

A regular meeting of the Bath Planning Board was called on 8-2-11 for the purpose of conducting regular business.

MEMBERS PRESENT

James Hopkinson, Vice Chair
Andy Omo
Paul Fraser
Donald Rogers
Robin Haynes
John Swenson

MEMBERS ABSENT

Bob Oxtan, Chair
Haley Grill (non-voting student member)

STAFF PRESENT

Jim Upham, Planning Director
Marsha Hinton, Recording Secretary

Mr. Hopkinson, Vice Chair, called the meeting to order in the third floor Council Chambers at 6:00 p.m. on Tuesday, August 2, 2011.

Minutes July 5, 2011, meeting

MR. ROGERS MOVED, SECONDED BY MR. SWENSON TO APPROVE THE MINUTES OF THE JULY 5, 2011, PLANNING BOARD MEETING AS WRITTEN.

UNANIMOUS APPROVAL**Old Business****Item 1**

Request for Site Plan Approval – 826 High Street (Map 26, Lot 1); Bath Regional Career & Technical Center, applicant (Continued from the July 5, 2011, meeting)

Mr. Joel Osten, director of the Bath Regional Career & Technical Center, pointed out on the amended site plan the location of additional screening, fence, walkway, screening materials, location of the propane tank and compost. Mr. Osten stated that he had been working with the City Arborist to select materials and plants. Mr. Osten added that there was a small berm on the northerly side of the building that would be adequate to control storm water runoff. He told the Board that this had been suggested by Mr. Leiner, the Deputy Public Works Director.

The Planning Board discussed setback encroachment, the amended site plan, the letter received by the Planning Office on July 20, 2011, written by the applicant, the berm, and treatment of the base for the propane tank.

Mr. Hopkinson opened the meeting to members of the public present who wished to comment on this agenda item.

Mr. and Mrs. Lee, 21 Chestnut Street, supplied the Planning Board with a *Times Record* article dated October 2, 2002 by Christopher Cousins entitled "Plan to build modular homes rejected by Bath Planning Board." Mr. and Mrs. Lee expressed their concerns with regard to the need for the school to have another greenhouse since there was one at the Junior High School, the

unsightly nature of polyurethane greenhouses, and the apparently haphazard planning and construction of the greenhouse.

Mr. Hopkinson explained Planning Board procedure and the Board's prior consideration of this agenda item.

No other comment from the public seen, Mr. Hopkinson close the public portion of the meeting.

MR. ROGERS MOVED, SECONDED BY MR. FRASER TO APPROVE THE REQUEST FOR SITE PLAN APPROVAL AT 826 HIGH STREET. (MAP 26, LOT 1) FOR BATH REGIONAL CAREER AND TECHNICAL CENTER, APPLICANT AS SHOWN ON THE SITE PLAN PRESENTED AT THE AUGUST 2, 2011 PLANNING BOARD MEETING.

**FIVE IN FAVOR (MR. HOPKINSON, MR. ROGERS, DR. HAYNES, MR. FRASER, AND MR. SWENSON)
ONE OPPOSED (MR. OMO)**

New Business

Item 1

Public Hearing – Zoning Map amendment. Change the zoning on three parcels of land on Washington Street (Lots 13, 14, and 15 on Tax Map 38) from Museum Zone to Residential 2 Zone.

Mr. Upham explained that the purchasers of Lot 13 wished to have a Home Occupation in their home. He said that he had thought that amending the Text of the Land Use Code to allow Home Occupations in the M Zone would be the best way to allow this. He went on to say that at the July meeting the Board felt that changing the zoning on these three residential lots was a better approach. Mr. Upham added that he was withdrawing the request to change the zoning on Lot 15 in order to allow the owner to operate a sailing school. Mr. Upham pointed out that by maintaining the Museum zoning for this lot compatible uses such as sailing schools would be possible.

Mr. Hopkinson opened the floor to members of the public who wish to comment on this agenda item.

Mr. Eric Leonardson, the owner of Lot 14 and 15, stated that he desired to maintain the Museum zoning designation on Lot 15 because he wished to use the lot to access the Kennebec River as part of his planned sailing/small boat school.

Ms. Karen Johnson, owner of Lot 13, stated she wished to establish a home occupation making and selling sea-glass jewelry. Ms. Johnson explained that under the current Museum zoning this would not be allowed.

No other comment from the public seen, Mr. Hopkinson close the public portion of the meeting.

The Planning Board discussed the recommendation to the City Council, the procedure after Planning Board recommendation, and maintaining Museum zoning on Lot 15.

DR. HAYNES MOVED, SECONDED BY MR. OMO, TO RECOMMEND TO THE CITY COUNCIL AN AMENDMENT TO THE ZONING MAP FOR LOTS 13 AND 14 ON TAX MAP 38 FROM MUSEUM ZONE TO RESIDENTIAL 2 ZONE.

