

TOWN OF YORK PLANNING BOARD
THURSDAY, MARCH 10, 2005, 7:00 PM
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Planning Board Member Glen MacWilliams chaired the meeting in the absence of Chairman Barrie Munro and Vice-chair Glenn Farrell. Five members were present: Richard Smith, Glen MacWilliams, Tom Manzi, alternate Michelle Moody, who voted in place of Barrie Munro, and alternate Lee Corbin, who arrived five minutes late and voted in place of Glenn Farrell. Town Planner Steve Burns represented staff. Patience Horton took Minutes. The meeting was televised, but there was not audio until part way into the meeting. Eleven motions were made. Two were not seconded. The meeting began at 7:00, when Glen MacWilliams began by introducing the board and staff.

Public Input

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

No one came forward to speak

Minutes

Review and approval of draft minutes.

Minutes of the February 24, 2005, meeting were reviewed. Michelle Moody pointed out line-editing oversights she wished to have corrected.

Motion Michelle Moody moved to accept the March 10, 2005 Minutes as amended and corrected. Tom Manzi seconded the motion, which passed, 4-0 (Lee Corbin came in moments after this vote).

York Community Service Association. 1320 U.S. Route One. Map 15/Lot18. Public Hearing. Conceptual discussion about proposed expansion of the Thrift Shop Building.

As the volunteer architect for this project, Acting-chairman Glen MacWilliams abstained from board participation. Richard Smith served as chairman. Elizabeth Bardwell, President of the York Community Services Association, said that the group had given \$90,000 back to York in 2004, donating such necessities as fuel oil to residents living with great hardship. She asked the board to allow the association to expand its facility, the thrift shop building, by changing the entrance, adding to the rear of the building, increasing the parking, improving the handicapped accessibility, and approving the appearance--all along meeting ordinance requirements. She introduced Jerry Turner, chairman of the association's building committee. He acknowledged Steve Burns and Glen MacWilliams for the tremendous direction and assistance they have given in developing the project.

Acting-chairman Richard Smith opened and closed the public hearing. No one came forward to speak.

Town Planner Steve Burns went over pending issues that he had detailed in his February 23, 2005 Memo to the Planning Board regarding this application. The nature of the use of the property could not be easily pinned down to any specific category on the use tables. A thrift shop is often an accessory to a religious institution, but this one is not. Community service could be compared to a fraternal organization, like the Elks, who successfully applied to the Planning Board to hold summertime, weekend flea markets several years ago. Tom Manzi asked about the history of the building site, because 3 or 4 years ago, the prior building burned down. Applicant Elizabeth Bardwell said that she did not know what had been there, but that the current building sat on the old footprint.

Lee Corbin said she thought that the use falls between that of church/synagogue/temple and service organization. Activities are not under auspices of the Town of York, though the Service Association serves the town's people. Jerry Turner said that the staff is dedicated to performing family services on the site. Lee Corbin said that would make it a quasi-public facility. That would make it public/semi-public, said Steve Burns.

Motion Tom Manzi moved to categorize the use as a public/semi-public institution. No one seconded the motion.

Richard Smith said that when he had gone to Webster's to look up "thrift shop," Webster's led him to believe that the store is retail outlet selling second hand items at reduced prices, "retail" being the operative word. He also noted that the proposed building will have 5700 square feet, which is about twice the amount of space a retail outlet in the Route One zone can legally have. Michelle Moody asked how much space is devoted to retail, and how much to community service. Jerry Turner said that fifty percent of the current space is for storage.

Lee Corbin asked what the tax status is. Jerry Turner answered, non-profit. Lee Corbin said that non-profit knocks it out of retail. She leaned toward "public/semi-public." Jerry Turner said that after the expansion, the retail space is increasing to about 2100 square feet. Currently it sits at 1600 square feet. Michelle Moody suggested instituting a plan note about potential retail size. Steve Burns said that association's use of the space is not that of a government organization, is not semi-public, nor institutional. Lee Corbin said that because of the charitable function, though it is not associated with a church, it is mostly a church-type activity.

Motion Lee Corbin moved that that the board considers, for jurisdictional purposes, York Community Service Association similar to a church situation, and that no more than 2500 square feet can be dedicated for retail space.

Amendment Tom Manzi corrected the motion, suggesting that the existing language, "with no more than 2500 square feet" be changed to, "with less than 2500 square feet." Lee Corbin agreed to the amendment.

