

York Planning Board
Thursday, August 14, 2008, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Tom Manzi opened the meeting and determined the presence of a quorum. Vice Chairman Lew Stowe, Barrie Munro, Glen MacWilliams, and alternate Todd Frederick were also present. Dave Woods was absent. Todd Frederick voted in place of Dave Woods. There were five voting members at the meeting. Town Planner Christine Grimando represented the planning department staff. Patience Horton took minutes. The meeting was televised.

Public Input

Open to the public to address any issue other than the scheduled public hearing.

Joe Lipton read passages from the June 26, 2008 York Planning Board meeting. The subject was parking reductions. The board had allegedly ignored the instructions regarding parking waivers from the BOS and ignored a letter signed by 14 York Beach property owners. The letter requested suspension of parking exemptions or reductions. Joe Lipton thought the request fell on deaf ears. He quoted 15.1.1.4 of the zoning ordinance. He began speaking about an agenda item and was stopped from doing so. He also said the family environment and the historic integrity of York Beach were invisible in the proposed zoning changes Statement of Fact. The Public Input hearing was closed.

Field Changes

Speaking about the **Rite Aid** application, Jim Hanley, of Engineering Alliance, had been before the board during the prior winter seeking a temporary occupancy permit. All the conditions had been met for that permit. Recently, developer Rick Lynch had walked the site with Code Enforcement Officer Tim DeCoteau, and they found three issues wrong with the landscaping. Also, Jim Hanley said, the bond from Ocean Bank is about to expire. Town Planner Christine Grimando said the bank had given a short-term extension (to October 14, 2008) until the items are resolved.

Terrance Parker of Terra Firma Landscape Architects, showed the proposed state of landscaping on the plan. A tree had been moved from a traffic island. It still fit into the requirements for trees located next to parking. Shrubs that had been moved were also still within requirements. In one place, it is necessary to add a tree. Christine Grimando said the location and screening of small retail propane tanks had become an issue. Jim Hanley understood the tanks were to be moved and shielded.

Motion Glen MacWilliams moved to accept the changes as shown on the landscape plan. Todd Frederick seconded the motion, which passed, 5-0.

In a second field change request, Seth Spiller of Architectural Design Builders, told the board about the changes to different grades around the building layout for **Cape Neddick Village**. He pointed out the proposal on a plan drawn by Steve Towne at Oak Point. The

change in grading would allow safer discharge and loading zones for handicapped parking spots. He explained how a five-foot loading area for handicapped vehicles is necessary on one side of the vehicle, but not for both. The grade changes would also apply to better stormwater distribution. He described curbing style and curb profiles for the parking lot. The size of the base contributes toward the curb's capacity to stay in place instead of being easily ripped out by a snowplow. The selected curb shape, called "Cape Cod," is wide at the base and deeply buried.

Seth Spiller discussed landscaping changes for Cape Neddick Village with board members. He asked if there could be adjustments for the locations of trees. Barrie Munro answered that the needs of this southern facade should be considered before eliminating the plantings. He further indicated that the abutting property was residential and needed particular consideration. Glen MacWilliams told Seth Spiller to come back when a landscape architect has proposed a new plan, and that a picture of the area would be helpful. Seth Spiller said that the four proposed trees would not get enough sun. He asked for permission not to plant them. Barrie Munro pointed out that that side of the building had always been a big issue. Barrie Munro asked for more information about the change, and he suggested increasing the amount of understory vegetation. Seth Spiller offered to bring in pictures and discuss the four trees at greater length.

Motion Glen MacWilliams moved to approve Items 1 and 2 of the Cape Neddick Village field changes. They are the proposed curb profile and the design for the handicapped parking spaces. Barrie Munro seconded the motion, which passed, 5-0.

Minutes

Minutes of July 10, 2008, were reviewed. Board members found corrections, which they handed to the recording secretary.

Motion Glen MacWilliams moved to approve the July 10, 2008 minutes, as amended. Barrie Munro seconded the motion, which passed 4-0. Tom Manzi did not vote. He was not present at the meeting.

Public Hearings on Proposed Comp Plan Amendments

CP-1 Policy Section 2: Town of York Goal 1.1: Public Sewer System, and Public Sewer Policy map

Christine Grimando put the proposed Public Sewer Policy Map on the easel so the board and television audience could see it. Three areas comprise the sewer configuration for the Town of York: the Prohibited Area; the Shore Road Service Area; and Priority Service Area. The map shows a proposed Southern Route 1 Service area. It would be carved out the prohibited area to the south of York River and would provide sewer for housing such as King Crest. Since under no circumstances are the sewer lines to cross the York River, any service to this area will come from the Kittery Sewer District.

