

A regular meeting of the Bath Planning Board was called on 4-6-04 for the purpose of conducting regular business.

**MEMBERS PRESENT**

Bob Oxtan, Chair  
Jim Harper, Vice Chair  
Marjorie Hawkes  
Robin Haynes  
Richard Klingaman  
Gordon Reed  
Brandon Shaw, non-voting student member  
Jonathan Dolloff, non-voting student member

**MEMBERS ABSENT**

Jim Hopkinson

**STAFF PRESENT**

Jim Upham, Planning Director  
Peter Owen, P.E., Public Works Director  
Marsha Hinton, Recording Secretary

Bob Oxtan, Chair, called the regular meeting to order in the third floor Council Chambers at 6:00 p.m. on Tuesday, April 6, 2004.

**Minutes of March 16, 2004, meeting**

Robin Haynes noted that a comment by Jim Hopkinson was omitted from the March 16, 2004, minutes. Dr. Haynes asked that the comment, "Language approved by the City Solicitor for an easement in the deed regarding the culverts which would allow the City a right to involve themselves in the maintenance but not the obligation to provide maintenance." be included as item 9 on page five of the March 16, 2004, minutes.

**ROBIN HAYNES MOVED, SECONDED BY DICK KLINGAMAN TO ACCEPT THE MINUTES OF THE MARCH 16, 2004, MEETING AS MODIFIED.**

**UNANIMOUS APPROVAL**

Jim Upham introduced and welcomed Mr. Brandon Shaw and Mr. Jonathan Dolloff as members of the City of Bath Planning Board. Mr. Upham explained that Mr. Shaw and Mr. Dolloff will be non-voting student members of the Planning Board and with the agreement of the applicants would be participating in discussion of applications.

**Old Business:****Item 1**

**Subdivision Final Plan Review** – 9-lot Subdivision, 1524 Washington Street, (Map 13, Lot 44-1); ICS Realty, LLC-Robert Leblanc, applicant. (Continued from March 16, 2004, meeting.)

Chris Belanger, of Sitelines, reported on the results of the new traffic study, discussed the road widths in the area, described sewer capacity at the Harward station and plans to remove 3,150 gallons a day of storm water flow, the plans for tree preservation on site, culvert maintenance and safety measures for the culverts, monumentation, pesticides, road maintenance, responsibility for repairs to damage caused by blasting, clarification of the definition of stream, blasting procedures and insulation of the utilities. Mr. Belanger handed out photographs of the site and roadways in the area.

The Planning Board held discussion on tree preservation, blasting plan, organic pesticides, sewage separation, combined sewer overflow events, diversion of storm water and availability of memorandums from City Staff to the public.

Jim Upham pointed out memoranda from City Staff with regard to traffic accidents.

Peter Owen, Public Works Director, described the storm and sanitary sewer separation process.

Bob Oxtan opened the floor to members of the public present who wished to comment.

Arnold Clay, 3 Mast Landing Road, expressed concern over damage caused by blasting to his drilled well pointing out that it is his only water source. Mr. Clay added that the increase in runoff into the stream would be caused by this development and that runoff in turn would impact abutter's properties along the swale or stream.

Katherine Hansen, 1510 Washington Street, expressed concern with regard to runoff, blasting, and traffic and pointed out that she has been observing the stream for quite some time and she felt that it meets the State Statute definition of "stream."

Mark Saint Louis, 1488 Washington Street, read a letter from Craig Mattingly who is stationed overseas with the Navy. Mr. Mattingly stated that Bath was an attractive place to live and raise a family because of its sense of community and safe environment. Mr. Mattingly expressed concerned as a homeowner over the impact to wildlife, nature, and safety and recommend that the City of Bath purchase the land and make it into a wildlife park.

Joan Maloney-Chrane stated that the Thorne Head preserve was a place established for conservation of nature and wild life and is an area with walking trails. Ms. Maloney-Chrane stated that she felt this application would be a beautiful addition to the neighborhood.

Ada Recknagel, 1515 Washington Street expressed concern about the blasting, the truck traffic needed to build the road and runoff that would cross her property on its way to the river. Ms. Recknagle added that she is very concerned about the impact to the quality of life in her neighborhood by this proposal. Ms. Recknagel said that the community must work to preserve beauty.

