

**York Planning Board  
Thursday, August 9, 2007, 7:00 PM  
York Public Library**

**Call to Order, Determination of Presence of Quorum**

Chairman Glen MacWilliams began the meeting at 7:00 and determined presence of a quorum. Everyone was present. Beside Glen MacWilliams, Vice Chairman Tom Manzi, Barrie Munro, Lee Corbin, David Woods, and alternate Lew Stowe were in attendance. Community Development Director Steve Burns represented staff. Patience Horton took minutes. The meeting was televised.

**Public Input Open to the public to address any issue other than the scheduled public hearings.**

Nate Alison of CLD Engineers spoke in behalf of his colleague, Joann Fryer. The Atlantic Kearsarge application parking lot has three aboveground propane tanks with one vaporizer. It is already approved. Due to abutter David Woods's concern about the 25-foot setback, and at the advice of Proulx Oil Company, the placement of the tanks is re-planned to go underground, and the consequently unneeded vaporizer has been eliminated. The mound created will not be particularly visible.

As an abutter, David Woods recused himself from board participation. After board discussion, it was decided he could remain throughout the hearing to join the discussion, despite planning board policy that a recused board member must leave the room. Alternate Lew Stowe was asked to vote in place of David Woods.

**Motion** Tom Manzi moved to allow recused David Woods to remain in the room for the entire hearing in order to participate in the discussion. Lee Corbin seconded the motion, which passed 4-0. David Woods and Lew Stowe did not vote.

Chairman Glen MacWilliams opened the **Public Hearing**. **David Woods** owns the campground abutting the Atlantic/Kearsarge parking lot. As well as being concerned about the amount of earth that will be over the tank, he expressed concern about the anchoring system for the tank and recommended use of stainless steel cables to hold them down, because of the amount of salt at the beach and the potential for corrosion. Nate Alison replied that the amount of the profile covering the tank is planned to be between one foot and one-and-a-half feet. He will look into the possibility of dropping the profile more, he said. He said he would also indicate that stainless steel should be used. On Lew Stowe's inquiry, it was learned the NFP 58 (National Fire Prevention Regulation 58) is the federal regulation indicating the setbacks and the distances when propane tanks are either above or below ground.

Dave Woods discussed the granite ledge that lies below the parking lot, saying that the tanks could be anchored to it, instead of connecting them to a poured concrete pad. Lee Corbin suggested placing the tanks in a different location, with abutter approval. Nate Alison said he did not recommend trying to waive a federal regulation. What is proposed seems to be the best location. Steve Burns said that there is a stream protection zone at the opposite end of the lot with a 75-foot setback requirement.

**Motion** Barrie Munro moved to include the specifications for National Fire Prevention Regulation 58, which governs the installation of the propane tanks, to the design plan. Also, at the request of the abutter, the anchor lines and insulated cables will be changed from galvanized steel to stainless steel. Tom Manzi seconded the motion.

In discussion, Lee Corbin was uncertain about the board recommending the type of tanks and straps, but agreed that it was best to follow the regulations. Tom Manzi asked Dave Woods the distance between the tanks and human habitation. Dave Woods answered an RV is located about eleven inches off the property line.

**Vote** The motion passed, 4-0.

### **Minutes Review and approve draft minutes**

There were no minutes to review.

### **Application Reviews and Public Hearings**

#### **1. DPW Realty LLC, 15 Cider Hill Road. Map & Lot: 0053-0023. Application for amendment of Route One Use Permit**

David Webber said that he wanted to add two doors for increased access to his building. He said he also had a list of potential tenant occupations to add to the plan, which would allow tenants to move in quickly, if they need to.

A **Public Hearing** was opened and closed. No one came forward to speak. Steve Burns said that the list of tenant occupations had been requested, and that list is consistent with the amendment. He said that the presentation of the application information should be reorganized. The plan notes are from the original approval, and the old notes should be removed. There should be an additional note stating that the code enforcement officer and the fire chief will review the list. There is issue about the required vegetated buffer, which is complicated by a CMP power line that runs through it. Subsequent discussion eliminated this as a concern. In board discussion, Tom Manzi questioned Item 22, parking. Steve Burns said that he took uses off the list that might generate public trips, due to the limited parking. There will be no retail use in the building. Barrie Munro suggested a plan note about uses that cannot exceed availability of parking.

