

Town of Scarborough

Planning Board

April 27, 2009

REVISED AGENDA

1. Call to Order (7:00 P. M.)
2. Pledge of Allegiance
3. Roll Call
4. Approval of Minutes (April 6, 2009)
5. The Planning Board will conduct a public hearing to receive input on an amendment to the Zoning Ordinance to add performance standards to allow Small Wind Energy Systems (wind turbines)
6. The Planning Board will conduct a public hearing to receive input on an amendment to the Zoning Ordinance to add performance standards to allow solar panels
7. Northeast Technical Institute, Chris Liponis requests an opinion to the Zoning Board of Appeals for a Miscellaneous Appeal to resume a nonconforming use as a trucking terminal for driver training in the HPZ Zone at 4 Ginn Road
8. Optimal Performance Physical Therapy, LLC, Karen Bailey requests site plan approval for 2,486 square foot medical building at 5 Millbrook Road
9. Administrative Amendment Report
10. Town Planner's Report
11. Correspondence
12. Planning Board Comments
13. Adjournment

NO NEW ITEMS SHALL BE TAKEN UP AFTER 10:30 P. M.

Town of Scarborough

Planning Board

April 27, 2009

MINUTES

Members Present

Staff

Ms. Auglis  
Mr. Chamberlain  
Mr. Fellows  
Mr. Mazer  
Mr. Paul  
Mr. Thomas

Mr. Bacon, Town Planner  
Mr. Chace, Assistant Town Planner

1. Call to Order

Mr. Paul called the meeting to order at 7:00 P. M.

2. Pledge of Allegiance

The Pledge of Allegiance was recited.

3. Roll Call

Mr. Chace called the roll; Ms. Littlefield was absent. Mr. Paul authorized Mr. Mazer to vote

4. Approval of Minutes (April 6, 2009)

Mr. Paul moved to approve the minutes of April 6, 2009; Mr. Thomas seconded.

Voted 5-0

Mr. Paul asked that Item No. 8 be heard first.

8. Optimal Performance Physical Therapy, LLC, Karen Bailey requests site plan approval for 2,486 square foot medical building at 5 Millbrook Road

Mr. Chace noted that the Board had seen this item at the previous meeting where one of the remaining issues was the treatment of Millbrook Road; he stated that the staff had discussed the issue with Ms. Bailey and had come to an agreement for mitigation of the road. He stated that Ms. Bailey had worked with MaineHealth, who had a proposal for the abutting property, to use their access during construction in order to save wear and tear on Millbrook Road. Mr. Bacon stated that the applicant also worked with the Public Works Director was amenable to a \$2,000 mitigation fee; he stated that the Sanitary District had approved the project as long as the bio-retention area was moved out of the sewer easement.

Ms. Bailey stated that she had received conditional approval from the Sanitary District and a construction permit from the Fire Marshall. She stated that she was requesting waivers to allow one driveway to be less than 90 feet from the abutting driveway and less than ten feet from the side property line, to reduce the parking spaces to 9 by 18 feet to reduce the number of spaces from 14 to 12, and to use the existing overhead electrical utility.

The Board members agreed that there were no problems with the waivers and were happy that the applicant and the town had worked out the issues; they also agreed that the agreement with MaineHealth should be a condition of approval. Mr. Fellows asked how the \$2,000.00 road mitigation fee was determined; Mr. Bacon replied that the property across the road would be held accountable for the same amount if it were redeveloped from a residential use to commercial before the town upgraded Millbrook Road. To a question from Mr. Chamberlain, Ms. Bailey replied that the agreement with MaineHealth had not been finalized but there were no initial issues with the agreement. Mr. Bacon stated that the basic requirement of upgrading Millbrook Road, grinding, grading and repaving, was satisfactory.

Mr. Paul moved to approve the site plan, including the waivers, with the following conditions:

1. Prior to the issuance of the building permit, the applicant shall pay the traffic impact fees.
2. The applicant shall pay a mitigation fee of \$2,000.00 to contribute to the future improvements of Millbrook Road, to be paid prior to the issuance of the building permit.
3. Prior to issuance of the building permit, the applicant shall revise the site plan to include the required site plan notes and relocate the bio-retention area outside the sewer easement area. This revised plan shall be submitted to Planning staff for review and approval.
4. That an agreement be secured with Maine Health to use their site (Orion Center) for access to 5 Millbrook Road for heavy construction equipment.

