

# **NOTICE OF DECISION**

**[With Findings of Fact & Conclusions]**

## **TOWN OF MACHIAS, MAINE** **PLANNING BOARD**

**JUNE 7, 2023**

### **PROJECT INFORMATION**

**APPLICANT:** Graham Holdings LLC/Wesley Graham

**PROPERTY:** 19 Canal Street; Map 11, Lots 44A & 44B

**PROPOSED PROJECT:** Transient Accommodations (Main Office with 12 Rental Units as Cottages/Bunkhouses)

### **SUMMARY BACKGROUND FACTS & PROCEDURAL HISTORY**

Graham Holdings LLC and Wesley Graham ("Applicant") has proposed construction of rental cottages/bunkhouses for temporary guest rentals at 19 Canal Street, Map 11 Lots 44A and 44B (the "Property") located off Water Street (the "Project"). The Project is located in the General Development I District under the Town's shoreland zoning. The Property is comprised of approximately two acres with eight hundred feet of river frontage.

The Applicant initially presented a purchase and sale agreement as evidence of right, title, and interest to pursue the Project. The Applicant also represented it had closed on the Property in October 2022, with a deed later recorded in the Washington County Registry of Deeds (Book 4986, Page 7).

One neighbor, Jean Tennison, contends the Applicant has proposed the Project on land the Applicant does not own and therefore does not have sufficient right, title, or interest. The Applicant contends it does, and that the submitted information is sufficient for right, title, or interest purposes and if any person has a private property dispute the courts, not the Planning Board, are the proper forum for such issues.

The Planning Board received numerous written submissions from the Applicant, interested persons, Town Staff, and the Maine DEP of and concerning the Project. The Planning Board also received extensive testimony and argument from the Applicant and interested persons, as well as information from Town Staff during the meetings on the Project.

The Planning Board held an initial meeting on the Project on January 4, 2023.<sup>1</sup> The Planning Board voted to table (i.e., continue) its review of the Project pending receipt of requested additional information from the Maine DEP, the parties, and any interested persons. The Planning Board met again on February 1, 2023, to review submitted information and receive further testimony and argument on the Project. At the conclusion of the February 1 meeting, the Planning Board requested additional information from the Town's legal counsel of and concerning certain issues and the Project. On February 16, 2023, the Planning Board reviewed the Town Attorney's letter dated February 16, 2023, and also heard from all parties and interested persons. The Planning Board then continued and completed its deliberations on the Project, reviewing applicable standards of the Town's Shoreland Zoning Ordinance to determine if the Project was in compliance. At its February 16 meeting,<sup>2</sup> the Planning Board found the Applicant had met each applicable standard and voted to approve the Project.

The Project was then subsequently appealed to the Town's Board of Appeals, which remanded the matter to the Planning Board with the direction to issue a written decision. On June 7, 2023, the Planning Board met for this purpose and adopted this Notice of Decision.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

The Applicant has sufficient right, title, and interest to pursue the proposed Project. The Planning Board finds the Applicant's submissions and representations provide a reasonable expectation that the Applicant has sufficient rights to do the Project as proposed. The Planning Board notes it does not adjudicate private property disputes, and those disputes are more appropriately addressed in other forums (e.g., courts).

The Planning Board further finds it has the authority to review the Project. The Project is located in the General Development I District (a shoreland zoning district), and involves a proposed commercial use (multiple rental units as transient accommodations marketed as cottage/bunkhouse rentals for temporary guest rentals). Under "Table 1: Land Uses in the Shoreland Zone", the Planning Board is the identified reviewing authority for any commercial project in the General Development zoning districts (including General Development I).<sup>3</sup>

---

<sup>1</sup> The Planning Board determined the Application was complete for the purposes of conducting a substantive review.

<sup>2</sup> Although the Shoreland Zoning Ordinance calls for a decision to be made within 35 days of receiving a complete application, the Planning Board understood the Applicant consented to an enlargement of time so that the Planning Board could receive information requested and make a decision on the Project.

<sup>3</sup> The Planning Board does not interpret the proposed Project to be a residential use or otherwise to involve dwelling units, since they are cottages/bunkhouses for temporary rentals serving a transient population.