UNANIMOUS APPROVAL

Item 2

Public Hearing – Land Use Code Text Amendment – (1) An amendment to Article 8, Section 8.22 by adding “Subsection D—Contract Rezoning - Contract rezoning is allowed in the PH Zone” and an amendment to Article 8, Section 8.20, B by adding “8. Plant Home Zone” to the list of zones where Contract Rezoning is allowed. (These amendments would make Contract Rezoning allowable in the Plant Home Zone.)

Mr. Upham explained to the Planning Board that a meeting attended by the City Attorney, the City Manager and himself to discuss whether the Plant Home Zone was comprised of one or two lots the City Attorney had determined that it was indeed two lots and that the proposed location of the new structure violated the Setback. Mr. Upham stated that establishing a contract zone for The Plant Home Zone would allow space and bulk standards to be modified in exchange for additional landscaping, screening, public access to the river front or other items above and beyond normal requirements.

The Planning Board discussed how the lot line came to be created, whether it was a formal lot line, contract rezoning, the process for contract rezoning, Department of Environmental Protection oversight, other sites contract zoning is utilized in Bath, flexibility provided for the Planning Board in Contract Zoning, and ownership of the 2 lots in question.

Mr. Hopkinson opened the floor to members of the public who wish to comment on this agenda item.

Mr. Henry Hall, 18 Riverview Road, expressed his displeasure with a further relaxation of requirements for the Plant Home. Mr. Hall pointed out that a new zone had been established for the Plant Home in February of 2010. Mr. Hall cautioned against allowing contract zoning until it could be shown that the Plant home was not in violation the new Plant Home Zone. Mr. Hall cited Section 8.22 of the Land Use Code and referenced the Comprehensive Plan. Mr. Hall added his concern for the natural resources in the area, density, and protection of the Kennebec River. Mr. Hall suggested that the Planning Board table this agenda item for more information.

Ms. Phyllis Bailey, 16 Riverview Road, expressed her concern that on the Plant Home website the proposed structure shown is clearly in violation of city ordinances. Ms. Bailey directed the board's attention to a book entitled *Design for Assisted Living* by Victor Regnier for more information on best practices with regard to assisted living facilities. Ms. Bailey added that she

was concerned with regard to building height, setback encroaching on the Shoreland zone, tree loss, and impact on the Kennebec River.

Mr. Kevin Connors, 16 Riverview Road, stated that it was his opinion that the Plant Home has not engaged in innovative design and that if contract zoning were allowed the plant home would come back with the exact same design.

Mr. Fred Denson, 8 East Lane, stated he was present at tonight's meeting to gain a better understanding of what contract zoning was. Mr. Denson asked what guidelines the Planning Board used when they made a recommendation to the City Council and for examples of areas the Planning Board had recommended contract zoning. Mr. Denison added that he did not think the proposal planned by the Plant Home was in keeping with the vision of Mr. Plant.

Mr. Doug Munsey, Plant Home Board of Directors, stated that the contract rezoning was being requested in order to continue operation of the Plant Home. Mr. Muncy added that the Plant Home has been working closely with the City in order to ensure this resource for the City's elderly population could continue.

Mr. Ed Rogers, stated that the Planning Director, the Planning Board, or the City Council would not only allow but would encourage comment from members of the public who wish to contribute.

Ms. Julie Rice, 27 Washington Street, expressed her puzzlement over the zone proposal given the previous proposal last year and this new zoning proposal. Ms. Rice asked if there was a specific proposal before the Board, if so what it was, and why wasn't the neighborhood informed.

Mr. Tom Saucier, Site Design Associates, consultant for the Plant Home, pointed out the lot line on us site map, described the thought process of the Plant Home relating to the contract rezoning, and the e-mail dated July 27, 2011, he had sent to the neighbors surrounding the plant home.

Don Capaldo, Executive Director of the Plant Home, described the financial arrangements used for the expansion to the Plant Home in 2002 and the leases of the portions of the lot. He also told of the inability to move the lot line established with that partnership, and pointed out that the Plant Home has been in operation for 100 years.

No other comment from the public seen, Mr. Hopkinson close the public portion of the meeting.

Mr. Upham stated that as far as what criteria is used by the Planning Board or City Council when it comes to making decisions regarding amendments to the Land Use Code, because this was a legislative act, there are no written standards or criteria. He did say that the Board would factor in what would be best for the community and neighborhood when considering contract rezoning. Mr. Upham reiterated the procedure for contract rezoning, clarified that there was no Plant Home site plan application before the Board tonight, and listed several

contract rezoning/site plan applications that had been before the Board along with the benefits gained for the city.

Mr. Hopkinson stated that contract rezoning would empower the Planning Board by allowing more control over design, buffering, public access, and other public benefit items that the Planning Board did not normally have. Mr. Hopkinson explained that the Planning Board was limited by the ordinances, without the flexibility of contract rezoning. Mr. Hopkinson added that when a plan would come before the Planning Board which met the ordinance requirements but may be felt to be unsatisfactory for some reason, the Planning Board was required to approve the application.

