

York Planning Board
Thursday, November 8, 2012, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Todd Frederick presided. A quorum was determined with five people voting: Chairman Todd Frederick, Vice Chairman Dave Woods, Board Secretary Lew Stowe, Torbert Macdonald, Jr., and Alternate Al Cotton, Jr. Alternate Brun Weger was present, but not voting. Dave Glazebrook was absent. Christine Grimando, the Town Planner, represented staff. Patience Horton took Minutes.

Public Forum

Open to the public to address issues other than topics scheduled for a public hearing.

No one came forward to speak.

Public Input

No one came forward to speak

Field Changes

Larson Subdivision Field Change

Town Planner Christine Grimando said this is a change to a previously approved subdivision plan, which showed a fence at one section for a property boundary. The property owner has put in landscaping as sufficient screening and has come to speak to the board.

Greg Larson said the plan was approved with a 6-foot stockade fence along the road. Abutters Robert and Ina Helkowski approved with the living, landscape fence he put in, and they signed papers to that effect. Torbert Macdonald said he would have preferred if Greg Larson had come to the Planning Board first, because the invasive Burning Bush should not be there.

Motion: Torbert Macdonald said, "I move that we approve the field change for the Larson Subdivision, and approve the list of plants shown in his submission to us tonight, with the exception of the Burning Bush." David Woods seconded. **In discussion,** Torbert clarified that the Burning Bush would have to be removed as a condition of the approval. **Vote:** The motion passed, 5-0.

Stonewall Kitchen Field Change

Town Planner Christine Grimando said the field change is on the approval given last month for the new addition. The applicant seeks 5 extra feet that will be outside the set-back and the buffer area. Project Engineer Bill Anderson said John Destefano needed to push out another five feet allowing more interior space. 250 square feet are being added per floor. The parking tables have been re-calculated, but they are way over the requirement already.

A light was relocated from the front of the warehouse. It is tipped back from the intersection so that it can light the intersection but not be a glare hazard for cars coming down the road. The building is 70 or 80 feet away from the road. The setback is 50 feet.

Motion: Torbert Macdonald said, "I move that we approve the field change for Stonewall Kitchen as submitted." Lew Stowe seconded. No discussion. It passed, 5-0.

Minutes

The minutes of October 25, 2012, were reviewed and changes were requested.

Motion: Torbert Macdonald said, "I move to approve the minutes of October 12, 2012, as amended." Dave Woods seconded the motion. It passed, 5-0.

Application Reviews and Public Hearings

York Colonial Center. 4 US Route 1. Map & Lot 0086-0001. Preliminary review of a site plan and subdivision for a building with retail and office space on the first floor with apartments above

Town Planner Christine Grimando said that the applicant is here to get a weigh-in from the board that can be included in the staff write-up to the Board of Selectmen. That would be an advisory opinion that is not binding. The sewer question is paramount.

Todd Frederick said that this is not a sketch review. There is no fee associated with it. Torbert said it is a sketch review. Christine called it a non-binding conceptual discussion. The applicant has brought a check, depending what they are submitting for.

Christine Grimando said State statute requires that the Board of Selectmen do a consistency review of existing codes before that infrastructure can be extended just for sewer. The Kittery Sewer system will write a letter to the Town Manager declaring their intent and requesting this review very specifically. Then the Town Manager will ask Community Development director Steve Burns or the Town Planner to weigh in on an overview of codes and pertinent information from the Comp Plan and Zoning.

Torbert Macdonald said that he is advocating to *not* undertake a discussion about this. Care should be taken about what the Planning Board does, because what the board says will be incorporated into the process. It is the selectmen's jurisdiction. Anything we say can be used against us at the level of the Board of Selectmen and beyond, if they turn that down. We might have to testify in court case. We don't have the jurisdictional authority.

Motion: Torbert Macdonald said, "Mr. Chairman, I move that we defer any further discussion of this project pending the outcome of the application to the Board of Selectmen for sewer extension." David Woods seconded the motion. **In discussion,** Lew Stowe suggested the applicant speak to the public session. Torbert answered that his motion does not allow for that. The motion is for no further action, he said. **Vote:** The motion passed, 5-0.

Villager Motel Site Plan. 14 Long Beach Ave., Map & Lot 0027-0079-A. Proposal for drainage pipe installation; Revision to a previously approved site plan

The Villager site plan goes back to the '80s. The drainage requirement calls for a ditch. The applicant put in a culvert. Some neighbors called Code about the Villager site. The applicant can and has returned to the drainage ditch and proposes an engineered culvert system. The culvert has to accommodate the water coming into it. This is a single application. All the work is being proposed on the site. The subdivision application was reviewed and approved a year ago.

Applicant Engineer, **Brian McCarthy** of CLD Engineers said that the original site plan had an open ditch, but, in violation, a culvert was put in. The owner has chosen to remove the pipe and restore the open ditch. The owner has proposed different options. One is to keep the ditch. One is to install twin 30" diameter pipes, which would accommodate the 100-year storm. The third option is contingent of what the upstream property does. The neighbors can maintain an open ditch, or they can install twin 24" diameter pipes from the end of the cross culvert at Church Street Extension to the other side of the property. In that case, the Villager would downsize two 30" pipes to two 24" pipes and have that continue from Church Street Ext. to the other side of the Villager property.

