

**York Planning Board**  
**Thursday, April 10, 2014, 7:00 P.M.**  
**York Public Library**

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

Chairman Todd Frederick called the meeting to order at 7:05. A quorum was determined with five people voting: Chairman Todd Frederick; Vice Chairman Al Cotton Jr.; Board Secretary Lew Stowe; and alternates Peter Smith and Amy Phalon. Both alternates were asked to vote as full members. Community Development Director Steve Burns represented staff. Patience Horton took minutes.

The Chairman is looking for two additional citizens to fill the board, with one coming specifically from York Beach.

**Public Forum**

No one came forward to speak.

**Minutes**

There were no minutes to review.

**Field Changes**

There were no field changes.

**Application Reviews and Public Hearings**

- A. **Keefe-Shoreland Building Replacement**. 43 Riversedge Drive. Map & Lot 0016-0033. Proposal to raze existing home and construct a new home within the required 100' shoreland setback.

Steve Burns introduced the application. The current house is 27 feet from the Cape Neddick River. The applicant wants to tear it down and put a new one in, though it doesn't meet the 100' setback. The Historic District Commission has Okayed the teardown.

The Keefes are proposing to build a new home 58' from the water. Per Code § 8.3.11.4.g, the setback should be 100'. There is a building envelope on the lot that is fully compliant with all setbacks. The applicant has chosen not to pursue that possibility and has come before the Planning Board for approval of a home 58' feet from the water. The Planning Board has to meet the standard to the greatest extent practical. Mr. Burns recommended denying the permit.

**Motion**: Chairman Todd Frederick asked for a motion to accept the application as complete for purposes of review. Al Cotton said, "So moved, Mr. Chairman." Peter Smith seconded the motion. The motion passed 5-0.

Attorney Greg Orso, supported by the design team of Isaiah Plant (architect) and Matt Banow (building designer), represented the applicants, Quentin and Mary Jane Keefe. He said former Town Planner, Christine Grimando, had informed the applicant they could not do the project several months ago. But until Mr. Burns's memo, they were never told this was a showstopper, and that the Town was not going to recommend a permit. It was never relayed the way it was relayed by Mr. Burns's memo of last week of March 24, 2014, said Mr. Orso.

He said the property is allowed to have a 30 percent expansion away from the water. Moving the twenty-year-old septic system 40' away from the Cape Neddick River is part of the plan.

Mr. Orson said that the ordinance repeats the term "greatest practical extent" 27 times, but that Mr. Burns reads this as the greatest *possible* extent. They are different, Mr. Orso said. Moving the septic system 40 feet from the river is a practical matter. There is no definition for greatest practical extent.

Ms. Phalon asked what is not practical about meeting the setback. He answered that by meeting the setback, you are disrupting the property. Ms. Phalon said that apparently there is building envelope space to fit this size house. What is not practical about using that space? He answered that you must weigh what is there now with what is going to be there when this is finished. It is practical to respect a responsible landowner who is making something more conforming.

Mr. Frederick read § 8.3.11.4.f, Relocation. "The implementation of a nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the sides of relocation conforms to all setback requirements."

Mr. Plant described some virtues of the proposed house. Though the 75' setback runs through one section of the house, the house is approved through the National Resource Protection Act. But it is not approved through the Town, said Mr., Smith.

Mr. Orso described lessened nonconformities of the project. The building is moved farther away from the river, from 27' to 58'. Within the 100' setback, lot coverage decreases from 3.2 percent to 1.3 percent, leaving 256 square feet of the building within the zone. The septic tank is being moved 100 percent out of the 100' setback. There are no archeological finds or historic significance to the property.

Mr. Smith said, "If you could not put a 3,200 square-foot house on the lot and manage the other setbacks on all sides without encroaching 10', 20' or 30' because the house couldn't be put anywhere else, then the "greatest practical" would allow you to put it where you can, though it is encroaching. If you can put it within that boundary, you put it within that boundary. That is the greatest practical."

The Chairman opened the **Public Hearing**. **Quentin Keefe** said that the new location has the most views and is more practical. It is practical because it sites the house im-

properly, and pushes the house against the wetland. Building a house beyond the 100' setback can hurt the view our new neighbor has, which we don't want to do. We are greatly reducing the impervious coverage, which is very important to us, as is moving the septic system. Mr. Keefe asked the board to vote in favor of the project, because it is a good project.