Christine Grimando showed areas on the map on the west side of U.S. Route 1, including Whippoorwill subdivision, where Torbert McDonald had described as unsuitable for development. It should not be included in any future sewer development plan. The basis for this was wetlands and ledge.

The **public hearing** was opened and closed. No one came forward to speak. Glen MacWilliams said some sewer in the Shore Road area is dependent on the Ogunquit Sewer District and should still be allowable. Christine Grimando said the concept would cause a change in language that that might not be possible at the current stage of the amendment.

Motion Glen MacWilliams moved to move the Public Sewer System and Public Sewer Policy Map Amendment on to the ballot. Barrie Munro seconded the motion, which passed, 5-0.

CP-2 Policy Section 3: Inconsistencies in Future Land Use Areas

The westward expansion of York Beach village center was discussed. Currently there is a small commercial district in that area. The extension of the expanded zone would include part of the Oscar Plotkin land. Town Planner Christine Grimando had written proposed language for the Comp Plan. Its adaptation by the townsfolk would enable the expansion. Chairman Tom Manzi read part of the York Beach Village Center section of the Comp Plan. The redevelopment of places like the Ocean House, the Union Bluff, and the Woods buildings are excellent examples of excellent refurbishing of York Beach. Further changes of the Comp Plan can bring greater improvements, said Tom Manzi.

Barrie Munro discussed past plans for the expansion of the village center, for example, the York Beach Village Expansion Zone. There was public resistance to this proposal and, as a result, the Board considered changing the existing boundaries of the proposed York Beach Village Business Center to exclude potentially controversial residential areas. A mixed use Transition Zone could be considered in the future. This current expansion proposal is in contradiction to the Board's most recent position. Glen MacWilliams said the expansion of York Beach and BUS-3 is up for reevaluation. Barrie Munro said the village does not have to be expanded. There would be concern for whether or not the Village Center's standards would be applicable to an expansion of the zone.

The **public hearing** was opened and closed. No one came forward to speak. Glen MacWilliams said York Planning Board has struggled with the location of expansion of York Beach for some time. The question is where the board really wants it to be. It has to be designed to fit in with York Beach Village. The board can talk about potential, but what Oscar Plotkin has done really shows what potential is. According to the current zoning, his possibilities do not fit in with York Beach zoning. The board needs to design new criteria and make zoning changes.

Barrie Munro said we don't need the guidance of the Comp Plan. One can expand into Plotkin's area if it makes sense to do so. It is important to add to that the board wants

new criteria on which decisions can be based. That includes Design Criteria to maintain the character and quality of the Beach. Design criteria should be a motivation. Residents must follow the standards. Glen MacWilliams suggested leaving the design standards out at this time.

Barrie Munro talked about the York Beach Subcommittee, which has had four meetings. He said the committee is comprised of good, very intelligent, well informed, and motivated people. None of the members have had a part in the approval of the existing zoning proposal. They are getting familiar with the criteria on which design review standards can be proposed. Assuming the public approves the change in zoning, appropriate design criteria will enable the development of the village to be what the community thinks it should be. Christine Grimando replied that it is not urgent to grapple with that complication, and the board should first deal with the expansion issue.

Motion Glen MacWilliams moved to defer further action on sending the Comprehensive Plan Amendment forward. Barrie Munro seconded the motion, which passed, 5-0.

Application Reviews and Public Hearings

Bayberry LP/Walgreens Pharmacy. 401 U.S. Route 1. Map & Lot 0053-0002-A. Preliminary review of a proposed Walgreens pharmacy and additional commercial space.

Dave Latulippe of the Richmond Company works jointly with Bayberry LP in the development of this project. There are 14,000 proposed square feet of retail pharmacy plus a bank and a restaurant on the same campus. The property is accessed off Routes 1 and 91. He described the cross connection with Cottage Place next door, allowing access for those cars to the traffic light.

The wetlands are the substantive issue. Soil Scientist Mike Cuomo has recently concluded a report about these wetlands. Two wetland areas on the property will be mitigated with a wetpond, which will improve sediment, erosion, and quality control. Storm Tech will oversee the maintenance requirement for the wetpond, and it will submit the required reports to the Town of York.

