

**TOWN OF YORK PLANNING BOARD  
THURSDAY, OCTOBER 10, 2002, 7:00 P.M.  
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Board Chairman Glenn Farrell called the meeting to order at 7:00. Torbert Macdonald, Al Bibb, Dave Marshall, Barrie Munro, and alternates Dan Remick and Mike Estes attended. Town Planner Steve Burns and Land Use Technician Brett Horr represented Staff. Patience Horton was the recording secretary. The meeting was televised.

Two items had been removed from the agenda: Enterprise Rent-A-Car and Parmenter and Thomas Lot Line Change.

**Applications**

**Country View Motel. Map 10/Lot 8.** 1521 US Route One. Public Hearing. Route One Use Permit for renovation of existing motel.

Brett Horr introduced the application for a renovation of more than 2500 sq. ft. of commercial space in a nonconforming structure. The Planning Office expressed to the board that the plan was agreeable, with no outstanding issues. The waiver of the Impact Analysis was recommended because there would be no change in the number of guest rooms.

Torbert Macdonald and Al Bibb moved and seconded to accept the application as complete. The motion passed, 5-0.

Mr. Farrell opened and closed the Public Hearing, with no one coming forth to address the application.

Mr. Bibb and Mr. Marshall moved and seconded to approve the Waiver of the Impact Analysis, Findings of Facts, and Application. All voted in favor of the motion, 5-0.

**York Shores Subdivision. Map 89/Lot 56.** York Shores Drive. Public Hearing. Proposed three-lot subdivision.

Brett Horr said that the applicant had made measures to keep the abutter away from the lot line, as requested. Applicant had also removed the wetland cross-

ing and moved the driveway. He recommended reopening the Public Hearing. He recommended denial of waiving §9.5.8 pertaining to the second access.

Dave Marshall and Al Bibb moved and seconded to accept the application as complete. All voted in favor of the motion, 5-0.

Applicant Joe Carr told the Board that it is a very simple subdivision, with one lot being divided into two. The driveway had been moved, and a common driveway running 25 or 30 feet was proposed. The lots were big, 4 acres in size. He asked for the application to be approved, stating that new roads or the extension of the cul-de-sac were not part of the plan.

The Chairman opened the Public Hearing. Mark Kinton, the direct abutter on Lot 56B, spoke first. He asked for clarification about the waiver. Glenn Farrell explained the three waivers being requested. Mr. Kinton asked why three lots were being created, and Mr. Farrell explained that 2 lots were for building and the third would have not building on it. Brett Horr showed this on the plan. Mr. Kinton asked about the potential for future development off the right-of-way. Glenn Farrell explained that an extended road would allow that, but there would have to be a secondary access, which would be the Board's decision. Mr. Kinton wanted to know about fire hydrants. Mr. Horr said that those were up to the Fire Chief, whose comments had not yet been made. Conditional approval from the Fire and Police Chiefs was necessary. Mr. Kinton asked if any of the sitting Board members were on the Board in 1989. Barrie Munro and Glenn Farrell said they had. Mr. Kinton asked for their recollection of why the lots of application were not part of the original subdivision. Glenn Farrell answered that the original developer did not own this parcel. Torbert Macdonald said that another access road would have had to be built at that time. Mr. Kinton asked if the existing road is a town road. Glenn Farrell answered to the affirmative.

Ron Winslow came forward and shared his concern about the number of houses being added, if approved, and the added traffic they would create. He asked about road frontage, which Brett Horr explained is 50 feet on a cul-de-sac, according to the town ordinance.

Scott Brown of 5 York Pond Road asked how the proposed construction might impact the wetlands. Mr. Carr answered that there would be no wetland fill. Mr. Brown stated that approving the action would open the door for secondary access, making a through street. Glenn Farrell answered that for that to happen, the applicant would need an approved subdivision application for the secondary access.

Mark Kinton spoke again, asking who owned the 2 lots to the rear of the applicant property. That answer was Albert Ferrin, Jr. There was a discussion

of who owned the other property around the lots. With no one else to speak, Glenn Farrell closed the Public Hearing.

