

York Planning Board
Thursday, December 8, 2011, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Lew Stowe conducted the meeting. A quorum was determined with five people voting: Todd Frederick, Tom Manzi, Torbert Macdonald, Lew Stowe, and Dave Woods. Alternate Tom Prince was present. Dave Glazebrook was absent. Town Planner Christine Grimando represented the York Planning Department. Patience Horton took minutes.

Public Input

There was no Public Input.

Field Changes

There were no field changes

Minutes

The November 10, 2011, minutes were reviewed, and board members requested corrections.

Motion: Tom Manzi moved to accept the November 10, 2011 as amended. Todd Frederick seconded the motion, which passed, 5-0.

Sannella Lot Line Adjustment: 9 & 13 Loop Road, 45 Ossipee Rd. 0012-0006-T, 0012-0007-T, 0012-0011-T. Revision to a previously approved subdivision plan, specifically a proposal to relocate an existing ROW and combine two lots into one.

Dave Woods said that Glen Farrell has does ongoing, daily work for him, but has no financial interest or conflict of interest in his project. The board found no conflict. Glenn Farrell spoke for the applicant. He said this is a very simple proposal joining two existing lots. The applicants have owned their two lots for a long time, owned by parents before them. Currently one lot has a house, and the other lot is vacant. With this approval, the applicants's lots will be joined and have one house. It reduces density. The abutters are in favor of it.

There is a private right of way, which is being moved back by this, away from the ocean. Ownership of the right of way will be divided. Each abutter will own what is in front of their own lot. This does not create a nonconforming lot. The Findings of Fact and the Mylars have been prepared for signatures tonight.

Motion: Todd Frederick moved to approve the lot line adjustment for Sannella Lot Line Adjustment, 9 & 13 Loop Road, 45 Ossipee Road. Dave Woods seconded the motion, which passed, 5-0.

Long Sands Plaza Change of Non-Conforming Use: 127 Long Sands Rd.; Map & Lot 0044-0046; Application for Change of Non-Conforming use to establish new medical offices at the former site of the American Legion.

Katie Watts said the medical office space would be located where one-half of the American Legion hall was. That is about 3,000 feet of former function space. Christine Grimando said that uses that are current or recently approved uses should not have to be reapplied for. It is redundant that certain nonconforming uses that are compatible should have a change of nonconforming use permit every time a slot opens. The permit would say office space, or medical offices, of bank, or hair salon that has been approved. Christine Grimando said she doesn't see a problem with adding retail under 2500 square feet. Smaller shops can be reviewed by the CEO. It gives the applicant the ability to get a lease signed and go right to the CEO.

Medical offices were taken off the list that includes office space, (small) restaurants, banks, and services businesses. Those offices where doctors see patients should have public hearings. Christine Grimando said that this list is not finite and the applicant can come to the board and propose other uses that can go without review.

Motion: Torbert Macdonald moved we approve the Long Sands Plaza Change of Non-conforming use, to establish new medical offices at the former site of the American Legion. I propose that we made of list of office space, restaurants with seating under 75 persons, banks, medical office, and retail, to comprise a category not subject to Planning Board approval when non-conforming uses change.

Amendment: Dave Woods asked to insert the words "small retail" to describe locations that are 2500 square feet or less. Torbert Macdonald accepted the amendment. Todd Frederick seconded the motion.

Vote: The motion passed, 5-0.

Nicole-Parlin Revised Subdivision Plan:

55/51/47/45/43/41/39/31/29/27/25/23/21//19/17 /15/13/11/9/7/5/3/1 Nicole Road; 17/24 Church Street Ext., 4/6/8/10/12/14/16 /18/20/22 /24 /26/28 /30/32 Parlin Road; Map & Lot 0028-0124-M /O/Y/J/L, 0028-0123-F /J, 0027-1120-B-, 0027-0093- /AA/B/D/C/D/E/F/G/I/J/K/L/N/I/O/P/Q/R/W /T/U/V /W/ X/Y/Z, 0072-0117-B/C/D, 0027-0094-R, 0027-1008-J. Revision to a previously approved subdivision plan, specifically drainage improvements to an existing drainage easement.

Dave Woods said that engineer JoAnn Fryer is working for him, but has no financial interest or conflict of interest in this project. The board found no conflict. Community Development director Steve Burns said 16 pairs of property owners have come to the planning board this evening to determine the grade for a better drainage system on the Nubble. Each of those 16 pairs of property owners shares a drainage way that runs between their lots. A set of stormwater pipes was installed in about 1972, but the drainage prob-

lem at the top is causing flooding at the bottom. The original drainage plans are simple and have arrows that point downhill, depicting the flow, but the water isn't even flowing downhill, and there is the problem.

