

TOWN OF YORK PLANNING BOARD
THURSDAY, AUGUST 12, 2004, 7:00 PM
YORK PUBLIC LIBRARY

SITE VISIT

The Meadows at Highland Farm Subdivision. Meet at the existing house at 6:00 PM. Open to the public.

MEETING

Chairman Barrie Munro started the meeting at 7:09 by introducing the panel. All Board members, Dave Marshall, Glenn Farrell, Glen MacWilliams, Richard Smith, and alternates Tom Manzi and Lee Corbin were in attendance. Steve Burns represented the Planning Office. Patience Horton took Minutes. The meeting was televised. Seven motions were made.

Public Input

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

No one came forward.

Minutes

Review and approve of draft minutes of July 8, 2004.

Glen MacWilliams moved to accept the July 8, 2004, minutes as written. Glenn Farrell seconded the motion, which passed, 5-0.

Applications

1) Theresa Hayward, 17 Abbey Road, Map 97/Lots 2M & 2N. Public Hearing. Application to amend an approved subdivision plan to consolidate two lots into one.

The chairman opened and closed the Public Hearing, as no one came forward to speak. Applicant Theresa Hayward deferred the explanation to Steve Burns, who said that board approval was necessary because the subdivision plan, made in 1985, must change to consolidate the lots. Glen MacWilliams noted that the address, rather than lot numbers, had been used to identify the property location on the survey, which had to be corrected.

Motion Glenn Farrell moved to accept the application as complete. Glen MacWilliams seconded the motion, which passed, 5-0.

Motion Glenn Farrell moved to approve the application with the accompanying Findings of Fact, once the lot numbering has been corrected. Glen MacWilliams seconded the motion, which passed, 5-0.

2) Cape Neddick Village. 1132 U.S. Route One. Map 22/Lots 13A & 13C. Public Hearing. Conceptual review of multi-unit mixed-use development.

Applicant Seth Spiller handed board members updated documents about traffic and septic studies. He proposed to create four buildings on his property, including a coffee shop/restaurant, business offices, and upstairs residences. Chairman Barrie Munro opened and closed the Public Hearing, as no one came forward. Barrie Munro said that different zones converge on the property, each involving different requirements.

Steve Burns described the complicated zoning situation with Route 1, GEN-2, and Shoreland calling for complicated mixed-use business and residential requirements with diversified setbacks in different parts of the property. He intends to chart out the many requirements to understand their organization. Floodplain elevation has to be determined by a surveyor.

Seth Spiller said he had discussed traffic with Bill Bray. Glenn Farrell asked about the curb cut easement from the Spiller Property next door. Glen MacWilliams said he liked the village concept. Seth Spiller said that the preliminary septic design worked out well, that there will be lots of grass and paths. Dave Marshall questioned if there will be that much green and commented that it appeared maximum lot coverage was being practiced. Tom Manzi noted that Route 1 traffic flow condenses in front of the property from 4 to 2 lanes going north. He asked if an easement for creating a second egress was possible. Glen MacWilliams recommended that a landscape architect come onto the project early. Lee Corbin asked how the septic field could go under an impervious surface (parking lot). Seth Spiller explained how the chambered system with a pre-treatment tank that decomposes waste largely eliminates the likelihood of system failure. Glenn Farrell asked that the maintenance plan for the septic system be documented in the plan in the likelihood that another owner will have the property some day. Barrie Munro explained that the board would want details about the scale, mass, appearance, building design, color, landscaping, drainage, and vehicular and pedestrian safety amenities at the next review.

Seth Spiller acknowledged that he also understood from Steve Burns that unapproved setback decisions at the time of the November ballot, when the voters have a chance to change setbacks distances, will be subject to the new, harsher rules. Seth Spiller said he hoped to attain approval before then.

3) Stones Throw Condos. 6 McLay Lane. Map 23/Lot 105A. Public Hearing. Application for minor site plan approval to convert 3 seasonal cottages to condominium ownership.

