

Planning Board
Thursday, September 10, 2015, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum; Appointment of Alternates

Chairman Peter Smith called the meeting to order at 7:05. A quorum was determined with five people voting: Chairman Peter Smith; Vice Chairman Amy Phalon, Esq.; Lew Stowe; Al Cotton; Gordon Eldridge, representing York Beach; and alternates Wayne Boardman and Kathleen Kruger, who were present but did not vote. It was Kathleen's first meeting. Assistant Planner Scott Hastings and Director of Planning Dylan Smith represented staff. Patience Horton took Minutes.

Public Forum

Torbert Macdonald spoke on his own behalf, urging the Board not to allow vinyl siding on the Kearsarge House. Cedar shingles would be appropriate. The siding should be as natural as on the original building. This project sets the precedent for all future new building in the Beach. "This is precedent because it is the first new building that is dropped down to zero and brought back up."

Minutes The August 27, 2015 Minutes were reviewed and changes were requested.

Motion: Al Cotton made the motion to accept the Minutes for August 27, 2015, as amended. Gordon Eldridge seconded the motion. The motion passed 5-0.

Field Changes There were no field changes

Application Reviews and Public Hearings

Bog Road Athletic Field-Phase II Plan, 40 & 50 Bog Road, Map & Lot 0090-0084-X & 0090-A-0084-A. Owner: Town of York. The proposal is an expansion of a previously approved athletic field complex, located on Bog Road. Improvements will include construction of a maintenance building, bleachers, concession building, walking paths, and other athletic field amenities

This meeting was conducted by Lee Jay Feldman, Director of Planning for Southern Maine Planning and Development Commission, instead of Director of Planning Dylan Smith. Town Engineer Steve Bradstreet sat at the planners' table with Lee Jay. This is an amendment to a previously approved application. The DEP permit has been approved. There are no issues with stormwater. The Findings of Fact have been provided. They are in full compliance with the requirements. Traffic is the remaining issue. A letter to the Planning Board from abutting property owner David Gittens encourages the placement of

no-parking signs on both sides of Bog Road. Mr. Gittins also writes that since the Bog Road was paved, the speeds could get dangerous.

Motion: Al Cotton moved to accept the application from Town of York for Phase 2, York Athlete Field, Bog Road, as complete. Amy Phalon seconded. The motion passed 5-0.

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

Lew Stowe agreed with Dave Gittens that there shouldn't be parking allowed on either side of Bog Road. There is a gully on one side.

Director of Parks and Recreation Mike Sullivan said parking lot lines are not marked for everyday practices. They are striped when there are events like Soccer Club, when teams from all over the Seacoast play on the fields. There is a parking attendant then, too. The original parking lot serviced two soccer fields and one baseball field. In Phase 2, parking has doubled and one more field has been added.

Motion: Amy Phalon moved that we approve the application for the Bog Road Athletic Field Phase II Plan, 40 & 50 Bog Road, Map & Lot 0090-0084-X & 0090-A-0084-A, with the condition subsequent that signage prohibiting parking on both sides of the streets be put in place. Gordon Eldridge seconded the motion. There was no discussion. The motion pass 5-0.

The Cliff House Resort and Spa. 592 Shore Road, Map & Lot 0004-0029; Owner RBDD Cliff House Acquisitions, LLC. The site plan revision is to reorganize access to the site, modify and rebuild existing buildings as well as revise the outdoor use areas and landscaping plan on both the ocean and landward side of the development.

York Director of Planning Dylan Smith introduced the application, which was accepted as complete on August 13, 2015. This application previously received Planning Board approval in 2000. There were ordinances and regulations in place related to building height that have changed specifically. Applicant representative Attorney Allyssa Tibbetts requested putting the topic of building height aside until the October 8 Public Hearing.

Project engineer Al Palmer responded to the Planning Staff Memorandum dated August 10, 2015, making the following points.

- The lighting plan has been developed. There will be no increase in lighting.
- The Town engineer, Steve Bradstreet, had reviewed the stormwater management plan and has no comments at this time. Maine DEP has had minor comments, which will be forwarded to Mr. Bradstreet.
- A portion of Cliff Top is within the shoreland setback. It was that way when the project was approved in 2000. They plan to remove the structure and reconstruct in the existing footprint.

- Phase I consists of the renovation of Cliff Scape and Cliff Spa, which will be done over the fall and winter of 2015, and operational for the summer of 2016.
- The foundation work for Cliff Top and Ledges would also be done during the fall and winter of 2015.
- Phase II, Cliff Top and Ledges, will be operational for the summer of 2017.
- The Public Works and the Police Departments have submitted comments to the Board concerning the intersection and entrance from Shore Road.
- Snow will be plowed along the entrance drive. There are potential snow storage site locations on the property, if needed.
- The erosion control plans are being modified based on comments from Dylan Smith and the Ransom Engineering [Steve Bradstreet]. They will also show where onsite stockpiles of any gravel or debris would be.
- Mitigation of heavy cement truck and large construction traffic will involve scheduling truck traffic with Public Works.
- The demolition of Cliff Top will be hauled off-site. DEP requires that no debris will stay on the site.
- The Cliff path has to be shifted two or three feet to meet DEP setbacks to bring it into compliance.
- The refuse storage dumpsters will be near the maintenance building at the center of the site.
- There are 88 parking spaces. Valet parking will be part the services offered to the guests. ADA parking will be the only parking in front of the building. Paved surfaces are being removed, and there is more green space.
- There is an ACU in a lawn area that will be relocated and a sound barrier will be installed.
- An existing tree line between the ledges and the closest abutter to the north will remain. A proposed trail would be cut through there.