In discussion, Michelle Moody said that the retail size limit would have to be well defined on the plan. Michelle Moody then seconded the motion, which passed 4-0 (Glen MacWilliams abstaining from participation).

Steve Burns discussed the expansion of non-conforming use, which was outlined in the previously mentioned memo. Improvements to the lot were also quickly discussed. Jerry Turner said that a gracious abutter had agreed to sell the association ½ acre to add to the lot size, making safer access and significant parking improvements.

Steve Burns said that he did not see any problems with the use the board had been assigned. Elizabeth Bardwell said that as far as she understood, the use for the entire building is okay, as long as retail remains under 2500 square feet.

Hannaford Bros. Company/Kennebunk Savings Bank. Map 53/Lot 13A and 13C, and part of Map 97/Lot 5. Public Hearing. Continuation of application for a Route One Use Permit for a new bank on the vacant lot in front of Hannaford supermarket.

Glen MacWilliams returned to his position as Chairman. Town Planner Steve Burns had earlier passed around a Memo to the Planning Board regarding this application, dated March 7, 2005, with attached Findings of Fact.

Architect Mike Lassel placed the slightly revised plan on the easel and pointed out added vegetative buffering to the parking on three sides, leaving setbacks for plows and vehicles. On the plan, he pointed out where some shingles had been added in some places, and a few windows had been taken away. He handed around samples of the Hearty Plank product, which he planned to use in the clapboard sections of the building. He also presented pre-stained, white cedar shingles to compliment the clapboard. Glen MacWilliams said that as the Planning Board continues to review alternative materials, he wants the applicants to be name-specific with the products, whether generic or name brand, as in MDO Board. Mike Lassel replied that the alternative material he was proposing was Hearty Plank.

Motion Richard Smith moved to accept the alternative products being shown for the Kennebunk Savings application. Michelle Moody seconded the motion. The motion passed, 5-0.

Acting-chair Glen MacWilliams opened the public hearing. No one came forward. The public hearing was closed.

During board discussion, Tom Manzi commented that the proposed building is a handsome structure. Glen MacWilliams said that the page numbers on the drawing sheets did not match the numbering and lettering in the index and asked that that be fixed. He asked about plans for the second floor, for which plans had not yet been submitted. Mike Lassel explained that the parking for 37 cars was based on the full 5,000 square feet of the

building, including the second floor. Glen MacWilliams asked for a breakdown of the square footage of each floor. Roof materials were briefly discussed, as were light fixtures, which Mike Lassel said would have high cut offs so the filament would not be seen.

Motion Richard Smith moved to Approve the Plan with the conditions set forth in the Memo from Steve Burns dated March 7, 2005. Lee Corbin seconded the motion.

In discussion, the board talked about the approval of signs on and next to the building. Glen MacWilliams said that the CEO would sign off on the signs. Steve Burns suggested making an amendment to the motion, taking Item 1.c., Review and Approval of Signs by Code Enforcement, out of the Findings and then making the item a plan note.

Motion to Amend Michelle Moody amended the motion by removing Condition 1.c. from the Findings of Fact, thus making sign approval by the CEO a condition to approval. Tom Manzi seconded the Motion to Amend, which passed, 5-0.

Vote The Motion to Approve the Plan, initially made by Richard Smith, and as amended, was passed, 5-0.

Cape Neddick Village. 1132, 1136 & 1244 U.S. Route One. Map 22/Lots 13A and 13C, and part of Map 97/Lot 5. Public Hearing. Continuation of application for a Route One Use Permit to construct 22,000 square feet of commercial space, plus apartments

Michelle Moody abstained from participating, as she is an abutter. Applicant Seth Spiller handed around a packet called Addendum 3/10/05. He updated the Planning Board, beginning with the correct determination of septic setbacks from water bodies, affirmed in CEO Tim DeCoteau's memo. The septic proposal by Altus and by Soil Scientist Joe Noel was in the process of being drawn and completed for pending submittal. The permit for the storm water drainage was on track for issuance in April 2005. The traffic permit was pending. He described how the road shoulders might have to be built up. He showed samples of vinyl cedar shakes, preferring them to natural wood. Steve Burns suggested using real wood where people would be up close to it. Seth Spiller said that he would like to "wrap the whole building" in the alternative siding.

Glen MacWilliams opened the public hearing. No one came forward, so he closed it.

