

York Planning Board
Thursday, May 8, 2014, 7:00 P.M.
York Public Library

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

Chairman Todd Frederick called the meeting to order at 7:00. A quorum was determined with five people voting: Chairman Todd Frederick; Vice Chairman Albert A. Cotton, Jr.; Board Secretary Lew Stowe; Peter Smith; and alternate Amy Phalon. Ms. Phalon was asked to vote as a full member. Community Development Director Steve Burns represented staff. Patience Horton took minutes.

Public Forum

No one came forward to speak.

Minutes

The minutes of January 23, 2014 were reviewed and corrections were requested.

- **Motion:** Lew Stowe made a motion that we approve the minutes of January 23, 2014. Al Cotton seconded the motion. The motion was approved 5-0.

The minutes of March 24, 2014 were reviewed and corrections were requested.

- **Motion:** Lew Stowe moved that we accept the minutes for March 24, 2014. Peter Smith seconded the motion. The motion was approved, 5-0.

Field Changes

There were no field changes.

Application Reviews and Public Hearings

MacLean – Shoreland Building Replacement, 7 Barn Point; Map & Lot 0021-0001-A. Proposal to raze existing building and construct a new home within the required 100' Shoreland setback

Steve Burns introduced the application. An old unused lobster pound and a shed would be demolished to build a house. The house meets the setback from the road and from the neighbor. The 100' Shoreland setback runs through the new building. It cannot meet the setback. It is farther back than the existing building and cannot go back any farther. Mr. Burns recommended the Board accept the application, and if nothing interferes with its approval, to approve it.

Mr. Cotton said it is in an area known for flooding. Mr. Burns said the flood elevation is Elevation 16. The flood elevation jurisdiction is with the code officer.

Motion: Chairman Mr. Frederick said, “The application is complete for purposes of review. Is there a motion to accept the application”? Peter Smith said, “So moved.” Al Cotton seconded the motion. There was no discussion. The motion passed, 5-0.

The Chairman opened and closed the Public Hearing. No one came forward to speak.

Applicant representative Tim DeCoteau showed the Elevation 16 flood zone, delineated as a shaded area on the plan. He said that water would never get to this site. The shed will most likely be torn down.

Motion: Peter Smith said, “I move to grant approval on the MacLean Shoreland application at 7 Barn Point Road, with no conditions.” Al Cotton seconded the motion. There was no discussion. The motion passed, 5-0.

Motion: Peter Smith said, “I authorize the chairman to sign the findings of fact for 7 Barn Point, Map & Lot 0021-0001-A.” Al Cotton seconded the motion. There was no discussion. The motion passed, 5-0.

Ciampa Shoreland Special Use Permit. 3 Ciampa Drive. Map: 0090 Lots 0080-B. Proposal to construct a new single-family dwelling in the resource Protection Subdistrict of the Shoreland Overlay District

Mr. Burns introduced the application to build a house in the Resource Protection Shoreland District. The Planning Board must be shown that the lot must predate the Resource Protection designation. In the case of this application, the lots do not predate Resource Protection Designation. That makes a showstopper. The Planning Board cannot grant approval the way the zoning is written. The application has to be heard by the Board of Appeals.

The Planning Board’s acceptance of the application as complete places the application in the Planning Board jurisdiction. After that, the application is eligible to go before the Appeals Board if the Planning Board denies the approval, which is based on the “showstopper criteria. If the Board of Appeals then overturns the denial, the application will be remanded for the Planning Board’s standards. The applicant is looking for a Planning Board denial for those things to happen.

Motion: Peter Smith moved that the Board accept this application for consideration. Lew Stowe seconded the motion. There was no discussion. The motion passed, 5-0.

The Chairman opened and closed the Public Hearing. No one came forward to speak.

Mr. DeCoteau said §18.2.7 has a footnote in the use pages that appeared for many years, was taken out for a few years, and then put back in at some later time. The Ciampas created these lots when the footnote was out. It was legal at the time. At this time, the application has to go to the Board of Appeals or perhaps to court. Mr. Burns added that the

argument before the Board of Appeals could be whether or not §18.2.7 applied during that time it did not appear in the ordinance.

Motion: Peter Smith said, “I move to deny the Ciampa application for a special use permit to construct a new home in the Resource Protection Subdistrict, because the applicant could not demonstrate the findings of Zoning Sub-section 18.2.7.a. The lot was created in 2007, which does not predate the establishment of the Resource Protection designation by the Town of York. The Board reviewed no other aspects of this application. In the event that the application is overturned for any reason, the application should be remanded to the Planning Board for consideration for all other aspects of compliance. The motion was seconded by Amy Phalon. The motion passed, 5-0.

