

**York Planning Board**  
**Thursday, May 28, 2009, 7:00 P.M.**  
**York Public Library**

**Call to Order, Determination of Presence of Quorum**

Planning Board Vice Chairman Lew Stowe sat in for Chairman Tom Manzi, who was on medical leave. Tom Manzi had given Christine Grimando input to include in the discussion on his behalf. Lew Stowe, Barrie Munro, Glen MacWilliams, Dave Woods, and alternative Todd Frederick comprised the quorum. Todd Frederick was asked to vote in place of Tom Manzi. Community Development Director Steve Burns, Kathryn Danylik, Assistant to the Town Manager, and Shoreland Resource Officer Ben McDougal were also there for certain presentations. Town Planner Christine Grimando represented the planning department staff. Patience Horton recorded minutes, which were edited by Barrie Munro. This workshop meeting was four-and-a-half-hours long.

Lew Stowe introduced the board and staff. He noted only one person attending the meeting. He hoped more would feel welcome at the upcoming hearings. Christine Grimando briefly previewed the agenda items, noting a multi-faceted amendment to Article 6 and a letter to the planning board from David Gross. **Zoning—6) Application Procedures** was moved to the end of the ordinance amendment hearings.

**Public Input**

**Open to the public to address any issue other than the scheduled public hearings.**  
No one came forward to speak.

**Field Changes**

There were no field changes.

**Minutes: Review and approval of minutes.**

There were no minutes to review.

**Public Hearings on Proposed Ordinance Amendments**

The chair decided to open the Public Hearing for each of the twelve ordinance amendments. Town Planner Christine Grimando or Steve Burns introduced each item.

**Zoning—1) Outside Display Standards for Route 1**

There are strict standards for outside displays along Route 1, and many are in violation right now. Small businesses seem most likely to put their products outside. There is no brand name, chain store recognition associated with these businesses. The regulations have to loosen up for these small businesses. 6.3.27.1 will allow outdoor displays for businesses less than 5,000 in square footage. The displays will not be greater than 50% of the retail space. The **Public Hearing** was opened and closed. No one came forward to speak.

Christine Grimando continued. The revisions to the amendment would be incorporated and posted by June 9, in time for the next Planning Board hearing, June 25. The Selectmen will hold hearings to these amendments on July 27, and August 24.

Dave Woods asked about the smallest acceptable size for an outdoor display. Glen MacWilliams suggested having a minimum of 300 feet, not to exceed 1,000 square feet. Barrie Munro asked after a definition for a garden center. Glen MacWilliams suggested striking "garden center" from the list of businesses pertaining to the amendment, leaving that business type generically covered within the general criteria of the ordinance. Whether wood chips, loam, and mulch are displayed in bags or in piles will be covered with the language "packaged or in bulk."

### **Zoning--2) Amend Architectural Standards for Commercial Development**

Per 6.3.13, building and site design standards in the Route 1 zone will relate in their design to the surrounding building environment, and the applicant will have to demonstrate how this requirement is satisfied to the board. Christine Grimando said that Tom Manzi, the absent chairman, had asked for inclusion of the term "aesthetic harmony" in the amendment. Discussion concluded the abstract nature of the term would cause problems in the enforcement of the ordinance. Glen MacWilliams said the board shouldn't make decisions based on color or aesthetics. Lew Stowe said a purple house in Freeport could not be stopped. Christine Grimando commented that Route 1 has "gone beige." How does the board ask for variation when chains come in? she asked. Barrie Munro said there are homely structures here and there on Route 1 and new construction should not emulate them. The objective of "New England in character" should govern new construction. It is not currently what exists that should guide future design. It should be the Town's concept of how it wishes to be perceived in the future. The **Public Hearing** was opened and closed. No one came forward for speak.

### **Zoning--3) LEED Standards for Commercial Development.**

LEED (Leadership in Energy & Environmental Design) silver certification is required for any building funded by the Town of York, per 9.2(a), said Christine Grimando. The ordinance amendment includes LEED silver certification for new commercial buildings, 10,000 square feet or greater, as well as additions and expansions of current buildings that are exclusively in the non-residential zones. A cost exemption occurs at the 15% level of the overall construction cost. That would allow the developer to drop to a lower level of certification. If the LEED costs are still excessive, the LEED requirement would be dropped completely. Residential, vehicular, and amusement and recreational uses are not suitable for adherence to this ordinance. Barrie Munro asked why such uses as movie theaters and bowling alleys were excluded. Glen MacWilliams said some building do not make LEED sense. In the end, the Board decided to require silver LEED certification on all buildings 10, 000 square feet or greater which do not incur construction costs greater than 10%. The **Public Hearing** was opened and closed. No one came forward to speak.

