

TOWN OF YORK PLANNING BOARD
THURSDAY, SEPTEMBER 9, 2004, 7:00 PM
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Vice Chairman Dave Marshall conducted the meeting in Barrie Munro's absence. Dave Marshall, Glen MacWilliams, Richard Smith, and alternate Tom Manzi, who voted in place of absent Glen Farrell, attended. 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 the agenda.

No one came forward to speak at that time.

Minutes

Review and approval of draft minutes of August 12 and August 26, 2004.

Glen MacWilliams asked that typos in the August 12, 2004, minutes be corrected.

Motion Richard Smith moved to approve the August 12 and August 26 Minutes, as corrected. Glen MacWilliams seconded the motion, which passed, 4-0.

Applications

White Pine Subdivision Amendment. 3 & 5 Tall Pines Way. May 94/Lots 16T & 16U. Public Hearing. Proposal to amend the shape and size of two lots in a cluster subdivision because a house was mistakenly constructed over the existing property boundary.

Town Planner Steve Burns explained that while being built, the house location accidentally went quite a bit over the property line. A new septic system design has been made to accommodate the error.

The Vice Chairman opened and closed the Public Hearing, as no one came forward to speak. The applicant declined to speak, but builder Paul Swanick explained that a combination of the house starting off smaller, a garage being added, plus a rushed deadline of February 1 all added up to the blasting and pouring going to the right, rather than the left of the property line without his realizing it, all for which he took full responsibility. Glen MacWilliams said engineering certification was missing. Steve Burns said that Anderson Livingston could certify the altered plans.

Motion Glen MacWilliams moved to table the application until the completed plans with necessary certification are submitted. Tom Manzi seconded the motion.

Amendment After discussion, Glen MacWilliams amended his motion, saying that the plan can be approved as designed when the original subdivision documents come back to the Planning Board with certification on them. Tom Manzi seconded the amended motion. All were in favor, 4-0.

Sentry Inn at York Harbor LLC. 2 Victoria Court. Map 57/Lot 79. Public Hearing. Application to amend the Elderly Congregate Housing by expanding the communal space in the Alzheimer's Unit.

Dave Marshall stepped down from voting on this matter because he is an abutter. However, he participated in the discussion. Town Planner Steve Burns described the straight-forward proposed physical expansion of an existing building including removal of a one-story addition and addition of parking spaces. He referred to a letter from an abutter supporting the change. The forthcoming Fire Chief's review was probably the biggest outstanding issue.

Vice Chairman Dave Marshall opened and closed the Public Hearing, as no one came forward to speak. Glen MacWilliams asked about a double door into the Alzheimer's Unit being up to code. He also questioned the tight design for parking. He asked about plan certification. Steve Burns agreed that there was an issue about the parking.

Ward Hand of Sentry Hill said that the Fire Marshal was okay with the double doors. All the outstanding issues had been addressed. The abutters have been updated on changes. A Mylar plan had to be brought in for Board signatures. Parking spaces need rearrangement, as those near Woodbridge Road are in wetlands. Glen MacWilliams asked about the upper lot and if more spaces are required for the expansion. Ward Hand replied that no additional spaces are needed, at all. He asked for approval, so his group could go ahead with the work.

Motion Glen MacWilliams moved to accept the plan for the building only and to wait on signing the completed Mylar for the issues of parking, fire chief approval, and final abutter notification to wrap up. Once that is signed, the applicant could go forward. Tom Manzi seconded the motion.

The motion passed, 3-0, with Dave Marshall abstaining.

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.

This application had been tabled at the August 12, 2004, review meeting. Town Planner Steve Burns described a highly motivated applicant who gathered public works department, fire department, water district, and sewer department sign-offs within just a few days after the last meeting. The applicant had shown that the sewer line serves other, and not just his, properties. No one has the right to park on the lawn, according to the condo documents. The CMP lines have been in place since 1947. CMP did not make a formal

easement back then and continues to have the legal right to their placement without one now. Tom Manzi asked about fire truck access to the tightly configured buildings, and Steve Burns described how they could come in and shoot water from a ladder truck.

