accessory Apartment Zoning Amendments prior to noticing the Public Hearing
 - b. September 6, 2023: Draft Open Space & Recreation Plan Presentation.
 - c. September 20, 2023: Zoning Amendments Public Hearing.
 - d. September 26, 2023: Final Draft STM Warrant
 - e. October 17, 2023: Tentative date for Planning Board to present Zoning Amendments to the BOS and execution of the STM Warrant.
 - f. November 7, 2023: Fall Special Town Meeting
13. **Adjournment: VOTE: On a motion by Ken Smith, seconded by Peter Slovak, the Planning Board voted unanimously (6-0) to adjourn at 7:10 PM with Chris Vincent, Susan Brita, Joanne Crowley, Peter Slovak, Ken Smith and Jim Saben voting in favor.**

ATTACHMENTS:

- **August 2, 2023 Agenda**
- **List of Remote Participants**
- **Design Review & Special Permit 118 – Red Jacket Beach Resort:** July 27th Planner Memo, modified stone fireplace renderings, updated DRAFT Design Review Comment Sheet, August 1, 2023 Comment Letter from Richard Pomroy, President of Gateway Isles Homeowners Association, and Peter Slovak and Chris Vincent Certifications for voting.
- **Lot Re-Release for Definitive Subdivision 1057S:** July 18, 2023 request letter from Mazzoni & Associates with 2012 Complete Release, June 28, 2012 Letter to Town Clerk, Land Curt Plan 11622-J and new draft release.
- **Accessory Apartment Zoning Bylaw Amendments:** Draft #13 Section 407 Accessory Apartments, dated July 27, 2023 with additional edits/comments from Town Counsel and Town Staff, and approved July 5, 2023 Planning Board minutes for easy reference.
- **Potential Signage Amendments:** Overview dated July 27, 2023 of possible sign amendments related to naming rights/sponsorships and donation signs.
- **Draft Meeting Minutes:** July 12, 2023 and July 19, 2023
- **Miscellaneous Correspondence:**
 - Conservation Commission Agenda for August 3, 2023
 - Zoning Board of Appeals Agenda for July 27, 2023
 - July 31, 2023 email with brief outline of results of 7/27/23 ZBA meeting

Approved on August 16, 2023:

On a motion by Ken Smith, and seconded by Peter Slovak, the Planning Board voted (5-0) to approve the meeting minutes of August 2, 2023, with Chris Vincent, Joanne Crowley, Peter Slovak, Ken Smith and Jim Saben voting in favor.