

**TOWN OF YORK PLANNING BOARD
THURSDAY, AUGUST 11, 2005, 7:00 PM
YORK PUBLIC LIBRARY**

Chairman Barrie Munro began the meeting at 7:00. All the board members were present: Glenn Farrell, Barrie Munro, Richard Smith, Glen MacWilliams, Tom Manzi, and alternates Lee Corbin and Michelle Moody. Town Planner Steve Burns represented staff. Patience Horton took minutes. The chairman began by introducing the members of the board and the staff.

Presentation on Proposed Home Occupation Amendment

The Planning Board will make a 15-minute presentation to the public to explain the proposed Zoning amendment dealing with home occupations.

Barrie Munro read a summary of the proposed Home Occupation Ordinance Amendment, which would condense uses in the GEN zones, eliminates undesirable uses, and limit uses, sizes, and characteristics in the different zones. Richard Smith then described allowable Class 3 businesses. Town Planner Steve Burns pointed out the Class 3 locations, west and east of Route 95 and toward the north and south boundaries of the town, in blue on the map. He described Class 3 businesses as “large scale,” including carpenters and landscapers where workers might leave cars in screened parking areas and go off to work on other properties. Michelle Moody described how classes could be moved up one step in Classes 1 and 2, to Classes 2 and 3, if the 4-acre minimum lot size requirement is met. Tom Manzi then described Class 2 occupations with smaller space and fewer employees. Steve Burns showed Class 2 in red on the map. Glen MacWilliams then described Class 1, in green, with the most restrictive uses, only allowing 1 employee, one extra parking space, and no outdoor storage. Barrie Munro commented that Class 1 activity is permitted in all areas. Chairman Barrie Munro asked for questions from the audience.

Brian McGann spoke about his desire to build a barn for a boat-building enterprise and school in the Maritime Zone in York Harbor. He said that his plan and the zoning ordinances are in conflict, and he would have to have a variance for the setback. Michelle Moody said that Home Occupation is not the vehicle for the Maritime Zone. Steve Burns said that §8.3.17 of Shoreland Zoning indicates the Maritime Zone is located from Sewell’s Bridge downstream, rather than from the Route 103 bridge downstream, as Brian McGann had stated. Furthermore, the zone is not the issue. The problem for the boat building school would be the setbacks.

Nancy Lambert of Cape Neddick asked for a definition of “outdoor activity” in the ordinance. She was concerned about hazardous materials and toxic waste. Steve Burns said that §7.4.5, General Standards, impacts limits, and that toxic wastes are prohibited. Commercial levels of chemicals cannot be used, only household strength. Nancy Lambert was also concerned about daycare homes, which could provide care for up to 12 children or adults. The possibility of having everyone dropped off or picked up at the same

time would cause a safety problem, if parking were limited to the street. She also said that all home occupation settings should undergo inspection by Code Enforcement, when required. Glen MacWilliams said that Code Enforcement already has carte blanche for every site in town. Nancy Lambert also said that refuse generated by the business should be disposed of privately and not with the household trash.

Public Input

Open to the public to address any issue other than issues scheduled for public hearings on this agenda.

Brett Horr, Town of York Planning Department GIS Manager, put an etched glass award on the podium and announced that on behalf of the Planning Department, he had recently gone to San Diego to receive the Environmental Systems Research Institute's Special Achievements in GIS Award, 150 of which are given out internationally every year. Fellow recipients had included NBC, the CIA, and NOAA. There had been a 1 in 10,000 chance of winning the award. Brett Horr said that it was the Board's award. Barrie Munro said that Brett Horr and Steve Burns's creativity and good common sense made winning possible, and the Board and the Town are in their debt. Steve Burns said that the only credit he should get was for hiring Brett Horr.

Minutes

Review and approval of draft minutes

The July 14, 2005, Minutes were reviewed. Michelle Moody discovered a syntax error on Page 6 and asked that it be repaired.

Motion Glen MacWilliams moved to approve the July 14, 2005, Minutes as amended. Glenn Farrell seconded the motion, which passed, 5-0.

