

A regular meeting of the Bath Planning Board was called on 10-2-01 for the purpose of conducting regular business.

MEMBERS PRESENT

Jim Harper, Vice Chair
Paul Karass
Marjorie Hawkes
Robin Haynes
David King

MEMBERS ABSENT

Bob Oxtan, Chair
George Pollard

STAFF PRESENT

Jim Upham, Planning Director
Mary Jane Sullivan, Recording Secretary

Jim Harper, Vice Chair, called the meeting to order in the third floor Council Chambers at 6:00 p.m.

Minutes of the September 4, 2001, meeting

ROBIN HAYNES MOVED, SECONDED BY MARJORIE HAWKES TO APPROVE THE MINUTES OF THE SEPTEMBER 4, 2001, MEETING AS WRITTEN.

UNANIMOUS APPROVAL

Minutes of the September 18, 2001, meeting

Jim Upham, Planning Director, reported that these minutes are not ready yet, and requested that action be postponed to next meeting.

Old Business:

Item 1

Request for Historic District Approval - Façade changes to building at 25-27 Centre Street (Map 27, Lot 110); Sagadahock Real Estate Association, applicant (Tabled from the September 4, 2001, meeting)

PAUL KARASS MOVED, SECONDED BY ROBIN HAYNES, TO REMOVE THE ITEM FROM THE TABLE.

UNANIMOUS APPROVAL

Roy Ordway, representing Sagadahock Real Estate Association, 52 Front Street, said the property is 25 & 27 Centre St., where Paperback Trader and Sheer Beauty are

located. The building façade is currently brick and plywood. The proposal is to remove the plywood and install new bricks. The bricks will be stepped out and stepped in just a little (1/2" to 3/4" per course for 3 courses each way). The final four courses will be on the same plane as the existing brick.

Jim Harper, Vice Chair, asked the Board for its comments or questions.

Marjorie Hawkes said brick would look better than plywood. Paul Karass asked for a review of SPI comments. SPI believed that replacing the façade with brick would be appropriate and suggested matching the old brick.

Roy Ordway responded that the "matching red brick" does not match. The old bricks are weathered and will all be repointed soon anyway. The mortar will be the unifying factor.

Robin Haynes asked what is on top of the top course. Roy Ordway replied that a bronze colored metal cap would top the bricks. Robin then asked if the bronze colored cap projects at all and was told it does not.

Robin Haynes stated her agreement with Mrs. Hawkes about the brick, and believes that this application meets the approval criteria of Section 8.12.

Jim Harper, Vice Chair, then opened the public portion of the meeting. There was no public comment and Jim Harper then closed the public portion.

DAVID KING MOVED, SECONDED BY MARJORIE HAWKES, THAT THIS APPLICATION MEETS THE APPROVAL CRITERIA SET FORTH IN THE LAND USE CODE SECTION 8.12, AND THAT APPROVAL BE GRANTED.

UNANIMOUS APPROVAL

Item 2

Request or Site Plan Approval and Contract Rezoning – for construction of new buildings; Leeman Highway (Map 28, Lots 53 and 54); Mark Sewall, applicant. (Tabled from the September 18, 2001, meeting.)

ROBIN HAYNES MOVED, SECONDED BY PAUL KARASS, TO REMOVE THE ITEM FROM THE TABLE.

UNANIMOUS APPROVAL

Jim Upham stated that additional information had not been received when the memo was sent to the Planning Board and that no material had come in since the memo went out. The Board is still lacking documents on the design and the materials the building is to be made of, as well as the specifics of the water separation system. He said that the

applicant might be ready to discuss the project with the Board, but that approvals probably can't be given. It is, however, a great opportunity to get all the issues out on the table and make sure the Board will have what it needs in time for that later meeting.