Al Palmer of Merrill Palmer had recently met with Public Works Director Dean Lessard. Al Palmer said the applicant has agreed to put funds together to pay for future maintenance of critical down-stream drainage swales. These funds will help make maintenance available for certain areas around the Bayberry land that have not been maintained in the past. The use of those the funds is at the discretion of the York Planning Board and the Town of York. The height of the walls of the wetpond had been discussed, and Al Palmer looked at different options for increasing the capacity of the pond by making the walls higher. The challenge would be to make the system capacity 25% more capable than was planned before. He described the route water takes crossing the Walgreens/Bayberry property. From the abutting farm stand next door, the runoff takes a circuitous route, eventually entering a swale. Barrie Munro asked if diverting this water to the cul-

de-sac drainage ditch would decrease water-runoff through the Stock property. Al Palmer explained that improvements do address what is coming from the side of the farm stand, and the benefit would be in directing the water away from Stock's yard.

Dave Latulippe said minor changes would be made to the design so the **lighting photometrics** would meet the ordinance. At an earlier meeting, there was a request from the public hearing to put a **chain link fence** around the pond, and that has been added to the plan.

Mike Lasso of Lasso Architects showed an updated elevation of a new, low set of windows on the north side, designed in response to planning board comments from an earlier meeting. The materials, brick, siding, and coloration would not change from the previous version. Christine Grimando said the detailing is consistent with the neighborhood. Barrie Munro said the south-facing facade should now be broken up. Lew Stowe said the ordinance change calls for New England character, and after looking at Walgreens designs on line, he saw Walgreens designs do not fit New England character. Mike Lasso said his is not a Walgreens design. Lew Stowe replied this Walgreens it is not designed for York. Dave Latulippe said this building designed by Mike Lasso is very different than Walgreens standard. This has a covered sidewalk. The dormers break up the otherwise plain wall. Glen MacWilliams pointed out further pedestrian friendliness. The roof above the sidewalks makes the building more welcoming. He asked the others, "Are we the purveyors of taste, or will we ask the architect to guide us?" Barrie Munro said he wished to see how this fits in with the buildings across Route 1 at the corner.

The group discussed the detailing of the south wall, which will not be visible from Route 1. Christine Grimando said people would still interact on that side of the building. Todd Frederick said the only interference to the south, linear wall of brick is the overhead of the drive-up window. He suggested putting windows along that side of the building. Mike Lasso, the Architect, agreed to do so. Glen MacWilliams looked at the elevation for the rear of the building. It has a couple of screened dumpsters. He wants to see more than the back doors.

Landscape Architect Terrance Parker discussed the site improvements around the redesigned drive isles. He named existing and added trees, showing them on the plan. They are designed to meet the requirements of side and rear yards. Barrie Munro suggested that the planting proposed for the rear of the parking area would act as understory planting to buffer the houses on Wood Cock Lane where the pine trees are losing their bottom foliage. Terrance Parker explained plantings to obscure utilities located in front of the middle restaurant building. Plants will absorb the pollution from the first flush of rain and off the parking lot.

Chairman Tom Manzi opened the **public hearing**. A butter **Walter Ziobrowski**, repeated his plea of previous public hearings that his property be protected from excessive drainage and light and noise proliferation

Mike Micciche, a nearby neighbor, asked if anyone had looked into the older permits allowing the fill for the Bayberry land. He thought something illegal had been done and that the illegal fill was causing problems. Glen MacWilliams said there isn't a clear indication of what happened. Some of the rock that was "stored" there was spread out, and there wasn't a permit for that. Tom Manzi said the post-engineering data indicates there would be less water leaving the property than there currently is.

Mike Micciche talked about the traffic change since York Village Business Center was built. It has become a nightmare for people turning left off Orchard Farm Road. He asked for a new traffic study, especially with the addition of the new drug store, restaurant, and bank. Barrie Munro told Mike Micciche to organize his neighbors to write the town asking for the traffic study, because the planning board has nothing to do with the MDOT's plans for US Route One.

Lynwood Wilson, 11 Woodcock Lane, requested aeration of the wet pond to prevent stagnant water and mosquitoes. A noise restriction must be enforced so no delivery trucks can come before 7 A.M. or after 9 P.M. He currently wakes up to hear dumpsters emptied at 6 A.M. at Cottage Place.