Applications

J&B LLC. 764 U.S. Route One. Map 94/Lot 16V. Public Hearing. Request for conceptual discussion regarding a Route One Use Permit to construct a 4-unit commercial building.

James McGarvey introduced himself and Mr. Cushing as the applicants. They hope to build a New England-y looking commercial building across from Wild Willies, but had not yet formalized their ideas. Barrie Munro opened the Public Hearing.

Faith Hunter lives at 2 Jennifer Lane near the proposed building. Her concern is how traffic will be dealt with. There are five children living on her lane. They, plus others, load the school bus from the parking lot next to the proposed building. She wants traffic be addressed completely.

Nancy Lambert was also concerned about traffic. She asked if the Planning Board has any clout in making Route 1 safer, with it being a State road. Barrie Munro answered that traffic is one of the most important things the Board deals with. Generally, if an applicant has satisfied Maine Department of Transportation's boiler plate for any section of the state road, the planning board can sometimes ask for something more. Steve Burns said that the stretch of road being discussed is accident-prone. It is classified as a mobility zone, and to Maine DOT, moving cars through there is the highest priority. Glenn Farrell said that the State would not allow speed to be reduced on Route 1.

Faith Hunter asked if there is anything the town can do during the school year so the kids can get off the bus more safely. She said she hears cars barrel right past them, and she hears horns honk. Steve Burns suggested contacting the Selectmen and the Police. Michelle Moody suggested talking to Mary Andrews and David Ott or State Senators. Barrie Munro added that sometimes the planning board can provide for interconnecting curb cuts between two properties, so there are not so many turn-offs. He closed the Public Hearing.

Pointing to the plan, project engineer Mike Livingston explained that the White Pine Subdivision is directly behind the applicants' lot. He pointed out an abutting residential lot to the north on Route 1 and an antique store to the south. He said that DOT had already determined the sight distances for the property, though Mike Livingston personally had not checked them. He showed a plan with test pits. He pointed out areas that will have to be cut through toward the back of the lot, and he showed the probably necessary retaining wall. The building would have a circular traffic pattern. There would be four customer parking spaces in front and garage doors for unloading and more parking in the back. There would be a rough tree line around the site.

Tom Manzi asked why the building would be situated so far toward the sound end of the property. Mike Livingston answered it would accommodate the grade and elevation change. Grading would most likely be necessary in the back. Barrie Munro asked for a cross section of the property. Michelle Moody suggested shifting the building more to the north so that the setback from the subdivision would not have to be waived. Glen MacWilliams said that the lot probably needs extensive grading, which would not preserve the natural features of the lot. That goes against the ordinance. Tom Manzi asked, "Hypothetically, if you didn't have TNT and bulldozers, how would you build on this lot?" Mike Livingston answered, "That would be very difficult."

Richard Smith read from §1.8 of the deed where it states that the property has to maintain a 50-foot setback. Mike Livingston agreed that if it is in the deed, it will be observed. He had not noticed that point. Barrie Munro said that the Board had indicated that they would not likely grant the waiver. Steve Burns asked how much grading is too much. He cited Site Plan Regulations §7.3.1, the preservation of natural features, which gives the board some latitude. Michelle Moody said that it is worth a site visit. Glenn Farrell said that it is a tough piece of property, and that the applicant has to be allowed to grade, or the board is promoting only flat lots. Glen MacWilliams suggested building at a lower

elevation and putting the parking lot at the higher elevation. Commenting that it would have an unconventional aesthetic quality, Tom Manzi said that with some engineering creativity, the building could be put on a hill. Lee Corbin said that her concern would then be over a 12-foot slope that causes cars to slide down to Route 1 in winter. Michelle Moody said that it would be wonderful if the two businesses, this and the antique store to the south, could talk to each other and have one entrance for both.

Steve Burns suggested a site walk before the September meeting. Glenn Farrell asked the applicant to stake out the proposed corners of the building and the parking lot before the walk.

Anchorage Motel, 269 Long Beach Ave, Map 36/Lot 96A. Public Hearing. Discuss status of application. Preliminary Approval was granted on November 4, 2004. Staff review indicates the applicant failed to submit complete application materials for Final Review within the required 6-month timeframe. The Board must make a decision about application completeness, the timeline, and how to proceed.