Brett Horr read a letter from Mary J. Cannata, 2 York Shores Drive, into the record. Her three concerns included increased traffic flow from construction and the new occupants, the use of explosives and potential damage to area homes, and the reason for three lots, when it had been apparent only two were earlier planned. Mr. Horr said he had spoken to her and answered her questions over the phone.

Glenn Farrell brought up the subject of the road waiver. Dave Marshall asked about the original owner. Mr. Carr said that Harry Goodstein built the original subdivision. He did not develop the subject area, because he wanted to loop the road out to Brixham Road. Barrie Munro said that the issue was whether §9.5.8 should be waived, which was within the Board's power. The answer lay in whether the addition of the lots would be harmful to the public safety, health, and welfare. Glenn Farrell brought up several different ways to circumvent the cul-de-sac and get 2 accesses. Torbert Macdonald brought up fire protection issues. Barrie Munro inquired about the nearby dry hydrant, wondering what could be done to make it functional. He asked Scott Brown, who had raised the issue of the dry hydrant, if there was water in the pond. Mr. Brown answered, yes, but that they can't get it out. Mr. Macdonald compared the situation to that of other towns that require fire ponds as part of the developer's expense. Mr. Munro said that that possibility does not make sense in this kind of development. Mr. Farrell agreed that the fire pond was not the applicant's issue. It was a neighborhood issue. Mr. Munro asked if there was a homeowners' association. Mr. Brown answered, no. He was not sure whose responsibility it was. Mike Estes pointed out that the applicant would still have to go to the Fire and Police Chiefs. The Fire Chief might recommend changing the angle of the pipe, so it gets down into the water. Al Bibb said that regarding the granting of a waiver as a site plan requirement, fire safety would be a vital aspect, and that if there were a dry hydrant that worked all the time, it would be easier to vote for the waiver. Torbert Macdonald said that it was possible that the site for the dry hydrant might be adequate for this applicant property, but maybe not for the extension back into the hinterlands. A thorough evaluation by the Fire and Police Chiefs would make a difference. The distance from the hookup may change the requirements, and another dry hydrant may be needed. Al Bibb said that if the board approves it, they need to evaluate it, first. Barrie Munro said that the issue should be addressed, but the location in relationship to the pond does not necessarily service everyone in the subdivision. Glenn Farrell said that if it is a fire issue, then getting the pond working to maximum capacity is important. He asked how the board would feel, if the Fire Department said that the pipe was fixed. Barrie Munro said that the Board had not always clung to §9.5.8 in the past, and that it was worth further investigation. He stated he was in favor of the waiver, which he felt was not contrary to the notes on the plan, which were

about the extension of the road. Dave Marshall said that §9.5.8 is a regulation to which the board needs to adhere. It was the intent of the prior Planning Board to limit the lots. Glenn Farrell agreed with Barrie Munro, saying that the board needed to enforce uniformly and not grant the road extension. Brett Horr read from *Residential Streets*, the publication from the American Society of Civil Engineers, et al, which said that as lots add up on a cul-de-sac, the road becomes a collector to all the lots there.

Barrie Munro moved that the board approve the waiver of §9.5.8, pending approval of the plan as submitted by the Fire Chief and the Police Chief as far as fire safety is concerned. Glenn Farrell seconded the motion.

In discussion, someone asked exactly on whose property the pond sat, so that it could be responsibly fixed. Mr. Macdonald said that when this issue came up some time ago, he was on the Conservation Commission, and that at that time, the State was interested in the lot development with regard to soil types, water flow, and septic systems. He said that this matter should go back to the State. Mr. Bibb said that that way, the board would end up granting more waivers than they have to. The lot sizes are over four acres, so Site Plan Regulations apply across the board. He tended to agree with the waiver based on the size of the lots, instead of the how things would be granted were the lots much smaller. Also, the applicant could get through construction without filling any of the wetlands, which would be good, he said.

The vote was taken. The motion was passed, 3-2, with Al Bibb, Glenn Farrell, and Barrie Munro in favor. Dave Marshall was opposed, as was Torbert Macdonald.