The Planning Board also finds the Applicant has met the applicable standards of the Town's Shoreland Zoning Ordinance ("Ordinance"). Specifically, the Planning Board reviewed the criteria set forth in Section 16.D of the Ordinance and found as follows:

- (1) The Project will maintain safe and healthful conditions. Based on the record information and other findings and conclusions of this Notice of Decision, the Project will not result in any unsafe or unhealthful conditions through emissions, discharges, or other adverse effects that would jeopardize safety or health considerations.
- (2) The Project will not result in water pollution, erosion, or sedimentation to surface waters. Based on the record information, the Project will utilize best management practices for storm water and any site disturbance and related activities, both for construction and post-construction, and will utilize Town utilities.
- (3) The Project will adequately provide for the disposal of all wastewater. Based on the record information, the Project will utilize Town sewer for wastewater which has adequate capacity to provide service based on the expected volumes and character of wastewater.
- (4) The Project will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat. Based on the record information, there are no mapped wildlife habitat areas of significance regarding spawning grounds, fish, aquatic life, bird or any other wildlife habitat, and further appropriate water pollution, erosion, and sedimentation control measures will be implemented.
- (5) The Project will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. Based on the record information, the Project appropriately conserves shore cover and visual/actual points of access to waters. The Planning Board notes the Project also involves the removal of invasive species as part of the Applicant's activities authorized pursuant to the Natural Resources Protection Act by the Maine DEP.
- (6) The Project will protect archaeological and historic resources as designated in the comprehensive plan. Based on the record information, there are no archaeological or historic resources on the Property or in close proximity.
- (7) The Project will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district. Based on the record information, the Project is not located in the Commercial Fisheries/Maritime Activities district, and similarly is not located in close

proximity to this district to raise any concerns of adverse effects on commercial fishing or maritime activities.

- (8) The Project will avoid problems associated with floodplain development and use. Based on the record information, the Property is not located in a floodplain and therefore problems associated with floodplain development are not an issue.
- (9) The Project is in conformance with the provisions of Section 15, Land Use standards.

The Project proposes a Main Office as its central operations with 12 cottages for rental use as transient accommodations. While the Ordinance states all new structures must be set back at least 100 feet from great ponds and rivers and 75 from all other water bodies, streams, or upland edges of wetlands, the Ordinance states in the General District I District the applicable setback is 25 feet. Further, the Planning Board notes the record information shows the Project is not located along a Significant River Segment (as confirmed by the Maine DEP), meaning the 125-foot setback for those designated areas is not applicable. The Planning Board also notes it does not find the Project to be a "campground" as defined in the Ordinance, which would trigger the 100 and 75 foot structure setbacks stated above. A campground involves temporary living quarters that has the character of tents, recreational vehicles, or other shelters. Here, the rental unit structures proposed are cottages/bunkhouses, which the Planning Board views as more akin to the nature and character of a motel/hotel operation as a commercial use. The Planning Board also finds that the Main Office of the Project is the principal structure,<sup>4</sup> with the cottage rental units comprising accessory structures to that central point of the Project's operations.

In accordance with the above findings, the Project would need to have at least 60,000 square feet in lot size and 300 feet of shore frontage. Further, all structures (principal or accessory) would need to meet the 25-foot setback. The record information shows these dimensional standards are met (approximately 95,000 square foot lot size with 82,000 of usable area; frontage of approximately 795 feet; and depictions/representations of all structures setback at least 25 feet from the normal high water line). The Project thus meets the Minimum Lot Standards and Principal and Accessory Structures standards.

---

<sup>4</sup>Based on the Applicant's representations, the Main Office serves as the check-in and check-out point for all guests/customers with additional guest amenities and services typical for transient accommodation rental units – all centralized in the Main Office – stated differently, without the Main Office, the rentals would not be operational for the business.

Based on the foregoing, the Planning Board APPROVES the Applicant's application by vote of 3 to 0.


Dated this 7<sup>th</sup> day of June, 2023, in Machias, Maine.

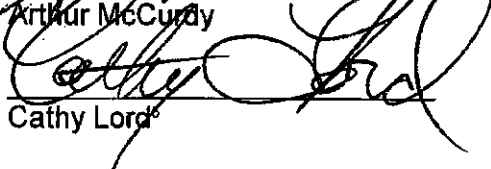
**Town of Machias Planning Board**

  
\_\_\_\_\_  
Rich Rolfe, Acting Chair

\_\_\_\_\_  
Edward Pellon

\_\_\_\_\_  
Harry Flower<sup>6</sup>

  
\_\_\_\_\_  
Arthur McCurdy

  
\_\_\_\_\_  
Cathy Lord<sup>5</sup>

**NOTICE:**

Any aggrieved person may appeal this Notice of Decision within 30 days of the date of this official written decision in accordance with the appeal provisions of the Town of Machias Shoreland Zoning Ordinance

<sup>5</sup> Alternate Planning Board Member Lord was present and participated in all of the meetings regarding the Applicant's application, and acted as a Regular Board member in voting to adopt this Notice of Decision.

<sup>6</sup> Planning Member Flower was unable to be present at the June 7, 2023 meeting when Board adopted this Notice of Decision, but was present and participated in the prior meetings including the Planning Board's unanimous vote on February 16, 2023 to approve the Applicant's application.