**2. Scudiere Non-Conforming Lot. 4 Thistleberry Lane. Map & Lot 0046-0053-G. Continued consideration of an application to re-establish a formerly consolidated non-conforming lot.**

Glen MacWilliams read an email from Applicant Paul Scudiere, which suggested that the anticipated denial of the application is based on erroneous information in the town attorney's letter dated June 26, 2007, and that the board should interpret the ordinance in the owners' favor.

Attorney Greg Orso spoke on behalf of the Scudieres, who were present. Greg Orso questioned the jurisdiction of the planning board over the re-division of lots. The transferable developmental rights code, Section A, concerning the re-division of lots, as this is, should be determined by the code enforcement office, he said. Otherwise, the merit of the application and the meeting of the requirement of the ordinances is a burden that has been met by the applicant. There is no need for a variance based on height, area, or setbacks. When one considers the work done by the clients to the property, this lot is more suitable than lots that are already built on in the neighborhood. The new drainage study shows a net decrease in drainage, because of technical applications. The septic system has been approved without variances.

Glen MacWilliams opened and closed the **Public Hearing**. No one came forward to speak. Steve Burns said that the jurisdiction of the matter is strictly that of the planning board. He had written the ordinance in the first place, and he said he knew how to interpret it. The subject property was once a part of a larger subdivision. An abutter pointed out the current problem facing this application. This property has four feet of road frontage, when 135 feet of road footage are necessary for a building lot. This was not a lawful building lot when it was created, he said. This never was a non-conforming lot. Lew Stowe added that there could not be a variance on road footage.

Greg Orso agreed that a variance cannot be attained for road frontage. However, there is a mistake on Town Attorney Durward Parkinson's part, because, as Greg Orso reads it, the matter is not for planning board review.

Barrie Munro agreed that the board does not have the right to grant the street frontage variance. The lot was never a build-able lot and was never a non-conforming lot of record. However, the board does not have the right to prove that it is a build-able lot. Glen MacWilliams said that the board is required to determine if the lot is divide-able. Steve Burns said this lot would be non-conforming today, after division, if the lot were nonconforming before the 1991 consolidation. The question is, was it non-conforming to begin with. It would have had to have the long frontage when it was created, and it did not.

Lee Corbin argued that in 1970, the planning board approved the lot as an individual lot in a subdivision. The contiguous lot ordinance changed it, regardless of what the owner actually did with it. This applicant wants to re-subdivide it.

**Motion** Lee Corbin moved to approve the request to re-subdivide the lot as it was originally approved in 1970. Barrie Munro seconded the motion.

In discussion, Glen MacWilliams said that town legal counsel has thought otherwise. Tom Manzi said that a rebuttal by the abutter's attorney, who had brought up this issue and was not present, has not been heard. Barrie Munro said that it makes sense to accept opinions from experts, but sometimes we have to disagree with legal counsel. He went on to say that at the time the subdivision was originally approved, lot five was included as a build-able lot. Subsequently by ordinance, lot five was consolidated with lot four. With the change in the ordinance that has prompted this application, it became permissible to again create lot five providing no waivers were required in order to satisfy existing ordinances. All these requirements have been met and it is not up to the Planning Board to issue the building permit, which will in essence determine whether or not this is a build-able lot.

**Vote** The motion to approve the re-subdivision of the property passed, 3-2 (Barrie Munro, Lee Corbin, and Dave Woods in favor, and Glen MacWilliams and Tom Manzi opposed).

Glen MacWilliams asked Greg Orso to make new Findings of Fact and added that there will likely be an appeal.

**3. Michael and Terry Estes. 519 U.S. Route One. Map & Lot: 0048-0043. Application to amend Route One Use Permit**

Board member Dave Woods stated he that his business directly competes with applicant Mike Estes's business, wondering if recusal were appropriate. Mike Estes said he had no problem with having Dave Woods on the board for this hearing. Bill Anderson of Anderson Livingston Engineers described the application, which consisted to making further expansion of the commercial building on Route 1. He showed building plans. The changes would not be noticeable from Route 1. One part of the three-part building would be pushed out in the back and expanded, replacing a small amount of paving. An existing garage would be converted to office space in the future. Currently there are 106 parking spaces, including six spaces where a parking lot ATM used to be. One hundred one spaces will be required by the new configuration. Steve Burns noted that the plans were certified, but not signed, as required.

