

York Planning Board
Thursday, October 8, 2009, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Planning Board Chairman Tom Manzi introduced the board members and determined presence of quorum. Tom Manzi, Vice Chairman Lew Stowe, Dave Woods, Todd Frederick, and alternates Torbert Macdonald and Tom Prince were present. Barrie Munro was absent. Torbert Macdonald voted in place of Barrie Munro. Town Planner Christine Grimando represented Town Planning staff. Patience Horton recorded minutes. This application meeting with public hearings lasted five hours and was televised.

Public Input

Open to the public to address any issue other than the scheduled public hearings.

No one came forward to speak.

Field Changes

The Town Planner said there were no field changes.

Minutes

Review and approve draft minutes

The September 24, 2009 minutes were reviewed. Lew Stowe recommended small changes and handed the corrections to the secretary.

Motion: Torbert Macdonald moved to approve the September 24, 2009, minutes as amended. Dave Woods seconded the motion, which passed 5-0.

Application Reviews and Public Hearings

Cragmere Subdivision Amendment. 501 Shore Rd. Map & Lot 0005-0011-A Revision to a Previously Approved Plan

Town Planner Christine Grimando described this application for removal of a buffer approved in 1997 as simple. The subject 25-foot easement on a non-conforming lot has no justification for existence, she said, as the other easements on the subdivision plan do.

David Waggoner, the property manager, came forward to explain his client, Mr. Bernard's, request to remove the buffer between Lots A & B, so a retaining wall can be put in. Removal of the buffer eliminates an encroachment around the pool and makes the lot conforming. Mr. Crane, who owns the other lot, and who sold Mr. Bernard his lot, has no issue with the change, said David Waggoner.

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

Dave Wagger handed out pictures of the boulder wall that will tie into the natural and blasted parts of the ledge. Christine Grimando said the buffer was placed in the subdivision plan without explanation. There is no infraction, as there is no zoning issue, and the subdivision plan can be amended to remove the easement between Lots A and B.

Motion. Torbert Macdonald moved that we approve the removal of the 30-foot buffer from the Cragmere Subdivision plan. Dave Woods seconded the motion. It passed 5-0.

Myles Franey. 1399 US Route 1 Map & Lot 0097-0033-A. Preliminary Review of a Minor Subdivision Plan.

Engineer Bill Anderson represented the applicant. Christine Grimando summarized the memo she had distributed to the applicant and the board. This proposed storage building on Route 1, not visible from Route 1, has landscaping and antique businesses on it. The property does not comply with the original plan. The owner has recently cleaned up the property. He has put up a post and rail fence, moved out propane tanks, added planting on the southerly side, and repositioned concrete “Jersey barriers,” all at the request of the Planning Board.

Dave Woods said the propane tank was for a house Myles Franey had in the past and should be deleted from the plan. Bill Anderson said he would do that. Myles Franey said the four Hemlocks should be removed from the plan because of their interference with the septic.

Torbert Macdonald and Bill Anderson talked about a stonewall that had been demolished. Torbert Macdonald asked what had happened to the stonewall that ran across the back of the property. Bill Anderson said it was bulldozed as part of the encroachment onto abutter Goodwin’s property. Torbert Macdonald suggested replacing it and asked if much of the stonewall is still there at the back of the property. Bill Anderson said the concrete blocks form the lot line, and the stones appear to have been pushed back. Other stones are still there at the base. Torbert Macdonald asked why the board should not demand a rebuilding. It was the abutter’s wall, and it was taken away. Bill Anderson said it has been replaced with something more substantial. Torbert Macdonald answered that it was replaced without something functional, but not the same. Torbert Macdonald said that if the base stones are there, the wall should be restored to the original condition, as it was before the encroachment. Dave Woods said it should be civil matter between the two owners, instead of a Planning Board issue.

