

Minutes
Town of Waldoboro
Planning Board Meeting
April 14, 2004

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Roll Call

The meeting was called to order at 7:03 p.m. by chairman John Morris in the firemen's conference room. Other Planning Board members present were Carlo Bianchi, Chuck Campbell, Terry Gifford, Ed Karkow, and Jo Ann Myers. Code Enforcement Officer John Black was present. The audience included Judy Boucher, Wayne Brown, Celia Cart, Ann Chiarchiaro, Charles Chiarchiaro, Geraldine Creamer, Kent Creamer, Kim Creamer, Tom Creamer, James I. Heard, William Hinkley, David Lash, Tom Lie-Nielsen, Chet Mayo, Stephanie Mayo, Henry Oliver, Parker Spofford, Pat Spofford, Dan Surrells, David E. Tosi, Gail Tosi, Steve Warren, Sean Welton, Norman Whitehill and Sandra Whitehill.

1. Minutes of March 10, 2004

On motion of Karkow/Campbell, the Board voted 6 – 0 to accept the March 10 minutes as distributed.

2. Denial of Permit for Pier, Ramp & Float, Boucher, 1262 Dutch Neck (R1/74-2)

Applicant Judy Boucher, Dan Surrells, and contractor David Lash of David Lash Marine Construction of New Harbor were present for review of an application to build a 6' x 100' dock with a seasonal 3'6" x 34' runway and 10' x 20' float on the Boucher property, which is on the east side of Dutch Neck five lots north of the Waldoboro Marine Park. A permit by rule has been granted by the Maine Dept. of Environmental Protection. The float will rest on the bottom at low tide, and can be used at half- or three-quarters tide. The applicant will keep a boat on a mooring in the permanent channel, which is about 375 feet from shore, and use a skiff to get to the boat.

Chairman Morris read Code Officer Black's analysis of the shoreland zoning review standards for the pier application. Black's analysis suggested that applicable shoreland review standards appear to be met.

David Lash said that no CCA pressure-treated wood will be used in construction, although the spec sheet calls for .40 CCA pressure-treated wood. The pier will be built of Natur-Wood, which does not contain arsenic. Pilings will be oak.

Morris opened the meeting to audience questions and comments.

Geraldine Creamer (Mrs. Thomas Creamer) said their land 200 feet from the Boucher property is a family farm that has been in the Creamer family since the 1800's. She gave the Planning Board copies of a sketch plan showing the area between the Waldoboro Marine Park on the south and the Creamer land on the north. There is a sandy beach at the high tide line and a hard pebble

bottom for swimming. Off the Creamer property are tidal clam flats of "Stahl's bar", which has been used for clamming for 200 years and is used every day by 5 - 6 clammers. The cove south of Creamers' has recently been closed to clamming due to pollution. Mrs. Creamer expressed concern not only for the continued health of the clam population, but for other animals and birds that use the area including horseshoe crabs, an endangered species; migrating geese and ducks; great blue herons that feed in the cove; harbor seals; loons; and cormorants. She said there are no piers within sight along the west shore of the Medomak estuary between the village and the Marine Park on Dutch Neck. The shoreline looks the way it did 200 years ago. "Once one pier is built, others will soon follow", she said, and this proliferation will harm this important marine resource, and also the scenic values of the area. Mrs. Creamer went on to say that a 154-foot pier/ramp/float would restrict entrance to the cove by boats and make it hard for people to walk along the shore. She suggested the Town build a deepwater pier at the Marine Park for public use, which would be environmentally preferable to having many private piers along the shoreline.

David Lash said he built a pier last year at Meetinghouse Cove at the north end of Dutch Neck. He said there are eight piers within sight of Dutch Neck, most of them a mile distant on the east side of the estuary. Judy Boucher said she bought her property seven years ago. There were no restrictions on it. Five docks were built in the last year, and no one complained about them. Dan Surrells said he has lived here for eight years. He said very few clammers use the flats in front of the Boucher property. He sees perhaps six clammers a month.