### **Zoning--4) Pharmacies**

Christine Grimando explained how this ordinance amendment proposes to exclude new pharmacies that are between 5,000 and 20,000 square feet within the Route 1-3 and 1-4

zones. Smaller pharmacies are allowed in those zones and in all other parts of town. Barrie Munro said the upper level of the Route 1-3, 1-4 pharmacies should be 60,000 square feet, to prevent big box businesses such as Market Basket and Wal-Mart from having pharmacies as accessory or primary uses in the zones in question. Christine Grimando replied that in the use tables, 20,000 square feet is the cap. Barrie Munro questioned how Hannaford's 55,000 square feet came to be. He suggested that the way to deal with the problem is to prohibit pharmacies in all buildings over 5,000 square feet in zones 1-3 and 1-4. The **Public Hearing** was opened and closed. No one came forward to speak.

#### **Zoning--5) Structure Definition**

Ben McDougal, Shoreland Resource Officer, said the purpose of the amendment is to provide a clearer definition of a structure. (The existing ordinance, as with other ordinance amendments at this workshop, was projected on a screen. The ordinance text had strikeout and redline annotation, showing the before and after language.) Shelters cannot have skids or wheels to enable mobility, thus exempting them from being categorized as a structure. A car is not a structure. Anything that is under 22 cubic feet, weighs less than 100 pounds, and/or has no dimension over five feet long is not a structure. Therefore, lawn chairs, trashcans, or gas grills are not regulated as structures in the zoning ordinance.

Todd Frederick said fishing shacks would but should not be disallowed inside the setbacks when pulled off the ice. One such shack is currently visible in the salt marshes of the York River above Scotland Bridge. Ben McDougal stated it is not a Code Enforcement goal to regulate ice shacks. Dave Woods thought a kayak on a woodpile might be a structure, which brought on humorous discussion. A clearly visible, run down bus in Cape Neddick also came up in discussion, as it has from time to time over several years at York Planning Board meetings. Dave Woods said all the owner has to do is register it every year, and it can be used for storage. Community Development Director Steve Burns said this language is geared toward taking ambiguity out of the definition for the benefit of the Board of Appeals. The State agrees that the language of the ordinance was fairly standard and totally acceptable, but the focus is too narrow for a ruling by the appeals board. The Board requested that Ben McDougal revisit his revised definition. The Vice Chairman opened and closed the **Public Hearing**. No one came forward to speak.

#### **Zoning--6) Application Procedures**

This item was skipped until later in the meeting.

#### **Zoning--7) Conversion of Buildings to Affordable Apartments**

Steve Burns led the discussion. Converting existing buildings into affordable apartments is critical to the region and to the state. The survey given in fall, 2008, showed the protection of neighborhood character and the disbursement of affordable units in all parts of town are important concerns of the community. The most sensible building configuration would place two affordable units with two market-rate units in one building. Any principle building can be converted. As proposed, the new units would be required to main-

tain their affordable status. There is no minimum size. The 500 to 800 square foot beach apartments would not be discouraged. Town Demographics are skewed by the absence of citizens in their late teens through thirty-five. It would be good to have more families with school age kids, he concluded.

The **Public Hearing** was opened and closed. No one came forward to speak.

**Zoning--8) Apartments over Businesses**

This ordinance amendment has grown. It includes York Village, as well as Route 1, said Steve Burns. At this point there is “zero incentive” to put a second floor onto an existing or new business. Buildings like Cumberland Farms and many buildings on Route 1 have responded to the existing ordinance by excluding second floor apartments. Amendment 8 requires that apartments have to be above businesses. The ordinance encourages better village architecture. In the Village, target area begins east of the Civil War statue. On Route 1, the Route 1-2 and 1-3 zones are targets for this ordinance. The **Public Hearing** was opened and closed. No one came forward to speak.

**Zoning—9)**

The ordinance allows someone to apply at one time for up to six units in a single multi-family building, eliminating the ban caused by current residential growth ordinance policies. The growth permits might not be handed out all at once, but the owner can apply at once. Steve Burns added he'd like to see an end to the growth ordinance altogether. The **Public Hearing** was open and closed. No one came forward to speak.

**Zoning--10) Amendments to Workforce Affordable Housing**

The 2008 voter survey indicated that design is critical in workforce housing, said Steve Burns. This amendment improves the currently very weak design standards of the Workforce/Affordable Housing Overlay District. Twenty-five percent lot coverage is unworkable. It should go up to 50%. A required 4:12 pitched roof fits into design standards. Supplemental use, juxtaposing workforce housing with a coffee shop, a church, or a community center, for example, fulfills the concept of a mixed-use Village Green design. The **Public Hearing** was opened and closed. No one came forward to speak.

**Zoning--11) Affordability Requirements for Elderly Housing**

“Affordability” was not factored into the language of the 2003 elderly housing ordinance amendment, so it is being inserted here, said Steve Burns. The amendment addresses and repairs an existing error defining affordability in the York Village Elderly Housing Overlay District. As well, a definition of “low income” is provided. This will limit units to low and moderate-income brackets. The **Public Hearing** was opened and closed. No one came forward to speak.

**Zoning--12) Density Requirements for Seasonal Conversions**

Density provisions are triggered by conversion from seasonal to year-round housing. The ordinance does not require the minimum lot size to be required for each unit, for example, multiple cottages on one non-conforming lot. Seasonal dwellings on small lots can convert, but unlimited densities with small lots and multiple uses are not the intention behind current ordinance amendment.