**Tom Reilly** of Cape Neddick is affiliated with the Cape Neddick River Association and the Cape Neddick Beach Association. He has seen the property and appreciates the time and money that has gone into it. He asked the board to vote yes.

**Tina Dipietrantonio** is a neighbor and a real estate developer. Moving a septic tank where it will not leach into the river and moving the house to the 58' line are very respectable. She and the neighbors urge the board to vote yes. The **Public Hearing** ended.

Community Development Director Mr. Burns said that in Ms. Grimando's December, 2013, memo, she wrote, "As proposed, I cannot recommend approval under § 8.3.11.4." They did not act on that recommendation, he said. Since then the garage has been moved out of the wetland, and the building still has a big setback. If they do want to do a 30% expansion, then per Supplement Plumbing Ord. 6.1.2, the current septic does get evaluated, because major additions require an assessment of the functions of the current system.

Though the public hearing was over, Mr. Banow asked to rebut Mr. Burns's statements, and he gave a history of the project.

- In the August of 2013, Mr. Plant went on the property with representatives from DEP and the Code Office. Because of the nonconformity of the existing building, the plan would have to go to the Planning Board.
- In September, 2013, Mr. Banow spoke to Christine Grimando and explained to her that the new building would not be nonconforming, but less nonconforming. She said, "Put something together."
- He submitted a plan November 11. In her first memo she wrote, "It is in the wetland. It can't be in the side wetland, and it has to have the 100' setback."
- On December 4, 2013, they talked on the phone. She said to send more information that shows "how it is better." It was not as if she was saying it was a showstopper, he said. After that review, she said the 100' setback ordinance was a strict interpretation. We had developed all our plans, and we stopped working on the plan at that time.

**Motion:** Al Cotton moved that we deny the application on the basis that it does not comply with Ordinance 8.3.11.4.g. Amy Phalon seconded the motion, which passed, 5-0.

**Town of York - Bog Road Fields Expansion. 40 & 50 Bog Road. Map: 0090 Lots: 0084-X and 0093-A. Proposal to construct a new athletic field with associated infrastructure at 40 Bog Road, with vehicular access provided through the adjacent Town property.**

Steve Burns introduced the application and discussed three outstanding items, the HDC signoff, the floodplain management note, and deed restrictions for the stormwater buffers.

**Motion:** Lew Stowe moved that the application for the **Town of York - Bog Road Fields Expansion** is complete. Al Cotton seconded the motion.

**In discussion,** Peter Smith said that the absence of the HDC signoff, the floodplain management note on the map, and deed restrictions of the stormwater buffers make the application incomplete for purposes of review. Todd Frederick said the application is accepted for review including those outstanding items at this time.

**Vote:** 5-0

The application was represented by Mike Sullivan, Director of the Parks and Recreation Dept. Project engineer Steve Brake said they have received a stormwater permit since their last presentation to the board. The existing access has a gravel drive off Bog Road that leads to the current facility, which includes fields for soccer, Lacrosse, and little league, plus a playground, a concession stand, and an existing gravel parking lot. A portable toilet location has been added since Sketch.

The proposed fenced-in football field is 390' by 210'. A new gravel parking lot provides space for 74 cars and includes ADA accessibility. When necessary, the parking lot spaces will be chalk-lined. Sometimes a couple of parking attendants will be hired for parking and safety issues.

The new gravel path is a restricted walking path and can be used by emergency vehicles. There will be a gate to stop routine traffic. The stormwater infrastructure includes four stormwater level spreader berm and buffers.

At Sketch, neighbors had concerns about dust. DEP says that you can't have dust migration across your property line. The only options for dust mitigation during dry periods are water or calcium chloride. Mr. Brake agreed to try recycled asphalt as the parking lot floor, and that the detail of that will be changed on the plan.

The application comes back to the Planning Board to finish up at the May 24 workshop. Mr. Burns had emailed deed restrictions to board members during the above deliberations and will work with Mr. Brake on plan notes before the 24th. Mr. Stowe said the board will verify the Findings of Fact so they can be signed that night.

