



To: Town of York, Planning Board
From: Lee Jay Feldman, Director of Planning
Date: 8/4/2016
Re: Site Plan review of Long Sands Bathhouse

I. Proposal

The Town of York is proposing to reconstruct the existing Long Sands Bathhouse in the same general area of the current bathhouse structure. The current structure is approximately 555 square feet in size while the new proposed structure will be approximately 1997 square feet, broken into two buildings and under one roof.

The site will include two bike rack locations, a handicap accessible ramp down to the beach, trash bins, outside wash areas, benches and a 25'x70' overlook deck on the beach side of the structure. The project as a whole has been pulled back from the beach based on the street relocation project. The street side will include a great deal of landscaping and textured crosswalks to slow the traffic and make this area very pedestrian friendly.

This project requires relocation of the current roadway in an arched manner pushing the street further away from the shoreline in order to accommodate the proposed project. In order to actually relocate this roadway the town has entered in to discussion with the Maine DOT who owns the current roadway alignment. These discussions have not yet been finalized as I understand it, so when the Planning board gets to the point of approval there will need to be a discussion regarding a condition on the landscaping needing to be approved by the Maine DOT. More discussion on that later.

In order to establish the review on this project, the board needs to understand there are a variety of hurdles within the zoning ordinances that must be addressed:



Base Zoning	RES-7
Shoreland Zoning	Wetland resource Protection
Floodplain	VE and AO zones

These too will be discussed later in the memo.

II. Process

I understand that the board has already seen this application at the sketch level during a workshop. I would suggest that the applicant be given the opportunity to present the project prior to the board taking any of the required actions this evening.

There several important housekeeping items that the planning board needs to first address before getting in to the technical review of this project.

Completeness: As you know, I like to remind the board that finding the application complete means that the information that is required to be submitted has been done. That submission does not mean that we agree with the information or that there may be a need to provide additional information above and beyond the submittal requirement. **The application can be found complete for the purpose of moving the project forward**

Waivers: The applicant has submitted a list of waivers with explanations to why they are requesting the waivers as part of your submission packet. Those waiver requests include:

- 6.3.5.e-Impact statement for stormwater management. See submission explanation.
- 6.3.5.h-Impact statement for water quality. See submission explanation.
- 6.3.5.m-Impact statement for public school enrollment explanation.
- 6.3.8-Traffic impacts. See submission explanation.
- 6.3.12-Phosphorus pollution- See submission explanation.
- 6.3.15-Watersheds in the Town- See submission explanation.
- 6.3.16-Plant or animal habitats or areas of ecological significance- See submission explanation.
- 6.3.24.2-Private sewage disposal- See submission explanation.
- 6.3.25.2-Wells- See submission explanation.
- 6.3.27-Stormwater management- See submission explanation.
- 6.3.29-Temporary markers- See submission explanation.
- 6.3.32-High intensity soil survey- See submission explanation.
- 6.3.33-Traffic impacts analysis- See submission explanation.
- 6.3.35-Planning board review fee- See submission explanation.

Due to the nature of this project, I see no reason why the board could not waive these items as requested.

TECHNICAL REVIEW

Zoning

This site has three zones to consider as part of this review. The first zone is the base zone.

The base zone is RES-7, in this zone the use would be considered a *Civic and Public Use Municipal*. Within this zone the standards are 12,000 square foot lot on sewer and water, 20' setback from the front yard and 12' from the side and rear yard(s) with a 30% lot coverage. Setbacks in the Res-7 zone are relaxed for this project under footnote b as found in §5.2.1 footnote b states that "a municipal functionally water dependent use in the RES-7 district that contains frontage on Long Beach Ave and has year round public water and sewer shall not be required to meet minimum front setback requirements" The issue of Functionally Water Dependent Uses is also discussed below in the Shoreland zone.