Mr. Fellows seconded the motion.

Voted 5-0

5. The Planning Board will conduct a public hearing to receive input on an amendment to the Zoning Ordinance to add performance standards to allow Small Wind Energy Systems (wind turbines)

Mr. Bacon stated that the Planning Department had received several inquiries about erecting small wind turbines, but they are not allowed under the Zoning Ordinance. He stated that, given the interest, the Ordinance Committee started working on performance standards to allow small wind installations which were introduced to the Town Council and was now in front of this Board for a public hearing. He stated that the performance standards were intended to strike a balance between a streamlined process through the Code Enforcement Office, not through the Zoning or Planning Boards, while having standards and checks on impacts to abutters. Mr. Bacon gave an overview indicating that one unit per lot would be allowed in any zone except Resource Protection and limiting the height to 100 feet. He stated that there would be a required setback of 110% for a fall zone which also would lessen the noise impact. He stated that there were design standards on lighting and electrical connections and the design would be on monopoles and not on lattice-type towers; he stated that there were safety standards about preventing the ability to climb on a tower and a minimum height so the blades do not rotate too close to the ground and a requirement for automatic braking for high wind speeds. He stated that there was a requirement for decibel levels to be less than 55 decibels at 100 feet from the tower as well as a standard on an unused tower for more than a year it needs to be repaired or taken down and an allowance in a Conservation Subdivisions for three turbines for the subdivision, which would be reviewed by the Planning Board. He stated that there were two definitions that defined small wind energy systems and meteorological towers as temporary uses to ensure that there was sufficient wind to make turbines a worthwhile investment.

Mr. Paul opened the public hearing and asked that comments be kept to five minutes or less and not repeat what someone else had said.

Mr. Harry White, of 135 Running Hill Road, noted that the proposed ordinance did not address the old multi-bladed water pumping windmills which are still being manufactured. He stated that he lived in the new Running Hill Mixed Use District, formerly the R-F Zone, and had a lot of land and owned two wind

mills which had not yet been erected. He stated that this was a problem since the ordinance would allow only one per lot and it would appear that the ordinance was made to address people who had very limited land; he stated that he saw no reason that he should not be allowed to have two or more windmills. Mr. White asked the science behind the requirement of a height limit of 100 feet; Mr. Bacon replied that, given the literature studied, if a turbine is more than 100 feet it is of a scale that is beyond a small turbine in terms of the amount of power it generates and could be generating power on a more commercial scale. Mr. White stated that 100 feet was not typically adequate for a lot of small generators; he stated that 150 feet would be a more reasonable limit.

Mr. White stated that he did not understand the 110% setback. Mr. Bacon stated that the Ordinance Committee felt that the tower should fall on the property on which it was placed and the blades were not factored in the height limit so the tower itself was limited to 100 feet so the 10% accounted for the blades. Mr. White suggested that the tower at the public safety building be taken down because it could fall and that all the cell towers be taken down for the same reason. Mr. White stated that no one wanted towers to fall so imposing a special requirement seemed discriminatory; he stated that he did not know of any towers falling over. Regarding the monopoles, he stated that he had had a 60 foot wind mill tower for about 25 years so saying they were not acceptable did not seem reasonable; he stated that the ordinance also eliminated guide towers which had small lattice work which he had for ham radio operation. He stated that he did not understand why lattice or guide towers were not acceptable. Mr. Bacon stated that a lot of language in the ordinance came from surrounding towns and the Ordinance Committee and staff found that a number of communities had required only monopoles because they were less visible and blended into the surrounding less than a lattice tower.

Mr. White stated that no one could see his tower and some relief needed to be given; he stated that a limit on color was a bit much. He stated that his climbing apparatus started at the ground and it would be extremely dangerous for him to climb 15 feet to the tower apparatus but he could see guarding the tower to prevent climbing. Mr. White stated that he did not understand why blade clearance had to be 20 feet and 10 feet should be adequate. Mr. Bacon stated that that height was used in other ordinances. Mr. White stated that the electrical box could be above ground and this was another requirement that took away more of his freedom and added to the cost. He stated that many turbines did not have automatic brakes but had other devices to avoid too much wind so they would not self-destruct so requiring brakes would eliminate a lot of windmills. He stated that 55 db was a very small number of decibels and a minimum should be at a distance of the nearest lot line, not 100 feet.