The Planning Board discussed ownership of the property, the lot lines, contract rezoning.

Mr. Omo stated that while he often opposed contract rezoning that he believed it to be appropriate for this area.

Dr. Haynes stated that contract rezoning would give an additional layer of control over various aspects of the application. Dr. Haynes cautioned that the applicant must be prepared for the more stringent requirements that will be required for approval.

Mr. Fraser stated that contract rezoning would allow a platform for greater flexibility and allow for neighbors to make input into that development.

Mr. Rogers pointed out that the modified setback would not be from the Kennebec River but from a lot line. Mr. Rogers added that he supported contract rezoning for the site because it provides tools for protection of the natural resources in the area.

Mr. Hopkinson stated that while he felt that the difficulty was created by the applicant, contract rezoning would equip the Planning Board with an additional "arrow in its quiver" to enhance and protect the City of Bath.

MR. ROGERS MOVED, SECONDED BY DR. HAYNES, TO RECOMMEND A LAND USE CODE TEXT AMENDMENT TO ARTICLE 8 SECTION 8.22 TO BY ADDING "SUBSECTION D -- CONTRACT REZONING CONTRACT REZONING IS ALLOWED IN THE PH ZONE" AND AN AMENDMENT TO ARTICLE 8, SECTION 8.20, B BY ADDING "8. PLANT HOME ZONE" TO THE LIST OF ZONES WHERE CONTRACT REZONING IS ALLOWED TO THE CITY COUNCIL FOR ADOPTION.

UNANIMOUS APPROVAL

Item 3

Request for Site Plan and Historic District Approval – At the "Train Shed" on Commercial Street (Map 27, Lot 133); Maine's First Ship, applicant.

DR. HAYNES MOVED SECONDED BY MR. ROGERS, TO FIND THE REQUEST FOR SITE PLAN AND HISTORIC DISTRICT APPROVAL AT THE TRAIN SHED ON COMMERCIAL

STREET (MAP 27, LOT 133) FOR MAINE'S FIRST SHIP TO BE COMPLETE WITH WAIVERS OF LAND USE CODE SECTIONS 12.08, I, 3; 12.08, J; 12.08, K, 3; AND 12.08, M, 2 AND 3.

**FIVE IN FAVOR (MR. HOPKINSON, MR. ROGERS, DR. HAYNES, MR. FRASER, AND MR. SWENSON)
ONE ABSENT (MR. OMO)**

Stephen Theodore, representing Maine's First Ship, described the boat shed house for the building of the replica of the *Virginia*, cooperation with the Bath Water District for parking spaces, and visual public access to the site. Mr. Theodore pointed out the location of the gravity sewer line and the manhole access points. Mr. Theodore added that this project would only be in operation during the summer months.

The planning board discussed location, waste, maintenance, emergency service access, fencing, and painting the plywood ends.

Mr. Hopkinson, opened the floor to members of the public who wish to speak on this agenda item.

Mr. Ed Rogers, representing Main Street Bath, stated that he was in favor of this application as a downtown businessman. Mr. Rogers pointed to the number of visitors who had been going to the First Ship Site.

Mr. Eric Varney stated that he was in favor of this project because of the educational benefits for the students.

Mr. Howie Kirkpatrick stated that he believed this was a really nice project and attraction for Front Street as well as being educational.

Ms. Joanne Kosakowski stated that her son was benefiting from being involved with this project.

DR. HAYNES MOVED, SECONDED BY MR. SWENSON, TO APPROVE THE REQUEST FOR SITE PLAN AND HISTORIC DISTRICT APPROVAL AT THE TRAIN SHED ON COMMERCIAL STREET (MAP 27, LOT 133) FOR MAINE'S FIRST SHIP APPLICANT WITH THE FOLLOWING CONDITIONS:

THAT IF THE BUILDING IS REQUIRED TO BE MOVED IT WILL BE DONE SO ENTIRELY AT THE EXPENSE OF THE APPLICANT;

THAT THE PLYWOOD ENDS OF THE BUILDING BE PAINTED;

THAT THE FENCE OR GATE HAVE A COMBINATION OR KEYLOCK THAT IS PROVIDED TO THE POLICE DEPARTMENT OR FIRE DEPARTMENT FOR ACCESS; AND

THAT FINAL APPROVAL BE CONTINGENT UPON APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION BEING SUBMITTED TO THE PLANNING DIRECTOR.

UNANIMOUS APPROVAL

Other Business
None

Adjournment

There being no further business before the Board, **MR. OMO MOVED SECONDED BY MR. FRAZIER TO ADJOURN THE MEETING AT 8:38 PM.**

UNANIMOUS APPROVAL

Minutes prepared by Marsha Hinton, Recording Secretary