Article(s) 8 and 18.2 The Shoreland zone, this project is located in the Shoreland zone and will require a Shoreland permit concurrent with the Site Plan review as noted in Article 18 Section 18.2 of the zoning ordinance. As I understand it, if the Planning Board has not already reached agreement to determine if this meets the definition of a **Functionally Water Dependent Use** than the board must do so by interpreting the definition as found in Article 2. If the board has already determined this, then I would recommend it be reiterated as part of this process to put it on the record. Lot coverage in the Shoreland zone for this project is 20% as defined in Article 8 Section 8.1.3.b. This standard has been met since most of the amenities being established in associated with this project are pervious in nature and not impervious. The coverage standard is more restrictive than the base zone requirement as well. The lot size has also been increased in size due to the relocation of the street which helps the lot coverage since this building is larger than the previous building. The lot size and frontage requirements have been met for this reconfigured lot by virtue of the standards in Article 8 section 8.1.1.E

The current building is considered Non-conforming within the Shoreland zone and is proposed to be relocated on the parcel based on the new size and reallocation of land due to the street relocation project, the following setback standards shall be used as found in Article 8 Section 8.3.11.4.f:

Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical

extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming. In no case shall relocation be required for a building which has been determined by a qualified historic resources expert to be eligible for National Register listing.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- 1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.*

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- 2. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.*

One of the most important factors in this consideration which falls to the town's favor is that this wording is structured in a way that is more restrictive due to the fact that septic systems are mostly found in those areas within Shoreland zones. In this case the project is on Municipal Sewer so that helps this issue out a great deal in considering the relocation of the structure.

Flood Plain Overlay Zone

The Flood Plain zone is a fairly complicated issue to deal with as it relates to the permitting of this project. The building sits in a "Special Flood Hazard Area" located on FIRM panel 230159-0028 D as the site has both the VE zone and the AO zones associated with it. In the VE zone the base flood elevation according to the applicant's survey data is at 18 feet. According to the note located on the current FIRM map, the Finished floor elevation of the existing bathhouse is at 14.66 feet, putting the current structure approximately 3.4 feet below the base flood elevation. The applicant's plans do not show the proposed final floor elevation for the new structure implying that there has been no change in the elevation of the proposed new building. **If this is the case the applicant will need to seek a variance from the Zoning Board of Appeals.**

In the VE zone the following applies:

P. Coastal Floodplains - 1. All new construction located within Zones AE, A, and VE shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.

2. New construction or substantial improvement of any structure located within Zone VI-30 or VE shall:

a. be elevated on posts or columns such that:

(1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to two feet above the base flood elevation;

(2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,

(3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.

b. have the space below the lowest floor:

(1) free of obstructions; or,

(2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or, Town of York, Maine Floodplain Management Ordinance: Amended May 19, 2012 13

(3) constructed with non-supporting breakaway walls which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

c. require a registered professional engineer or architect to:

(1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA-55/June, 2000); and,

(2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2. 3. The use of fill for structural support in Zone VE is prohibited. 4. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage. 5. The enclosed areas may be used solely for parking vehicles, building access, and storage.

In the AO zone the following standards apply:

ARTICLE VI - DEVELOPMENT STANDARDS

G. Non-Residential - New construction or substantial improvement of any non-residential structure located within:

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:

a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

b. at least three feet if no depth number is specified; or,

c. together with attendant utility and sanitary facilities be flood proofed to meet the elevation requirements of this section and flood proofing standards of Article VI.G.1.

The depth identified in the community is 1' for this location

I have had a conversation with the Maine Flood Plain Coordinator to verify my position on this matter. She has indicated that since this project sits both in the AO and VE zones that the more restrictive regulation would apply, in this case, the VE zone regulations. The building must be elevated 2 'above the Base Flood Elevation

of 18'. It is my understanding that a FEMA Representative will be in Maine on the week of August 8th and the Maine Coordinator would be happy to set up a meeting to discuss this design with me in light of these issues.

I would also recommend to the planning board that a 3rd party Engineer review these plans and my issues regarding the Flood plain in order for another set of eyes to determine my interpretation of the regulations

The applicant has not provided any evidence as part of this submission that they have met these Floodplain standards, and as the board is aware, they must make a finding in the CRITERIA OF APPROVAL Article 1 Section 1.2 of the Site Plan and Subdivision Regulations:

1.2.13 Flood Areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board will determine whether the development is in a flood-prone area. If the development, or any part of it, is in such an area, the developer shall determine the 100-year flood elevation and flood hazard boundaries within the development. The proposed plan must include a condition of approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least two feet above the 100-year flood elevation.

