

**TOWN OF YORK PLANNING BOARD  
THURSDAY, FEBRUARY 24, 2004, 7:00 P.M.  
YORK PUBLIC LIBRARY**

Co-Chairman Dave Marshall ran the meeting, which started at 7:05, in Glenn Farrell's absence. Barrie Munro, Glen MacWilliams, and alternates Richard Smith, who voted in place of Glenn Farrell, and Tom Manzi, who voted in place of Dan Remick, attended. Town Planner Steve Burns represented the Planning Office. Patience Horton took Minutes. The meeting was televised. There were 10 motions made during the meeting.

**Minutes** Minutes were not reviewed.

**Public Input--Open to the public to address any issue other than issues scheduled for public hearing on this agenda.**

Public Input on other issues was opened and closed, as no one came forward to speak.

**Public Hearing--Proposed Ordinance Amendments. Public Hearing to receive input on 10 proposed amendments.**

**9) Zoning Ordinance—Formula Restaurant Prohibition**

This first item was heard out of order to accommodate two television crews from Portland stations which had attended solely to cover this amendment.

In Board discussion, Richard Smith stated opposition to the amendment because, due to §17.1.8, currently nonconforming restaurants would have unfair difficulties when wanting to expand. Glen MacWilliams agreed with the unfairness and suggested taking the section out. Barrie Munro said that the language in the entire amendment was an airtight method of keeping fast food out of York. He suggested moving the ordinance forward as written. Dave Marshall said that the people of York have been asking for a policy to keep fast food out for 10 or 12 years. Once a restaurant has met the criteria of being "formula," it cannot relocate.

Charles Stacy, of 101 Raydon Road, suggested that Public Hearings should be conducted after initial information from the board goes out to the audience, which policy was followed throughout the meeting. He agreed with Richard Smith not to ban any restaurants. He cited the Freeport/McDonalds situation where the restaurant building had to fit character of the town. He wondered why business should be as restricted on Route 1 as it is.

Torbert MacDonald, a selectman speaking as a citizen throughout his participation in the meeting, said that under the U.S. Constitution 14<sup>th</sup> amendment, Equal Protection, the ordinance would constitute discrimination. It also violates interstate commerce by stopping businesses from coming from another state. He suggested establishment of design standards, instead of promoting discrimination. Fred Knox of Long Sands Road said that it is

a good amendment. A vote by the people of York 15 years ago prevented McDonalds from coming to town. Fast food has always been against the character of York.

Michelle Moody, Chairman of the Board of Selectmen, but speaking as a resident of 1200 Route 1, said similar ordinances, as in Calistoga, CA, where the trend started, have been challenged in court and have stood the test. She agreed with Glen MacWilliams that §17.1.8 should be cleaned up, because there are problems there.

Barrie Munro suggested eliminating §17.1.8, if a better way to approach the problem can be found. He read the statement of intent he had written about the character of York not being compatible with fast food establishments. Richard Smith suggested banning all restaurants because they will potentially harm the town as much as any McDonalds could.

**Motion** Glen MacWilliams moved to remove §17.1.8 from the ordinance amendment and send the rest of the amendment forward, with the intention of having the board work on the section. Barrie Munro seconded the motion.

In discussion, Dave Marshall questioned the strategy of pulling the section out, rather than modifying it. Richard Smith said there was no way to explain the nonconforming part of the section. Steve Burns agreed that §17.1.8 was weak. Dave Marshall said that the group was not ready to approach the altering of design standards as a remedy.

**Vote** The motion passed, 4-1, with Richard Smith opposed.

The television crews paraded out of the room.

### **Zoning Ordinance 1—Structure Expansion Limits in the Shoreland Overlay.**

During the Public Hearing and citing Zoning Ordinance P. 185, Article 17, Torbert MacDonald said the Section c of the amendment, expansion of the nonconforming-use structure, did not “make it, legally.” Barrie Munro confirmed with Steve Burns that EEP had reviewed the amendment, and Section c did not cause a problem. Steve Burns added that expansion of a structure does not necessarily mean increasing the non-conforming use, i.e., the volume of a restaurant can increase without adding tables.