The residents have not done anything purposefully wrong, he continued. Violation notices were issued. Some homeowners went to appeals, which upheld the violation notice. The residents were given two years to make a plan. It's very difficult for sixteen sets of neighbors, 32 homes, to be coordinated. They have 2 years to get the old pipe out. It is five feet into each property. Steve Burns said he has issued two-dozen violation notices and might have to issue more. Everybody has to work together. There are some holdouts.

JoAnn Fryer of CLD Engineers showed a map locating pairs of owners who want culverts, pipes, or no participation at all. Some haven't decided which way to go. She showed areas that pond on Nicole Street and Church Street Ext. She showed a profile of the ditch (surface drainage). Pairs of property owners who want surface drainage instead of the pipe would tie their sump pump into it. The drainage will come down under Church Street Ext., either through a well-maintained ditch or pipe that will be appropriate for the flow. The purpose of their appearance before the planning board is to have help understanding what that last stage should be, said Steve Burns.

The minimum slope is .6%. There will be plan notes regarding the drainage pipes. The depth of the open ditch will be 2 ½ feet. Some will be deeper because of the topography. Lot 69 will have 4-½ feet depth. For 70 and 71, it will be about 4 feet deep. After a major storm event, you won't see flowing water freezing, said JoAnn Fryer.

It has not been decided if fences have to go in. It is private property. It is up to the owners. Dave Woods said the board has the responsibility to say that the system has to be piped for safety purposes. Pipe is cheap. Christine Grimando said it is agreed that having the whole thing piped would be better, but the applicants don't have to all agree that they should have it piped. It is a voluntary application. If they just remove the original pipe, they will be in compliance. We have more say now than we could have if they went into their 1970 compliance.

JoAnn Fryer said costs like inspections and pavement will bring the individual costs to \$3K, or \$4K, in the case of Lot 32. Torbert Macdonald said that some of the ditches would be six feet deep. There would be liability of drowning.

Lew Stowe opened the Public Hearing. **Richard O'Brien** said there are three people on his road who don't want to be involved, one blatantly so. It is a monetary issue. That group of dissenters feels that they are not on board now, but they will see what happens. Richard O'Brien said that the people who are in favor of the piped system will do whatever the engineer says is the best thing. He said he is compassionate about the people who are against it, and they might change.

Frank Michienzi, present with his son, Matt, of 17 Church Street Ext., said that when it rains and the water comes across the stream, it backs up into his yard. If you allow additional water to flow, it will go into two 24" pipes. That will cause the water to increase. He said he has cleaned it out to allow the water to flow, but his backyard floods from a normal rainstorm. He said he was not contacted about the new drainage plan that has been going on for two years. Christine Grimando said there is backing up from the Villager motel. The Villager is not in compliance.

Leroy Park of 22 Parliament has been the leader of the effort. Not contacting Frank Michienzi was an oversight. During Phase 1, the Michienzi property was not included. Leroy Park said he has an open ditch behind his house. His cottage has been raised on piles by 3 or 3 ½ feet. Hydrostatic pressure coming from the top of the hill caused the soil to be saturated and the cottage shifted. That will change when the water table lowers.

Judy Michienzi said two 24" pipes were proposed for their property. They went to talk to the engineer, who said that the problem was from the Villager. She doesn't think her property has been included in the engineering plan.

Steve Burns read a letter to the owners of the Villager, sent this day, December 8, 2011. It is owned by two trusts. In his letter, he asked to speak with them about the culvert behind the Village that is impeding water flow. He included an aerial view and a copy of the plan recorded with the registry of deeds. He will instruct the owner to stabilize the ditch and make it flow. It is causing backup for all these folks, he said.

Steve Burns said there is an existing pipe under Long Beach Ave. that runs under two condo developments just downstream from this development. It comes out next to the Cutty Sark. A pipe is being installed along Long Beach that will end one problem with the flooding. The grade of the Michienzi property will match the elevation of the other properties. Torbert Macdonald said there has to be an onsite review.

Bob Brookhouse, 14 Parlin, wants to make sure everything's clear about whether the group has to face the town attorney or not. If the planning board decides against the plan and grade, the homeowners have to dig a ditch and leave it there. In that case, our timeline has to be extended, or we will be out of compliance.