Vice Chairman Dave Marshall opened the Public Hearing. Abutter Jacqueline Robichau stated she did not object to the conversion, but described how, at one time, renters used her yard for a turnaround. As well, there have been many parking abuses. She was still afraid about children being hurt from the renters' traffic. Dave Marshall closed the Public Hearing.

Dave Marshall asked applicant Adam Ford to show the turnaround and neighbors' driveways on the plan. Adam Ford said that plan notes were being made that would limit the parking. Deborah Ford said they were going to assign designated parking by putting numbers in front of the space. She showed a common area that cannot be used for cars. A map indicating parking will be placed in the units she and her husband rent out. Dave Marshall responded that the signage must be made. Richard Smith asked for assurance that the parking would not occur in the easement or in the turnaround. Glen MacWilliams asked about measured distances on the survey. Project Engineer Mike Livingston showed that they were on the plan. Glen MacWilliams commented that the applicant had satisfied all the items the Board had asked for at the last meeting.

Motion Glen MacWilliams moved that the plan be accepted as soon as the conditions of providing bearings and dimensions are included in the Findings and signage on the site's designated parking spaces is complete. Richard Smith seconded the motion. The motion passed 4-0.

Bayberry Ridge at Spring Pond Estates. 14 Styles Lane. Map 94/Lot84R. Public Hearing. Application for Preliminary Review of a 30-unit elderly congregate housing subdivision. Continued from August 12 to consider Town Attorney's comments.

Town Planner Steve Burns said that the applicant had not only submitted a letter retracting his application, but also picked up his application materials from the Planning Office. The Town Attorney had informed Steve Burns that the Planning Board could either do nothing about the applicant's default, or vote that he is in default with regard to Spring Pond Phase 1. Glen MacWilliams suggested that the default vote might inspire Applicant Walter Woods to manage the defaults better than he has.

Motion Glen MacWilliams moved to find the developer in default of 11.2.6 (3) of the Town of York Site Plan along with the Findings of Fact. Tom Manzi seconded the motion.

In discussion, Tom Manzi asked if the Planning Board has jurisdiction over the action. Glen MacWilliams said that the pending violation is what matters, asking if Walter Woods can come back and make another submission as a builder. Steve Burns said that, if the Board has a finding of default, the applicant couldn't come back to the Planning Board on any application until the default is taken care of. Dave Marshall said that it is

not the Planning Board's decision to decide the applicant's default. Glen MacWilliams said that there is a legal opinion that Walter Woods is in default, and the applicant has been cited. The Planning Board has the opportunity to agree that it believes he is in default. Dave Marshall said that he believed the people in authority were deciding. Richard Smith said that the Board's finding the applicant in default is based on the Town Attorney's opinion, and the Board can base the vote on the attorney's findings. Dave Marshall asked if the Code Enforcement Officers could find Walter Woods in default. Steve Burns said that it is not up to the CEOs. It is in the Planning Board's jurisdiction because the Planning Board cites subdivision regulations, it is on the Planning Board's agenda, and the Planning Board has notified the abutters. There are citations from the CEO and the Town Attorney, and there is a continuing situation that threatens public health and safety.

Furthermore, Steve Burns continued, in Article 2 of the zoning ordinance, there is a definition of a corporation that states that when two or more directors of different corporations are the same person or that person's spouse, the two corporations are treated as the same corporation, which is what we have here.

Vote Vice Chairman Dave Marshall called the vote, which passed, 4-0.

David Woods' Project. 459 U.S. Route One. Map 49/Lot 22. Public Hearing. Application for a Route One Use Permit for proposal to remove the former Big Apple store/gas station and replace it

Town Planner Steve Burns described the new plan for the property as better than the former situation. He mentioned that the landscaping and buffers need more lawn area, but that the building design was "winning" with interesting concrete clapboards. Steve Burns went over guidelines about non-conformity.