Richard Smith brought up the fact that alternative siding had been allowed in a prior application. Glen MacWilliams said that since there is no ordinance about alternative materials, the board would have to review them, as proposed, one application at a time. Steve Burns asked about joints in the siding and the size of sections. Seth Spiller said that there would be a hairline crack every sixth shake or so. Lee Corbin said that she liked the looks of the real cedar, which Seth Spiller had brought as comparison. Glen MacWilliams asked him to bring back samples of the roofing materials when he returns. He asked for plans of the different phases and the parking. Seth Spiller asked if the 2,500

square feet of allowable retail space in the Route 1 zone included storage. Steve Burns answered, yes.

Elks Club. 995 U.S. Route One. Lot 30A/Lot 18. Public Hearing. This is an application for a Route One Use Permit for construction of a new lodge building and function hall.

Architect Don Driver presented the application for a 7800 square foot Elks Lodge and function hall with service area, patio, and catering kitchen. It would feature a metal roof, clapboard siding on the front sections of the building, and metal, vertical siding on the rear function hall. The septic design, which could be expanded, if Code Enforcement insists, meets weekly lodge use, plus capacity for one function every week. The applicant has met with abutters, who are concerned about noise and headlights. There is a plan to place a stockade fence and shrubbery around the building between the lodge and the abutters. Lights in the parking lot will have a low cut off from the fence. Engineer Mike Livingston described how the lot was created in June 2000 out of one commercial lot and three residential lots. Town Water ends 380 feet to the south, but it will be extended by the applicant to the lodge. There is 40% lot coverage, well below allowable. Site drainage and sheet flow will be directed into a retention pond. The entrance is based on a traffic study, and Bill Bray, of Public Works, has seen the sight distances. The septic system will be on site. The building will be sprinkled. The setback was increased in the November election, and Mike Livingston asked for input on the possible buffer and setback changes due to that election.

Glen MacWilliams opened the public hearing. Keith Weston spoke on behalf of abutters Kim Gonier and Jessica Weston. He was concerned about how the septic system, which apparently exists in a buffered area, will impact to the abutting properties.

Nancy Richard is an abutter. She was concerned that the fence will not be tall enough to keep headlights out of her house, which is on a slope below the level of the lodge parking lot. Mike Livingston said that there are large pine trees in the back portion of the property, as well as the proposed 6-foot fence, to keep light out. Nancy Richard asked what the setback was at that point near her house. Mike Livingston answered that it was 30 feet. Nancy Richard said that she could not be sure that the applicant would bother to build the fence at all. Glen MacWilliams said that if a fence is on the plan, they have to build the fence. Glen MacWilliams closed the public hearing.

Referring to the septic, Tom Manzi asked what the crowd capacity for the building was. Don Driver answered, 50 for the lodge plus 200 for the function hall. Mike Livingston said that the numbers for the septic were based on water records of the Elks Club in Portsmouth, which is of similar size and is used a similar amount, but the numbers were doubled for purposes of this evaluation. Glen MacWilliams asked how the board would know that it would be only used as described. Michelle Moody added that it is not unusual for a lodge to hold two functions in a day. She suggested the board put restrictions on the amount it can be used. Glen MacWilliams said that he would rather see a septic system designed for capacity that is greater than what is proposed. Steve Burns said that

the septic system approval is the only remaining glitch preventing application's completeness. He also said that though MDOT review was not necessary for the application, Bill Bray was not convinced that the property would only generate 100 trips during peak hours. The septic system's being recognized as an "essential utility" would allow the system to go into the buffer zone, as Keith Weston had suggested during the public hearing. Michelle Moody asked about snow removal and storage. Snow removed from the gravel parking lot would also include gravel picked up by the equipment, she said. The stones would then clog up the water storage areas into which the snow would be moved, causing eventual drainage problems.

Glen MacWilliams's request for a motion from the board dealing with the possibility of reducing the rear setback to 30 feet and the privacy fence size being increased to an 8-foot stockade fence was thwarted by Steve Burns, who said that because the hearing was set up as non-binding guidance, motions would be ineffective. Glen MacWilliams did suggest the applicant add one more parking space for a bartender or a server who might be hired for an occasion, in the place of a member who might do such a job.

Steve Burns read the definition of essential utilities, which he said does not include disposal, but does include transmission. To the neighbors, the proposed septic area would be regarded as a buffer yard. Glen MacWilliams said that he considered the septic system as an essential utility, because it does the same function as a sewer. On an application-by-application basis, a septic system could be considered an essential utility. Mike Livingston added that the septic area would be landscaped. The septic system is expandable toward the building, he said. Lee Corbin asked if the septic system could be revised and brought closer to the building. Glen MacWilliams suggested that the septic should be moved closer to the building at the beginning, and then expanded out into the buffer, when the need comes in the future.