Expansion of Non-Conforming Use – Bullshirt 1070 U.S. Route One. Map & Lot 0094-0050. Proposal to construct a 48’ by 70’ addition to the existing building

Mr. Burns described this lot configuration, which has an existing commercial building and the Bullshirt shop. There is a detached garage in the side setback. The applicant proposes to remove the garage and build an addition. The use is not allowed in the base zone. It is allowed in the Shoreland. This is classified as manufacturing. Because it is nonconforming, they are allowed to expand in the confines of the lot. To do that, they have to comply with setbacks to the greatest extent practicable. The new building fully complies with setbacks, including the Shoreland setback. In §17.1.6, it states that if you are in an overlay district, the building has to fully comply. The site has on-site septic. The local inspector is satisfied with the septic for the expansion.

Motion: Amy Phalon moved that we vote to accept this application for consideration. Peter Smith seconded the motion. The motion passed, 5-0.

The chairman opened and closed the Public Hearing. No one came forward to speak.

Glen Farrell was the applicant’s representative. He had added two notes to the plan that Mr. Burns had requested, the modified floodplain note and the archeological note. Removing the shed on the side of the building improves the side setback, which is presently non-conforming. There aren’t any modifications to the access. The impervious surface will reduce with the modification. The dumpster will be placed behind the building and won’t be seen. Information about the dumpster being relocated out of sight behind the building is not on the plan, but it will be added. The siding will be clapboard.

Motion: Peter Smith moved to grant approval of the addition to the Bullshirt building at 1070 U.S. Route One, subject to the following three conditions precedent: 1) Add a floodplain note defined by Section 9 of the Floodplain ordinance to be signed by the Board. 2) Add the archeological resources note required by zoning of Section 8.3.7.b to the plan to be signed by the Board. 3) Applicant is to provide written verification from the town LPI that current septic system is adequate to accommodate the proposed extension. The new location of the dumpster will be corrected. Al Cotton seconded the motion. There was no discussion. The vote passed, 5-0

Cape Neddick Village – Phase 2. 1132 U.S. Route One. Map & Lot 0022-0013-A.
Review use, building design, and traffic impact review to allow the second phase of this master plan development to proceed.

Mr. Burns introduced the application. When the Board saw this application a few months ago, the building had a long, blank roof on a blank façade. The Board asked the applicant to correct that. At that point, the application had not been accepted for review. The applicant is looking for flexible uses that can fit into the building. New uses have to be checked at an administrative level as units are rented out, as they apply to septic and traffic impacts.

Motion: Chairman Todd Frederick asked for a motion to accept the application as complete for consideration. “So moved,” said Peter Smith. Al Cotton seconded the motion. The motion passed, 5-0.

The Chairman opened and closed the Public Hearing for Cape Neddick Village. No one came forward to speak.

The application representative, Seth Spiller, said that the Board should have received the recent revised building plans. There is a potential for a restaurant in that location, and the trip count and septic would have to be demonstrated. Currently the uses are office and storage, which is accessory to the office use. At the request of Mr. Burns, Mr. Spiller drafted Findings of Fact with the proposed, and then alternative, use.

Mr. Spiller said that the water line will be started in the next two weeks, and the landscaping shall be done after that. This has preliminary approval from the Water District. We have to wait for approval before going ahead with the water line. The abutter has drainage pipes that will be placed in the excavated area. The owner of Cape Neddick Village, Bill Duffy, said the line would go in on May 19. Then all trees will be planted in the buffer zone.

Motion: Al Cotton said “Mr. Chairman, I move to grant approval for construction of the new building designed for Phase 2, subject to the following conditions precedent and conditions subsequent. For conditions precedent, the applicant shall prepare findings of fact and list the possible uses for each building, such that the uses are both Route 1-5 and Mixed Shoreland Overlay zones, and that reflects the following conditions subsequent. The condition subsequent, by establishing any new use or changing use from one use to another, the CEO must approve the new or changed use in advance. The basis for such approval is two-fold. One, obtain an approval of the local plumbing inspector with regard to impacts on local capacity of the septic system and the ability of the system to accommodate waste water from the proposed uses, and, two, obtain approval of the public works superintendent with regard to impacts that total trip generation on the property. No combination of uses that generate 35 or more peak hour trips for Phases 1 and 2 combined shall be allowed without Planning Board approval.”

Peter Smith added language to the motion, “That the applicant complete installation of the stated water line and of the landscaping improvements related before June 30.” Lew Stowe seconded the motion, which passed, 5-0.

York River House Site Changes: 150 U.S. Route One. Map 0073 Lots: 0014 and 0014-A. Proposal to add a deck, move and change use of an existing building, and alter the parking lot. The application materials for York River House are on the web.

Mr. Burns introduced the application. The owner reconfigured the Bos’n’s Landing building with permitting from Code Enforcement. They did that in a short time frame to protect their grandfathering.