Commenting on the large number of audience members, Chairman Barrie Munro said that there was a question why so many people were not notified at the last meeting. Steve Burns said that the GIS is used to identify and notify abutters. For the last meeting, people within 100-feet of the site were notified, as required. This time, far more people, those within 200-feet, were notified.

Attorney Peggy McGehee introduced applicant Ray Ramsey and Bill Anderson of Anderson Livingston Engineers. She first addressed the issue of the Mitchell Road, the dirt road right-of-way along the edge of the Anchorage property, saying that access to it will remain as it is. She showed on the plan how the Anchorage Inn will be accessed as it always has been, and the proposed building will use the same driveway as the hotel. Mitchell Road will not change. Bill Anderson said that the vegetation around it might be pruned back allowing for a 12-foot width to accommodate emergency vehicles, but otherwise, it will remain a pedestrian access to the ocean. Chairman Barrie Munro opened the Public Hearing.

Mike Walters, of 39 Mitchell Road, said this is the last property before the ROW. He said his wife had found a site plan showing Mitchell Road being blocked off temporarily. He referred to documents 96b and 96a. In 96b, there was reference to a 12-ft ROW easement. In 96a, there was reference to a 20-ft ROW easement. Barrie Munro took note of this information. Mike Walters said that the edge of the new building is 17.2 feet from the edge of the easement, and that the right-of-way was being disregarded. He also said that he has neighbored the Anchorage Hotel for 21 years. At one point, he asked Ray Ramsey if he, Mike Walters, could manage the roadway of the ROW, and Ray Ramsay said yes. Mike Walters said that the ROW impacts the value of his property and access to the beach. He wants it to continue as it is. Peggy McGehee said that she does not believe there is any structure in the ROW, but she will check.

Abutter Suzanne Lucacio said that traffic should not access Mitchell Road from the new units. On the plan, Peggy McGehee showed where cars will come into the Anchorage driveway in and proceed to the new building. People might get confused and accidentally drive onto Mitchell Road, but there will be signs, she said.

Sydney Stirk, 3 Jeremiah Lane, said that there are 23 homes with the aggregate value of millions of dollars in the housing project, including his family's home. Any attempt to prevent their use of the ROW would be of great concern. It would reduce property values and put the condo group in hardship. The 12-foot right-of-way has been in existence and has been on their deeds for years. Mitchell Road has been neglected for years. It is grown over, and the brush and debris has taken over. He asked that letters about the outcome notify the interested people. He thanked Town Planner Steve Burns for the courtesy of sharing some of his time that morning. He introduced his son, who spoke next.

Michael Stirk read a letter he had e-mailed to Steve Burns late in the day, so Steve Burns had not received it. It said that Michael Stirk felt he was not properly notified about the November, 2004 hearing. He asked that the Planning Board take no further action until everyone affected by the ROW has been notified. The letter said that he would like permanent maintenance of the ROW to be part of the plan. The ROW should be protected and maintained to its present state during construction. His neighborhood group does not want to waive the right to make further comment. He said that everyone with land rights to the ROW should have been notified.

Nicholas Strater, lawyer for the abutting Long Beach Motor Inn, said that in 1987, a Superior Court order upheld the position of York Code Enforcement Office regarding a height restriction of 40 inches on vegetation at the intersection of Mitchell Road and Long Beach Avenue. The vegetation is being maintained at 6 feet, instead. He said that the Board should decline any consideration of application until the applicant complies with the court order.

Sue Swietek asked if there was any intention of running cars on the ROW. She asked if Mitchell Road would be accessible from the new building's parking lot. Her children walk on the ROW to the bus until the snow is too high and prevents it. Steve Burns said that there is no connection from the parking lot to Mitchell Road.