Christine Grimando said there were changes to the application since the last hearing. Beside the new fence and relocation of the concrete blocks, much of the fill at the rear had been pulled back and re-graded. Also, the storage building now has a certified, professional building plan. When the storage building is finished, the shed will “go away.” She recommended that as a plan note. She recommended a plan note for a 1-year replacement guarantee on the planting. There remains a compliance issue with the fill. If there is an approval, there should be a condition about the wetland getting restored. It

was not declared a default against the previously approved plan, but at this point, there has to be a compromise, she said.

The **Public Hearing** was opened. Christine Grimando read a comment from **Ron Nowell**, the nephew of and the spokesman for the abutter to the north, Henry Briley, who is in favor of the permit. However, Henry Briley wants to see that the integrity of the 200-year-old wall is maintained. The section of the destroyed portion is owned by the Goodwins. The remnants of the wall are covered up with rocks, piles of roots, and loam, Ron Nowell had written. It is called the Isabel Goodwin wall. With no one else to speak, Chairman Tom Manzi **closed the Public Hearing**.

Christine Grimando said the Planning Board's object was to resolve any issue of default, and approve the additional structure to the property. Torbert MacDonald read from 18.1.5.2, Page 204, of the Ordinance. Code Enforcement or the Planning Board will expect landscaping of good quality and minimal impact to the natural resource features. Until the stonewall is restored, the applicant will be in default, he added. Todd Frederick said the wall should be protected as a historic feature. Christine Grimando said the wall is in "scenic" Route 1, making it within Planning Board jurisdiction to pronounce that the wall was once there, was destroyed, and can be repaired. Bill Anderson said he did not think the entire wall was there at first, before it was moved. David Woods said that the board has to come up with a standard of repair for the applicant, to make sure it has guidelines so it can be rebuilt. It is too much to ask the applicant to put in a perfect wall. Torbert Macdonald said it is common sense to make the repaired wall look like it does to the north and the south. Dave Woods said that there are gaps in the 300-foot portion of the property line to the north. Code Enforcement would be the authority if the task were delegated.

Motion Torbert Macdonald moved that we require the applicant to restore the stonewall, referred to as the Goodwin wall, to that standard consistent with the wall to the north and south, and there should be a good faith effort to meet that effort. Todd Frederick seconded the motion.

Friendly Amendment: Dave Woods said the language should be consistent, saying *property line length to the north* and the *property line length to the south*. Torbert Macdonald and Todd Frederick agreed to the change.

Vote: The motion passed 5-0

Motion: Dave Woods moved we do not require the applicant to install the Hemlocks on the northwest side of the property. Torbert Macdonald seconded the motion.

After discussion, the motion was withdrawn and reworded.

Motion: David Woods moved that we do not require the applicant to install any plantings or vegetation on the northwest corner of the property. Torbert Macdonald seconded

the motion. The motion passed 3-2. Tom Manzi and Lew Stowe voted against the motion.

Town Planner Christine Grimando listed plan note issues: restoration of the stonewall; the planting change to be reflected on the final Mylar; the removal of the shed; the screening of the dumpster; and remediation and restoration of the wetland at the rear of the lot per Shoreland code.

Motion: Torbert Macdonald moved that we require that the applicant manually remove the soil impacting the existing trees on the abutter's land, and it be required that no occupancy permit is given until the remediation has occurred. Todd Frederick seconded the motion. It passed 5-0.

Motion: Todd Frederick moved we approve the plan with the precedent conditions made this evening. Dave Woods seconded the motion, which passed 5-0.

Perkins Subdivision, 17 Ledge View Lane; Map & Lot 0006-0004-E; Preliminary Review of a minor Subdivision Plan

Christine Grimando introduced the minor subdivision application. This is a request to make three lots out of one existing lot. It requires a wetland permit. There was a site walk on September 29 with Planners Tom Manzi, Todd Frederick, and Lew Stowe, along with Town Planner Christine Grimando. The debriefing focused on retention of vegetation at the center of the cul-de-sac and the question of how utilities will be brought in--above ground, or not? The Maine Historic Preservation Commission has replied to the applicant. The wetland delineation document has been received. Fire Chief Bridges recommended a wider road design with variable widths for turning around if emergency vehicles want to get down the road.