Mr. White stated that the requirements for a foundation would cause him to hire an engineer but he had made on of his towers himself; he stated that he could not find noise information on his 1970s windmill. He stated that a drawing of a tower would cost thousands of dollars and the cost of complying with this ordinance would be prohibitive.

Mr. Andrew Bradley, 4 Sarah Liberty Lane, stated that he was concerned with the noise and had read the standards and realized that the 55 db noise would be very perceptible and annoying. He stated that some of the recommendations had been for a 20 db and to increase it as you get closer to an ambient noise level. He stated that would be practical to allow the higher noise level during the day with braking at night. Mr. Bradley noted a comment about limiting the power that could be generated as single installation for household usage. He stated that the payback was really long. He stated that with positive behavior and green energy if we could increase the average household usage to a multiplier and with the advent of smart grid coming, a lot of utilities are going to be looking to individual households to buy excess power from, now only credits are allowed and homeowners cannot sell excess power as regulated by the PUC. Mr. Bradley stated that this ordinance should look forward to allow a little increased production to help owners with that incentive. He stated that his last point was height and setback and with small lots, the setback of 45 feet would put a windmill in the middle of a house and would have to be higher than 45

feet because the turbine blades would hit the roof of a 35 foot house. The idea is good but if the installation had to be designed and engineered, it would be no different from putting a tall structure adjacent to a property line. He stated that he approved of having a professional engineer of signing off on the unique design of items for a monopole that could fall over in poor soil so there should be soil tests or pits and proper foundations.

Mr. Paul closed the public hearing.

Ms. Auglis stated that she was pleased that Scarborough had decided to address this issue and appreciated the feedback from the public. Mr. Chamberlain stated that the comments were educational and would be passed on to the Town Council; he asked whether there was any consideration given to the grandfathering of existing structures. Mr. Bacon replied that the Ordinance Committee did not talk a lot about grandfathering and probably did not realize there was at least one installation in town; he stated that this focused on standards for new installations. Mr. Chamberlain stated that he thought the Council should consider grandfathering the existing systems. He stated that he was surprised that the town would be exempted from the space and bulk rules and he thought the same standards should apply. Mr. Chamberlain stated that there had to be a decent sized lot to have a wind turbine and the ordinance seemed restrictive in terms of the setback of 110 feet from all property lines; he stated that the intent was wonderful but the ordinances should be adjusted to create more flexibility.

Mr. Fellows stated that he appreciated the comments from the people who had worked with wind turbines; he stated that he would support an accounting for the different zones because what made sense for one area might not be right for another area so he would like to see something that would vary by zone, including the noise threshold. Mr. Fellows stated that he would consider grandfathering of the existing installations and would encourage the committee to look at best management practices and consider what other towns had dealt with their issues. To a question from Mr. Fellows, Mr. Bacon replied that the next step would be a public hearing by the Town Council and then they would have a second reading at a later meeting; he stated that unless there were substantial changes it would likely not come back to this Board.

Mr. Thomas agreed that there should be grandfathering for existing turbines and he would be interested in information from other communities where similar facilities had been installed. He stated that he also questioned the exemptions for the town which should set the standards for the residents. He agreed that there should be a setback depending on the height of the tower and the blade circumference to address safety issues.