Joe Seigh, 1505 Washington Street, stated that because of the vibration currently caused by traffic he needs to replace the foundation under his garage before it slides into the river. Mr. Seigh pointed out how the vibration from traffic was negatively impacting the road and other features in this area. He expressed concern over further damage the blasting would cause as the vibration traveled through the ledge.

Tom Watson, 1565 Washington Street, stated that this project was driven by greed and that packing nine lots into this area is unjustifiable and unreasonable. He indicated that this would not be the case if it was a cluster development or for affordable housing. Mr. Watson also stated that he was concerned about the neighborhood, streets, and families. He asked that the Planning Board approve only on the condition that the number of building lots be reduced from nine to four.

Dan Lord, 1483 Washington Street, stated he had been in the neighborhood since 1920. Mr. Lord provided a history of the stream stating its historic uses. Mr. Lord stated that he has been backing out of his drive way for 59 years and is concerned about his chances should the traffic increase. Mr. Lord reminded the Planning Board that in the 1920s through 1940s there were wooden sidewalks maintained in this neighborhood and added that having no sidewalks in this area now is a safety concern.

Robert Westlake, 1484 Washington Street, stated his concern for the traffic increase and the speed that cars go up and down that street. Mr. Westlake described the geography of the area and how he has almost gotten hit mowing his lawn. Mr. Westlake added that the truck traffic needed for construction combined with the lack of sidewalks was a safety concern.

Chuck Tarbox, 1529 Washington Street, expressed concerned about blasting, the destruction of ledge and change in the direction of the streams caused by the blasting. Mr. Tarbox added that he had been required to have a lot 250 feet by 250 feet in order to build his house and that if that was required of this project they could not get nine homes on that property.

Hector Jaeger, 1519 Washington Street, expressed concerned that assigning responsibility for blasting damage would be problematic because damage caused by one house construction may not show up until a later time. Mr. Jaeger explained that his house was partially on pylons over the river and felt that the vibrations caused by the blasting could cause serious and sudden damage to his home and family. Mr. Jaeger added that he could not conceive of language that could go into the different deeds that would protect him as a homeowner. Mr. Jaeger pointed out that just because the damage does not show up immediately it does not mean that it isn't there.

Steven Filler, 1497 Washington Street, stated that this was the wrong project in the wrong place. Mr. Filler reminded the Planning Board that Washington Street is narrow and site distances are negligible. Mr. Filler asked what the build-out time frame was and recommended the Planning Board exercise discretion and reduce the number of houses.

Angela Saint Louis, 1488 Washington Street expressed concern with regard to her two children playing outside if the traffic were to increase. Ms. Saint Louis asked whether it is better to save and preserve Mother Nature and see children playing outside or to just satisfy these people's account.

Chris Dwinal, speaking on behalf of his parents who live at 1552 Washington Street, recommended charging for the excess sewage usage or requiring a more than one-for-one off-set. Mr. Dwinal read comments on preservation of natural, scenic, and historic features, landscape plans, impervious areas grading, swales, runoff and the ability to police use of fertilizers and pesticides. Mr. Dwinal recommend that the Planning Board wait until after the Department of Environmental Protection's visit before making a decision. Mr. Dwinal also expressed concern on the blasting impact and asked that a study be performed with regard to protecting non-public water sources. Mr. Dwinal encouraged the Planning Board in making this decision to keep an eye toward future growth in North Bath and the impact to sewage facilities that would have.

Karol Worden, Woodlot Alternatives, stated that a site visit was made in September of 2003 and that she visited the site today. Ms. Worden reported seeing a visible channel in one area, a rock dump, after the rock dump a soured channel and finally an old road bed and the scoured channel continuing to Washington Street. Ms. Worden stated that in the September site visit observations had been that no water was in the channel and plants that normally do not grow in moving water were growing in the channel. Ms. Worden explained that this had been the basis for Woodlot Alternative's determination that this did not meet the State Statute definition of "stream." Ms. Worden added that Woodlot Alternatives had looked at the City of Bath's definition of a stream and at the September site visit it had not met that criteria. Ms. Worden stated that in her site visit today there was water flowing. Ms. Worden drew the Planning Board's attention to a letter from the Maine Department of Inland Fisheries and Wildlife, which stated that there was no significant wildlife habitat in this area. Ms. Worden said that if it could be demonstrated that it flows for six consecutive months she could change her determination with regard to its status as a stream.