**Motion** Barrie Munro moved to approve the amendment as submitted. Tom Manzi seconded the motion.

**Friendly Amendment** In discussion, Glen MacWilliams suggested making a friendly amendment to the motion that would acknowledge P. 185, Article 17 of the Zoning Ordinance. Dave Marshall suggested that Steve Burns look at Article 17 in the coming days with that possibility in mind. Barrie Munroe agreed to add Glen MacWilliams’s friendly amendment to the motion, which would provide Steve Burns the opportunity to review Article 17 and possibly recommend a change.

**Vote** Dave Marshall called the vote. The motion passed, 5-0.

### **Zoning Ordinance 2--Eliminate Duplicate Shoreland Variance Standards**

During the Public Hearing, Torbert MacDonald recommended inclusion of impervious surface ratio language, because it did not seem to show up any place else. Steve Burns showed him §18.8.2.4, where surface ratio is handled in the Shoreland Ordinance.

**Motion** Barrie Munro moved, and Glen MacWilliams seconded to approve Amendment 2, as submitted. The Motion passed, 5-0.

### **Zoning Ordinance 3--Increase Buffer and Setback in Mixed-Use Shoreland Overlay**

Dave Marshall read an undated letter from Eric Lusty of Dockside Guest Quarters & Restaurant, located on Harris Island, into the record. It described the special and very different circumstances of mixed use on Harris Island, compared to Route 1. Richard Smith suggested dropping the 25' setback so a shed or a building can be placed in that buffer. Tom Manzi pointed out a problem in §8.3.3.4 and recommended getting rid of the language, "only when there is no reasonable alternative," calling it a loophole. In §8.3.11.3, he said the word "any" should replace the word "substantial."

In Public Hearing, Eric Lusty said that a 75 ft setback would render every building on Harris Island non-conforming. For the marina, it would "create impossibility." He asked that Dockside be separated from the rest of the ordinance. He worried that coming back to repair the ordinance could fall into the decisions of different planning board personnel. He asked that the ordinance not be put forward in the broken condition in which it appeared to be.

Michelle Moody, speaking for herself, said that the Conservation Commission had asked that this ordinance be changed a long time ago. She asked why it was necessary to treat anybody differently, saying that shoreland protection should be straight across the board, including Harris Island.

Board discussion covered the possibility of taking Harris Island out of the amendment.

**Motion** Barrie Munro moved to approve Ordinance Amendment 3 with two changes: taking the word "substantial" out of §8.3.11.3 and excluding Harris Island for the new buffer and setbacks requirements. Tom Manzi seconded the motion, which passed, 5-0.

### **Zoning Ordinance 4--York River Watershed Overlay District**

During the Public Hearing, Torbert MacDonald went over aspects of the original proposed ordinance that had been eliminated or changed over time, including the 125-foot setback and the introduction of the concept of 24" of separation. He said he planned to change the language back before presenting this ordinance he had written, with help, to the Selectmen, reminding the Planning Board that the overlay district is a critical re-

source. Sewage and septic sludge should be prohibited. Inorganic pesticides and herbicides will ultimately poison wells, but that section seems to be coming out. He spoke of the improbability of increasing the code enforcement staff to specialize in maintaining this district. He strongly believed that the impervious surface ratio should be 15%.

Rick Boardman said that Code Enforcement should oversee the excavation of large amounts of soil. He thought that the inorganic herbicides, etc., should be stricken. He believed that sludge could not be prohibited, but the Town could control its locality.

Don Bristow-Carrico said that the watershed goes into the wells, and that the town needs a broader infrastructure for sewage and water.

Tom Blaisdell asked how cattle and agriculture would be affected by §D.2.C.2, Pastures. Animal husbandry, timber harvesting, the locations for garden sheds, and the impervious surface ration all concern his property. He believed 25% impervious would be best. He clarified that sewage is not spread on the fields at his farm.

Michelle Moody added that she does not want the property owner supervision fee taken out.

Torbert MacDonald said that if the ordinance does not include animal husbandry, it would have to be added. Homeowner taxes should be regarded as fees for service. Creating an environmental inspector is not a good idea. It is too police-like, he said.

Barrie Munro, speaking about the aspect of the ordinance pertaining to large amounts of land redistribution for excavation purposes, said that if 9,000 sq. ft. of surface soil is moved, it does not come near an acre and does not fall into the requirement for additional engineering. The movement an acre of soil will not occur very often, only when large, industrial activities, like subdivision development, need to be managed.

Mike Polumbo, a selectman speaking on his own behalf, wanted differentiation between what is applied to a developer compared to a homeowner. If the items must be enforced, it is difficult for payment of an environmental engineer to be borne by the homeowner. Steve Burns replied that the size limit of disturbance is the difference between having a CEO for a homeowner and a Professional inspector for the subdivision developer.