Subdivision regulations require a water supply that addresses fire safety. If fire ponds are not used, the houses must be sprinkled. The Police Captain has had no issues. Public Works Director Dean Lessard is concerned about sight distances at Pine Hill Road and Jade Lane, along with neighborhood traffic concerns. He recommends leveling the right-of-way. Stormwater peer feedback has not been received. Because of this, stormwater discussions cannot yet be incorporated.

There are waiver requests for the fire pond, Christine Grimando continued. A waiver is requested for the High Intensity Soil Survey. There is also a request to waive the open space requirement. The upcoming November 11 hearing will tie up pending matters. That will be the deadline for a decision, unless the applicant requests otherwise.

Applicant attorney Nick Slater represented Scott and Barbara Perkins during this hearing. He said they believe everything is complete. If the peer review is missing, they should not be penalized. Engineer Alex Ross said he was not allowed to submit what had been requested. Referring to the fact that documents had been brought to the Planning Office earlier the day of this hearing, Christine Grimando said that, per the Site Review & Sub-

division Regulations, submittals are to be made 17 days in advance of the hearing. Torbert Macdonald explained the board cannot do justice with submittals that are received the same day. It is not fair to the board or the applicant. Christine Grimando said the applicant wanted to submit as late as last week, but the agenda was full, the timing was wrong, and she said “enough.” It was too much.

The Chairman opened the **Public Hearing**. Hearing no one, seeing no one, the **Public Hearing** was closed.

Tom Manzi said the package is substantive. Torbert Macdonald said the waivers could be taken up during this hearing, and then other matters after that.

Motion: Torbert Macdonald moved that we waive 7.8.2.4, water storage for fire fighting, and instead require that all houses to be constructed shall have sprinkler systems installed to comply with NFPA 13R. Todd Frederick seconded the motion. It passed 5-0.

Motion: Torbert Macdonald moved that we waive 9.5.9, street design standards, to allow for a narrower road width as presented in the so called “compromise plan.” This road waiver will result in the unacceptability of this road as a town road. Todd Frederick seconded the motion, which passed 5-0.

Motion: Torbert Macdonald moved that we waive 6.3.32, the High Intensity Soil Survey. Todd Frederick seconded the motion. It passed 5-0.

Motion: Torbert Macdonald moved we waive 7.1.3, the open space requirement. Tom Prince seconded the motion. It passed 5-0.

Christine Grimando said the debriefing of the site walk included that vegetation should be retained at the center of the cul-de-sac. Alex Ross said that point is covered in Plan Note 16. Note 14 addresses overhead utilities. Utilities will service both Lots A & B. Note 17 refers to the abutting properties that will maintain the private way and the culverts.

DPW director Dean Lessard had been concerned about road safety and the right angle in the right-of-way. Alex Ross said the Dean Lessard does not have to deal with the road angle. The right-of-way is preexisting, making it a non-issue. No right-of-way change is proposed. The radius of the road is also a non-issue. The angle of the road is also a non-issue. Christine Grimando said that, since the figures are not ready, the sight distance figures could go on a subsequent plan. Nick Strater then interpreted Dean Lessard’s memo to mean that the “small increment” being added refers to the increment of *traffic*, and not a physical increment that is part of the road. After discussion, Christine Grimando and the board agreed that the sight distance report could be waived.

Motion: Dave Woods moved that we waive the sight distance request placed on the applicant. No one seconded the motion. The motion was not heard.

Motion: Torbert Macdonald moved we waive 9.6.2 of the Site Plan & Subdivision Regulations that states all new streets or accesses must meet the intersection sight distance requirements as outlined in 8.2.3 of these regulations.

Christine Grimando said the stormwater peer review has not come back yet, and cannot be voted on this evening.