Kent Creamer, who owns 1249 Dutch Neck Road (R1/73) across the road from the Boucher property, said he is glad to hear that Lash does not plan to use CCA pressure-treated wood containing arsenic, which is a carcinogen and a health risk to touch or breathe. He assumes that Natur-Wood contains copper. He said copper is more of a threat to aquatic organisms than arsenic, and that a study in Florida showed decreased growth in oysters exposed to copper. Creamer said phytoplankton also are affected by copper and that the DEP regards clam flats as the most sensitive marine environment to perturbation. Boats using the proposed dock will churn up bottom sediment. Gasoline will leak from motors. The effect of a single dock may be minor, but the cumulative impact of multiple docks is potentially significantly harmful to the marine environment. Creamer said the Medomak estuary is an important recreational resource as well as a commercial resource for clamming. Kayak companies take groups down the estuary.

Celia Cart said she works with David Lash. She prepared the permit-by-rule application to the DEP which was submitted on Feb. 26 with copies to the Army Corps of Engineers, the Dept. of Conservation, the Maine Historic Preservation Commission, and the Town of Waldoboro. The DEP approved the permit on March 5, finding that the proposed dock meets their criteria. The Corps of Engineers and the other agencies that got copies of the application gave tacit approval or did not oppose the application.

Mrs. Creamer said she and her husband and David and Gail Tosi appeared at the March 10 Planning Board meeting with questions about the proposed pier application. Neither the applicant nor her contractor was present, so the Planning Board tabled the application. The Creamers went to the DEP in Augusta on March 24 and learned that the DEP application had already been approved. They were told that they had until April 5 to submit an appeal, which did not give them much time to marshal facts. She got a letter today from the DEP acknowledging receipt of their appeal. It did not set a date for the BEP hearing.

Dave Tosi said he bought his property (1260 Dutch Neck Road, R1/72) abutting the Boucher property in 1987. The flats in the cove were used by clammers up until two years ago, when the flats were closed. That may be why Dan Surrells sees few clammers there now. The Shoreland Zoning Ordinance calls for protection of scenic and natural values. Tosi asked how high above the water the deck of the pier will be. Lash said it will be 4.5 feet above the water at a plus tide, and 13.5 feet below lawn level. Tosi asked the Planning Board, if it approves the application, to restrict the height of the pier to no more than 4 feet above the highest flood tide. Lash said if the pier is built too low it will be taken out by ice in winter.

Tosi said he was present at a Planning Board meeting at which the Board reviewed an application to start a business in a residential area. The Board showed major concern for neighbors to the

proposed business use. Tosi asked the Board to extend the same concern to neighbors of the proposed pier, and to look closely at the application in order to be fair to both the applicant and the neighbors. Further south along the coast, permit-granting authorities pay attention to impacts of docks on fishing and on neighbors. If the Planning Board allows docks to be built every 200-300 feet along the shore, this will have a major impact on the natural resources and scenic resources valued by residents and visitors. He asked the Board to consider carefully what we should do with this resource, the Medomak River.

Chairman Morris said the existing ordinance lacks specific performance criteria, yet the Planning Board is nonetheless required to determine whether a proposed dock is injurious to a fishery. Before tonight's meeting, Morris said he asked Code Enforcement Officer Black to speak with the Lincoln County planner, the DEP, and other towns to seek additional guidance in this matter. Black reported that Camden has an ordinance prohibiting new docks closer than 300 feet to an existing dock, except in the inner harbor. The CEO of Boothbay was away, and the Falmouth web site showed nothing about docks. Lincoln County planner Bob Faunce had no comment, stating he rarely gets into marine-related issues in his work.