Mark Kinton interrupted discussion, asking the board to consider something he had to say. Glenn Farrell explained that changes were too late. Mr. Kinton asked if there was an ordinance violation connected to that vote. Torbert Macdonald explained that §9.5.8 deals with 15-lot subdivisions having 2 street connections. Barrie Munro added that the Planning Board has the right to give the waiver of §9.5.8. Dave Marshall further explained that Subdivision Regulations, like §9.5.8 can be waived, however, ordinances couldn't. Mr. Kinton admitted that it is difficult to understand the process. Mr. Macdonald read from Article 12.1, regarding the process.

**Spring Pond Estates Amendment. Map 32/Lot 3.** Styles Lane. Public Hearing. Proposal to switch spaces for apartment and community center space within existing building.

Brett Horr introduced the matter, saying he received calls or had conversations with 2 abutters about the proposed space change. One regarded concern over the interruption of postal service when the mailboxes are moved, which was to

be solved by having the plan reviewed by the Postmaster. The second concern involved privacy screening from the doorway of the new center.

Barrie Munro and Dave Marshall moved and seconded to accept the completed application for review, which passed unanimously.

Applicant Walter Woods spoke first, saying that the mailbox situation is between the Association and the Postmaster, and not between himself and the Postmaster. Al Bibb asked if there would be any days without mail delivery, and Mr. Woods answered, no. He was unaware of the screening issue, because the letter of concern had been sent to the Town Planner, and Walter Woods did not know about it.

The Chair opened the Public Hearing. Jerry Corradino of 11 Spring Pond Circle spoke of the Community Center move and creation of a new apartment. People coming in to the community center would be able to see into every room of his house and patio. He asked for installation of latticework to assure his privacy.

With no one else to speak, Mr. Farrell closed the Public Hearing. Walter Woods said that he was not sure if he could put up any latticework. An architectural committee at Spring Pond has to approve it. To the Board, he showed photos of the community center and the front door entrance to the second floor. Al Bibb suggested the approval of the application subject to the agreement by the architectural committee. Glenn Farrell said that if latticework is not agreed on, Walter Woods will have to come back before the Planning Board.

Barrie Munro moved that in order for the apartment and community center spaces to switch, latticework must be required. Dave Marshall seconded the motion, which passed 5-0.

**Enterprise Rent-A-Car. Map 91/Lot 8-Y.** 649 US Route One. Public Hearing. Route One Use Permit to establish rental car business.

This application was tabled at the applicant's request.

**Dunkin Donuts Conceptual. Map 91/Lot 8-Y.** 649 US Route One. Public Hearing. Conceptual discussion about feasibility of permitting a restaurant.

This discussion began with a brief talk among board members about the "Dexter" property being used by 2 different businesses. Steve Burns raised the question of whether or not the application qualified the restaurant as a fast food store, which is forbidden under York Zoning Ordinance. Fast food is definition in 3 parts: ready-to-consume food; a drive-through window; and

multiple cash registers. This store will not meet the definition of fast food, he said, with only one cash register and no drive-through.

Greg Orso spoke for Dunkin Donuts, saying that the applicant is willing work around York's definition of fast food.

Glenn Farrell opened and closed the Public Hearing, as no one came forward to speak. Mr. Burns said that he had received 3 letters (one addressed from Kittery) in support of Dunkin Donuts. Glenn Farrell asked the board members how they felt about Dunkin Donuts. Dan Remick compared the plan and layout that that of the Bagel Basket, and said that the plan offered was good. Mike Estes pointed out that Anthony's has 2 cash registers. Barrie Munro, noting that the applicant had bent its standards to meet the requirements, said that the architecture of the building is not a concern, as it will not altered. Al Bibb said that he was willing to go along with the idea, provided there be a condition that in no case would Dunkin Donuts be allowed to come back asking for second cash register station. Glenn Farrell said that the appearance of the building from the outside and the traffic flow are going to be important. He did not want to see any arches, 25-ft. guy holding a hamburger, nor neon signs. Mr. Munro said that a peak-hour traffic estimate would be necessary.