Jim Harper asked for any comments from the Board, then called on the applicant. Mark Sewall, 97 High Street, Bath, presented some material for the Board to look at, and said he had talked to Scott Wilhelm (Waste Water Treatment Plant) in reference to what was proposed as far as an oil water separator. Mr. Sewall said that Scott Wilhelm had approved the method. He also said he has talked to Trevor at the Bath Water District and he indicated that they pretty much agree, although the water district is still searching for the shutoffs to redo the service.

He proposes to use Architectural CMU (concrete blocks) and banding around the doors with a different color block; white and dark gray. In the drawing the colors are transposed, just the opposite of what he intends to do. He said he would use Harvard slate architectural shingles. The plan shows a new gas island.

Jim Harper, Vice Chair, said the Board needs to know the design of the new gas island. Phil DeLeon, consultant for Mr. Sewall, said the design of the new gas island is the same as the existing islands. (See the drawing stamped September 11) Sketches were passed out.

Jim Harper asked the applicant if he considered this a submittal to the Board of that design and he indicated that it was.

Jim Upham, Planning Director, stated that a cement block and a shingle couldn't go in a file folder. Whatever gets approved needs to be on a plan in the file. The details have to be there. He also said that another issue is that Scott Wilhelm has not given a written approval. The water district, he said, has written that should the Board decide to approve the application, it should be with the condition that the connections to the water mains be approved by the Bath Water District.

There was further inquiry from the Board about details that were not clear in the drawing.

Jim Upham asked Phil DeLeon about a 1998 aerial photograph on which lot lines from the tax maps had been added because the lot lines were very different from what his site plan shows. Phil DeLeon said the lot lines on his drawing were based on a boundary survey of 1971. Jim Upham asked Phil for a copy of the survey to update the tax map.

Robin Haynes said the Board would need drawings of the gas island and a drawing of the vacuum island.

Mark Sewall wanted to know if pictures would be acceptable. Jim Upham restated that the Board and City Council will need plans of the vacuum island, the gas islands, any

canopy, and screening for dumpsters. Colors, descriptions, lights, etc. all must be on the plan.

Jim Harper expressed his view that the existing dumpster was not part of the request. David King thinks the whole lot is up for review by the Board. He said he considered contract rezoning as a privilege, not a right. And it can be done if it will result in significant gain to the city. He said that this is a compact lot that could cause lots of trouble in the future. If the Board is going to virtually eliminate setbacks, he said he is strongly committed to seeing the whole lot reviewed. He submitted in writing his proposal for Conditions of Approval for the Sewall Lot:

1. *"The entire property as bounded by U.S. Route 1, Court Street, Floral Street and the Court Street Cutoff to Route 1 is subject to the within Contract Zoning Approval and shall hereafter be called the lot.*
2. *No changes shall be made to any use, building, or accessory use on the lot without securing an amendment to the Contract Zoning Approval by the Planning Board and the City Council.*
3. *The lot shall have three curb cuts, one on Court street in its current location on the westerly end of the lot and as shown on the Plan; and two on U.S. Route 1, one in its location as shown on the Plan on the westerly end of the lot and one opposite the easterly end of the existing car wash building on the lot. All Curb cuts are to be located on the Applicant's boundary line.*
4. *The old car wash building shall either be approved for a new use or torn down within one year, with the reuse of the building and any and all modifications to the outside of the building to require an amendment to the Contract zoning Approval by the Planning Board and the City Council.*
5. *The east end of the lot shall be landscaped in the yard area.*
6. *The current Site Plan Approval for the building containing Dunkin Donuts is hereby modified in that the parking on the south side of the building can only continue to be used until the State of Maine shall undertake to widen U.S. Route 1 then a revised parking plan for the property shall be submitted and unless approved the Certificate of Occupancy for the building housing Dunkin Donuts shall be rescinded.*
7. *The west end of the lot shall be landscaped in the yard area."*

After some discussion, Jim Harper asked for response from the applicant. Mark Sewall said, "If the whole Board is in favor of these conditions, I might as well walk away." Phil DeLeon said that improvements to the lot are to be done in phases and that the applicant is not focused on the east end for this part of the project. And that the only use of the eastern part of the lot is for employee parking in an already paved area adjacent to the existing vacuum islands.