Cosmos DiBiase showed pictures of the flooding on his property. He has a sixteen-inch pipe. He had a pro come in a blow out the pipe, costing thousands. He would have gone farther downstream, but people wouldn't let him do that. He will take the pipe out. He said this has been going on for four years.

Richard O'Brien spoke again. There is a momentum, and it is critical to keep it going. There are deep ditches we would love to remove by Memorial Day. Kids are not running around now because of the season. We want to get bids. Frank Michienzi said he wants to make sure his place is not going to flood after all the other stuff is done.

Butch Clark said he has been collecting money for the project. He is keeping the ball rolling. It is a slow process, and he has about \$11K. He wants approval this evening. He wants to write a nice December newsletter about planning board approval.

Torbert Macdonald asked the applicants that if the pipe is approved, would others fall into line and do that? Richard O'Brien said there are some who don't want it. Dave Woods said people could still have an open ditch if they will keep with the standards. The people with the ditch will have a hard time keeping in compliance.

Motion: Dave Woods moved that we approve the revision to a previously approved subdivision plan, and establish a set gradient through the established drainage easement as described in the August 16, 2011 plan. Todd Frederick seconded the motion.

Amendment: Torbert Macdonald said that none of this should take place until the town completes the down stream drainage work and that the culvert issues are solved with the Villager.

Vote: The motion passed, 4-1 with Tom Manzi against.

Bayberry Ridge/Styles Lane, Spring Pond Estates Amendment: Orin Lane, 254 Ridge Road, and 17 Styles Lane; Map & Lots 0094-0084-R, 0032-0003, 0094-0084-K. Revision to three previously approved plans; Application for lot line change to join two parcels and request for density reallocation.

Co-chair Todd Frederick conducted this hearing. Christine Grimando explained that the application has two parts.

Shoreland zoning and the base zone split the property, and the density levels are different. When the buildings were built, one was built in the wrong place, over the Shoreland line. Walter Woods wants to build what he was approved for. Here, he asks for two properties to be joined with a thin strip, creating a "flag lot." The combined properties will allow the density to be met, and the unbuilt buildings built. However, the sub-regulations do not allow flag lots, but per Article 12, there can be a waiver if one is justified.

Walter Woods had asked the planning board to vote on the plan note issue, said Christine Grimando, but the matter has not been included in the application.

The land that is being annexed is a conservation easement created during a prior approval. The second issue, whether the addition of this land can grant density, contradicts what a conservation easement is. Take them in order, Christine Grimando instructed the planning board. If the flag lot fails, the second is denied.

At the last meeting, November 10, 2011, four board members came up with a tie vote, a failed vote. Todd Frederick and Torbert Macdonald voted to deny the flag lot. Dave Woods and Dave Glazebrook voted in favor of the flag lot. Tom Manzi, Tom Prince, and Lew Stowe were absent.

Applicant Walter Woods of the York Building and Design Center read a presentation. He asked for reconsideration of a plan note that was placed on a prior approval. He said he has found no place in any ordinance where it says that the conservation land cannot be used for density points. He has not found any ordinance stating that conservation land cannot be turned around.

A plan note was created by the former planning board allowing him to preserve this land use toward density from the conservation land for future development, he said. This was documented with a note on the final plan, he said. It was the town attorney's opinion that the future development could not be used because there was no ordinance provision that the planning board could allow it. That is because the two lots were not connected, he said.

Chairman Todd Frederick opened the **public hearing**.

Joe Amend, 9 Bayberry Ridge, said that Walter Woods's failure to complete the development as planned has caused a deleterious effect on the home values. The mistake has caused "maybe" 100 square feet, a tiny area. It affects the income as a homeowners' association. There is no logical reason why this shouldn't be approved, he said.

Chris Giotopoulos, a retired dentist, said the board should practice common sense. The development should be finished. Though there was an inadvertent transgression, he said, the lost land could be mitigated in some other way. When you turn into Orin lane, there are two vacant lots.

Joyce Amend said she is on the landscape committee. The error of five feet caused the area to be blighted by two empty lots. I am five feet tall, she said, and that is the amount of the error. You are punishing all of us.

Two letters had been received as email, one from **Jose Sands**, who wrote he is not in favor of this application. Another was from **Paul Collins**, who said he would not like the board to make an exception to the rule. The **Public Hearing** was closed.

