

## Arundel Planning Board Minutes

September 13, 2018 7:00pm

Mildred L. Day School Library - 600 Limerick Rd. Arundel

**Board Attendees:** Mr. Cain, Mr. McGinn, Mr. Morin, Mr. Ganong, Ms. Roth (arrived @ 7:06)  
Secretary Ms. Goulet

**Attendees:** Stacy Gile, Dewey Gile, Bruce Read, Lynn Howe, Craig Raincourt, David Jones, William Stilphen, Jason Vafiades, Matt Collard, Mike Ouellette, Charlie O'Donnell, Teresa O'Donnell, Elizabeth Kelley Erickson, Jim Logan, Norm Nunan, Juan Landry, Sol Fedder, Ted Daggett, Jessica Robichaud, Alan Dow, Frances Legros, Tim Brofield, Scott Lilly, Denise Lafortune, Dana Libby, Paul Gadbois, Priscilla Coffin

**Call to Order:** Chair Ganong calls meeting to order at 7:00pm.

### I. APPROVAL OF AGENDA:

**Motion:** Mr. Morin motions to approve the agenda by tabling the approval of Minutes due to lack of quorum and to move Arundel Machine Tool Company's new application up ahead of Pending Applications. Mr. McGinn seconds.

**Vote:** All in favor.

### II. APPROVAL OF MINUTES

Approval of Minutes tabled until a quorum can be established.

### III. CITIZEN COMMENTS

No public comments.

### IV. PUBLIC HEARINGS

**Item 1: The Capable Canine: Conditional use Application:** Proposal to convert a portion of an existing residential structure into a dog kennel and training facility on an 8.9-acre parcel located at 863 Alfred Road, Tax Map 5, Lot 1 in the R-4 District. Jessica Robichaud is the owner and applicant.

Public Hearing Opened at 7:02pm

No questions, comments or concerns from those present.

Public Hearing Closed at 7:04pm

**Item 2: Legros Lane: Private Way Application:** Proposal to extend Legros Lane an additional 625 linear feet for the purpose of providing legal access and frontage for two residential lots exempt from subdivision review under 30-A MRSA 4401.4 and 4401.4.D-4. Frances V. Legros is the owner and applicant. Dana Libby RLS is the applicant's agent.

Public Hearing Opened at 7:04pm

Neighborhood resident, Tim Brofield, speaks up regarding concerns about the lack of appropriate road maintenance agreement.

Neighborhood resident, Scott, Lilly, notes that the most recent agreement that was proposed by the Legros involved the residents taking over ownership of the road.

Public Hearing Closed at 7:14pm

## V. NEW APPLICATIONS

**Item 1: Arundel Machine Tool Company: *Site Plan Review: Proposal to expand the existing garage by 1600 sf to accommodate storage of recycling materials on a 7.76 acre parcel located in the BI district. DCD Properties is the owner and Paul Gadbois PE is the applicant's agent.***

**Motion:** Mr. Morin motions to recommend the proposal go through the staff review process. Mr. McGinn seconds.

**Vote:** All in favor.

## VI. PENDING APPLICATIONS

**Item 1: The Capable Canine: *Conditional use Application: Proposal to convert a portion of an existing residential structure into a dog kennel and training facility on an 8.9-acre parcel located at 863 Alfred Road, Tax Map 5, Lot 1 in the R-4 District. Jessica Robichaud is the owner and applicant.***

The Board raises no additional questions or concerns. Mr. Ganong reads Findings of Fact.

### FINDINGS OF FACT AND MOTION FOR APPROVAL Capable Canine Conditional Use

**WHEREAS** on September 14, 2017, the Arundel Planning Board received a conditional use pre-application from Jessica Robichaud to convert a portion of a existing residential structure into a dog kennel and training facility on a 8.9 acre parcel located at 863 Alfred Road, Tax Map 5, Lot 1 in the R-4 district.