Applicant Adam Ford said that his engineer was not present. He asked if the hearing should be postponed. After Board discussion, it was decided that the matter was simple, and the hearing could go forward.

Barrie Munro opened the Public Hearing. Abutter Mike Roberge said that the sewer line to the applicant property runs across his property, which is fine, but so do aerial power, telephone, and cable lines, which is not fine, as there does not seem to be a formal easement allowing it. Glenn Farrell said that adding lines without an easement is unusual for CMP, and the surveyor will have to find the easement. Applicant Adam Ford said that he was not sure when lines additional to initial power lines were added or how the authority to do so was made. He said that the sewer line was old and clay and substandard. Barrie Munro thought that parking was also an issue the board would have to decide is acceptable or not. Perhaps consultation with the police captain was necessary. Dave Marshall and Glenn Farrell were concerned about cars driving across and parking on grass, as well as emergency vehicle access.

Glen MacWilliams said that unknowns made the Board unable to make a decision about the conversion. He said that the application should be tabled. The sewer line, the electrical wire, and the parking have to be reviewed by authorities. Keith O'Connor, the former owner of the property since 1979, said it the overhead power lines were there when he bought the houses. Glenn Farrell asked Adam Ford for a letter from the police saying that the existing parking plan is satisfactory. Proof that there is a right to run the power over Mike Roberge's land has to be submitted. Steve Burns also asked for a sign-off from the fire chief.

Motion Glen MacWilliams moved to table the application to September 9, 2004. Dave Marshall seconded the motion, which passed, 5-0.

4) The Meadows at Highland Farm Subdivision. 301 Cider Hill Road. Map 90/Lots 29, 29A, 29B, 29C, 29D & 29E. Public Hearing. Application for Preliminary Review of a 13-lot subdivision to replace the existing approval for the Highland Farm Subdivision.

Steve Wood introduced project attorney Peggy McGehee, project engineer, Stephen Haight, and Mike Cuomo. Steve Wood described his history with the property. He has continued communication with the heads of the Police, Fire, Water, and Planning Departments. His is cooperative with the York Conservation Trust and the Mt. Agamenticus-to-the-Sea Incentive. On the property he has seen black bear, deer, bobcats, and many other animals.

Mike Cuomo spoke on the limitations caused by wetlands and soil restrictions on the locations and sizes of the 13-clustered houses. In the second cluster, clay and silt deposits cause slow permeability and lateral runoff. Richard Smith asked if that would cause leech fields to bleed out. Mike Cuomo answered that a consultant has been retained to answer the question. The leech field will be moved if it does not meet State standards.

Peggy McGehee spoke of commonly held open space located on the "Estate Lot" (the 33-acre lot on the southeastern quadrant of the property). She differentiated the parcel of open space located there from the commonly owned 12.8 acres, called "the Meadow" located in the south western quadrant, where the clustered homes will be. The Meadow

will remain open in perpetuity and can be used for grazing, agriculture, or haying. Its upkeep would be maintained by a restrictive easement held by the Homeowners Association. Citing Zoning Article 7.6.4, she said that a portion of open space can be used for common use, and part of the open space will be privately held, that which is part of the Estate Lot. The open space on the private lot will remain private, she said. Applicant Steve Wood explained how the overall acreage is divided into four parcels, with three owned by LLCs, and the fourth, the 33-acre Estate Lot, owned privately by Steve Wood and his wife.

Steve Haight, of Appledore Engineering, reviewed subjects pursued with different agencies and municipal departments, including hydrant locations, site distance vegetation clearing, water studies, and easement creation. Waste treatment systems by Septitech, with preliminary and secondary waste treatment, were being considered. Steve Wood said that he would personally be designing and building the houses to insure consistency and long-term value. Steve Haight said that the houses will fit the ½ acre envelopes aesthetically, and each will have direct access to open space. He described the curvilinear driveway as “pleasing.” The commitment to never clear-cut will be protected in the plan. He also said that Steve Wood was in the process of accommodating abutter Selwyn Silverblatt’s easement concerns.