Planning Board member Gifford said the pertinent standard is shoreland zoning standard (d), "will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat". If the clam flats north of the Marine Park are temporarily closed to clamming, we can assume they will be open again in future. Presence of a dock does affect wildlife. Clamming is a huge economic industry in Waldoboro, with a value of \$2.5 to 3.5 million dollars a year. The Medomak River clam flats are the most productive in the state. The clam flats are a resource that belongs to everyone. She presented a copy of a statement dated April 16, 2001, signed by 17 clambers from the Dutch Neck area of Waldoboro asking the Planning Board not to keep on granting permits for docks.

David Lash said clambers can dig under a fixed pier; the only area not accessible to clambers would be underneath the 10' x 20' float. Gerry Creamer said the pier will reduce sunlight which will affect phytoplankton growing under the pier.

Chairman Morris read a letter from Jean Pierce, who owns 1322 Dutch Neck Road (R1/74A), two lots south of the Boucher property. She expressed concern about marine life and shore birds. There is an eagle's nest in a tree near the Tosi cottage. She said a small boat can be pulled up on shore, implying that Boucher does not need a dock in order to reach a moored boat by skiff.

Morris said pier permits granted by the Planning Board in the past have not been for piers over major clam flats. The tidal flats in the Medomak estuary are an important resource for clamming and worming. The Planning Board must evaluate the value of this resource and whether a pier will affect the resource. If there are only five docks within a mile, it is still a largely undeveloped shoreline. There is a potential for many new docks.

Celia Cart said that according to shellfish warden Bragg, the area in front of the Boucher property is not in the best area for clamming, but people do dig there and it is adjacent to prime clam flats. Gerry Creamer said people dig two tides a day there when the tide is right, and the area is used by 5 - 6 people a day. Judy Boucher disagreed, saying no one digs in the area in front of her house.

Morris closed the meeting to public comment and polled Planning Board members individually.

- Campbell said the Board has to figure what is the value of clamming and how to resolve the issue of the rights of individual property owners versus the rights of clambers.
- Bianchi said the issue is shoreland review standard (d), "will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat". "The applicant", he said, "has to prove there will be no adverse impact."
- Morris agreed that the Board "has heard no definitive statement from the applicant that review standard (d) can be met."
- Karkow said the application fails on review standard (d). "It cannot be argued that there is no effect on clam flats."

- Myers agreed that standard (d) is the issue. The Board has not previously approved a dock in a clamming area. There is also an aesthetic argument, that there are no other docks on the shore of Dutch Neck in this area.
- Gifford said it is important to protect the clamming industry in Waldoboro. The Planning Board has not previously issued permits for piers on clam flats, and should not do so now.

On motion of Gifford/Myers, the Board voted 5 – 1, Campbell opposed, to deny a permit for the proposed Boucher pier because the application does not meet shoreland zoning review standard (d), “will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat”.

Dan Surrells protested that Gifford should have abstained from voting on the application because she presented an April 2001 statement from clambers opposing docks. Gifford said she does not have a conflict of interest because she is not a clammer.

David Lash asked how to appeal the Planning Board’s decision. CEO Black will provide him with information about the Board of Appeals.

3. Setback Waiver for Garage, Fletcher, 620 Union Road (R14/3) - Tabled

The applicant, Seumas (Jim) Fletcher, seeks a setback waiver to build a garage 13 feet from the side lot line. He was not present, but CEO Black said Fletcher wanted his application to be considered tonight. On motion of Bianchi/Karkow, the Board voted 6 – 0 to table the application until the applicant is present to answer questions.

4. Approval of Setback Waiver for Barn, Hinkley, 156 Clary Hill Road (R20/39)

William Hinkley was present for review of his request for a setback waiver to build a barn on an existing poured-concrete foundation across the road from his house on a 71-acre rural property. The foundation is 35’ - 37’ from the traveled way of Clary Hill Road, necessitating a 15-foot waiver from the ordinance-required 50-foot setback of a structure from the edge of the traveled way. Morris is familiar with the property and said there is adequate room in front of the barn for vehicles to pull off the road. The road is a dirt road 16-18’ wide. Morris guessed that it is probably a two-rod road with a right-of-way width of 32 – 34 feet, so that the barn would not be in the road right-of-way. The location is on the outside of a curve and the barn would not block visibility for oncoming vehicles.