There was board discussion about the setback distances in the Shoreland, which does not pertain to this matter, said Christine Grimando. Five feet encroaching into the Shoreland zone triggers two density units, she said.

Tom Manzi said that if he looks at the square footage of developed land, he gets 316,000 square feet. If he takes the square footage of the buildings with the square footage of the land, there is an error of 240 square feet. The magnitude of the error is an error of 1/1,000.

Christine Grimando said the error is not weighed in terms of square footage. It is triggered by density units.

Torbert Macdonald said that if this planning board had granted the waiver, we would be in violation. We don't have the ability to waive it. We cannot make decisions about waivers that will lead us into such situations. We can't count conservation land as developable land. He said he hopes to make a motion that will allow Walter Woods to go to the Board of Appeals. An error was made on the part of the applicant, and the planning board cannot resolve this as a matter of the humilities or aesthetics.

Christine Grimando said there was an attorney opinion sent earlier in the process. It was on the validity of the note. It was decided that the planning board was out of its jurisdiction to make that note.

Christine Grimando said there was a previous decision on this issue to find out if Walter Woods could get the conservation land without creating the flag lot. Lew Stowe said the ordinance does not say that you cannot take conservation land for density. Christine Grimando said it does not say you cannot rob a bank. These are rules. Torbert Macdonald said conservation land cannot be developable. That is why it's called conservation land. It is a forsaking of development rights.

Dave Woods said to Walter Woods that when you got the approval from a prior planning board, you made the size of the conservation easement greater by than it needed it to be. Through an attorney, the Town made Plan Note 30. Would you have designated this as conservation land? No, said Walter Woods. The land was not connected to this parcel of land. Dave Woods asked Christine Grimando if Walter Woods has the ability to come to the town and re-designate the land. She said that the town attorney had said the original board went outside its scope.

Walter Woods said the error in Plan Note 30 should be the third item on this application, so it will be available for the Board of Appeals. If he has to go the board, he would like to go there with the three contexts. He said that the Town Planner, Christine Grimando, has refused to put that item on the application several times.

Motion: Torbert Macdonald moved we deny the creation of the flag lot. The Chair, Todd Frederick, seconded the motion for discussion.

In discussion, Torbert Macdonald said that if the board goes ahead and creates a flag lot, not only is it violating the site plan and subdivision ordinances without creating a waiver to do it, it is also setting a precedence that any time anybody has a problem, they don't go to the board of appeals, they go to the planning board. The flag lot will create density that the planning board has no right to do.

Lew Stowe said that flag lots are not the problem. It's the manner in which they're made. There are flag lots, he said. There is one on Beech Ridge Road.

Vote: The motion failed as a tie, 2-2-1. Todd Frederick and Torbert voting for the motion, and Dave Woods and Lew Stowe voting against. Tom Manzi abstained from voting.

Motion: Dave Woods made a motion that we waive 12.0, which will allow the creation of a flag lot for the Bay Berry Spring Pond Estates.

There was no second. Todd Frederick stated it was the same motion that had just been voted on.

Motion: Tom Manzi moved that based on the submittal of the detailed mathematics about the calculation of density, my motion is that the density requirements are met based on the reliability of the tolerance of measurements in large numbers, since the discrepancy is only one thousandth of a percent. Lew Stowe seconded the motion. The motion passed, 3-2, with Tom Manzi, Lew Stowe, and Dave Woods in favor, and Todd Frederick and Torbert Macdonald opposed.

Torbert Macdonald left the room.

Tom Manzi said the numbers were accurate within an acceptable tolerance. Christine Grimando said the accuracy of stamped, licensed engineers was being questioned, and the board had just voted on the fact that those numbers were not accurate.

The Findings of Fact will be edited to reflect the meeting, she said. They will be sent to the board for the next meeting, December 22, 2011. Walter Woods said, for the record that he had requested Plan Note 30 to be acted on by the Town Planner several times.

Tom Prince was asked to vote in place of Torbert Macdonald.

New Business

There was no New Business

Old Business

Motion: Todd Frederick moved to approve the Findings of Fact for the Town Dock Bait Shed Conditional Use Permit, dated November 15, 2011. Tom Prince seconded the motion, which passed, 5-0.

Motion: Todd Frederick moved to approve the Findings of Fact for the Sannella Lot Line Adjustment, 9 & 13 Loop Road, 45 Ossipee Road. Dave Woods seconded the motion, which passed, 5-0.

The meeting adjourned at 11:00.