Barrie Munro opened the Public Hearing. David Tibbetts, York Conservation Commission, had gone on the site walk held before the evening’s meeting. Making grassland in the common Meadow would be nice if it were cut twice a year and not overly cut. Birds, especially bobolinks, would thrive in the setting. He warned of invasive species of plants he saw, including purple loosestrife. He warned about ATV-type off-road vehicles ripping up the land, possibly owned by the new homeowners to the property. He recommended that any easement should be supervised by a third-party, such as the Land Trust. Storm runoff was a concern.

Selwyn Silverblatt said that his right-of-way concerns were almost resolved. He wished to maintain the ROW until he has town water coming onto his own property. He was concerned about clearing vegetation on Route 91 for site distances. The growth acts as a buffer against traffic noise. He learned that only a limited amount of roadway grass would be cleared. He said he liked bobolinks and wanted to see that long meadow grass.

Motion Glenn Farrell moved, and Richard Smith seconded, to accept the submission as complete for the purpose of review.

In discussion, Glen MacWilliams said that, since it was not clear how the road fits into the existing conditions, he found the plan confusing without having the contours of the topo superimposed on the plan. He found the provided information incomplete, in that plans provided for the previous submittal did not seem to interface with the current one. He also asked that Steve Burns coordinate ownership deeds with the application.

Vote Barrie Munro called the vote confirming that the application constituted a satisfactory accounting for the purpose of review. The motion passed, 5-0.

Discussion returned to the issue of the right to access open space, also called the Conservation Easement. Citing Articles 18.10.1 and 18.10.2 of the York Zoning Ordinance for clusters, Barrie Munro called for the best possible plan for topography and vegetation. Glenn Farrell said that the proposed splintered ownership and of the 16.5 acres of open space was a key issue. Lee Corbin said that, as proposed, the homeowners' association would both own the meadow and control the restricted covenant over the uses by holding the easement over the estate land, thereby controlling the activity on that land. The association, as well as the Town, can stop the activities on the estate's open space. Richard Smith stated strongly that the open space on the estate lot should be available to the homeowners. Attorney Dee McGehee said that part of the conservation easement could be private. Dave Marshall said that the most important part was in keeping the land inaccessible to future development. Glenn Farrell agreed with Richard Smith and said that all of the open space is contiguous and will have one set of criteria making it available for recreation or public use. Steve Burns offered to further research the alternatives. Barrie Munro said that at the next meeting with Highland Farm, the board will decide on it.

Lot sizes and the overall plan were discussed. Richard Smith did not like the northern cluster because of a shared driveway between two houses and small lot sizes. Dave Marshall approved of the configuration based on the generous consideration of open space. Calling the design "sophisticated," Glen MacWilliams appreciated the developer's conformity to and appreciation for building on the good soil, keeping respect for the preservation of open space. Richard Smith asked for a report on how much land on each lot is buildable. Barrie Munro was also interested in that.

The roadway into the property was discussed. Barrie Munro and engineer Stephen Haight talked about the road construction, the cut, the landscaping, Town standards, the buffer, and the necessary DEP permit for control of storm water. Richard Smith asked for an idea of what the undeveloped, northern half of the land might look like. Barrie Munro agreed that the future development would affect the size of the road being built. If waiver requests are necessary for the size of the road, rationale for those considerations must be made, he explained. By-laws and covenants for the subdivision will eventually be required for review, he reminded the applicant.

Motion Barrie Munro asked for a motion representing the Board's concurrence as for the overall effectiveness of the layout of the plan. Glen MacWilliams so moved, with Glenn Farrell seconding, and all members voted in concurrence, 5-0.

Because of Article 18.101, questions about the building envelopes, and incomplete decisions about the covenants for open space, tabling the application until September was suggested. Other matters were left unresolved, including a Bill Bray letter inquiring about the long driveway becoming a town road, the nature of the turnaround at the end of that long driveway (a paved circle, or a circle with a vegetated island in the middle?), conversation of the pond, and drainage issues.