Morris read CEO Black’s summary of the six requirements for a finding of practical difficulty justifying waiver. Board members agreed that it is more reasonable to use the existing foundation, which predates the ordinance, than to require the applicant to locate the barn further back from the road on this very rural property. On motion of Bianchi/Karkow, the Board voted 6 – 0 to grant the requested 15-foot setback waiver because the application meets the criteria.

5. Denial of Setback Waiver for Garden Shed, Mayo, 80 Depot St., (U9/23)

Chet and Stephanie Mayo were present for review of their request for a 20-foot setback waiver to place a 14’ x 18’ garden shed 10 feet from their south property line at 80 Depot St. The lot is 0.7 acre with 130 feet of street frontage, narrowing to 65 feet at the back. The property is in an area of small lots predating the ordinance and many buildings are close to property lines. Morris read CEO Black’s analysis of the six requirements for a finding of practical difficulty justifying waiver. Board members asked why the shed could not go in another location on the property that would at least be less nonconforming, if it did not meet the setback requirement. Mayo said the area behind the house is wet, and if the shed were close to the back of the house it would block his walk-out basement. Karkow said the applicant cannot meet the sixth requirement, that he will suffer significant economic injury if the waiver is not granted. On motion of Gifford/Myers, the Board voted 6 – 0 to deny the setback waiver because the application does not meet the requirements.

6. Review of Site Plan for Change of Use to Wine and Food Sales, McKean & Charles, 1587 Atlantic Highway (U5/15)

Prospective purchaser Tom Lie-Nielsen, real estate agent Jim Heard, owner Parker Spofford and prospective store manager Steve Warren were present for review of plans to renovate the Spofford building at the corner of Jefferson St. and Route 1 and use the first floor for retail sales of wine and gourmet foods. A preapplication discussion was held at the February 11 Planning Board meeting. The renovation will include an outside stairway to the second floor. Warren brought in site plans and plans for the building renovation, which the Planning Board reviewed at the meeting. The property is on municipal water and sewer. A construction permit has been received from the State Fire Marshal's Office.

Morris read CEO Black's analysis of the site plan submission checklist. On motion of Myers/Bianchi, the Board voted 6 – 0 that the following items are present and satisfactory: 1 owner and developer; 2 name, scale, north arrow, date; 4 lot lines, dimensions and location of buildings; 7 location map showing properties within 300 feet; 8 location and size of existing buildings, watercourses, other essential features; 9 location of sewers, water mains, culverts, drains; 10 location of existing and proposed utilities; 11 location and names of streets; 12 contour interval of not more than 5 feet; 17 narrative demonstrating that all performance standards can be met; 20 traffic impact analysis.

On motion of Myers/Gifford the Board voted 6 – 0 that the following checklist items are not applicable: 3 number of lots; 5 temporary markers in the field; 6 parcels dedicated for public use; 14 soil erosion and sediment control plan; 15 soils report for septic system; 16 flood map; 19 hydrogeologic assessment; 21 groundwater extraction impact analysis; 22 visual impact analysis.

After discussion of the sidewalk situation, on motion of Myers/Bianchi the Board voted 6 – 0 that item 13, typical cross-sections of roads, sidewalks and storm drainage facilities is not applicable. Black noted that the DOT has just agreed to reconstruct Jefferson St. It is expected that a sidewalk will be included in the work. Item 18, written review comments of municipal officials, was not yet available.

A motion by Karkow/Bianchi to accept CEO Black's list of general performance standards that are applicable and conforming failed by a vote of 2 – 4. On motion of Gifford/Myers, the Board voted 6 – 0 that the following items are applicable and conforming: A access to lots; F glare; K off-street parking and loading; M refuse disposal; N sanitary provisions; P signs; S storage of materials; T stormwater management; U street access and driveways. On motion of Gifford/Campbell, the Board voted 6 – 0 that the following items are not applicable: B air emissions; E explosive materials; H hydrogeologic assessment; I net residential area; J noise; L odor control; Q soils; R erosion control; V water quality impacts.