Motion: Torbert Macdonald moved we give preliminary approval to the Perkins subdivision based on the changes made tonight. There is a caveat that other issues may be found based on other submissions made tonight but not reviewed by the board. Todd Frederick seconded the motion. It passed 5-0.

The final plan is anticipated for the next hearing.

There was a brief discussion about the recording secretary's hesitation to read motions back when requested. Christine Grimando said exact language of motions is very important. Board member Dave Woods said the secretary probably couldn't keep up with some of the motions. Chairman Tom Manzi suggested slowing down when giving motions.

BAS Eldredge, LLC. 97 Raydon Road. Map & Lot 0091-0008-V. Application for Preliminary Site Plan Review/Route 1 Use Permit for a commercial showroom and storage space.

Dave Woods indicated that as a regular customer of Eldredge Lumber, he has a "conflict of interest." Torbert Macdonald said it's either Eldredge's or Home Depot. Todd Frederick says he frequents the store, so how can any of them be impartial? They did not recuse themselves.

Christine Grimando summarized her memorandum. The applicant last came before the board in February, 2009, with a sketch review. This is a preliminary site plan application and a Route 1 application. A site walk is planned for upcoming October 28. Wetlands were, but no longer are, part of the issue. Wetland fill is not part of the plan. Lumber storage is allowed in this zone. There is an existing condition. They had begun renovation work without a permit, which was stopped by the CEO. Creation of a gravel driveway, tree cutting, and a truck turnaround in a buffer yard were discussed in February, but this current version has eliminated truck traffic on the residential Raydon Road. That is a major change since the sketch review. The showroom no longer has an entrance onto Donica. All those changes should be better for the neighbors.

Senior project engineer Geoff Aleva from Civil Consultants in South Berwick described the application. The site is in the Route 1-3 zone. There had been a site walk on October 2. The plan consists of a building that will be converted into a door and window store-room. There will be an outdoor space for the storing "engineered lumber" brought from the second Eldredge site in Cape Neddick. The access to the property proposed during the sketch review has been relocated, and the trees that were an issue before will be re-

cated into the existing buffer, mitigating some of the sound and some of the visual. The pavement is 35 feet off the property. A waiver for the intrusion of the side buffer will be sought. The approach for tractor-trailers making deliveries has changed and some new pavement will be required. No outside light is proposed. Four properties on Donica Road abut this property, and two of them are vacant lots. The Ace Storage property wraps around part of the boundary. Torbert Macdonald suggesting putting a very tall fence along the property line because it is the best barrier to noise.

Stormwater is detained in underground storage and will flow into a catch basin and out through a manhole and pipe. All water on the Eldredge property exits through the same swale and under Route 1. The Chairman opened the **Public Hearing**.

Art Fossa read a written statement. He has a house with a deck on Donica Road. He is an immediate abutter to the Eldredge property. He has been in York for 56 years. He spoke about the environmental impact on deer, turkey, red fox, flora, fauna and the wetlands. He said the Eldridge business expansion would depreciate his home by \$25,000. Art Fossa suggested bifurcating the application, making lumber storage and window showroom into two applications. He asked all the planners to do what is best for the Town of York. When he finished, the audience applauded, as they did for everyone who spoke during the public hearing.

Mary Dervishian, of Donica Road also read her speech. She said a garden center was proposed at Eldredge, but it became a rental center. That was not what she was told would happen. Trucks started coming down Donica Road, and she felt that was not represented correctly, either. The trucks driving on the road continues. She is upset about beeping trucks backing, early (5:00 A.M.) deliveries, dumpsters, and work being done without permits. She asked the planning board to consider what will continue to deteriorate if the project continues.

Tom Manzi told the speakers that the Planning Board could protect the neighborhood only as much as the ordinance allows. Lew Stowe asked the presenters to temper their statements.