Public Hearing

Judy Michienzi of 17 Church St. Ext. said her family had come before the board eleven months ago "begging" the board not to allow the Nicole drainage plan to proceed. She had been told by the board, engineers, and city that her property would be unharmed, but "that was not true." "We were told our property would be untouched, but work was done on our property. We put up a construction barrier, and that was trespassed. Their entry onto our property was by invitation only, and that was violated."

Frank Michienzi said his property is "stuck" between the Villager and the neighborhood. The work was not done in the right of way. He requested a site visit by the board.

Nicholas Michienzi said that the slope is supposed to be a 0.6% slope for the project, and on their property, there is a 0.5% slope, which is flat over 80 feet. OSHA visited the site. There were requests for hard hats, vests, rope, or police details. There are many safety issues on our property that were not observed.

Richard O'Brien, 47 Nicole Road discussed OSHA issues not related to the Villager Motel, and the Town Planner told him his testimony was not necessary for this application.

Cosmo DiBiase that there are two 30" pipes across Church Street. They are working fine. The Villager has a problem with mosquitoes because of the standing water. He and another abutter went to the Board of Appeals, who told them to come back to the Planning Board. He said they are "doing it" by the book.

Frank Michienzi spoke again. We are stuck right in the middle of two properties, he said. Do we have any intention of putting pipes in? Not at this time.

Matthew Michienzi asked for a site walk. There are safety concerns. What was approved and what was done are not the same. Chairman Todd Frederick closed the **Public Hearing**.

Torbert Macdonald said that the applicant must show that upstream conditions need improvement and that stormwater management has to accommodate upstream drainage per 9.8.8 and 9.8.9. Future downstream drainage will be studied. Storm drainage will not overload the existing system or the two drainage systems downstream from the subdivision. Brian McCarthy said that the upstream and downstream information is in the packet, but that he doesn't have an overall display, as Torbert requested.

Lew Stowe noted that the Michienzi family did not agree to the culvert system, but it should still work as a swale. Todd Frederick says that Code should review the entire project and that it will be certified that what is on the ground is what is on the plan.

Dave Woods said that between the two 24" pipes and the two 30" pipes, it would be smartest to go with the 30" because it is unknown if the Michienzis will decide to put a pipe in. The 30" would take care of anything in the future.

Lew Stowe said there had been a complaint that in building a 10' swale, the workers went beyond the 10' right of way onto the Michienzis' property. He asked the Town Planner if the Code office has gotten involved based on their complaints. She said that Code is aware of it. The situation has been flagged.

Motion: Lew Stowe said, "I make a recommendation that we approve the Villager Motel Site Plan, 14 Long Beach Ave., Map & Lot 0027-0079-A, Proposal for drainage pipe installation, with the 30" two culverts." Dave Woods seconded.

In discussion, Dave suggested referencing whether Option A, B, or C but the motion was already tied to Option A (30"). Todd Frederick said the time frame for the work is two years.

Vote: The motion passed, 5-0.

Ellis Short Sands Park Public Restroom Facility. 16 Ocean Avenue. Map & Lot 0024-0049-A; Replacement/Reconstruction of the Ellis Short Sands Park public restroom facility

Town Planner Christine Grimando said that this is the replacement of the existing bathhouse. It is in the Flood Plain, YBV base zone, and Shoreland zone.

Ellis Park Board Secretary **Andy Furlong** read a letter from Attorney Jon R. Doyle, dated November 8, 2012, into the record. There is a Penstock Road, which appears on the

plan. The legal existence of that road is not fully understood. “Any depiction of all or a part of Penstock Road is for graphics purposes only and should not be interpreted as a determination of its existence or its location as a way,” he writes. Board Chairman Todd Frederick directed Christine Grimando to place the record into the file.

Planning Board member Al Cotton said he knows where Penstock Road is because he used to work on it between 1963 and 1965. It was to the left of the then-existing Chamber of Commerce building, between the Goldenrod, the bowling alley, and the rest area.

Scott Donnelly is the project architect from Oak Point Engineers. Steve Towne is the civil engineer. He spoke first. Recent changes in the State jurisdiction of the Sand Dune permits (D1 zone) allow for an increase in the plumbing fixtures and the size of building. The building can come no closer to the water, and it must be impervious. There can be a minor expansion away from water. The height ordinance cannot be exceeded. It has to comply with Shoreland zoning. Improvements have to meet the setback 100 feet from the coastal wetland. The structural requirements inside the flood zone are met.

There is overhead electric coming into the building and underground electric that serves the lighting on the boardwalk. The storm water outflow project on Beach Street upgrades the stormwater in the parking lot. Everything drains as sheet flow away from the beach into catch basins and takes it to Beach Street, said Steve Towne. He said that Christine Grimando had requested an erosion and sediment control plan note to bring the project into compliance with zoning. That is Note 5. She also asked for a Flood Hazard note.

