

**Planning Board Meeting
Council Chambers of the Town Offices
290 Tuttle Road, Cumberland Center
Tuesday, July 17, 2001
7:00 PM**

A. Call to order

The meeting was called to order at 7:00 p.m.

B. Roll Call

Present: Phil Hunt, Martha Porch, Tom Powers, Stephen Sloan, Joseph Taylor, Terry Turner,

Absent: Beth Howe

Staff: Andy Fillmore, Town Planner,

C. Minutes of Prior Meetings

Ms. Porch moved to accept the minutes of June 19, 2001 as written.

Mr. Powers seconded.

VOTE: Unanimous

D. Consent Calendar

There were no consent calendar items.

E. Hearings and Presentations

1. Public Hearing – Shoreland Zoning Permit, to re-construct an 8' x 8' work shed on Chebeague Island, Tax Assessor Map I02, Lot 75, Earnest M. Richardson, owner.

Mr. Hunt stated the agenda item is a Shoreland Zoning Permit request to re-construct a work shed, the reason this item is before the Planning Board is that the Ordinance requires certain improvements in the Shoreland Zone to have Planning Board review and approval.

Mr. Fillmore presented background information as follows:

The applicant Earnest Richardson is present at the meeting. The applicant is seeking a Shoreland Zoning Permit to reconstruct an existing 57.8 square foot storage shed on Chebeague Island, Tax Assessor Map I02, Lot 75, Earnest Richardson, owner and representative.

Mr. Richardson currently maintains a seasonal cottage on Chebeague Island, the 75 year old shed is suffering from extensive damage due to age. The applicant wishes to reconstruct the shed in the same location, and same general configuration and with similar materials. The shed has neither electricity, plumbing nor a foundation, nor does the proposed reconstruction.

ZONING ISSUES:

- 1) The cottage is located in an “Island Business” zone (sec. 204.11) with a “Limited Commercial” overlay (sec. 204.5.4).
- 2) The site of the existing cottage appears to be 40’-50’ from the high water line. Because the site is within 250’ of the normal high water line, it meets the definition of “Shoreland Area” (sec. 104.119, pg. 18).
- 3) New buildings in Shoreland Areas must be built more than 75’ from the normal high water line (sec. 423.3.1, pg. 124). As such, the existing cottage is a non-conforming use.
- 4) Reconstruction/replacement of a non-conforming use in a Shoreland Area is discussed in sec. 501.1.3.3, states:
*“Reconstruction or Replacement: Any non-conforming building or structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed by more than fifty percent (50%) of the market value of the building or structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and **provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance.** In no case shall a building or structure be reconstructed or replaced so as to increase its non-conformity.*

Based on the applicant’s application and testimony, it is the opinion of the planning department that the building’s market value has been decreased by more than 50%. Having met this condition (sec. 501.1.3.3) the permit request is subject to planning board approval.

The existing shed (6.25’ x 9.25’) has no foundation as its sills rest on rocks and earth. The proposed reconstruction will be in the same location and of roughly the same size, and will be built upon 6”x 6” pressure treated sills resting on 6”x6” pressure treated vertical posts set in 8” cement tubes.

The applicant has shown that moving the structure away from the water to comply with the 75’ shoreland setback would be impossible due to a steep embankment directly to the rear of the shed.

The existing shed is 57.8 square feet. In accordance with Section 501.1.3.1 a non-conforming structure may be enlarged by up to 30%. 57.8 square feet plus 30% equals 75.1 square feet. If Mr. Richardson rebuilds his shed at 8’x 8’, using dimensional lumber, it will be 64 square feet or 11% bigger. If he rebuilds it at 8’x 10’, using dimensional lumber, it will be 80 square feet, or 38% bigger. This section of the zoning ordinance is quite clear that expansion beyond 30% is considered a “substantial expansion” and would require a variance from the Board of Adjustment and Appeals.

Given that the proposed reconstruction will not introduce any new impacts to the shoreland zone, that the reconstruction will not be in excess of 30% larger than the original, that it will be in the same location as the original, and the fact that the shed predates the setback requirement by many years, it would appear that the proposed reconstruction of this cottage would not increase its non-conformity.

RECOMMENDATION: It is recommended that the Shoreland Zoning Permit be granted with the conditions that it not exceed 75.1 square feet in plan area, and that the code enforcement officer approve the plans.