Dylan Smith responded that trees that are remaining should be marked to show they are good robust trees.

The Chairman opened the Public Hearing. **Ned Neal an abutter at 107 Bald Head Cliff Road**, said the Cliff House brought in a crane and demonstrated how high the 65 foot of the Ledges will be. He made a picture showing the perspective of the building from his home. The Ledges was represented as a tower.

Mr. Neal said the Ledges building resembles the Embassy Suites at LAX. He contended that Kathy Weir never intended to create the second leg of the Ledges that would be built toward his house. He drew the Board' attention to litigation in front of the Maine Superior Court in 2000, called York vs. Saul. It referred to construction phasing.

Attorney Pat Bedard represented Bob and Alice Abrams of 87 Balk Head Cliff Road. They are also concerned about height. Mr. Bedard also cited the York vs. Saul decision. He questioned the amount of time that is given for each phase. He said that from the

court ruling, after finishing Phase 1, a builder had two years to finish Phase 2. In this case, he said, the gap is 15 years. Certain building permits have expired.

There is a question as to whether or not the applicant has done significant construction. In Phase I, the construction went from 144 units to 166. They stopped after they started. Now they want to go from 166 units to 220 by adding another building. It doesn't appear they've got significant construction since then, he said. "That is a question that hasn't been addressed."

Mr. Bedard continued on behalf of the Abramses. Can this applicant benefit from a permit given to a predecessor? The Cliff House takes the position that, per 18.a, the permit can be transferred. It is possible that the Cliff House does not have a vested right and might have to "start from scratch." "I am going to suggest to you that it is not vested. I think the building permit is a problem, and I question if the applicant has any right to continue with the previous permit." Mr. Bedard also alluded to building height. "Getting the height of the building is critical."

Land Use Consultant Tim DeCoteau represented abutters Ken and Sheila Graylow. "The DEP permit has not expired. The Site Plan may have expired and might be in default. The zoning may have expired. The shoreland permit has expired. There is a two year length for a shoreland permit. The shoreland permit is critical. They want to demolish a building; the ordinance now requires that you move it back."

He said, "In the site plan ordinance under 5.5.5, it basically calls for substantial construction of a site plan or subdivision within 3 years of the date of approval. Grading and earth moving alone shall not constitute substantial construction. Substantial construction shall not be deemed to have taken place until the applicant has constructed the improvements that use 25% of the materials needed for required public improvements. Upon determining that a site plan or subdivision approval has expired, the planning board shall have a notice placed in the registry of deeds to that effect. They need to prove that, in fact, they have spent 25%. It is a question that hasn't been addressed. Per Section 10.7, Phasing the Development, can it accept phases for site plans? This is a site plan, not a subdivision.

Mr. DeCoteau referenced Zoning P. 157, Replacement of Foundation, Section 8.3.11.4.e, "Whenever a new, enlarged, or replacement foundation is constructed under the nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest extent practical as determined by the planning board." He commented, "If the shoreland permit has expired, and I believe it has, there is a section that if it expires after 2 years, they have to comply with this. They cannot replace this in the same location because that permit expired. They have to move it back."

"Expiration of Shoreland Permit 18.2.8.1 issued after May 9, 1992 shall expire one year from the issuance, if substantial start has not been made into the construction or the use

of the property during that period.” He commented, “They didn’t get it done in that period; they’re in default.”

Bob Abrams, 87 Bald Head Cliff Road, said he has not received an applicant’s drawing of the endcap or the width of the proposed Ledges building. That would be a rendering of the drawing Ned Neal presented earlier (“the dogleg”). Mr. Abrams said that Kathy Weir presented the plan in 1999 or 2000. He said she was going to tear the Ledges down. She had drawings for the first leg of the Ledges, not the dogleg. That section wasn’t there. The Cliff Top has 18 rooms on two floors. Now they are proposing six floors. There will be an observation deck on Cliff Top. That is on the 7th floor. It will be open to the public.

Two days prior to this hearing, on September 8, 2015, Mr. Abrams had a conversation with the man operating the crane to demonstrate the Ledges’s height of 64 feet, for the abutters. That man told Mr. Abrams that the building height, plus the added parapet, would go up 85 feet.

Mark Johnson, 93 Bald Head Cliff, was amazed by how much the sketch diagrams of the Ledges look just like the Oakland Airport Marriot, and not the Wentworth by the Sea. This is the largest hotel in York-Cape Neddick, but he wants us to think about what this will do to the town. The tower is going to be seen in Kennebunk. What is the appropriate design sense?