David King, attorney representing some abutters, stated that this project is marginal, pushes the limits of what is allowable and goes beyond what is beneficial for the City of Bath. Mr. King passed out photographs of the stream and of a school bus on Washington Street. Mr. King addressed various approval criteria and argued how this project did not meet those criteria.

Cynthia Kennerson 1502 Washington Street, stated she was present as a steward for her land. Ms. Kennerson expressed concern over blasting that would cause the release of radon and arsenic from the granite. Ms. Kennerson stated that she was especially concerned about the arsenic getting into the water.

Paul Seaman, resident of Woolwich, stated that he lives almost directly across from development site and expressed concern of the negative state-wide impact on the water systems and water ways and to the City of Bath in general. Mr. Seaman repeated his comments from an earlier Planning Board meeting over the density of this proposed site

and stated that it is inconsistent for this area. Mr. Seaman suggested that this would be more appropriate closer to the center of town where it could connect with a system of roadways.

There being no further comments from members of the public present, Bob Oxton closed the public portion of the meeting.

The Planning Board held discussion on excavation for the road, the build-out time frame, erosion control, ways to protect non-public water sources, responsibility and protection for cumulative effect of blasting, geotechnical assessments, repair work done on existing sewers in the area, Woodlot Alternative's and the Department of Environmental Protection's assessment of the swale or the stream, setbacks, permitting, road width in the subdivision, tree preservation plans, use of blasted ledge in roadway construction, reasoning for not adding sidewalks, broadening the area for notice of blasting, blasting work in other areas of the city, the potential impact from blasting to wells in the area, runoff, impact on the river and shoreland zone, and the guidance in the Comprehensive Plan, Land Use Code and the Zoning Ordinances.

Gordon Reed stated that the board has been reviewing this project for six months and while he is heavily pro development that it must be responsible development. Mr. Reed added that he does not believe that the applicant has met the guidance in the Comprehensive Plan and Land Use Code to prove that this development will not have a negative impact on the community. Mr. Reed cited section 13.02, 13.40, and 13.71 of the Land Use Code.

Jim Upham told the Board that the interpretation of the requirement of being consistent with the Comprehensive Plan is, based on an interpretation of the Maine Supreme Court decision of Oeste v. Camden, is that if the subdivision is consistent with the zoning ordinance it is consistent with the Comprehensive Plan. Mr. Upham stated that the only place this application that might not be in conformance with the zoning ordinance is the requirement that that portion of the proposed road get site plan approval for major earth moving. Mr. Upham addressed approval criteria with regard to density, character, the stream, traffic, non-source pollution, erosion controls, storm water plans, and comments by City Staff. Mr. Upham stated that he would like to hear comments on the percentage increase in traffic from Mr. Eaton. Mr. Upham then read a police officer's comments on the only accident to occur in this neighborhood in the past two years. Mr. Upham commented that it was his job to perform a review of submitted materials and make recommendation to the Planning Board.

**ROBIN HAYNES MADE A MOTION, SECONDED BY JIM HARPER TO CONTINUE THE REQUEST FOR SUBDIVISION FINAL PLAN REVIEW FOR A 9-LOT SUBDIVISION AT 1524 WASHINGTON STREET, (MAP 13, LOT 44-1); ICS REALTY, LLC-ROBERT LEBLANC, APPLICANT TO THE APRIL 20, 2004, PLANNING BOARD MEETING IN ORDER TO ALLOW THE APPLICANT TO OBTAIN INFORMATION ON THE EFFECT OF BLASTING ON DRILLED WELLS AND THE IMPACT ON THE KENNEBEC RIVER WATER QUALITY, AND TO HEAR FROM DEP REGARDING THE SWALE OR STREAM ON THE PROPERTY.**

