

York Planning Board
Thursday, October 22, 2015, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum; Appointment of Alternates

Chairman Peter Smith called the meeting to order at 7:15, after audio/visual problems had been solved. A quorum was determined with five people voting: Chairman Pete Smith; Vice Chairman Amy Phalon, Esq.; Lew Stowe; Gordon Eldridge, who represents York Beach; and Al Cotton. Alternates Kathleen Kluger and Wayne Boardman were present, but did not vote. Director of Planning Dylan Smith represented staff. Patience Horton took Minutes.

Public Forum

Joyce Stowe came forward to speak. She said that at the last meeting, the Planning Board approved the Cliff House's request to add an additional 30 feet to its current height, and by doing so, the Board open a Pandora's Box. Other builders have been before the Planning Board in past years asking for additional height, and that request has always been denied, she said.

"I'm hoping that you reconsider the vote that you took at the last meeting, on the basis of my challenge that you did not enforce Article 5.2.1, which clearly states that the voters approved a 35 foot building maximum height. I looked at that ordinance, and it is three pages in your code book with three pages of charts. There are 14 categories in that article, and across the bottom of all 14 categories it says, '35 feet,' 14 times, '35 feet.'

"So based upon this error, I am asking you to reconsider that vote and bring it up for discussion, based upon that error. I think the future of York depends on that." Joyce Stowe concluded. Gordon Eldridge asked, "You'd feel different if we were talking about the auditorium"? Joyce Stowe answered, "The auditorium is going to be voted upon by the people. Your decision at the last meeting, apparently, is not going to be voted on by the people. If it were, I would have no problem with it."

The Chairman **closed the Public Forum.**

Minutes The October 8, 2015 minutes were reviewed. Changes were requested.

Motion: Al Cotton moved that we accept the minutes as presented. Lew Stowe seconded. The motion passed 5-0.

Field Changes There were no field changes

Review/Discussion of York School Department request for building height ordinance amendment

Mike Whitman, a citizen of York and the Chairman of the Building Committee for the York Community Auditorium, introduced Jim Amoroso, Director of Finance; Dr. Dunn, Superintendent; Attorney Dick Spencer from Drummond Woodsum in Portland; Dan Cecil from Harriman Architects; and Zach Harding, in charge of facilities for the York Public Schools.

When the auditorium was voted on and approved in May, Dick Whitman began, there were two instances where we knew we would violate the 35 foot height requirement, the fly gallery and part of the auditorium. The architect of this project has had that similar situation with the building height several times, and the problem has always been solved with a variance. However, the York Zoning Board of Appeals cannot grant that variance to the school. It can only approve setbacks and footprint issues, but not height.

The School District's lawyer, Dick Spencer has been working with Director of Planning Dylan Smith, and believes the correct way to repair this situation is to have a zoning amendment approved by the Planning Board. The zoning amendment is the purpose of this hearing.

Mike Whitman continued. The School Department went to the Selectmen Monday night [three nights ago], and, though a date for the special referendum has not been made, there was a straw poll, and all five selectmen support this path. Tonight's approval, followed by a Public Hearing to be held by the Selectmen, will keep the tight time frame on track. The best bond interest rate and the more advantageous bidding by contractors are at stake. Dylan Smith told the Board it can allow for it at their own discretion.

Chairman Peter Smith offered anyone in the room to **Comment on the Request**. No one came forward to speak.

Dylan Smith explained the proposed amendment. The Village Overlay District allows 50 foot building heights for principle municipal use in the village overlay, which is within the defined growth area. The ordinance for the auditorium that is being proposed tonight is modeled on that Village Overlay.

The High School location can be thought of as in a growth boundary area that can allow for a municipal-use building with a maximum height of 50 feet. It matches the current language in the zoning book and avoids the potential of being considered spot zoning because it is in such a large area.

Amy Phalon said it is inappropriate to go about it that way. The Board of Appeals has done Special Exceptions for height, and for this kind of building, it is the appropriate way to do this. She would like to see this treated as a special exception rather than change the height limit in buildings in this area. This way, the zoning would not be misconstrued as

spot zoning, though, she was largely concerned about expanding tall buildings in town, and less about spot zoning, she said.

Attorney Dick Spencer said that if you read the height exception section 5.1.5.1, it allows exceptions to height for very specific things, but not the fly area in a school auditorium that that needs to be higher than 35 feet. The only provision that allows a special exception from the Board of Appeals in accordance with this fly area height limit would be by adding another category that would allow a building to go higher. That would be section 5.1.5.1.c [referred to as Paragraph c].

Amy Phalon argued that 5.1.5.1.b [referred to as Paragraph b] gives limits for specific structures, the public water system, barns and silos. Either way [Paragraph c or Paragraph b], she said, the appeal would have to go back to the Board of Appeals.

Dick Spencer argued that by adding Paragraph c to 5.1.5.1, the issue would not have to go to the Board of Appeals, because Paragraph c allows it as an exception. He added that the amendment being discussed was drafted by Town Planning Staff. It is proposed in a way that would fit into the ordinance smoothly. It replicates the current 50 foot height regulation in the York Village District that was put in a few years ago for municipal use buildings. Public schools are defined as municipal use buildings. It would be compatible with the Comprehensive Plan. [The discussion about 5.1.5.1 ended.]

Dylan Smith added that the change would not be considered spot zoning, because it affects the full GEN-3 district. Referring to the GEN-3 area as the “growth area,” he emphasized that, per the Comp Plan that area north of the Little River is where growth should happen.

Lew Stowe said that you are allowing 50 foot, 5 story buildings in the entire growth area, and that he’s rejecting the idea because it includes residential property. The maximum building height right now is 40 feet in York Beach. We have never gone over 35 feet, Lew said. This is going to cost us the timing, because it can’t be decided in ten minutes. He said he didn’t know if the applicant had looked at the 35 feet.