The Chairman closed the **Public Hearing**.

Lew Stowe had listed four concerns. The Kennebunk Water District wants to know what the uses will be for the new hotel. General information is sought about the traffic on Shore Road. Lew would like to see the replies given to the DEP’s 7-page report. The applicant has to address how the Comp Plan and “growth” don’t not meet up.

Motion: Al Cotton moved that we request the Town Attorney to evaluate the legal issues involving the vesting of the 2000 plan. Amy Phalon seconded the motion.

Amendment: Lew Stowe would like the attorney to make an opinion on **Footnote n**. In discussion, Peter Smith explained that **Footnote n** existed on ordinance pages relative to dimension, particularly building heights as they existed in the year 2000. It allowed a calculation relative to building height. It was rescinded in the year 2001 and is no longer appropriate, but it was appropriate then. The amendment was withdrawn. The motion passed 5-0.

Motion: Amy Phalon moved that we continue this application to our next application hearing meeting, which is October 8, 2015. Gordon Eldridge seconded. The motion passed 5-0.

Kearsarge House, 6 Railroad Avenue

Map & Lot 0024-0015, Owner: Elaine and Michael Morgillo. The proposal is to demolish the existing building and build a new mixed-use building.

York Director of Planning Dylan Smith said this application was accepted as complete in August, 2015. Since then, there have been issues about the design elements of the building. The applicant has remedied some of those elements. Dylan said he was unclear about the proposal for lockouts. There is nothing in findings or minutes that talks about lockouts. There is nothing about “lockouts” in the zoning ordinance.

The applicant and the Board could not come to grips for a parking formula. The applicant contended that 41 parking spaces were the amount necessary, with “one space per door.” This led to considerable argument about defining the lockout rooms. Wayne Boardman calculated 57.5 spaces were needed, considering the lockout rooms as hotel/motel rooms.

Dylan spoke about the Letter of the Law, saying, “I’m looking at the letter of the law and what we require and what we define. I have to believe life safety requirements for a lockout or a hotel/motel room would have to be permitted a certain way that would lend this toward a motel/hotel.”

The applicant cited Section 15.1.1.2, that the Planning Board can determine the number of off-street parking spaces required. Al Cotton cited 15.1.1.4, “The planning Board may grant the parking reduction to apply the proposals consistent with York’s comprehensive plan.”

At the end of the discussion, Lew Stowe said that “we” did a study on fractional units and how it was regulated by the State. Condominiums are regulated by the State. Hotel rooms are regulated by the State. We have our requirements, but how they are regulated? He indicated that he would be researching it.

Rick Lounborn said that the applicant was looking for additional parking at York’s Wild Kingdom.

Motion: Gordon Eldridge moved that we extend the meeting to 11:00 P.M. Al Cotton seconded. The motion passed 5-0.

The chairman opened the **Public Hearing**. **Tate Duffy**, has owned the Sands-by-the-Sea-Motel in Short Sands for 14 years. He has 60 units with 67 parking spots. There is a significant shortage of parking in York Beach. It is very difficult to accommodate everyone, even when you have enough parking spots plus a few more. The Chairman **closed the Public Hearing**.

The discussion changed to **Demolition**. Rick Lounborn said that per 5.1.5 and 11.2.5, the Code Officer Amber Harrison cannot give a demolition permit prior to Planning Board

approval. Land clearing, site preparation, or other such pre-construction activities under these regulations without the Board approval will be the violation of the law.

Rick explained that the Board of Selectmen have allowed for the demolition to begin September 21, 2015, and then, after October 19, the building is cleared for construction. Due to the limitation, the applicant is requesting a waiver to 5.1.5 and to 11.2.5, to allow the demolition and preparation of the site before final approval.

Motion: Al Cotton moved that we do a waiver of Sections 5.1.5 and 11.2.5 to allow demolition of the existing building in preparation of site plan construction before final approval. Gordon Eldridge seconded. The motion passed 5-0.

Motion: Al Cotton moved to continue this application review to September 24, 2015. Gordon Eldridge seconded. The motion failed 2-3.

Motion: Al Cotton moved to continue this application review to October 8, 2015. Amy Phalon seconded. In discussion, Amy said October 8 is the same date as the next Cliff House hearing. The motion passed 5-0.

York High School Auditorium. 1 Robert Stevens Drive.

Map & Lot: 0038-0005; Owner: Town of York. Sketch plan review for proposal to demolish the existing auditorium and mixed use room at the York High School and replace with a larger auditorium, lobby, and additional small rooms.

Motion: Amy Phalon moved to place the consideration for the sketch plan for the High School auditorium on the September 24, Planning Board agenda. Lew Stowe seconded. There was no discussion. The motion passed 5-0.

The Findings of Fact

Chairman Peter Smith asked for a motion to authorize the Chair to sign the Findings of Fact for Best Western York Inn, 2 Brickyard Lane, Map & Lot 0059-0022-D. Amy Phalon so moved. Gordon Eldridge seconded. The motion passed 5-0.

Other Business

At the next meeting, there will be a 6:00 meeting with the Board of Selectmen.

Adjourn 11:15