Sheila McGovern-Reynolds is concerned about water issues. In the past 3-½ weeks, a film of grease has formed on the water in her back yard. She attributes the grease to the Microtel and the Rite Aid across the street. She cannot mow her lawn. She is bothered by the Rite Aid sign already and doesn't want added problem from Walgreens. She is concerned about safety for the children in the neighborhood. With no one else to speak, the chairman closed the public hearing.

Tom Manzi said the large issue concerns wetlands. The proposed wetland fill does meet 11.3.2 of the zoning ordinance, because the proposed fill provides vehicular access to the property. But there are fill areas that don't necessarily have to happen, and the board can act on that. Dave Latulippe said the fill compensation (mitigation) is beyond any harm that may be caused by the small amount of wetland fill proposed. The fill area includes the drive aisle that goes around the perimeter of the building. Its placement keeps the building forward toward Route 1.

Tom Manzi asked Dave Latulippe to read from Page 8 of *Wetland Creation at Bayberry Marketplace*, dated July 2008 and written by Soil Scientist Michael Cuomo. Lew Stowe asked to see a post-development, cross-section diagram of the property. He also asked for a diagram showing the abutters level compared to the Bayberry property. He wants to see the areas of the wetland flow, the area of property that will go into the pond.

Al Palmer showed the location of water flow toward Walter Ziobrowski's property and then pointed out how it that would change after modification. Glen MacWilliams asked if the wetland fill crossing actually meets the requirement of the ordinance, because a piece of the wetland is actually in the parking lot and landscape buffer. He asked if it could be changed. Dave Latulippe gave the definition of the road and travel way. He showed the section in the drive aisle. Barrie Munro said per 8.3.4.2, allows mitigation, if

the area is four acres or greater. Why, therefore, wouldn't the Board accept mitigation in this instance given the small size of the fill proposed?

Attorney Tom Boyle stood, representing the applicant. The issue is whether or not fill is permitted on the driveway or the roadway, under the ordinance. The fill allows a road for access around the building. Section 11.3.2 allows wetland mitigation under that ordinance. That ordinance does not say wetland impacts are not allowed. This project will be done according to 11.4.2. This wetland impact is so small, it falls below state and federal regulations in terms of preservation, enhancement, and compensation.

As for the previous permits, Tom Boyle continued, the permits have been researched through the Pierce Atwood law firm. It was determined that permitting was not an issue. Glen MacWilliams said he agreed with Tom Boyle about the fill. The proposal meets the criteria of York's ordinance with regard to the crossing of the wetland and the driveway, including the landscaped part and the drive aisle. Glen MacWilliams concluded, because of the mitigation that is proposed, 11.3.2 "goes away." Board members concurred.

The board talked about downstream maintenance requirements. Barrie Munro described the drainage situation on Flint Rock Drive during the brief, but heavy, downpour of the evening of July 31. He wanted to understand whether or not the existing culvert system and the terminus rebuilt a year-or-so ago, were adequate. Dave Latulippe answered DPW had reviewed the proposal. Glen MacWilliams said 12-inch culvers have to be increased to 15-inches to meet the current standard required in the ordinance. Property owners Stock and Ziobrowski should get fair treatment and agreements, Glen MacWilliams added. Dave Latulippe said the applicant is willing to do what is fair. Barrie Munro reminded the board and the applicant that the voters would have to agree to accept the proposed funds and to permit their use as proposed. The people have to accept use of the money by vote. Applicant Attorney Tom Boyle reiterated that he wanted to make sure that any further requests of the Planning Board are based on ordinance.

The infrastructure in that area has clearly failed, said Glen MacWilliams. Given the proposed plan, there would be less water runoff than currently. Dave Latulippe said the applicant has a DEP stormwater permit verifying the storm water will be less. Glen MacWilliams said the applicant has some responsibility for what happens to the abutters' property. Tom Manzi said Ron Gillespie's report indicates the fill has to be removed. Dave Latulippe replied that the excavation will dig down through the fill. He described Ron Gillespie's "squish factor," wherein water is squeezed out when the void spaces are reduced. Ron Gillespie estimated the squish factor would produce between 10 and 12 gallons of water for the property, and that's all.