**FOUR VOTED FOR THE MOTION (ROBIN HAYNES, JIM HARPER, MARJORIE HAWKES, AND GORDON REED), ONE ABSTAINED (DICK KLINGAMAN).**

Due to the time and the fact that the meeting had been going on for over three hours, it now took a unanimous vote of the Board to continue, **ROBIN HAYNES MADE A MOTION, SECONDED BY GORDON REED TO CONTINUE ON THE NEXT ITEMS ON THE AGENDA.**

**UNAMIOUS APPROVAL.**

**New Business:**

**Item 1**

**Request for Site Plan Approval** – Request for approval of a residential development with multiple principal buildings on a lot, according to Land Use Code Section 10.05; 254 Centre Street (Ma0 28, Lot 128); Tondra Schultz, applicant.

Tondra Schultz, stated that there is a 160 year old barn on the property she wishes to convert into a garage on the bottom and a small studio apartment on the top for her father to spend the summers with her. This would make a three unit facility so she needs approval from the Planning Board. Ms. Schultz explained construction details for renovation of this barn.

Jim Upham stated that this was before the Planning Board because there are two principal uses on one lot. A two family dwelling and a proposed one family dwelling in a separate structure.

**ROBIN HAYNES MADE A MOTION SECONDED BY DICK KLINGAMAN TO FIND THE APPLICATION COMPLETE WITH THE WAIVER OF ITEMS IN 12.08 J, L, AND M, 1.**

**UNANIMOUS APPROVAL**

The Planning Board held discussion on parking, moving the barn, setback, and restrictions on dividing this lot into two lots.

Bob Oxtan opened the floor to members of the public present who wished to comment.

None being seen, Bob Oxtan closed the public portion of the meeting.

**JIM HARPER MADE A MOTION SECONDED BY GORDON REED. TO GRANT APPROVAL FOR THE REQUEST FOR SITE PLAN APPROVAL OF A RESIDENTIAL DEVELOPMENT WITH MULTIPLE PRINCIPAL BUILDINGS ON A LOT, ACCORDING TO LAND USE CODE SECTION 10.05; 254 CENTRE STREET (MAP 28, LOT 128); TONDRA SCHULTZ, APPLICANT, WITH THE CONDITION THAT LANGUAGE**

**RELATIVE TO PREVENTING THE SALE OF THE BUILDINGS AS SEPARATE LOTS BE DEVELOPED AND APPROVED BY THE CITY SOLICITOR.**

**UNANIMOUS APPROVAL.**

**Item 2**

**Request for Site Plan Amendment** – Addition of a roof over entrance-exit door and landscape plan for set back reduction in the C3 Zone, 37 Wingfarm Parkway (Map 24, Lot 4); Kennebec Company, applicant.

Jim Upham stated that this application does not need to be found to be complete because it is an amendment to the site plan. Mr. Upham added that the applicant wishes to build an extension over an entrance and under the new zoning codes needs to get Planning Board approval.

Jim Peavey stated that he wanted to put a roof over the door to cut down on the ice buildup in front of the door.

Discussion was held on the path to the door, alternative landscaping plan, cost of landscaping, and the direction the door faces.

Bob Oxtan opened the floor to members of the public present who wished to comment.

None being seen, Bob Oxtan closed the public portion of the meeting.

**JIM HARPER MADE A MOTION, SECONDED BY ROBIN HAYNES TO APPROVE THE REQUEST FOR SITE PLAN AMENDMENT FOR ADDITION OF A ROOF OVER ENTRANCE-EXIT DOOR AND LANDSCAPE PLAN FOR SET BACK REDUCTION IN THE C3 ZONE, 37 WINGFARM PARKWAY (MAP 24, LOT 4); KENNEBEC COMPANY, APPLICANT, WITH THE CONDITION THAT THE APPLICANT AND CITY ARBORIST AGREE ON FINAL PLANTING ARRANGEMENTS NOT TO EXCEED \$1,218 AND TO GRANT A CONDITIONAL CERTIFICATE OF OCCUPANCY.**

**UNANIMOUS APPROVAL.**

**Item 3**

**Request for Site Plan Approval** – Home Occupation – B; 26 Richardson Street (Map 31, Lot 26); Crystal Plenderleith, applicant.