Chairman Barrie Munro tabled the application until September by consensus of the Board

5) Bayberry Ridge at Spring Pond Estates. 14 Styles Lane. Map 94/Lot 84R. Public Hearing. Application for Preliminary Review of a 30-unit elderly congregate housing subdivision.

Steve Burns prefaced the hearing by stating that, if the developer is in default on other projects, the developer cannot move forward. He recommended tabling the item for a month, allowing the Planning Board to decide on the default issue. He handed out information from applicant's attorney.

Barrie Munro explaining the default in terms of Sections 11.2.6, 11.2.6.7, and 11.2.6.9, which charge the Planning Board with disallowing applicant Walter Woods from go forward with the current, proposed project, if the default is based on reasons of hazard to public health and safety. The Chairman opened the Public Hearing.

Russell Baker, President of the Spring Pond Estate Homeowners Association came forward and called for the default based on the Code Enforcement Office's citation of 103 code violations in the construction of Spring Ponds Phase 1. Some firewalls were not put in place between units. There are electrical, drainage, and roofing problems. Some electrical problems have been life threatening and have cost thousands to remedy. Another house was literally taken apart to have mildew removed, also at great, personal expense. Twenty houses have undergone roof re-construction, and 9 still leak—some worse than ever. Litigation through the Town and other attorneys has begun against the builder. For these reasons, Russell Baker asked that the application be turned down.

Applicant Walter Woods acknowledged the issues and said he takes responsibility for them. However, a different company he now uses is in good standing, and that company, York Building Design Center, which is separate for accounting and legal purposes, and is not Spring Pond Development, LLC, should be allowed to do build the elderly congregate housing subdivision.

Motion Barrie Munro stated he would like a motion by the Board to request an inquiry to be submitted to the Town Attorney asking whether or not the violations identified constitute a default as defined in 11.2.6, 11.2.7, and 11.2.9. Glen MacWilliams so moved. Glenn Farrell seconded.

In discussion, Steve Burns said that the builder changed from using Spring Pond Development to the York Building Design Center on the project, only about a month ago. Lee Corbin said she wished to know the legal relationship between the two entities. It would be critical in deciding the default, as they seem to be under one umbrella. It could be a legal way to get around the default issue.

Vote The Chairman called the vote, which was unanimous, 5-0.

Motion Glen MacWilliams moved to table the application to the next month. Richard Smith seconded the motion, which passed, 5-0.

Other Business/Adjourn

Steve Burns said that at the newest Duane Jellison development on Route One, engineering and landscape plan changes made aspects of the building turn out differently than planned. Dramatic changes caused by soil and tree removal were supposed to be mitigated with an attractive building and a good landscape plan. The Board needs to protect the integrity of plan notes. A CEO who inspects a project can make no substantive changes, but field changes are always made. Perhaps an applicant might have to make restitution over unauthorized changes.

The Board discussed making a policy about how minor changes can be reviewed and voted on at Planning Board meetings, making a condition that there will be no changes without Planning Board approval. Glen MacWilliams disagreed with the idea. If the CEO does not bring a change to the Board's attention, the Board doesn't know it, and the change occurs, anyway. The effort needs to be in the form of making sure the ordinances are enforced. Steve Burns said that John Treat, not Code Enforcement, is involved on the level of such changes. When John Treat says, "go ahead," to a field change, the Planning Board is out of the loop. Glen MacWilliams said that the Planning Board is digging a hole it cannot get out of.

In other business, Steve Burns said that the Town of Wells is being challenged in court over a statute change in their Growth ordinance: something to watch. He handed out a Notice about the 2nd facilitated Workforce Housing Taskforce Meeting, August 23. Also, a Joint Public Hearing (Selectmen/Planning) workshop is scheduled for August 31, regarding the November 2005 referendum. Barrie Munro said that previous communication should be made between the two groups.

The meeting was adjourned at 11:00.