Dave Latulippe returned to the offsite, maintenance requirements. The maintenance plan goes through the entire drainage system. The DEP has the ability to remove the permit in five years, should annual inspections prove the system is failing. Al Palmer said the DEP is looking at water quality impacts. They are looking at the 1-inch storms. The wetpond and storage are for the 1-inch storm.

Sidewalks were discussed. Christine Grimando brought up sidewalks, as well as their location with respect to the curb cuts. On the plan, sidewalks are not on the applicant property, but rather on the right-of-way. She would like to see them brought in to full compliance. Lew Stowe asked about pedestrian circulation and asked for a plan showing what the pedestrian movement would be.

Christine Grimando had discussed off-site downstream maintenance with Public Works Director Dean Lessard, who had responded favorably. He felt there was an issue with the Route 91/Route 1 intersection, where signs were getting run over. He suggested having Walgreens/Bayberry install light at that place, as it seemed to constitute public improvements. Glen MacWilliams said he didn't think it had anything to do with this application. The Board and applicant concurred.

More general topics were discussed. Tom Manzi said the illumination from traffic lights must not shine on Walter Ziobrowski's property. Todd Frederick added insect mitigation and pick-up hours for waste to the list of unfinished topics. Lew Stowe asked if the building meets 75% net buildable. Christine Grimando answered that they do. Glen MacWilliams added the greasy film on the McGovern-Reynolds property, adding that the code enforcement office should look into it. He added the requirements of the Impact Statement per 6.3.5 (a)-(n) must be met. He asked about setbacks: 20-foot buffer on the business side, and a 30-foot buffer on the residential side. Dave Latulippe said per the Conservation Commission, the drainage swale should be 20-feet on each side to be maintained in its present state. Lew Stowe said the traffic study is based on 2005 development. The study was done before the new buildings were there. Things are different now. There should be a new traffic study. Dave Latulippe said the traffic study would be updated. For light screening, Glen MacWilliams asked the CEO to look at the buffers. Al Parker said he would provide more plantings. The fence has already been agreed to.

As for insects in the pond, the pond is about 5 feet deep, explained Al Palmer. There is a flow through the pond. After 1-inch of rainfall, water is pushed through the deep pond. Mosquitoes like shallow, stagnant water, not water that is as deep as that proposed for the pond. Aeration will defeat the water quality objective by bringing sediment off the bottom of the pond. The fence, Al Palmer continued, has to be there because the area residential. It is a Walgreen requirement intended to satisfy liability insurance requirements. Todd Frederick asked if the fence could be in the pond as apposed to the top of the berm to lessen the visual impairment. Al Palmer said he would look into it. The board and applicant agreed that trash pick-up between 7 A.M and 9 P.M. is appropriate. Glen MacWilliams said it should be a plan note. The trash compactor was discussed. The mechanism for the compactor is in the building, and the shoot sends trash outside into the dumpsters. Christine Grimando said she should have a deadline date for the high intensity soil survey.

Dave Latulippe asked to reconvene with the board in two months, possibly a littler sooner. At that time he hoped to look for preliminary and final approval. The Board concurred that it was possible to obtain both approvals assuming all requirements have been met.

New Business

Preference Votes for the following November 2008 Ordinance Amendments

2	Zoning	Expansion of Nonconforming Structures
3	Zoning	Board of Design Review
4	Zoning	Stormwater Run-off requirements
5	Zoning	Building and Site Design Requirements
6	Zoning	York Beach Zoning
7	Zoning	Overall Shoreland Zoning Amendments
8	Zoning	Shoreland Additional Resource Protection Area
9	Zoning	Inland Waterfowl and Wading Bird Habitat
10	Zoning	Coastal Bluffs

Christine Grimando asked the board if they had any questions about the changes to the ordinance amendments. The most substantial, 14.2.1.2, would change the average height of structures to 125 feet to determine adjacency. The Board of Design Review just pertains to the York Harbor area. There are few other changes, like 5.4.11, allowing the planning board to minimize the number of units on lots. She went over the different uses in the shoreland amendment. Glen MacWilliams discussed how the board should go about showing their preference, and came up with the following method:

Motion Glen MacWilliams moved to request the November 2008 Ordinance Amendments go forward. Todd Frederick seconded the motion, which passed, 5-0.

Old Business

The board signed the Atlantic House Findings of Fact and Revised Plan Note Mylar.

Other business/Adjourn

There was no other business.

The meeting adjourned at 11:45.