Jim Harper stated that he received a notification as a neighbor but that he was not an abutter.

Discussion was held by the Planning Board on Mr. Harper's status as a neighbor and the applicant was asked if there was any objection to allowing Mr. Harper to hear this participate as a Planning Board member on her application.

Ms. Plenderleith stated that she had no objection.

**ROBIN HAYNES MADE A MOTION, SECONDED BY GORDON REED TO FIND THE APPLICATION TO BE COMPLETE WITH A WAIVER OF SECTION 12.08, I, J, AND L.**

**UNANIMOUS APPROVAL**

Crystal Plenderleith, owner of Crystal Clean, stated that her major concern is the traffic impact with her staff backing out of the driveway. Ms Plenderleith said that her staffing does not arrive until after 7:00 a.m. and returns after 3 p.m. and 4 p.m.

Discussion was held by the Planning Board on the lighting, hours of operation, vehicles, and equipment storage.

Bob Oxtan opened the floor to members of the public present who wished to comment.

None being seen, Mr. Oxtan closed the public portion of the meeting.

**ROBIN HAYNES MADE A MOTION, SECONDED BY MARJORIE HAWKES, TO APPROVE THE REQUEST FOR SITE PLAN APPROVAL FOR A HOME OCCUPATION – B AT 26 RICHARDSON STREET (MAP 31, LOT 26); CRYSTAL PLENDERLEITH, APPLICANT, WITH CONDITION THAT A CATALOGUE CUT AND LIGHTING PLAN BE APPROVED BY CITY STAFF AND NO EMPLOYEES BE ALLOWED TO ARRIVE OR LEAVE BEFORE 7 A.M. AND AFTER 7 P.M.**

**UNANIMOUS APPROVAL**

**Item 4**

**Request for Historic District Approval – Façade changes; 106 Front Street (Map 27, Lot 117); Riverport Company, Inc., applicant.**

The Planning Board held discussion on the columns and glass panes.

Bob Oxtan opened the floor to members of the public present who wished to comment.

None being seen, Mr. Oxtan closed the public portion of the meeting.

**ROBIN HAYNES MOVED, SECONDED MARJORIE HAWKES, TO APPROVE THE REQUEST FOR HISTORIC DISTRICT APPROVAL FOR FAÇADE CHANGES TO 106 FRONT STREET (MAP 27, LOT 117); RIVERPORT COMPANY, INC., APPLICANT.**

**UNANIMOUS APPROVAL**

**Item 5**

**Request for Historic District Approval Amendment – Façade changes; Commercial Street (BathPort) (Map 26, Lot 272); New BathPort, LLC, applicant.**

Ed Rogers, representing New BathPort LLC, said that they would like to make a change to the front of the building as indicated the photo simulations. Mr. Rogers pointed out the proposed placement of windows on the photos and the ramp and railing for handicapped accessibility.

The Planning Board held discussion on the driveway, alignment of windows, and a corrected plan.

Bob Oxtan opened the floor to members of the public present who wished to comment.

None being seen, Mr. Oxtan closed the public portion of the meeting.

**ROBIN HAYNES MADE A MOTION, SECONDED BY GORDON REED TO APPROVE THE REQUEST FOR HISTORIC DISTRICT APPROVAL AMENDMENT FOR FAÇADE CHANGES; COMMERCIAL STREET (BATHPORT) (MAP 26, LOT 272); NEW BATHPORT, LLC, APPLICANT, WITH THE CONDITION THAT AN ACCURATE PLAN BE SUBMITTED TO CITY STAFF SHOWING THE CORRECT PLACEMENT OF WINDOWS AND THAT THE VENT BE PAINTED.**

**UNANIMOUS APPROVAL**

There being no further business to come before the Board, **DICK KLINGAMAN MOVED, SECONDED BY GORDON REED, THAT THE MEETING BE ADJOURNED.**

**UNANIMOUS APPROVAL**

The meeting was adjourned at 9:55 p.m.

Minutes prepared by Marsha Hinton, Recording Secretary