Regarding the setbacks, Steve Burns said that the applicant started working with an older standard, and then the standard changed. The Planning Board has the ability to let the applicant maintain the 35-foot setback. Regarding building materials, Lee Corbin asked that the applicant bring in the materials being proposed. Architect Don Driver compared the materials in the function hall to those being used in the back buildings at Stonewall Kitchen.

York Village Business Center. 14 Cider Hill Road (Route 91). Map 53/Lot 9. Public Hearing. Application for a Route One Use Permit for commercial development of this lot, also known as the Marciano lot.

Jim Hanley of Engineering Alliance introduced himself as the applicant's representative. Terrance Parker of Terraforma Landscaping began by pointing out the buffering on the site plan, with concentrations of double plantings around the parking lots and abutting residences. Jim Hanley discussed the traffic study, which had been completed by Peter Hedricks. He had received comments from MDOT and York Public Works director, Bill Bray, who are coordinating plans to establish a traffic signal on the corner of Routes 91 and 1. Traffic flowing into York Village Business Center will be accommodated with

widened lanes on Route 91. The complex's parking lots will be discharged west of the TAGT site. Jim Hanley said he had mapped out the parameters for an upcoming drainage study after meeting with Bill Bray. Frick & Associates will be preparing the soil information.

Glen MacWilliams opened the public hearing. Abutter Scott Franklin also spoke for his sister, who was present. They each have houses abutting the property on Route 91. He asked for more privacy, especially from the upper stories of the hotel, from whence someone might look directly into his home. He re-described the earthquake-like sensation he had talked about at the last public hearing for this application. The vibrating compactor used in building the nearby Cormier building had caused two chimneys in his house to collapse. As well, dust and dirt accumulated in the two houses, and windows could not be opened, or more would come in. He asked that lights be screened. He suggested that an 8-foot-tall, solid-wood fence be built around his property. He asked for tall trees to screen him from the hotel. The chairman closed the public hearing.

Glen MacWilliams said that he appreciated the rural feeling given from the landscaping. He asked if vibrations transfer through certain soils more than others. It was suggested that a slush fund be created to clean the Scott Franklin and his sister's houses, adding that light pollution is a strong concern. James Hanley referred to his February 23, 2005 letter detailing current issues. He said that the applicant is working toward receiving preliminary acceptance. He spoke briefly about lighting on the sides of buildings and in the parking lots.

U.S. Cellular/Maine Turnpike Authority. 10 Spur Road. Map 91/Lot24. This is an application to collocate an antenna on an existing telecommunications tower.

Attorney Barry Hobbins of Saco, Maine, represented the applicant, U.S. Cellular, which hoped to collocate on a facility owned by the Maine Transit Authority (MTA) by installing six low-profile wireless antennas on an existing tower. As well as the antennas, the project calls for equipment shelters built on pre-cast concrete pads at the base of the tower, plus it utilizes coaxial cables running from the antennas to the equipment in the shelters. He stated that he believed that the prerequisites for the application had been met. He said Town Planner Steve Burns had outlined the necessary waivers. Barry Hobbins acknowledged that York has the strictest wireless ordinance in the State of Maine, and that with this application, he makes every effort to meet it successfully by receiving conditional approval that evening.

Glen MacWilliams opened the public hearing. No one came forward, so it was closed. Glen MacWilliams read an abutter letter, dated March 8, 2005 from Tom Farnon and Marlene Farnon, who could not attend the meeting. It stated that their house is closer to the tower than any other house, and they did not feel the change would affect them in any way, adding wishfully that it might improve their own cell phone reception.

Michelle Moody asked when the tower was built, and if it was ever reviewed or permitted by the Town. Barry Hobbins said that legally, he could not comment on anything about

the MTA. Steve Burns said that the MTA is exempt from zoning, but not from requiring a building permit. Barry Hobbins said that whether or not the tower was permitted should be a code enforcement issue. Looking at Tab 17 of the Structural Analysis and Background Specifications, which he had handed out to the board members before the meeting, though, he said he could see that the tower had been built in 1993. Steve Burns said, "If we hadn't caught up with them in a dozen years, we have a problem."