Dennis Whall described the truck traffic, the damage to the substructure of Donica Road, and how trucks pull out onto Donica Road to exit onto Route 1. There are noise and safety issues. There is potential danger, especially to children. He pointed out the overgrowth on the showcase building in a photo. Nothing has been done to cut back the overgrowth.

He recommended a redesign of a "required: right-hand turn from proposed new development onto Raydon Road. It would prevent a left hand turn onto Donica Road. The applicant and Planning Board agreed to this proposal. Dave Woods suggested a plan note disallowing access from Donica Road. The plan note will outline that.

Sharon Decato is happy the truck entrance onto the added property will not be from Donica Road. The noise from the Eldredge deliveries starts before 7:00 A.M. She has had

to call the police about the noise. Two times during the same day of this hearing, she saw a fork lift with a very full load in the middle of Raydon Road. It is not licensed for a public road. She offered photos. There is a constant issue with the unauthorized use of the dumpers, she said. The expansion of the lumberyard is going to make the homes around it unacceptable to buy. She is afraid she will never be able to sell her home.

Jeremy Prescott, who has lived on Donica Road since 1993, when the warehouse was a very quiet warehouse, said his house looks right at the showroom building. He has seen the dirt road change from a walking path to a dirt road heavily trafficked by Eldredge Lumber. He hopes for the building to be converted to low impact, commercial use. It is easy for trucks to cut through Donica, and he hopes that will be reconsidered.

Jeff Beaudin said he sees trucks up and down Donica Road all the time. He said he was “playing the family card” and asked the board to take the kids into consideration. He also said the area is configured like an amphitheater. Don’t think a metal fence will do anything to stop the sound, he told the board.

Loretta Prescott of Donica road asked if there was documentation of the site visit. Tom Manzi said there is supposed to be a minimal of conversation, and there is not much of a record, he said, like minutes.

The oldest house on the street was deeded on 1979, Loretta Prescott continued. The warehouse was built in 1981. The Route 1 zoning was changed in 1982. She wondered what anyone was possibly thinking when Route 1 zoning was assigned to the neighborhood being established there. It was a benefit for Eldredge, but a negative impact on the abutters.

Mary Murray of Donica Road said Eldredge has two lumberyards. She wondered why they need a third. She said trucks are backing up into people’s living room. That is a rusty, tin building that is not being maintained. She said she does not want the lumberyard in her back yard.

Art Fossa asked that the applicant leave the plan where it can be reviewed publicly. The Town Planner said it could be viewed at Town Hall.

Torbert Macdonald moved to close the public hearing. Lew Stowe seconded the motion. **The Public Hearing was closed.**

Christine Grimando recommended the board find the application complete for purposes of review. Torbert Macdonald cited Site Plan and Subdivision Regulation 5.5.1. It states that no plan shall be approved as long as the applicant is in violation of another approved plan. Noise had been violation of the previous plan. The planning board has to know if it has stopped. Christine Grimando said the noise violation had ended.

Motion: Todd Frederick moved to accept the application for purposes of preliminary review. Dave Woods seconded the motion. The motion passed 5-0.

Jeff Avila offered a rebuttal to comments made during the public hearing. He has been part of this expansion since it began. He was also part of main building expansion. There are no violations for either side. The access directly behind Meadowbrook is available for vehicles delivering to the lumberyard. He pointed to these roadways on an aerial photograph. A 24-foot buffer is required for this project, and a 35-foot buffer is given. The intended use is allowed in the zone.

Dave Woods said there should be a plan note that no delivery will be made before 7:00 A.M. Geoff Aleva said there would be idling trucks, instead. Dave Woods said that an asphalt apron linking the gravel driveway to the roadway would be acceptable to cut back on mud, and that the right hand turn out of Meadowbrook should be eliminated. Also, since the commercial zone is next to a residential zone, there is a water quality issue.

The Eldredge annex hearing ended.

New Business

There was no new business.

Old Business

There was no old business.

Other Business

November 9th, 6:00 P.M. joint meeting with Board of Selectmen

Adjourn

The meeting ended at midnight.