Eileen Daily said that she lives right in back of the applicant property. She did not receive notice for the hearing in November, 2004. Steve Burns explained that the subject lot is a separate house lot, and not part of the Anchorage Hotel lot. As the house lot, it did not include her until the abutter notification was enlarged to 200 feet. Eileen Daily asked if the ROW would be paved. Barrie Munro answered that it would not. She emphasized that she wants it to stay a dirt road. She asked if there would be a gate or any impediment. Steve Burns answered that during construction, a black, plastic silt fence will block construction vehicles. Peggy McGehee said that there would be other accommodations, so that a silt fence will not be necessary, and the ROW can still be accessed. The Chairman closed the Public Hearing.

The conversation shifted to the applicant's failure to submit complete application materials within the 6-month period. Barrie Munro said that though the paper work did not satisfy the letter of the law, §5.4.2 of the regulations shows flexibility in the board's ability to entertain and grant an extension of time. Peggy McGehee expressed appreciation for the possibility. She said applicant Ray Ramsey has worked on the project since 2002, and in December 2004, he had worked on traffic issues, drainage, and surveying. On April 28, 2005, Ray Ramsey met with Steve Burns about the drainage system, and he felt that they had met the terms of the final plan, except for certification of the plans. Michelle Moody then read Site Plan and Subdivision Review §5.4.2, which requires that any request for an extension must be made in writing. She asked if the board wishes to uphold the regulations. Barrie Munro said that the board has a lot of work ahead, and if it can move the work along without placing the board in legal jeopardy, they should do so. There was no point in jeopardizing the applicant. Furthermore, the board is trying to deal with the integrity of the original review. He asked for a consensus from the Board. Glenn Farrell said that they had made the progress that was required, and he suggested reviewing it as Preliminary and Final together, next time they come in. Peggy McGehee said that she thought completion had been met in April. Steve Burns said that the transmittal package was dated April 28, and that he now tells people that it takes him two months to get to a plan to see if it is complete.

Barrie Munro continued polling for the consensus. Glen MacWilliams said that the board has to comply with certain circumstances, and having the package "sit on the floor" of Steve Burns's office for several months is a special circumstance. The board's job is to do what is best for the applicant. Tom Manzi said that hearing the preliminary and final approvals together makes sense. Lee Corbin agreed. She compared the speed of daily life for the board and applicants to a record player that used to run at 33 RPM and now goes at 78. Barrie Munro asked how much time is needed to prepare. Peggy McGehee would be ready in September. Steve Burns said he needed the completed application in 17 days before September 17. Barrie Munro said that the applicant has to be letter perfect.

Motion Glen MacWilliams moved that the board accept the provision for granting a waiver of Preliminary Approval, extending the time so the application can move forward. Tom Manzi seconded the motion, which passed, 5-0.

Steve Burns brought up the 1987 court order. Glen MacWilliams said that he hoped the applicant has the ability to make that situation right.

Michelle Moody said that Planning couldn't research deeds to decide who has access to the right-of-way. Steve Burns said that the Anchorage Hotel, the Ramsey property, and the Long Beach Motor Inn were the only 100-foot abutters to the applicant property. So, he will have all properties within 200 feet notified, as he had for that night's hearing.

Continued Ethics Discussion

The Board may enter into executive session pursuant to MRSA Title 1 §405.6.A.

Chairman Barrie Munro began the proceedings by reading his document, “York Oil Company Site Compliance Alleged Improper Conduct by a Board Member, Alleged Failure of the Board to honor State and Municipal Law(s).” He also read a letter from Glenn Farrell requesting that the proceedings be conducted in open session. He explained that the issue concerned whether or not Glenn Farrell had engaged in a conflict of interest, and whether there had been a breach in Planning Board policy in the circumstances leading to the issuance of the occupancy permit to York Oil Company.