Other Issues

Street Relocation

It is my understanding that the street relocation matter has not been completed at this time with the Maine DOT. Because of this, the applicant cannot do any of the proposed streetscapes and landscapes until the DOT has approved the relocation plan.

Sea Level Rise

The Town of York was on the cutting edge of Sea Level Rise impacts by being the first Coastal community in Maine to adopt a Comprehensive Plan chapter dealing with Sea Level Rise. As part of that work, the town also adopted Goals Policies and Strategies associated with SLR. Some may need further adoption to become ordinances and others were policies that the community needs to consider for any project moving forward. I have included several of the GP&S from that section of the plan:

TOWN GOAL 6.4: Recognize that Sea Level Rise is occurring, and that storms are happening more frequently, with higher intensities and water levels. The Town should implement strategies to adapt to this situation. A challenge facing York is the realization that sea level is rising, and intense rainfall events and

storm surges are happening more frequently. According to the Maine Geological Survey (MGS), the State projects a 2' rise in sea level in the coming 100 years. An increase in sea level will have significant impacts on the coastal landscape. As the coastline moves inland, floodplains will rise, salt marshes will change, and erosion will worsen.

Footnote: since this was adopted, the state has changed its prediction to 1 meter or 3.3 feet rather than 2 feet as discussed here.

6.4.1 The Town of York shall review its floodplain management ordinance and land use ordinance to strengthen standards for new or replacement construction located in vulnerable tidal areas, or areas subject to freshwater flooding. The Town of York shall also review these ordinances provisions and enact amendments to protect existing properties and direct owners over time to modify their structures so that they are more resilient to sea level rise, storm surges, and rainfall events. This may include requiring additional elevation of the base floor of reconstructed buildings after flood damage, or in all cases of new or replacement construction. IMMEDIATE PRIORITY - PLANNING BOARD TAKES LEAD ROLE

6.4.2 The Town shall incorporate sea level rise into its decision-making and design of transportation improvements, such as increasing road surface elevations and improving road subsurfaces, increasing the capacity of all stormwater management and drainage systems, and adjustment of bridge heights. IMMEDIATE & ON-GOING PRIORITY – DEPARTMENT OF PUBLIC WORKS TAKE LEAD ROLE

6.4.3 The Town shall identify its public investments and infrastructure at risk from sea level rise impacts, and update this assessment every 10 years. Specifically, the Town shall analyze vulnerability to facilities and services, including but not limited to: town buildings; water and wastewater treatment plants and pumping stations; stormwater systems; town roads and bridges. The Town shall coordinate with other municipalities, and water and wastewater utility districts in this effort. ONGOING PRIORITY –DEPARTMENT OF PUBLIC WORKS AND UTILITY DISTRICTS TAKE LEAD ROLE Page 57

6.4.4 The Town shall evaluate the costs and benefits of alternative means of adaptation to sea level rise and increasing frequency of storms when considering the location and design of new infrastructure or the reinforcing or retrofitting of existing infrastructure. Such evaluations should be incorporated into the budgeting, planning, siting, construction, replacement and maintenance of public infrastructure in a manner that is cost-effective and that maximizes the use of the infrastructure throughout its expected life span. In each case, the Town should consider the three alternatives of adapting; whether

to reinforce, accommodate or retreat in the face of sea level rise. ON-GOING PRIORITY – SELECTMEN TAKE LEAD ROLE

While there are no specific requirements (Ordinances) to adhere to for these items it seems that consideration should be given to them as part of the review of a new municipal project and yet it seems no consideration was given to these impacts as part of this design. When the Planning Board has to make a finding that this project adheres to the Comprehensive Plan I am not sure at this time that I can guide the Planning Board towards making that finding:

1.2.9 Conformity with Local Ordinances and Plans. The development is in conformance with these Regulations, Zoning and other Town land use codes, and the Comprehensive Plan. In making this determination, the Planning Board is authorized to interpret these Ordinances and Plans.

Recommendation:

At this time I recommend the planning board Table this application until such time as:

- 1) The flood plain issue gets resolved.
- 2) A third party engineer be retained to review the flood plain issues