Vice Chair Dave Marshall opened and closed the public hearing, as no one came forward. He expressed concern about the desired 40-foot setback not being met. Glen MacWilliams agreed that the 40-foot setback was important. He commented on the attractive building being proposed and asked if the proposed 2600 square feet includes the 2nd floor. The applicant replied that the upstairs is unusable. Glen MacWilliams said that the Board did not have, and needed, floor plans. Different rules come into effect, if the applicant is approaching 5000 square feet, he said. Dave Woods answered that his building is under that size. He must provide ample downstairs space for his tenant, and he wants a nice looking building. Glen MacWilliams said that the applicant could have the 2600 sq feet and a 40-foot setback at the same time. He said he thought the 40-foot setback was a requirement the Board had made on the applicant. Dave Woods said that he could not make anything work with the 40-foot setback. He described his method of laying out layers of tissue paper on the plan and coming up with no design that would maintain the size he needed and the distance the Board required. If he moves the building down, it will no longer look good, that the pleasing-ness of the building and the size of the space were his highest priorities.

Motion Glen MacWilliams moved to table the application because of the outstanding issues of the 40-foot setback, identification of bearings and dimensions, and parking. Parking on the adjacent lot must be placed on the plan. Tom Manzi seconded the motion.

In discussion, Richard Smith said that the Board had “led Dave Woods wrong” by saying that the 40-foot setback was required. It would have been better to say that the old building had a 40-foot setback, so he has to work with 40 feet. Steve Burns read from the minutes of the last review of this application. The Board clearly stated that that the 40-foot setback *must* be maintained.

Vote The motion passed, 3-1, with Richard Smith opposed.

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.

Town Planner Steve Burns talked about the math for calculating open space. Open space terminology is not the same as language and terms for net development in a cluster subdivision, he said. There was an error in the calculation for open space made before. He and Project Attorney Peggy McGehee had not agreed about the amount of open space that is required for Highland Farm.

Peggy McGehee said she hoped to receive preliminary plan approval that evening. Among other things, the draft covenants had been prepared and submitted. Project Engineer Steve Height said density calculations and a hydrogeology study were prepared. The size of Lot 13 had gotten larger. On the plan, he pointed out the open space haying line, the no-cut zone, and buffered land near Selwyn Silverblatt’s land. He pointed to the Estate Lot with wildlife refuge and open fields.

Peggy McGehee said that the land on the Estate Lot would be natural. Richard Smith asked if the open land on the estate would still be private. Peggy McGehee said that 5 acres have been added behind the upper cluster, moving the open space off the Estate Lot.

She explained her calculation of open space in the cluster housing area. According to Article 7.6.4 of the zoning ordinance, the developed area will be limited to not more than 50% of the net developable property acreage. She has, therefore, had to figure out if the developable area is less than 18.2 acres. She read from Article 3 that developed land is defined as land where change has been made, including lawns, landscaping, and buildings. In Zoning Ordinance Article 2, Page 15, she saw that “development” refers to any change to real estate structures or improvements. So, she asked Steve Haight to add up the amount of changes being proposed. When he did, he said that there would be 9 developed acres. Peggy McGehee then compared that figure with 18.2 acres and saw that nine acres are less than 18.2 acres and concluded that her calculation works. But, Steve Burns had told her that everything left over after building has to be open space. Peggy

McGehee replied that there are no objective criteria for open space in the ordinance. She said that the formula for open space has been interpreted 2 different ways already by the Town. The ordinance does not say that everything outside of the developed area needs to be open space, she said. Also, open space is not necessarily the inverse of development. The fundamental disagreement has led her to want to turn the decision over to the Town Attorney.