There was a short break. The **Public Hearing** was then opened. Abutter **Martin Doherty** handed out copies of October 2003 approval plans, which illustrated four parking spaces on Michael Estes's property adjacent to the driveway access to Martin Doherty's property. In actuality, there are five, not four, parking spaces in that place, which makes it impossible for Martin Doherty to get ramp trucks through that driveway, when someone is parked in the fifth spot (he unloads cars on his property). Having someone park in that fifth spot also makes it very difficult to get in and out of the Doherty property under normal circumstances and when there is snow. Mike Estes replied that when he relines the parking lot, he

will make sure the final line is even with the curb, eliminating the fifth, problem space. Chairman Glen MacWilliams asked for a note on the plan stating there will not be parking in that space. The public hearing was closed.

For the record, Lee Corbin read the easement aloud. It concerns the egress and ingress from the Doherty property to Route 1. She noted that the document did not specify the width of the easement.

**4. Josiah Woods Subdivision. 114 & 116 Josiah Norton Road, and 142 Ogunquit Road. Maps & Lots :0098-0002A; 0098-0006; 0099-0013A; 0099-0013B; 0099-0014D; and 0099-0014G. Sketch review for a 24 lot cluster subdivision.**

Dana Libby represented applicant George Danis, who proposed a cluster subdivision on 114 acres on the Josiah Norton Road, 58 acres of which would be net build-able. Forty-two acres of the property that extends to the town line has been offered to and is being considered as a donation by the York Land Trust. The final 14 acres will ultimately serve as George Danis's private residence. Lee Corbin suggested her own possible conflict of interest, because she lives at the other end of the Josiah Norton Road, one and-a-half mile down. Glen MacWilliams said he felt there was no conflict there.

Hoping it will meet town requirements for two access points onto a subdivision this size, the applicant has offered a boulevard style entrance to the property. A vernal pool study was conducted during April and May. Barrie Munro said that the per 7.6.1(d), the board must know that the proposed land use is the best utilization of natural resources and that the ownership of the land is consistent with land trust guidelines. All the while, the cluster requirements have to be honored. Steve Burns agreed that the purpose of the open space has to be justified. The open space must be designed first, before the cluster is designed. There have been several cluster designs in the past in York, and he listed them, including the most recent Highland Farms Phase 1, but the cluster standards have been re-worked since then, and this is the first one to come under the new standards. Glen MacWilliams said that the land trust commitment should not come before the planning board presentation.

Barrie Munro said he thought the boulevard is a good approach, particularly with the cross ties, and satisfies the safety element for police and other safety vehicles. Dana Libby said the crossties in the boulevard correspond to the lots and building locations. If the town wants the boulevard to be part of the roadway system, that is fine. Otherwise, the homeowners association will maintain the road. Barrie Munro said a landscape plan must indicate how the area will be planted, if the natural vegetation is eliminated. The board discussed the responsibilities of the land trust. Steve Burns said if the York Land Trust can't oversee the donated land, the applicant would have to go for a conventional design, or, if York Land Trust cannot take the responsibility, the Great Works Land Trust also has land in York, and can possibly oversee this property.

Lew Stowe asked about wetland fill. Dana Libby said some will be required as part of a Tier 1 permit, but that the applicant does not foresee the need for any waivers and is willing to do any studies that are required. Glen MacWilliams asked for a map of adjoining land parcel, which is also a cluster subdivision. He told the applicants to return with specific conservation easement information at their next hearing.

Glen MacWilliams opened and closed the **Public Hearing**. No one came forward to speak.

### **Other Business/Adjourn**

**In other business**, a letter from **Diane Flynn** raised an issue of Class 1 Home Occupations outside the Transition Zone at York Beach. In her home, adjacent to that zone, she creates quilts and candles, but is limited in their sale, because in her zone, she cannot have a shop. She would like to see craft shops and professional offices in that area, as well. Barrie Munro suggested that Class 1 Home Occupation standards could be modified to suit a particular zone. Steve Burns further commented that the November 2008 Referendum would be the appropriate time to work on that issue.

**In other business**, Steve Burns says there is a new Town Planner being sought, and Planning Board business will be turned over to him/her.

**In other business**, Steve Burns said there is a new criterion for having design professionals sign off their work and indicate that the buildings have been build in accordance with their design. The first example of this criterion comes from Architect David Gleason in conjunction to the **Cape Neddick House**.

**In other business**, Barrie Munro said at the next meeting, he wished to discuss the Board of Appeal's interpretation of the term "similar to" and the Board's reliance on ambiguity as one basis for recently granting a Route 1 appeal.

**In other business**, Lew Stowe volunteered to prepare a packet on Woodside Meadow.

**In other business**, for further discussion, David Woods showed a photo of recently installed sidewalks and curbs that lack standards and lack design consistently.

The meeting ended at 10:10.