The following general performance standards were discussed in some detail.

A Access to lots: Warren said MDOT will accept a driveway entrance 100 feet from the Jefferson Street intersection. The existing driveway is 124 feet from the intersection. The distance between the existing driveway entrance and the next driveway to the east is a little less than the desired separation distance, but the driveway to the east is a low-volume residential driveway.

D Construction standards: Campbell and Morris questioned whether Mike Jones of Breakwater Design & Build, who is not an architect, is qualified to make a determination that the renovated building meets BOCA Code. Warren was asked to provide plans stamped with an architect's seal, as required for buildings intended for public occupancy.

F Glare: Warren said that aside from a freestanding lighted sign, the only exterior lighting will be a porch light. There will be no lights in the parking lot. There is adequate ambient light from the Irving station across the street. There are floodlights on the building now; Warren said these will be taken down or not used.

More information was requested on the following items, all having to do with landscaping: C buffer areas, G landscaping, and O setbacks and screening. The Spofford building abuts residential uses to the south. Warren said there is a dense stand of trees along the back boundary of the lot. He proposes to put ground plantings between the trees to provide additional buffering and screening along the rear lot line. Along the Route 1 frontage the Planning Board asked him to provide some low bushes and small trees such as crabapples, set back from the road far enough not to block visibility from the driveway exit. The Board asked Warren to provide a revised landscape plan with more detail, a planting plan and a list of plants.

According to Black's analysis, the only applicable specific performance standards are P Stormwater management and R Additional Improvements. Storm runoff will be by sheet flow across the property to the rear boundary and into an existing drainage way on the abutting Whitehill property. Because the parking area will be graveled and more evenly graded, and because of the new plantings along the rear boundary, storm runoff onto the Whitehill property should be less than at present. The Planning Board declined to require any additional improvements such as sidewalks. On motion of Myers/Gifford, the Board voted 6 - 0 that all applicable specific performance standards are conforming.

Finally the Board considered the review standards checklist. Item K is not applicable because the property is not within 250 feet of a water body. M is not applicable because the property is not in a flood-prone area. On motion of Gifford/Myers, the Board voted 6 - 0 that all applicable review standards are met except J, proof of adequate financial and technical capacity. Warren was asked to provide a letter from a financial institution.

Warren said the proposed purchase of the property cannot take place until the Planning Board has approved the site plan for the proposed change of use. Items to be supplied include written review comments by municipal officials, building plans stamped with an architect's seal, evidence of financial capability, and a revised landscape plan and plant list. The Planning Board wants to review the landscape plan. On motion of Bianchi/Campbell, the Board voted 6 - 0 to approve the McKean & Charles site plan conditional upon receipt and approval of the landscape plan, building plans with an architect's seal, and a letter attesting to the applicant's financial capability.

CEO Black was asked to put the McKean & Charles application first on the agenda for site plan review at the May 12 Planning Board meeting.

7. Approval for Addition to Coastal Christian School, 574 North Nobleboro Rd. (R16/62A)

Coastal Christian School board members Sean Welton and Henry Oliver were in to present plans for a 30' x 60' addition on the end of the present classroom building, so that all classrooms will be within one building. The proposed addition will eliminate the need for three trailer classrooms and allow the trailers to be used for other purposes. There will be no running water in the addition. A preapplication discussion of the addition was held March 13, 2002.