Vice Chairman Dave Marshall opened the Public Hearing. Keith Fletcher spoke on behalf of Doreen McGillis and on behalf of himself, as a conservationist (and not necessarily a member of the York Land Trust). He hoped to read the Highland Farms covenants. He was pleased with the location of the clusters on the western side of the property. He stated that a corridor should be established allowing people to get from Mount Agamenticus to Route 91. He hoped the rare New England Cottontail on that property would be considered by reducing the mowing schedule to an absolute minimum. He suggested having a 3rd party holder control the easement, rather than the homeowners association. Dave Marshall asked if the York Land Trust might take the responsibility. Keith Fletcher suggested that the Conservation Commission might be more likely to do it.

Helen Weinbaum identified herself as enthusiastic voter toward the Town's \$200,000 purchase of the Linscott Road piece. If people could walk from the Kittery Water District land to Linscott land that is contiguous with Mt Agamenticus, it would be a great benefit to the community, not just the homeowners, she said. A corridor on the western side would help make this happen. Steve Burns wondered how the pedestrian connectivity could be maintained. Keith Fletcher said that the Linscott Road could be developed.

The Board discussed the difference in Steve Burns and Peggy McGehee's calculations for open space. Steve Burns agreed it was best to go to the Town Attorney. Dave Marshall said that the intent had been for the open space to be 50%. Steve Burns said that the Comp Plan calls for 50% in 6.2.1, Revision of Clusters. Dave Marshall said that the problem is that it doesn't clearly say that 50% is set aside for open space. He commented that there was a difference in what the voters meant and how Peggy McGehee was looking beyond the intent and more directly at the letter of the law. Glen MacWilliams said he was looking forward to a legal opinion about this ambiguity in the ordinance. He also pointed out that the eastern side of the Estate Lot is no longer considered as part of the open space and is no longer contiguous with a natural wildlife corridor. There was also discussion of exactly what was approved in the former meeting. Steve Burns said that the board accepted the application as complete and voted that the layout was acceptable.

Richard Smith asked if the previously requested concept plan of Phase 2, the upper half of the property, had been made. Peggy McGehee said that there is no concept plan, but that some sketchy things have been handed in the past. The Planning Board does not have the jurisdiction to insist that the next phase be planned in order to determine this phase. Glen MacWilliams asked that a viable open space corridor for wildlife through that part of the property be nailed down. Peggy McGehee suggested that the name "vi-

able wild life corridor” should be changed to “natural buffer.” The applicant, Steve Woods, had personally observed and reported on the wild life.

Dave Marshall suggested that Peggy McGehee organize questions for legal counsel, especially about open space. Glen McWilliams added that the location of the corridor is also important. Peggy McGehee offered to come upon an open space solution that that Board would support. Dave Marshall suggested tabling the application before going to the Town Attorney. Steve Burns thought of looking at the area as different types of open space, like a tree farm that could still have a pedestrian and wildlife corridors.

Vice Chairman Dave Marshall asked for a consensus from the Board about approaching the problem by using the attorney. All agreed with the two weeks of negotiating before approaching the Town Attorney. They also agreed that the total open space should stay on the cluster side of the property and not on the estate lot.

Motion Glen MacWilliams moved to table the application to the October 14 meeting. Between this meeting and that meeting, if an understanding cannot be reached in a 2-week period, the opinion of the Town Attorney will be sought. Richard Smith seconded the motion. The motion passed, 4-0.

Other Business/Adjourn

Steve Burns said that he had spoken with absent Board members Barrie Munro and Glen Farrell, but not alternate Lee Corbin, about the required preference votes on the items the Planning Board had recommended for the November ballot. Both Barrie Munro and Glen Farrell had expressed their favor for all of the proposed items. At this time, the Board members attending the meeting were given an opportunity to express final approval or disapproval. It was not necessary for Tom Manzi to vote.

- On Residential Use, all were in favor.
- On the Fishing item, all were in favor.
- On the Shoreland Zone Boundary Amendment, Glen MacWilliams was opposed, but the others were in favor.
- On Setbacks and Buffers, all were in favor.
- On Building Heights, all were in favor.
- On “Small Boats,” all were in favor.

The meeting was adjourned. The time was 10:45.