**Sea Latch Amendment – Site Plan Amendment. 22 Long Beach Ave. Map & Lot 0036-0082, Proposal to alter the site design based on revised delineation of the dune boundary.**

Steve Burns said this application would add a 644 square foot check-in building to the project. When the plan was originally drawn up, the dune boundary line crossed the original office, and it was temporarily put in the main building. The building was redrawn

where it is now and was moved forward slightly. The actual dune line has been delineated and approved by the State. The building can be put back where it was. Mr. Burns recommended board accept the application and open the public hearing. The Water District has no concerns.

**Motion:** The Chairman asked someone to move to accept the application for purposes of review. Peter Smith so moved, seconded by Mr. Stowe, and passed, 5-0.

Edward Brake from Attar Engineering represented the applicants. Four members of the present board heard the complete application in August 2013 and approved it. Since then, it returned with two field changes.

Cynthia Thayer of R. W. Gillespie went through the on-site work to show where the dune line is. Based on that, Mr. Dixon at ME DEP sent a new dune boundary. The ADA ramp was revised to allow more space on the pool apron. Coverage calculations have been updated. Impervious surfaces have reduced for each of the zones on the plan.

The two field changes that have already been seen and approved were incorporated on the great plan. Lew Stowe made a motion to open a **Public Hearing** of the Sea Latch amendment to the site plan. No one came forward to speak.

Steven Dixon, with the DEP, gave the approval December 6, 2013. Ms. Thayer sent him a report, which he found had sufficient detail for approval. The revised MSG file, which the board was given in their packet, showed the former dune boundary (yellow) and revised boundary (orange.) Architect Mike Lasso then said the dune location was excavated onsite and was dug along the entire line to determine it by different types of sand.

Mr. Burns had gotten written signoff from the Police Department, as well as the Water Department. Mr. Lasso said he had left a message with the fire chief and not heard back. A fire panel with all the alarms throughout the complex will be in this building.

**Motion:** Peter Smith moved to approve the application for the Sea Latch amendment, Sea Latch Hotel at 227 Long Beach Ave.; Map & Lot 0036-0082. Amy Phalon seconded the motion. It passed, 5-0.

**Motion:** Peter Smith moved that we authorize the chair to sign the findings of fact for the Sea Latch amendment, 227 Long Beach Ave.; Map & Lot 0036-0082. Amy Phalon seconded the motion. The motion passed, 5-0.

## **Other Business**

### **New Materials for Medical Marijuana Code Amendment**

Ms. Phalon had prepared a chart called “Maine Medical Use of Marijuana Act Information Chart for the York Planning Board April 9, 2014,” to assist the board going forward writing the zoning ordinance.

There are two divisions of the medical marijuana business, one where marijuana is cultivated and packaged, and one where marijuana can be bought. One business cannot operate both divisions. They must be physically separated. A growing facility could be very big. There can be a lot of plants. The growing centers have to be in secure locations and screened from view.

The growing area can have six mature plants, each in different stages for each of five patients. They can also have immature plants and seedlings. They can also have 2.5 ounces of processed pot ready and available for each patient. A reserve of “incidental marijuana,” weighing of up to six pounds, can be set-aside for each patient. There can be six pounds of medical marijuana on hand for a caregiver has six patients.

In York, there are neighbors who live near an existing growing center. They have reported what makes it seem like a high risk, large-scale medical marijuana production. That is what the board has work on, said Steve Burns, not the family member, or a hospital worker, or the caregiver. It doesn't matter about people who grow it in their own homes as much as it does about big production.

## **Other Business**

- There will be an extra, televised meeting for the Police Station on Tuesday, May 6.
- There is an opening for a board officer, and the planning office would like a candidate for the spot.

**Motion:** Lew Stowe made a motion to nominate Pete Smith to fill that position. Al Cotton seconded the motion, and the vote approves the motion, 5-0.

- Interviews for a planner replacement will take place Wednesday, April 16, with three staff members plus Amy Phalon. The position should be filled by the end of May.
- The Septic Subcommittee had a fifth meeting with about seven people and a licensed site inspector and a certified inspector. An ordinance draft has been given to Steve Burns.

## **Adjourn**

9:45