Code Enforcement Officer Tim DeCoteau's position is that to be a seasonal resident, the occupant has to be away during January, February, and March, instead of being unable to use the premises for one day of the year, as the older ordinance states. The **Public Hearing** was opened and closed. No one came forward to speak.

### **Zoning--6) Application Procedures**

Steve Burns said this ordinance amendment aims at standardizing the application process for the Planning Board, the Historic District Commission, and the Board of Design Review. Abutters in different districts have different notification rules, as an example. It would be easier to organize the parameters of notification distribution, if all rules were the same. Part of the point is to make the codes easier to understand. The definition of a "garden center" was questioned earlier in this meeting, but there are over 100 uses in the manual, and only *ten* of them are defined, said Steve Burns. Approached correctly, the format would allow all the uses and provisions for all the different zones to be simplified. If design professionals or property owners or staff want the standards in a given zone, the format of the ordinance will be clearer. Steve Burns said the item would be discussed at the upcoming workshop.

On a related subject, Lew Stowe led a discussion about signing Findings of Fact and/or signing a Mylar with respect to when the "clock starts" for the appeal process to begin. Steve Burns clarified that the clock starts with the filing of the Findings, outlined in Article 18.5. The writing of the findings has become the applicant's burden. The board reviews the Findings. This practice is unusual for a planning board to require, but sensible in our case because the board's deadline cannot always pace with the applicant's deadline.

Steve Burns explained the board's vote to approve an application constitutes the approval, itself. The reasons the approval has been given are documented in the Findings of Fact. The written Findings start the appeal period. Conditional approval has to be limited to six or twelve months, or whatever is agreed upon. The faulty conditional approval for Kearsarge House had no appeal deadline. If the condition period is sixty days, and the applicant does not meet the conditions, they don't get approved. It was not clear that there was general agreement among Board members either with respect to the exact procedure followed with respect to recent applications or exactly when the contract between the Town and the Applicant is finalized. Barrie Munro dissented on several occasions to the popular view.

Glen MacWilliams brought up **certification**. Though it is required, it does not always happen. Steve Burns said that is the case on all levels. In the sketch phase, it is okay not to have certification—but only if the plans were made by someone not certified. All work presented to the planning board, during any phase of the application, by a design professional, surveyor, engineer, landscape architect, or of any other design, must be certified.

Lew Stowe asked why he can't go and look at a project first hand, **apart from the rest** of the board. Steve Burns replied that the board has to have equal knowledge. In Durham,

he said the planning board sends two people out to a site, and they make a report to the others. Which two people are selected is rotated through the board. He plans to see that all boards in York are trained to understand the differences on how to approach special research, so that *ex parte* activity does not occur.

**Workshop on Comprehensive Plan Amendments: Housing Policies, Municipal Capacity, Economic Policies, Bicycle and Pedestrian Policies, Zoning Amendment to Zoning Article Six.**

Municipal Capacity is the final chapter of the Comp Plan Inventory and Analysis. It includes sub-sections on non-government land, municipal services, and municipal capacity for growth. Maps are currently being updated to reflect, among other things, government land and cemeteries. This work will replace the 1999 Inventory and Analysis of the Comp Plan. All come plan amendments go before the voters. Kathryn Danylik is documenting every ordinance created since 1970. She'll track easements and roads, Steve Burns said.

**Bicycle and Pedestrian Policies**

Christine Grimando had looked through the Comp Plan for places in it where bicycle and pedestrian issues are raised. At community meetings, people are often negative about paths because bicycle/pedestrian ways are expensive. It would be smart to take some of the negative language out. Roads could be widened for better bicycle access. Tom Manzi had told Christine Grimando that a committee should be put in place for this reason. Maybe signage can help the situation, if a bike lane won't go in. Glen MacWilliams said the planning board knows how important sidewalks are. This concern could become a transportation policy.

**Amendment to Zoning Article Six**

There is currently language in Article Six stating that the Planning Board must determine what the standards of Section 6.1 have been. This is a mistake that is confusing for applicants. Christine Grimando said more information would be presented at the upcoming June 25 public hearing.

**May 22<sup>nd</sup> Letter from David Gross**

A letter from a "future applicant" David Gross, was discussed. He hopes to have a driveway approved so he can get to his property. The easement across the neighbor's property has not been decided, because he needs Planning Board approval. He is not certain if he has to present a full application. Glen MacWilliams thought the applicant should apply for sketch review. Providing more information to the Board would give him an in-depth response. David Gross could then invite the board to a site visit. Steve Burns said the planning board has the ability to lessen the wetland setback under certain conditions.

**Other Business**

- Christine Grimando said Tom Manzi has ideas for future workshops.
- Glen MacWilliams said he would speak about his experience on the Board at the last meeting.
- Tom Manzi would like to conduct a drive up Route 1 with a camera documenting what Glen MacWilliams calls design diversity.
- Energy workshops are being planned with two different groups.

The meeting ended at 11:30.

This document was approved June 25, 2009