Steve Burns said that Enterprise is further along than Dunkie's in developing the same building. Enterprise could be ready in 4 weeks, while this would be longer. Dave Marshall said that reviewing these applications together is important. Mike Estes described how Enterprise would have the responsibility of showing a whole-building sketch plan. Torbert Macdonald said that the application could come in under the one owner of the building.

**Jacobson Conceptual, Continued. Map 30A/Lot 18.** U.S. Route One. Public Hearing. Proposed commercial development of the commercial lot from the Whispering Winds Subdivision.

Steve Burns introduced the application, describing a large building encompassing many small businesses in the spaces within. They would not include retail shops or stores, but house trades-people, their businesses, and offices. He said that the proposal was good for York and went over five questions regarding traffic, tenant changes, landscaping, buffers, and parking for the board to consider.

Applicant Art Jacobson depicted a 24,000 sq. ft. building with a 1,000 sq. ft. attached secondary structure housing a central office and shared conference room. He described how 12 to 16 tenants, with some possibly taking more than one space, could rent the 16-or-so spaces. In accordance with use regulations, each space would be less than 5,000 sq. ft. The space would be both upscale and affordable. Vegetation and design would be compatible with the Town's wishes. When fully leased, 30 people would be working there. He

hoped to go forward in February 2003, and complete it for occupancy the following June.

Glenn Farrell explained that Mr. Jacobson would have to extend City water to the property. He opened the Public Hearing. Don Bristow-Carrico spoke. He had lived at Lot C of Whispering Winds for 22 years. He voiced deep patriotism, love of York, and a desire to keep the area "fit for humans." He was concerned about the additional septic system the project would bring, as well as its impact downstream, especially on wells. He said that the Planning Board is inconsistent with what they accept. The size of this commercial project bothers him.

Mr. Farrell closed the Public Hearing. Mr. Burns said septic, parking, and traffic were major issues. Al Bibb said that some of the proposed uses of the building would almost require retail use, if there were a locksmith, for example. Mr. Farrell added, or a UPS drop-off. Mr. Remick said that great care would be needed about what goes in. Mike Estes said that the building would be so large, it would have to go through the Fire Marshall's approval. Fire separations will have to be required and documented, and the uses would have to be limited along those lines. Twenty-five thousand square feet of building requires over 100 parking spaces, but there are only 50 on the plan. It might be "industrial," but Mr. Estes did not see how that would be. Looking at the septic, it might have to be up scaled to a larger type. A traffic study and traffic lane on Route One would probably be necessary. Barrie Munro said that similarly to the Sport Center, a turning lane would be appropriate. The heavily forested area along Route One also means that the lot will have to be cleared off. An adequate buffer will be difficult to meet the Route One zone. A landscape architect might be an appropriate help. Mr. Munro asked Steve Burns if square foot limits are to be put in place on certain Route One activities. Mr. Burns answered that by limiting the size of each tenant, the applicant is doing that.

Mr. Munro asked about parking. Mr. Jacobson answered that since there is no retail business there, there will not be many cars. He compared his building to the Eliot Business Park. In the morning, the tenants go out on a job, so the parking is low. Glenn Farrell pointed out how someone might drop something off and pick it up at another time. Steve Burns suggested conducting a traffic study at Eliot Park for a week or so. Barrie Munro said that there would need to be a good drainage assessment, because of the subdivision the Park will overlook and will try not affect. Torbert Macdonald pointed out that some of the activities suggested might be replete with hazardous material. He had difficulty with the concept of the septic and drainage, saying that he didn't think the septic could handle something that big. Also there are physical problems with septic systems in the area. He was not sure that there is the infrastructure to accommodate that building at that site.

Mr. Jacobson said that Mike Livingston is engineering the project. All businesses going in will have permits from the Planning Board. Mike Livingston said that there would be water records to make sure the septic is not over-capacitated by the use of the building. Drainage had not yet been analyzed. They planned to address all State permit requirements. Torbert Macdonald brought up the possibility of the septic system being shocked. Mr. Livingston said, "Those things have to be prohibited."

**Parmenter and Thomas Lot Line Change. Map 99/Lots 86D & 71B.** Clay Hill Road. Public Hearing. Proposal to alter boundary between two lots of a subdivision originally approved in 1974.