Barrie Munro polled board members about whether the first four York Oil Company hearings involved a conflict of interest. Michelle Moody said that the board may not have been following the selectmen’s ethics policies, but it did not have ethics policies back then. During those hearings, no one on the planning board brought up ethics, made motions about conflicts, or followed the town’s guidelines. Everybody was at fault. Richard Smith said that everybody directly asked Glenn Farrell questions, making everyone guilty. Lee Corbin said that the board was not guilty, but unaware of any code of ethics. No ethics code was given to her when she joined the board. Glenn Farrell is a builder, Lee Corbin said. He stepped down, and he answered in the capacity of the builder. On the site visit, he answered questions because they were directed at him. There was no violation, whatsoever. Tom Manzi said that he had not been present at the June meetings, but, there was a conflict of interest and the avoidance of the appearance of a conflict of interest. As in football, there was a fumble. A recused member got involved. The Board was invited in on it. As in football, it had the appearance of being a broken play. Glen MacWilliams said that most members of the board were unaware that there was a policy about recusal, and they can hardly be faulted. However, the Chairman and the recused person are at fault, if they knew.

There was talk about making a motion. Michelle Moody said that the board did not have to make a motion. They could, if they wished, or they could take no action. Glen MacWilliams said that the board could ignore the policies that have been established, or look at whether or not it actually happened. Did the Board actually allow the recused member to speak? He referred again to there being two members who knew about the policy about recusal. Barrie Munro replied that the policy about recusal came out of a brief passage in some 1994 Planning Board Minutes, and does not constitute a heinous crime.

Alternative Planning Board member, Michelle Moody, suggested making the following motion. Upon hearing the motion, Tom Manzi said “so moved.’ In that Glenn Farrell had recused himself from these proceedings, Chairman Barrie Munro assigned alternate Lee Corbin to vote in Glenn Farrell’s place.

Motion Tom Manzi moved that Glenn Farrell represented that he was the builder and was working for the applicant, that he recused himself, and the Planning Board was

aware of that. Based on the fact that no member of the board brought up the ethics policy, the Planning Board took no vote on his conflict of interest, and as a result, no action should be taken for those actions. Richard Smith seconded the motion.

In discussion, Glen MacWilliams said that the decision has to be in the best interest of the public. The board does not have any right to relieve any criteria of its rules of order, Charter, State law, or town ordinances. He said that if the board does not hold up policies, no one will. Barrie Munro said that there is nothing that would indicate that the board does not abide by those policies.

Vote The motion passed, 4-1, with Barrie Munro, Richard Smith, Tom Manzi, and Lee Corbin voting in favor, and Glen MacWilliams voting against.

The subject moved on to the site visit. Barrie Munro polled the members who had been present. Richard Smith recalled that the handicapped sign was ready to be mounted. There was riprap. The pavement was being done, and there were a couple of trees. He did not know the tree type. Lee Corbin also recalled that the handicapped sign had not yet been mounted, the paving was just about completed, but not striped, and two Birch trees were on the site being substituted because the trees on the plan were not available. The riprap provided by the builder was on the adjacent property. Glen MacWilliams read his Findings of Fact from the site review. They included landscaping, trees, the retaining wall, and the handicapped sign. He said the Findings were objectively written without prejudice. Comments just made, referring to those of Richard Smith and Lee Corbin, contained prejudice about whether or not it was a problem, he said.

Barrie Munro said that Code Enforcement Officer Tom James came the next day and issued an occupancy permit. Tom Manzi asked if Tom James had influence from Glenn Farrell, which would be a violation of the recusal. Michelle Moody said that if Glenn Farrell talks to the code enforcement officer outside of the public meeting, it would not be a violation. The site walk had been a public meeting, because there were three members there. Glenn Farrell's discussion with Tom James is not the Board's purview, she said.

Glenn Farrell said that Tom James did not issue the permit, Mark Badger did. The inspection was by Tom James. Steve Burns said that Tom James had signed the permit. He added that to staff, there is no confusion as to whether Glenn Farrell is a Planning Board member. Personally, Steve Burns said, he himself has to "jump through hoops" because Glenn Farrell is a Planning Board member. He suggested bringing Tom James and Mark Badger in before the board to ask them if they were influenced.

Glen MacWilliams said that during the first meeting where this matter was discussed, Glenn Farrell had said that he might have said to the officer that there was no problem. He asked Glenn Farrell, yes or no, whether he had said that to Tom James. Glen MacWilliams said that there was a statement made that influenced Code Enforcement to issue the occupancy permit. If that happened, it is a violation of the Charter.