Mr. Mazer stated that the purpose of the committee was to draft an ordinance that would apply to every property in town which meant that every neighbor could apply for a system and the committee had tried to come up with what would be the best for everyone in general. He stated that if many people applied for a unit some of the standards needed to be applied as far as the building, the setbacks and the issues needed to be addressed with the expectation that many people may want wind power on their property. He stated that he had no problem with grandfathering with some exceptions; Mr. White stated that he had these units for many years, but lots had happened in the way of technology and he had no problem with more than one unit on a property but thought that units had to be upgraded and brought up to code. Mr. Mazer asked whether anyone had applied; Mr. Bacon replied that no one had applied because under the current standards they were not allowed but there had been several inquiries indicating that people would apply if they were allowed. Mr. Mazer noted that decibel levels could have an impact if there were a lot of units in a small area. He agreed that the town should follow the same standards as anyone else. Mr. Bacon stated that there could be turbines on the town campus and the thinking was that an exemption might be appropriate in that instance to power the numerous town facilities; he stated that there were a number of different lots on which the buildings were located and for the town to make the investment, the ability to comply with the space and bulk regulations would be challenging. He stated that in the interest

of the town to do something in Oak Hill, the number of turbines needed that exemption would be appropriate in the interest of the taxpayers. Mr. Mazer stated that if Mr. White had a lot of land, he should have an exemption to be allowed more than one unit on his property.

Mr. Paul stated that, as opposed to a restriction on the number of windmills on a lot, there could be a restriction on the number of units that could be erected for a certain size lot. He stated that, regarding the setback issue, he had an issue with the extent to which a windmill could encroach on an abutter if it fell and would like to see language regarding setbacks from structures, rather than just property lines. He stated that it could be that the facilities might be acceptable in only certain zones.

6. The Planning Board will conduct a public hearing to receive input on an amendment to the Zoning Ordinance to add performance standards to allow solar panels

Mr. Bacon stated that solar panels were now permitted as accessory uses and the performance standards were modest; they needed to meet the height requirements for a structure and needed to generate power for their own lot for onsite generation only. He stated that this adds standards for ground-mounted solar systems establishing a height limit of 20 feet, the average solar array with the post and panels are in the range of 13 to 16 feet providing setbacks and restricting shadowing of abutting properties.

Mr. Paul opened the public hearing. No one from the public spoke. Mr. Paul closed the public hearing.

To a question from Mr. Chamberlain, Mr. Bacon replied that there was a property in town with five solar rays but he thought that household consumed more than the average house, so two to three panels might be average to achieve enough power to equal consumption. He stated that cost would be a factor in terms of matching what one would consume or try to reach a percentage of what was consumed. Mr. Chamberlain stated that he liked the way this amendment was written but buffering should be a consideration for the neighbors. Ms. Auglis agreed that this was a well written addition to the ordinance. Mr. Bacon stated that buffering was not addressed extensively and tall buffers would impact solar access and smaller lots. Ms. Auglis stated that it was a challenge that had to be addressed.

Mr. Mazer and Mr. Thomas agreed there should be buffering. To a question from Mr. Thomas, Mr. Bacon replied that Section 2B or D. did not put a cap on the amount of panels but indicated that these systems needed to meet the setbacks of a particular zone and it would thereby limit the number of panels on a lot. Mr. Fellows agreed that this was a well written ordinance; he asked whether there had been any ongoing concerns about the existing panels; Mr. Bacon replied that there had not been any concerns. Mr. Paul agreed with the buffering issue; he stated that when buffering was not feasible on small lots we should consider that freestanding not be allowed and only roof mounted panels would be allowed.

7. Northeast Technical Institute, Chris Liponis requests an opinion to the Zoning Board of Appeals for a Miscellaneous Appeal to resume a nonconforming use as a trucking terminal for driver training in the HPZ Zone at 4 Ginn Road

Mr. Bacon stated that there was a proposal for the reuse of a trucking terminal on Ginn Road where there were currently several trucking facilities, so the reuse of this nonconforming use would be consistent with the character of the area and it would probably be quite some time before the area was redeveloped into the Haigis Parkway Zone. He stated that Planning Board opinion was required before the applicant could go to the Zoning Board to request the resumption of the use on this property.

The Board agreed that there should be no problem with letting this use resume.

9. Administrative Amendment Report

There was no report.

10. Town Planner's Report

There was no report. Mr. Bacon distributed new Commercial Design Standard booklets.

11. Correspondence

There was no correspondence.

12. Planning Board Comments

Mr. Mazer asked whether there was any news on Walgreens. Mr. Bacon replied that they had applied for their building permits. Mr. Mazer noted that the Board had been invited to the grand opening of WalMart.

13. Adjournment

The meeting was adjourned at 8:50 P. M.