Tom Manzi pointed out that a certain license for establishing the collocation project expires shortly. Barry Hobbins answered that he hoped the application would be approved soon, so U.S. Cellular could start work immediately. Glen MacWilliams said that the eight-foot fence was not shown on drawings, but had to be on the final drawings. He asked about the licensing and certification of the Radio Frequency Engineer (RFE). Barry Hobbins answered that "RFE" is a coined phrase in the industry, and is not a licensed Professional Engineer (PE) in the State of Maine. Glen MacWilliams said that the RFE should be called something other than an "engineer," and that all engineers are PEs in Maine.

Steve Burns said that application completeness hinges on the waiver requests listed and endorsed in his Memo to the Planning Board, dated March 8, 2005 regarding this application. There was very little discussion about the four waiver requests.

Motion Lee Corbin moved that the Planning Board accept the Waiver Requests articulated in Steve Burns's memo and at Tab 16 of the Request for Waivers. Tom Manzi seconded the motion, which passed, 5-0.

Glen MacWilliams said that conditions affecting approval could include whether or not the Town issued a prior permit for the building of the tower. Secondly, there has to be a fence. Michelle Moody said that perhaps the board should seek a legal opinion to find out if the MTA is exempt from having a permit to build the tower.

Motion Lee Corbin moved to accept the plan as complete. Tom Manzi seconded the motion, which passed 5-0.

Motion Michelle Moody moved to have the Town Planner check the jurisdiction of the Town for committing the facility for the MTA for the existing tower, and should the Town have jurisdiction, the CEO should review it and issue the applicant a permit, after the fact.

In discussion, Glen MacWilliams said that the board would most likely receive word from the CEO that the permit is not required. Steve Burns added that what was being suggested would require quite a bit of work, especially "if we haven't tried to bust them in the past 12 years." No one seconded the motion.

Motion Tom Manzi moved to accept and approve the application as written up. Lee Corbin seconded the motion, which passed, 5-0.

Other Business

Reserve 45 minutes to discuss The Meadows at Highland Farm Subdivision application. This will be a workshop discussion, with no input received and no votes taken.

Attorneys Peggy McGee and Hope Jacobsen were present to represent applicant Steve Wood. Peggy McGee stated that there had been illegal meetings between board members and among abutters. She read the contents of her letter dated March 10, 2005, written on Perkins, Thompson, Hinckley & Keddy (Portland) letterhead, which stated that the time had come to approve the application as submitted, in that the applicant strove to improve the prior plan for the property, had met all legal documentation requirements, and fourteen growth permits were pending. The letter stated that the Planning Board poorly used the applicant when he was initially told on June 3, 2004, that the process could potentially be complete in two months. Instead, the review had been exceptionally rigorous. Preliminary approval had been made in October 2004. Land trusts had been contacted. The covenants were reviewed and endorsed by the Town Attorney, but at the March 2005 meeting, the board only voted that the application was complete. In her letter, she referred to ex parte contact that a board member had had regarding reviewed design and wetlands with an "opponent" to the application. In further violation, e-mails had been retrieved, constituting illegal meetings outside the knowledge of the applicant or the public. Peggy McGehee cited case law as a footnote to the letter. After finishing the letter, she asked the board to correct itself, rather than deal with courts and fines. She asked the board to grant Steve Wood immediate approval.

Glen MacWilliams told the board that, since it was 11:15, maybe it was too late to deal with it that evening. Michelle Moody said that the board should seek legal counsel. She said that subjects of the e-mails were all brought up at the last meeting. Glen MacWilliams said that he was not aware of ex parte communication with opponents. Peggy McGehee said that one member of the board had met with a member of the Conservation Commission about the trust. Michelle Moody said that her husband was a member of the Conservation Commission.

Glen MacWilliams asked the board members how they felt that they should deal with the issues. Steve Burns summarized the situation as having two parts: what to do with the application, and what to do with the alleged ex parte. Glen MacWilliams suggested someone move to have the board consider the consequence of the applicant's complaints, and then have the board follow legal counsel's recommendation. That request for a motion did not materialize into a motion, and there was no second.

Peggy McGehee stated for the record that the board was going to delay final approval based on the illegal meetings.

Motion Michelle Moody moved that the board receive legal counsel on how it should proceed. Lee Corbin seconded the motion. The motion passed, 5-0.

Glen MacWilliams said that the board may have no choice but to proceed as the applicant proposed. He closed the meeting. It was 11:25.