Dan Cecil from Harriman Associates, architect for the project, reviewed the aspects of the theater and lobby. The School Board feels they can’t do a state of the art performing arts center without the fly gallery, which allows you to take the curtain and scenery up into the higher area.

Al Cotton and Lew Stowe compared the proposed theater height (44.4 feet) to the height of the Ogunquit Playhouse, 35 feet, and what wonderful productions are done there. Part of that height is obtained by dropping some of the building into the ground, Al said. Dan Cecil said the fly gallery will allow the district to have first class theater productions. When asked about changing the fly and house (auditorium) design, he said a reduced height would dampen the acoustics.

Pete Smith said that the board shouldn't be looking at the building design, anyway. The board has to decide if the amendment is reasonable or not, and added that he was not sure if the amendment is reasonable to consider for the whole growth area. Amy Phalon and Lew Stowe said they look at the area as a total residential area. Amy said that what the School District wants to do does not fit the regulations.

Wayne Boardman agreed with Peter. Whether or not it is considered as the growth area, the particular zone, or just the property, the approach Gordon Eldridge originally suggested, the amendment is a reasonable thing to consider. The School Board is not asking us to tell them to go ahead and do this. They are asking for permission to put it on the ballot. I think the townspeople can thoroughly understand this situation and vote to either approve it or disapprove it.

Dylan summarized the proposed ordinance amendment as he had discussed with Town Attorney Mary Costigan. Singling out one building, such as the High School, is considered spot zoning unless it is called out in the Comp Plan. The zone the building is in is the GEN-3 district, and it is north of the Little River. In the York Village Overlay District, there is a 55 foot provision for municipal buildings. A 50 foot height is allowable within an overlay district that is in the GEN-3 district without a focus on spot zoning. This building can be looked at as only 10 feet above 35. The board agreed to hold a hearing for voters and townspeople to come out and express their concerns.

Planning Board Workshop on 2016 Zoning Ordinance Amendments and Policy Boards

- ~~Discussion/ Review of Potential Shoreland Ordinance Amendments~~
- **Discussion/Review of Village Zoning District Amendments and Process**

Dylan Smith said the Village Zoning Sub-Committee has made a field study of the Village District, looking at setbacks and how buildings are positioned on their lots. The group has looked at how other towns in New England treat setbacks, then decided to categorize the York Village Center as a periphery and a core. The concept is similar to identifying a central business district.

The structures that comprise the core are situated right up to the street and sidewalk, and they are close together. Right now the setback is a minimum of 30 feet. The dimensional requirement for the defined core has changed to a maximum setback of 15 feet, or closer if the properties on the left or right side of a structure is closer. In that case, those are averaged to determine the setback. Buildings come closer to the sidewalk. The core has 100% coverage.

Amy Phalon said that there won't be parking in the front yard of the buildings, and there won't be diagonal parking. Parking will be on the side or in the rear. There will be no drive up windows for banks or pharmacies, and there will be no gas stations.

We are trying to promote a pedestrian-oriented scenario, said Dylan. We don't want the sidewalks to roll up at 5:00. We hope to strike a balance between allowing offices on the street level, while promoting retail and restaurant activity on the street level, too. Pete Smith said that inside the core, you can have a single-family dwelling above the first level. Optimally, putting office space in the back of the first floor, and not facing the street, or putting offices on the upper floors would be best. Maybe a hallway or a lobby for an office could face the street.

Dylan is planning for a workshop in December.

- **Discussion/Review Other Potential Ordinance Amendments**

Kathleen Kluger said "lockouts" needs to be added to the list of definitions.

Other Business

Review Findings of Facts

- **Kearsarge House**

The board discussed the proposed drop off zone that would take over two town parking spaces. Chairman Peter Smith asked for a motion authorizing the Chair to sign the Findings of Fact, including Amendment 3.b at the top of Page 6, clarifying that the applicant approached the Planning Board with a proposal for the two parking spaces before being sent to the Board of Selectmen with it.

Motion: Amy Phalon moved that we authorize the Chair to sign the Findings of Fact for the Kearsarge Acquisition Company, LLC, Tax Map 0024, Lot 0015, Six Railroad Avenue, York Maine, with the changes as recommended on Page 6, Item 3.b, and give it today's date. Al Cotton seconded. The motion passed, 5-0.

- **Cliff House**

Dylan Smith said he has received comments for the Findings of Fact for the Cliff House from Lew Stowe, but from no other member of the board. Lew said there are necessary changes. He said the approval is likely to be litigated. He recommended that the board have the Town Attorney, Mary Costigan, look at the Findings and comments made by Dylan Smith and by the board in order to "make them defensible in case it goes to court."

Other Business

Lew Stowe talked about the 2000 Planning Board approval involving height approvals for the Cliff House. He said that Planning Board did not hear all the information that was

presented, in that the plan called BH-1, "Building Height-One," was presented to the Board of Appeals, but not to the Planning Board. He read from the 2000 minutes, "Mr. Carr believed it should go back to the Planning Board as they did not hear all the information."

Lew Stowe reiterated that BH-1 was not introduced until after it went in front of the Appeals Board. It didn't go to the Planning Board on the first hearing. The only thing the Appeals Board was considering was the 6 foot cupola on top of the elevators.

Amy Phalon had the complete 2000 application that included BH-1 and showed it to Lew. Lew said that not all of it was presented that to the Planning Board. They never considered it. They never approved it. The 2000 Planning Board was in error for approving it and, and because of that error, the Ledges ended up with 6 stories.

The Board agreed that Lew Stowe should be able to talk to members of the 2000 Planning board and find out what they considered.

Adjourn

10:30