EXHIBITS:

- 1) Shoreland Zoning Permit Application.
- 2) Shoreland and Property Information sheet.
- 3) "Survey of Property" prepared by surveyor, showing lot metes and bounds, and location of shed and other structures (1972).
- 4) Fax cover sheet from applicant describing project.
- 5) Applicant's sketch of shed
- 6) Building Permit application
- 7) Existing conditions photos: 1) view of property 2) existing shed.

Mr. Hunt thanked Mr. Richardson for the complete application and helpful photos. He asked if he would like to make any comments.

Mr. Richardson stated Mr. Fillmore's report was very complete.

Mr. Sloan asked Mr. Richardson what was the use of the shed.

Mr. Richardson stated for storage.

Mr. Turner asked who determined that the building was substantially below market value. From the pictures it appears to be standing true.

Mr. Richardson stated the picture is over fifteen years old. They have tried to level the building but have been unable to do so.

Mr. Turner asked if anybody on the Board knew where the caveat of 50% destruction clause originated from and the reason.

Mr. Taylor stated probably fire or storm damage, which happens all at once, where this is just old age.

Mr. Turner asked if a fire or hurricane destroyed the property would an owner be allowed to replace it.

Mr. Hunt stated they would be able to replace it only with Planning Board approval.

Ms. Porch stated she assumed the boathouse was in good shape.

Mr. Richardson stated yes, it was built in 1972.

Mr. Hunt stated if that if there were destruction that was less than 50% it could be repaired without the requirement of Board approval.

Mr. Turner stated that if someone had catastrophic damage to property within the shoreland area repairs would require Board approval.

Mr. Hunt stated if a structure required routine maintenance the Board would not need to give approval, but if the repairs were substantial the applicant may upon review be encouraged to relocate the structure to a conforming location. He does know when it came into the Ordinance.

Mr. Taylor asked Mr. Richardson for clarification of the buildings in the photograph.

Mr. Richardson pointed out the cottage and boathouse which will remain, and the shed which needs to be replaced.

Mr. Hunt stated this is an application, which requires Board approval. There is a recommendation from the Town Planner that the Shoreland Zoning Permit be granted with the condition that the improvement not involve more than 75.1 sq. ft. of area and that the Code Enforcement Officer approve the plans.

Mr. Powers moved to grant a Shoreland Zoning Permit to Earnest M. Richardson to reconstruct an existing 57.8 square foot storage work shed on Chebeague Island, Tax Assessor Map I02, Lot 75. The shed will not exceed 75.1 square feet (30%), and the plans will be approved by the Code Enforcement Officer.

Ms. Porch seconded.

VOTE: Unanimous

F. Administrative Matters

Mr. Fillmore stated the Planning Board and the Town Council have been busy with amendments for the Growth Management Ordinance. These amendments will be presented to Council. The issue of Route One design guidelines is ever present. As stated last month, Mr. Fillmore has contacted University of Maine. The plan is that the September class might be able to provide assistance.

Mr. Hunt stated that there was a letter written from the Meadow Brook community regarding the school project. He has responded to the two-co-chairpersons of the committee and stated there is no formal application before the Planning Board. No action will be taken until application. Their communication would be kept in the record and forwarded to the Town Planner.

Ms. Porch stated she was concerned that the school board would present plans to the Planning Board with limited time for review.

Mr. Fillmore stated the final referendum will be in November, the application will not be before the Planning Board until after the approval. It was his understanding the school department does not plan to begin construction until fall of 2002.

Ms. Porch voiced concern regarding the increased traffic.

Mr. Fillmore stated the Town has retained SYTDesign for peer review on the project. SYTDesign has sub-contracted a traffic engineer and traffic planner to look at the macro issues. The Planning Board should be fully involved.

Mr. Hunt stated that he has received complaints from residents on Forest Lake Road stating that the Town had done a poor job cleaning up the gravel pit site. Stumps, cutting and brush had been pushed to the other side, which has created an unattractive view to the residents.

Mr. Fillmore stated he would bring this issue to the attention of the Public Works Director.

Mr. Turner asked about any upcoming issues.

Mr. Fillmore stated Westbranch Subdivision would be back in August or September.

Mr. Hunt asked if Mr. Kennedy had any plans ready for submittal.

Mr. Fillmore stated Mr. Kennedy is still not ready to submit plans.

Mr. Sloan asked about Mr. Guidi.

Mr. Fillmore stated he has not heard from Mr. Guidi.

Mr. Turner stated there is construction activity in the area of Johnson Road in Falmouth.

Mr. Powers moved to adjourn:

Ms. Porch seconded.

VOTE: Unanimous

A TRUE COPY ATTEST:

Philip C. Hunt, Board Chair

Pam Bosarge, Board Clerk