Jim Harper, Vice Chair, called for comments from other Board members.

Paul Karass asked Mark Sewall how he felt about item 4 of David King's remarks.

He said he sees it as the same as leaving the “Bodwell” building vacant. He said he can’t see tearing it down and he said he would find a new tenant within a year.

Jim Harper, Vice Chair, then opened the meeting to the public. Jan Martin, Route 127, Georgetown, said this building [for the car wash] is beautiful. Splitface block is durable. Clapboards and vinyl siding wouldn’t last. It would improve the area.

With no further comments from the public, Jim Harper closed the public portion of the meeting.

Robin Haynes brought up the question of traffic flow and Jim Harper responded that he is not clear on the traffic flow. Jim Upham is concerned about the queuing-up to Dunkin Donuts, out in Route 1. He said there would be better traffic flow if the old carwash building were taken down. It is not wise to approve a site plan where an integral part of the plan is on a neighbor’s (the State’s right-of-way) property, whether that is traffic flow or landscaping. The Board cannot approve anything in the Route 1 right-of-way. The Department of Transportation will only allow low bush landscaping on their land.

Jim Harper, Vice Chair, told the applicant that it would be appropriate to include a queuing plan on his site plan. Robin Haynes indicated that she hoped the applicant would persevere and try to find some compromises.

Phil DeLeon said that David King’s proposals are not acceptable to the owner.

Paul Karass asked David King regarding his point 6; if he was asking for a parking plan now. Mr. King said no, but in the event that Route 1 is widened it should be a condition that the applicant would have to come before the Board again.

Jim Upham recommended he put together a letter on what he believes are the needs of the Board, all inclusive of the concerns about format and details and time frame expectations, and that it also be in the letter that all this stuff needs to be back three weeks before scheduling another board meeting with the applicant.

Jim Harper believes the letter from Jim Upham will help, and it is still a great opportunity to improve the look of the gateway. Jim Harper asked that the Board and the applicant agree to a date to meet with the understanding that all of the material must be presented to the Planning Office three weeks before the meeting, Article 10 criteria must be met, and there must be enough to approve Contract Rezoning or the request will be denied.

Phil DeLeon said they have been more than six months just struggling with the water district. Jim Upham concluded that the water district is the least of the City’s concerns.

Mark Sewall proposed that this item be tabled for the December meeting.

DAVID KING MOVED, SECONDED BY PAUL KARASS, TO TABLE THE REQUEST FOR SITE PLAN APPROVAL AND CONTRACT REZONING FOR CONSTRUCTION OF NEW BUILDINGS; LEEMAN HIGHWAY (MAP 28, LOTS 53 AND 54); MARK SEWALL, APPLIANT, TO THE FIRST REGULAR MEETING IN DECEMBER, DECEMBER 4.

UNANIMOUS APPROVAL

New Business:

Item 1

Public Hearing – Amendment to the Zoning Map; Request for Zone change on a parcel of land on the east side of Oak Grove Avenue (Map 19, Lot 6) from R1 Zone to R2 Zone; City of Bath, applicant.

Jim Upham, Planning Director, reported that for years the Cemetery and Parks Department has been trying to get funding to construct a new maintenance building. This year they got the funding and got the site plan done. The staff in Codes and Planning ran through the check list and discovered that it was not a permitted use on the proposed location—the back of the cemetery on the east side of Oak Grove Avenue. When the new Zoning Map was drawn Oak Grove Avenue was used as the zone boundary, putting the cemetery on the west side of the road in the R2 zone and the cemetery on the east side of the road in the R1 zone, making the cemetery on the east side of the road a nonconforming use, and, making the maintenance building (which the Codes Enforcement Officer determines is a Public Works Facility) a use that is not permitted.