They are proposing three amendments. First is a deck that overlooks the river. Second, there is an existing home on the property they want to demolish and replace with a building the same size for a take-out counter and ice cream stand. Third, they want to add 22 parking spaces, bringing the total to 121. The restaurant footage, 6,000 sq. ft., is already in excess of what is allowable, 5,000 sq. ft. However, §17.1.6, Expansion Within the Confines of a Lot, allows this added area.

The proposed additional parking lot would be built on a wetland. The question is, is it wetland fill? which is the argument the applicant is going to make. The ordinance says it is considered a manmade wetland, if the wetland has a low-functional value according to the New Hampshire assessment method. This does not have such a value. The question needs follow up work to sort it out.

Motion: Lew Stowe made the motion that we accept the application as complete. Amy Phalon seconded the motion. The motion passed, 5-0.

Chairman Todd Frederick opened the Public Hearing.

Bob Packard, 10 Southside Road, is an abutter to the restaurant. It is an asset to the neighborhood. We approve the changes. Hopefully, the ice cream/food stand will be calling its customers’ orders in some other way than a loud speaker.

Wendell Weaver, Four Weavers Way, lives four houses away from the restaurant. The noise from Bos’n’s Landing take out stand was bad. These new owners agree to use the vibrating disk notifies. The owners did York a great favor by taking this project on. When you went by there, you saw every contractor in town with his truck. They must have been moving out of the way of each other. Mr. Weaver asked the Board to give Mr. West all the consideration possible.

Applicant engineer, Geoff Aleva, with Civil Consultants, represented owners Ken West and Jeff _____. The noise concerns of the abutters are going to be solved with a texting system. When customers pay for their order, the punch their text number in and receive a text when the order is ready. There will be no P.A. system. The vibrating disk is the alternate notification.

The manmade wetland was discovered in early April, 2014, when Jim Wilkins from Al Fricke and Associates flagged the wetland along the pavement. He wrote a letter indicating that there are manmade wetlands. Chris Cote was on the site May 7, 2014, the day before this meeting, and provided an email response stating this wetland would meet DEP's exemptions for not having to file an application, as long as the wetland was under a tenth of an acre. The impact wouldn't have to go to DEP for NRPA ruling.

That is different from what the Town of York indicates.

Mr. Aleva said the current parking plan calls for 99 cars, which is too tight. When the wetland was determined to be a manmade wetland, a new parking plan, with 22 more spaces, was made, and based on that determination. Al Fricke and Associates, wetland scientists, made that determination. In order to determine the wetland is manmade, the wetland scientist would take core samples, studying the soils at different stratum.

Mr. Aleva has met separately with the Fire Chief and the Police Chief and the Public Works Director and talked about the parking lot layout. To force people to slow down when they come into driveway, the entrance will be narrowed and a landscaped island with curbing will be put there.

The applicant is proposing a seasonal deck of 940 square feet along the northern edge of the restaurant building.

The residential unit on the property does not have a foundation. It is being moved farther away from the Shoreland zone, and a cape style with a covered porch at the take out and ice cream area will be in its place. Next to it, there will be brick pavers and picnic table seating. The courtyard area for the take out building will lead to bathroom and kitchen accesses. The flood elevation is Elevation 9. The first floor of the restaurant is Elevation 30.

The new part of the parking lot is going to be paved. The impact area does not require a DEP stormwater permit. They are under the lot coverage limit because of the large lot size. Letters were sent to the Code Enforcement Office describing the repairs that were made to the septic system. A letter describing the capacity for the proposed system, about 5,500 gallons a day, will be required.

The prior handicapped parking spaces did not meet code. They were relocated close to the building. New vegetated buffers were put in their place to catch pollutants. Mr. Frederick requested a plan of the drainage system using color and crosshatching to show the different aspects of the system.

A waiver is being requested for landscaping made of shrubs and native species between the parking lot and Route One. It will not hide the building with code-required trees, but will break up the area.

The elevation in the main body of the parking lot, the elevation is 34. The elevation of Route One is Elevation 40. Abutters are protected from glare. Headlight glare is also diminished by the high slope of Route One and the lower elevation of the parking lot.

Mr. Frederick told Mr. Aleva that the standards of § 6.3.11 and §6.3.6 are to be met. Clarification must be made on how to classify the wetland. The soil scientist should look at the York 1998 report, as part of his research. The Board wants to look at a stormwater control plan. The landscape buffer area along Route One must be described.

Motion: Al Cotton said, Mr. Chairman, I move that we table this issue to the meeting of the Planning Board on June 12. Peter Smith seconded the motion, which passed, 5-0.

Other Business

- Dylan Smith, the new town planner, is from New Hampshire and has worked with Rockingham Planning Commission in Exeter, Southern New Hampshire Planning Commission, City of Manchester, and North Country Counsel in Bethlehem. He will be staffing the Planning Board June 2, 2014.
- The Septic Committee has shown a strong interest in taking another step relative to septic systems. They would like to work in the area of multiple family rentals in houses with a single septic. This could start in September.

Adjourn