Tabled at the applicant's request.

**Eastman Change of Non-Conforming Use. Map 22/Lot 4D.** 1163 US Route One. Public Hearing. Proposal to build a garage.

Steve Burns said that the change was based on the number of units on the lot, which is a duplex and allowed, though it is non-conforming.

Dave Marshall and Barrie Munro motioned and seconded to accept the application as complete for review. All voted in favor of the motion.

Harry Eastman said that the proposed garage would not put any impact on the neighborhood. It would be for a couple of vehicles. His land is 1.24 acres. He asked for approval.

Steve Burns explained that Article 17.1.6 allowed for expansion of non-conforming use in the Route One Zone. Mike Estes asked if the garage was just for parking. The answer was, yes. Torbert Macdonald had read the article and asked what had to be covered. Mr. Burns answered, setbacks and lot coverage, but there was no site plan standards for a duplex.

Dave Marshall and Barrie Munro motioned and seconded to approve the application and the Draft Findings of Fact. The motion passed, 5-0.

**Kingston Shoreland and Change of Non-Conforming Use. Map 33/Lot 142.** 205 Long Beach Ave. Public Hearing. Proposal to alter existing residential units.

Steve Burns described the application as confusing and not really ready for decision. The owner wished to convert the front of his property to a year-round home, after tearing down the building behind it and replacing that with a duplex. There would be a change of non-conforming use, as well as shoreland issues. The property clears setbacks. Going from seasonal to year-round constitute one issue. The need to show that new use is appropriate for the

neighborhood is also necessary. The applicant had shown reduced impact. There would be a condo-conversion issue. The impact and floodplain issues were also two main things, he said.

Architect Brendan McNamara spoke on behalf of Mr. Kingston. Of the three units, two would be offered for rent or sale, most likely to empty nesters. The overall habitation would be reduced, with the number of bedrooms decreased. Bringing the front building into current code would be difficult, because it would be under floodplain requirements. A change of thickness of the floor had been proposed to the DEP, but was rejected. They are not planning to re-build, but have a new area of complications.

Glenn Farrell opened and closed the Public Hearing, when no one stepped forward to speak. Barrie Munro asked what the DEP would approve at that time. Mr. McNamara answered that they are unclear, but said that the applicant could expand within a limited extent. Mr. Munro said that the applicant could not change the height or the footprint. Mike Estes said that they could only do minimal work on the house, which Steve Burns qualified by saying that 50% of the value of \$133,000 was all they could put into it.

Torbert Macdonald asked about Resource Protection. Brendan McNamara said that though they wish to redevelop the front house, they had been instructed to wait until the new DEP regulations come into force. Steve Burns brought up the possibility of jacking up the house 2 feet or so, which led into a discussion about lifting it up. Mr. Burns said that a one-foot surge coming over the road in terrible weather would be the most likely danger.

Brendan McNamara said that his group wished to work on the demolition project soon. Torbert Macdonald said that the Planning Board was not going to insist that the front house be brought up to code until DEP can do something. Glenn Farrell added that deferral of improvements on the front house is possible, but there might be a time limit imposed after the DEP changes their regulations.

The reduction of the intensity on non-conforming use by going from six to three units was discussed. "Six of one, half of that in another," said Torbert Macdonald. Al Bibb wondered if the Board's restrictions would have an effect on whether or not the applicant could get flood insurance. Steve Burns explained that the imposition the Board would be making would be if 50% or more were put into the house, it would have to bring it up to code. Torbert Macdonald asked who it is who checks the 50% rule. Steve Burns said that it is part of the building permit in a floodplain.

Steve Burns asked the Board if the change in nonconforming use was okay. Glenn Farrell asked about the impact. Dan Remick and Dave Marshall both thought the impact on the school would lessen. Al Bibb agreed. Torbert

Macdonald said impact fee based on the bedrooms would be paid, and there would be less bedrooms.

**Other Business/Adjourn**

Mr. Macdonald and Mr. Bibb moved and seconded to adjourn. All agreed. The time was 9:50.