Michelle Moody said that she thought they were talking about the site review. The board needs to make a motion if the site review was properly conducted, she said. The board cannot deal with what happened the following day. Glenn Farrell said that he was there as the builder. Michelle Moody said that she thought it should be determined whether or not Glenn Farrell's presence as the builder at the site review constituted a conflict of interest or not. Was everyone aware that he was there as a representative of the applicant? Should any action be taken? she asked.

Glen MacWilliams said that he had documented what they saw in the Findings. There is an appearance of impropriety, he said, and it appears that the board has decided they are not going to do anything about it. Barrie Munro stated that the Planning Board has to either agree with Glen MacWilliams, or tell him that it disagrees.

Motion Lee Corbin moved that the Planning Board accept the fact that there was a site visit, and that Findings of Fact were made by Glen MacWilliams. Glenn Farrell was there as a builder and not a member of the Planning Board. She proposed that the Planning Board moves forward. Richard Smith seconded the motion.

In discussion, Glen MacWilliams said that the motion was absurd because Glenn Farrell is a member of the Board who has separated himself from the Board. If members can do that by wearing different hat, then the board is in trouble. The responsibility is to the public. Tom Manzi said that he would not put himself in Glenn Farrell's position as builder, but rather send in a "first lieutenant" in cases like this.

Vote The motion passed, 4-1, with Barrie Munro, Richard Smith, Tom Manzi, and Lee Corbin in favor, and Glen MacWilliams opposed.

Michelle Moody reiterated that there could not be any action over what happened between Glenn Farrell and the code enforcement officer because no one on the board was present to know what happened.

Glen MacWilliams said that the board could ask Glenn Farrell what he had said at a prior meeting about what happened with the code officer. Lee Corbin said that it would be improper, in that the code enforcement officer was not present, and the testimony would be hearsay, one-sided, and inappropriate.

Lee Corbin left because of a time restraint. The Chairman asked Michelle Moody to vote in Glenn Farrell's place, if necessary. Barrie Munro said that the meeting could be tabled in order to invite the code enforcement officer to a meeting. Michelle Moody said that if it has to do with a town employee, then it should be a selectmen issue. It is not appropriate at the board's level. Richard Smith said that he did not think there should be a motion to continue the matter.

Glen MacWilliams said that at a previous meeting, Glenn Farrell had indicated that he had said to Tom James there were no problems with the property. He wanted to know if that had been a willfully false statement to the code enforcement officer.

Barrie Munro said that he did not want the selectmen to get involved. He wanted the Planning Board to handle its own matters. Michelle Moody said that it was a code enforcement officer's responsibility to make decisions. Any one person should not influence them. "Does it mean that no member of this board can go into Code Enforcement on even anything that has nothing to do with the board?" Steve Burns said he wanted to give a quick staff-perspective. He said staff knows when board members are the applicants. They know what capacity he or she is in, and there is no intent to deceive.

Glen MacWilliams said that whether or not the provisions of the charter have been met by the oath of office, he hoped everyone could understand that they are the rules and have been violated.

Motion Glen MacWilliams moved to send the issue to the Board of Selectmen for their opinion.

Barrie Munro said that nothing should be given to the Board of Selectmen without establishing what decision they have to make.

Amendment Glen MacWilliams amended the Motion: with regard to the issues noted in the July 25 letter to Barrie Munro with regard to Glenn Farrell's alleged statement, a motion is made to send the letter to the Board of Selectmen as part of the matter of discussion as to whether Glen Farrell made a false statement.

No one seconded the motion.

Motion Michelle Moody moved to take no further action in the matter. Richard Smith seconded the motion, which passed, 4-1. Barrie Munro, Richard Smith, Tom Manzi, and Michelle Moody voted in favor, and Glen MacWilliams was opposed.

Site Visit Policy

Not discussed at this time.

Other Business/Adjourn

Steve Burns went over a myriad of upcoming Planning Board Activities, including a joint Ordinance Amendment meeting with the Board of Selectmen, and appeals from Walter Woods and Seacoast Donuts. The meeting adjourned at 11:00.