Charles Stacy stated that the changes in ordinances would not affect the farms, because they are grandfathered. Dave Marshall replied that changes on the farms would be affected by the new ordinances. Torbert MacDonald said that timber-harvesting standards exist. There is an exemption for homeowners timbering for firewood. A management plan is needed for those wanting commercial timbering in the district. Steve Burns added that timber harvesting is in accordance with the shoreland requirements. He said that the higher impervious surface ration is not going to kill the York River, as suggested. Every individual watershed has to be evaluated. Some are ok.

Dave Marshall said that P. 7, from the ordinance should be taken out. Barrie Munro agreed that §2, Monitoring and Enforcement, including parts a, b, c, and d, could be removed. “Expert” can be changed to “CEO.” Steve Burns agreed that §2 of the ordinance could go out. Glen MacWilliams agreed, however, in §8, he preferred the lower impervious surface ratio kept as it was.

**Motion** Glen MacWilliams moved to go forward with the discussed changes. Septic sludge will be prohibited. §2 a, b, c, and d will be removed. “Expert” can be changed to “CEO.” Agriculture, animal husbandry, and timber harvesting will be within the shoreland requirement changes. The impervious surface ratio will remain at 25%. §A2, use of inorganic insecticides will be dropped.

In discussion, Richard Smith said timber harvesting should be as the State defines it. Others did not agree.

**Vote** The motion passed, 4-1, with Richard Smith opposed.

### **Zoning Ordinance 5--Minor Dimensional Variances**

The Board agreed that the proposed ordinance was correct, as written.

**Motion** Barrie Munro moved to approve the ordinance as submitted. Glen MacWilliams seconded the motion, which passed, 5 –0.

### **Zoning Ordinance 6--Site Plan Review Authority**

The Board agreed that the proposed ordinance was correct, as written.

**Motion** Barrie Munro moved to approve the ordinance as submitted. Glen MacWilliams seconded the motion, which passed, 5 –0.

### **Zoning Ordinance 7--Buildings and Structures**

David Michniewicz spoke on behalf of the Water District Board of Trustees. He asked that water tanks be exempted from the height limitation ordinance. Those at York Heights and Simpson’s Hill are most likely going to be increased in height. He described adding a banded layer at the bottom to capacitate the tanks, one of which is already 113 ft tall, with more volume.

Torbert MacDonald asked for exemptions for windmills, church steeples, barns, and silos. Dave Marshall replied that there wasn’t time to research and qualify the examples, but the recommendation could be considered for the November ballot.

**Motion** Barrie Munro moved the approve Ordinance 6, as submitted. Tom Manzi seconded the motion.

There was discussion about eliminating §6.3. Glen MacWilliams said that that zoning supercedes the site plan. Steve Burns referred to snow removal plans and historic resources impacts, which are affected by the section. Section 6.3 is rigorous, he said, and should be preserved.

**Vote** Dave Marshall called the vote. The motion passed, 5-0.

### **Zoning Ordinance 8--Clean Up Outdated Telecommunications Reference**

The Board agreed that the proposed ordinance was correct, as written.

**Motion** Barrie Munro moved, and Glen MacWilliams seconded to approve Amendment 8, as submitted. The Motion passed, 5-0.

### **Zoning Ordinance 10--Traffic Impact Study Requirements**

The Board agreed that the proposed ordinance was correct, as written.

**Motion** Barrie Munro moved, and Glen MacWilliams seconded to approve Amendment 10, as submitted. The Motion passed, 5-0.

### **Other Business**

Steve Burns handed out a Notice of Intent to File from Civil Consultants in South Berwick. They plan to apply for a drive-in bank and restaurant. He handed out copies of the Shoreland Zoning News. He handed out a February 10, 1981, letter from then-Attorney General (Maine, James E. Tierney), saying that York could change the zoning at York Harbor.

### **Workshop--Workforce Housing Discussing with Board of Selectmen. The Chair of the Board of Selectmen has requested the meeting with the Board.**

Michelle Moody, Chairman of the Board of Selectmen, said that she wants full membership of the two boards to discuss workforce housing and affordable housing. Dave Marshall offered to schedule the earliest possible workshop.

### **Adjourn**

The meeting was adjourned at 10:50.