Architect Scott Donnelly described the flood aspect of the building. An insulated concrete form will be used for the structure with solid concrete from the foundation wall to the beam. Outside will be of finished materials. Inside, the material finishes have not been determined, but ceramic tile or epoxy paint are possible. The two large access ways to the building are flood-proofed. On either side of the doorjamb, there is a channel. With a pending weather event approaching, aluminum boards will be slid manually into the channels and cover the entranceways. That makes it flood resistant. There will be some leaking overall. The floor slabs will be designed so the water will drain out of the building. This meets FEMA standards for FRD (Flood Resistant Design).

Currently the men’s or women’s rooms are entirely shut down for maintenance. With the new plan, there are 2 women’s bathrooms, 2 men’s bathrooms, and then 2 family toilet rooms. During cleaning, one can be closed down, leaving the other one open. There are three rolling overhead doors. When the building shuts down for the evening or the season, the last two doors can be brought down, closed, and locked. Overhead doors can keep some bathrooms open and some closed during lighter seasons.

Architect Scott Donnelly said we are trying to get this under construction as soon as possible and near completion when the season opens. It has to be done by May, because that is when the restrooms and playground are opened.

Motion: Torbert Macdonald said, “I move that we accept the Ellis Short Sands Park Public Restroom Facility, 16 Ocean Avenue, Map & Lot 0024-0049-A, replacement and reconstruction of the Ellis Short Sands Park public restroom facility, as complete.” David Woods seconded the motion. It passed, 5-0.

The **Public Hearing** was opened and closed. No one came forward to speak.

Dave Woods said this building does not meet design standards. He read from Page 23 of the York Beach Village Design Standards ordinance. Though it is a restroom, “For buildings containing non-residential uses on the first floor, the front façade shall have windows, display cases, and/or transparent features along at least 60% of its horizontal length to maximize light and display.” He said that the front of the building has not been determined for making those calculations. The roll-up garage doors are a showstopper.

Scott Donnelly answered that this is a unique building type and making all these things apply to it is difficult. Dave Woods suggested taking the arch into consideration in the calculation or having a false wall behind glass. If the designed standards are not met, the next builders will ask why they have to meet them. Christine said there are no applicable waivers, but many things don’t apply to this building. Torbert said the objection is not appropriate to the situation. Restrooms are not subject to transparency requirements. Christine Grimando called the circumstance and outlier. Torbert called it a unique exception.

Motion: Torbert Macdonald said, “I make a motion to approve this application.” There was no second to the Motion.

He said that no technical issue has come up for the building, and the design standard is intended to entice people to come in for *commerce*.

Motion: Torbert Macdonald said, “Again I say, I move to approve the Ellis Short Sands Park Restroom Facility.” There was no second to the Motion.

Christine said this application has been accepted for review. This motion would be to approve the application.

Al Cotton said that the building is in the middle of a parking lot and does not front on any road. Can’t the applicant decide which of the four sides is the front? Christine said there is a prominent, primary entrance. Dave said 60% transparency is on the primary side. Scott Donnelly said they would make calculations.

Christine Grimando said that there is language in the ordinance about how the design review process is flexible (P. 4). It is intended to encourage designs that are innovative and appropriate for their locations. She referred to that as “wobble room,” and added that a lot of the design standards will not be applicable.

Torbert asked if there is anything of substance other than the transparency issue. Planning board member Brun Weger said the landscaping plan is stark. There is some room for landscaping to soften the building. There is a planter across the front.

Dave Woods said he cares about how it looks, but more so wants to get the building close to the design standards. He said the applicant should pick a front façade that the 60% can be applied to. They have to understand they cannot have solid doors. The arch has to meet front door design standards for winter and night. There should be a landscape plan. Penstock Road should be shown on the plan and referenced by the Atty. John Doyle letter. There is no lighting on the building but aerial lighting should show up on the plan. The handicapped parking spots have to be shown on the plan. He further said that a lot of years went into the design standards, and this is the first building that they are being applied to.

Motion: Torbert Macdonald said, “I move that we grant preliminary approval to the Ellis Short Sands Park Public Restroom Facility; 16 Ocean Avenue; Map & Lot 0024-0049-A.” Dave Woods seconded the motion. It passed 5-0.

New Business

- **Preparation for joint meeting with Board of Selectmen**

The board will present Cluster when it goes before the Selectmen on Monday, October 19, 2012. Torbert Macdonald said he would be ready to present ADU to the selectmen, being the author of the original ordinance. The original ordinance was intended to be limited to the growth area and limited to additions to houses within houses.

Old Business

Torbert Macdonald had sent out a memo questioning whether the revocation of the approval of the police station and connector road was legal. The Town Planner responded. She had researched *Robert's Rules of Order*. In Section 18-A, it says that conditional approvals that haven't met their conditions within 60 days of the vote for conditional approval can be denied by the board without prejudice. Because it was opened-ended, it was a conditional approval that never got final sign-offs.

Torbert said that we need a legal opinion. We can go to the MMA with this question: is it ever possible for the Planning Board to rescind final approval as voted on? What are the conditions for that?

Adjourn

10:48