Jim Upham considers this similar to a map drafting error. The Future Land Use Map in the Comprehensive Plan shows this lot on the edge of the R1-R2 zones. Jim believes that moving the boundary one lot to the east is still in compliance with the Comprehensive Plan, and recommends the change to the Board.

He then opened the Public Hearing. There was no public comment. Jim Harper then closed the Public Hearing.

DAVID KING MOVED, SECONDED BY ROBIN HAYNES, THAT THE PLANNING BOARD RECOMMEND TO CITY COUNCIL APPROVAL OF THE ZONE CHANGE REQUEST ON THE LOT DESIGNATED AS MAP 19 LOT 6, FROM R1 ZONE TO R2 ZONE.

UNANIMOUS APPROVAL

Item 2

Public Hearing – Amendments to the Land Use Code; Amendment to Article 2, Section 2.02, definition of “Setback.”

Jim Upham summarized the Board’s discussion at its last meeting that it was important that certain structures occupying a large cubic area and above ground by a certain height, should be required to meet the Setback requirement, not simply the Yard area requirement. His draft amendment to the definition of “Setback” is a place to start discussion.

His proposal to amend the Setback definition reads as follows:

Setback. *The minimum horizontal distance between the front, side, or rear lot line and the nearest point of the building, including decks or any covered projections thereof, on the lot. Setback also pertains to a structure if that structure:*

- 1. Occupies a space larger than 400 cubic feet and is at any point more than 18 inches above the ground;*
- 2. Is an in-ground swimming pool; or*
- 3. Is a tower that is more than 20 feet in height.*

There was discussion under #1 whether the word should be “and” or “or,” and instead of 18 inches perhaps two feet.

Robin Haynes says the proposed definition eliminates a compost bin or firewood. Marjorie Hawkes said many places in Bath have so little land and that the change could cause problems. She only agrees with the tower piece. She felt that much of the amendment was too intrusive, and asked if the Board was making too many rules.

Jim Harper, Vice Chair, said this is the Board’s third meeting on this because there is no easy answer. David King said admittedly it’s not perfect, but what Jim Upham has written with the “or” is a reasonable compromise.

Jim Upham said his fear was that the City Council would have a real difficult time with this as it is. The consensus was to have Jim show some of what 400 cubic feet would be. Jim Upham said he would rework the amendment and bring it back to the next meeting.

Jim Harper, Vice Chair, opened the Public Hearing. There was no public comment. Jim Harper then closed the Public Hearing.

PAUL KARASS MOVED, SECONDED BY DAVID KING, TO TABLE THE REQUEST FOR AN AMENDMENT TO THE LAND USE CODE, ARTICLE 2, SECTION 2.02, DEFINITION OF “SETBACK” FOR ONE MONTH. THE MOTION WAS CARRIED BY A MAJORITY, WITH MARJORIE HAWKES OPPOSED.

Item 3

Request for Site Plan Amendment and Amendment to Setback Reduction Plan – 831 Middle Street (Map 26, Lot 161); MidCoast Federal Credit Union, applicant.

The amended landscape design was not received.

ROBIN HAYNES MOVED, SECONDED BY DAVID KING, TO TABLE THE REQUEST FOR SITE PLAN AMENDMENT AND AMENDMENT TO SETBACK REDUCTION PLAN – 831 MIDDLE STREET; MIDCOAST FEDERAL CREDIT UNION, APPLICANT TO THE NOVEMBER MEETING.

UNANIMOUS APPROVAL

Other Business

Jim Upham has been asked by City Council to come up with ways to allow Hyde School to have the teaching farm on their property without going through a zoning map amendment. The Council thinks the teaching farm is appropriate but did not want to change the zoning to do it because of all the ramifications that could create. He presented three possible ways to accomplish this.

Paul Karass wanted to know why they objected to our original recommendation. David King said since the property is all owned by one entity the C3 (Industrial Park) is inappropriate when there are no plans and no desires to use it that way. It is appropriate for R3 (Low Density Residential) use.