Morris read CEO Black's analysis of the site plan review submission checklist. On motion of Gifford/Karkow, the Planning Board voted 6 - 0 to accept Black's analysis as presented. They voted to find the following items present and satisfactory: 1 owner and developer; 2 name of development, scale, north arrow, date; 4 lot lines, proposed dimensions and locations of buildings; 7 location map; 8 locations and size of existing buildings, watercourse, other features; 9 location of sewers and water mains; 10 location of utilities; 11 location and names of existing streets; 15 soils report for septic systems; 17 narrative to show that performance standards can be met. They voted to find the following items not applicable: 3 number of lots; 5 temporary markers in the field; 6 parcels dedicated for public use; 13 typical cross sections of roads, storm drainage facilities; 16 flood map; 19 hydrogeologic assessment; 20 traffic impact analysis; 21 groundwater extraction impact analysis; 22 visual impact analysis. Review comments from public officials (item 18) were not available for tonight's meeting. On motion of Karkow/Campbell, the Board voted to waive item 12, contour interval, because contour lines are available on the plan for the previous construction, and to waive item 14, soil erosion and sediment control plan, because the proposed construction is on pre-prepared level land. The Board specified that silt fences or hay bales be used around the construction site to control erosion and sedimentation.

Under general performance standards, on motion of Gifford/Myers the Board voted 6 – 0 to find the following standards applicable and conforming: C buffer areas; F glare; J noise; O setbacks and screening; and Q soils. On motion of Gifford/Myers, the Board voted 6 – 0 that the following items are not applicable: A access to lot; B air emissions; E explosive materials; H hydrogeologic assessment; I net residential area; K off-street parking and loading; L odor control; M refuse disposal; N sanitary provisions; P signs; S storage of materials; T stormwater management; U street access and driveways; and V water quality impact.

The following general performance standards were discussed in more detail.

D Construction standards: Not met. A permit is needed from the State Fire Marshal’s Office.

G Landscaping: Not met. No landscaping plan or plant list was submitted. Welton said there is some landscaping at the front entrance, consisting of railroad ties, bushes and flowers. Railroad ties and mulch will be continued around the side of the building as funds permit. There are plans to plant some trees this summer. Morris conceded that the school is not located right on the road, and landscaping in such a case is more an amenity for users of the school than a public amenity. As a condition of permit approval Welton was asked to bring in a landscape plan showing what has been done and what the school plans to do, including at the front entrance.

R Erosion control: not conforming. The Board specified that silt fences or hay bales be used around the construction site to control erosion, and asked that a note be added to the final site plan to this effect. Karkow asked for a note on the site plan that the Planning Board waived the requirement for contour lines because contour information is already on file.

On motion of Gifford/Myers the Board voted 6 - 0 that the above general performance standards D, G and R are applicable but not conforming.

On motion of Gifford/Myers, the Board voted 6 – 0 that all of the specific performance standards except R additional improvements are not applicable. The proposed building addition is the additional improvement.

On motion of Gifford/Campbell the Board voted 6 – 0 that all review standards A – N are met.

On motion of Campbell/Myers, the Board voted 6 – 0 to approve a permit for construction of the proposed addition at Coastal Christian School, conditional upon satisfactory submission of missing items including the permit from the State Fire Marshal’s Office, a landscape plan, addition of an erosion control statement to the site plan, and satisfactory written comments from municipal officials.

8. Review of One-Lot and Five-Lot Subdivisions, Wayne Brown (R16/57, 54B, 56) – deferred

The site walk planned for April 14 was cancelled at the suggestion of the applicant because of rain. It was re-scheduled for 4:30 p.m. on Wednesday May 12. Because the site walk was not held, the Planning Board did not review the two proposed subdivisions at tonight’s meeting.

9. Preapplication Discussion, Bridal Gift Shop, Hilgerman, 245 Jefferson St. (U4/30) – deferred

The applicant was not present.

Adjournment: The meeting was adjourned at 10:05 p.m.

Edward Karkow

John D. Morris, II, Chairman

Joanne Myers

Carlo P. Bianchi

Submitted by:

Charles Campbell

Susan S. R. Alexander

Terry Gifford
WALDOBORO PLANNING BOARD