One idea presented is to allow, on lots that are divided by a zone boundary, expansion of the permitted use that is in one part of the lot into the other part of the lot where the use would otherwise not be permitted.

- The lot must be a single lot of record as of the date of adoption of the ordinance, (someone could not buy an abutting lot where their use is not permitted and expand into it).
- Could only expand into a commercial or industrial zone (would not want to have high intensive uses expanding into a low intensive zone).
- Could not expand by more than 50% (or perhaps some percentage less) of the land area used in that part of the lot where the use is a Permitted Use, whether the expansion was at one time or over the life of the use. (This follows the same concept that allows the expansion of a nonconforming use by up to 50%).

Because there are so very few lots divided by zone boundaries, this change in the Code would allow an expansion into a zone where the use is otherwise not allowed in only three places. Two of them are through-lots that have frontage on both Route 1 and Court Street. The other is the Hyde School lot.

Jim Upham said that Chris Neagle, of Verrill & Dana, lawyer for Hyde School, is suggesting the following permitted use be added to table 9.02 as item 16.7 and be a permitted use in the C3 Zone and R1 Zone and any other zones that may be appropriate for its use:

Agricultural uses on land of educational institutions, which are used as a part of the programs of the educational institution.

Roger Theriault's solution is to allow use number 16.1 (Agriculture) in the C3 zone with the following conditions:

- Must be an accessory use, not the principal use.
- Could occupy no more than 10% of the total area of the lot, with a maximum area of 3 acres.
- The land used in the agricultural operation would count in the lot coverage.

David King said he likes Jim Upham's proposal, saying that it is good for the city, and also provides flexibility on Court Street and Route 1.

Jim Upham asked what the Board wants advertised for a public hearing at the November meeting. The Board agreed to have the change to Section 7.07 advertised.

The public requested to be allowed to speak. Jim Harper, Vice Chair, gave permission although this item was not advertised as a public hearing.

Eric Sterling, 616 High Street, Bath, and Carl Young, 616 High Street, Bath, spoke for Hyde School. The idea of a teaching farm is innocuous, the change to R3 as recommended by the Zoning Board is innocuous. Hyde School does have a problem with C3 zoning. Currently this area has athletic fields, cross country trails and ski trails used by both Morse and Hyde. The biology classes use the marshes in an instructional way. From the standpoint of the school, issues have been uncovered that are more extensive than simply the teaching farm. He asked if the Route 209 Bypass were to occur, could a roadway run through a residential zone, and if it can is there any need to zone the land commercial. If a road can be run through a residential zone, Mr. Sterling said that Hyde School concurs with the Planning Board's original recommendation to City Council that the land be zoned R3, and he said that the school would like to see the entire Hyde property be zoned R3.

Jim Upham said it was zoned commercial with the dream that if the Route 209 bypass occurs, another Wing Farm-type development might open up along it.

Jim Harper, Vice Chair, said that it is quite far away and it is presumptuous to think the Board needs to accommodate that dream at this point. He advised Hyde School to take up their concern with the City Council. It is out of the realm of our authority.

Jim Upham said the Board could continue to recommend an R3 zone and still call a public hearing on the text change.

DAVID KING MOVED, SECONDED BY PAUL KARASS, TO ASK THE CITY COUNCIL TO RECONSIDER THE PLANNING BOARD'S ORIGINAL RECOMMENDATION AND THAT AFTER REVIEWING THE OPTIONS, THE BOARD STILL BELIEVES THAT THE RECOMMENDATION TO REZONE THE AREA TO R3 IS THE BEST SOLUTION.

UNANIMOUS APPROVAL

By consensus the Board agreed to hold a Public Hearing on the proposed amendment of Section 7.07.

ROBIN HAYNES MOVED, SECONDED BY MARJORIE HAWKES, THAT THE MEETING BE ADJOURNED.

UNANIMOUS APPROVAL

Adjourned approximately 8:00 p.m.

Minutes prepared by Mary Jane Sullivan, Recording Secretary