**WHEREAS**, on September 30, 2017, the Planning Board scheduled a site walk on the property. However, the applicant requested a postponement until December 2, 2017, whereupon the Planning Board did conduct the requisite site walk and informed the applicant of a number of design modifications that must be addressed in the Major Conditional Use application.

**WHEREAS**, on August 9, 2018, the Planning Board received a Major Conditional Use application from Jessica Robichaud, providing details of the proposed facility and addressing concerns expressed by the Planning Board at the December 2, 2018 site walk.

**WHEREAS**, the applicant made additional changes to the application upon review and the Planning Board deemed the application complete on August 23, 2018.

**WHEREAS**, on September 13, 2018 the Planning Board conducted a public hearing, in conformance with LUO section 9.2.9.

**AND WHEREAS** the Arundel Planning Board has determined the following *Findings of Fact and Notice of Decision*:

### FINDINGS OF FACT

1. The owners of the property are Jessica Robichaud and Terrance Knight.

2. The property is located at 863 Alfred Road, Tax Map 5, Lot 1 in the R-4 district.
3. LUO §6.10.2 lists the proposed dog training and kennel facility as a conditional use in the R4.
4. The applicant proposes to convert the ground floor of the existing residence for use as a common social room and crate sleeping area, while a 40' x 40' outdoor play area will provide an exercise and training area in the front of the residence. A double gate entry system between the building and the pens will prevent canine escapes.
5. The proposed outdoor exercise and training yard is screened from the adjacent property to the east by large conifers, and vinyl slats will be installed in the mesh fence to screen the play area from Alfred Road.
6. The outdoor pen meets all required setbacks of LUO §9.3.25.
7. The applicant proposes to compost all dog refuse and cleanup materials in a subterranean compost bin as prescribed by the State of Maine, located more than 100' from all on-site and adjacent water supply wells.
8. The applicant has received a provisional license to operate a Dog Kennel from the State of Maine.
9. The applicant will provide a total of seven parking spaces including a handicap space to meet the parking demands of her operation based upon the class size in her submitted business plan.
10. A 8 sf wooden sign meeting the design standards of LUO §5.17.11 will be installed at the entrance of the existing driveway on Alfred Road and setback from the intersection sufficiently as not to impede drive sight distances.
11. The applicant is not proposing to install any additional outdoor lighting.

#### CONFORMANCE WITH CONDITIONAL USE CRITERIA

After due review and consideration, the Arundel Planning Board has determined the application to be in conformance with the criteria of Section 9.2.9 of the Arundel Land Use Ordinance as follows:

- 9.2.9.1 That the use is compatible with and similar to the general categories of uses of neighboring properties.
 

*The proposed use is a permitted use in the ~~B1~~ R4 district and is consistent in scale and use with other uses in the surrounding neighborhood and the district.*

**Motion:** Mr. Morin motions to accept. Mr. McGinn seconds.

**Vote:** Unanimous in favor.
- 9.2.9.2 The use is consistent with the Comprehensive Plan and the anticipated future development of the neighborhood in that:
 

*The Comprehensive Plan specifies such animal husbandry and natural resource as the dog training facility/kennel to be consistent with the goals and land use objectives of the R4 district.*

**Motion:** Mr. Morin motions to accept. Mr. McGinn seconds.

**Vote:** Unanimous in favor.
- 9.2.9.3 That there is adequate and safe pedestrian and vehicular access to and into the site to accommodate anticipated traffic to and from the use.
 

*The proposed use will not generate significant trip generation, since dog training classes are held in the morning and afternoon and limited to no more than 6 or seven participants.*

**Motion:** Mr. Morin motions to accept. Mr. McGinn seconds.

**Vote:** Unanimous in favor.
- 9.2.9.4 That there is adequate water supply and sewage disposal available to service the use.

*The existing septic system will not be used to dispose of dog waste. A state -approved dog composting bin will be to be disposed of wastes and located more than 100 feet from on-site and adjacent well systems. Existing water supply on the site is sufficient to meet the needs of the proposed new use.*

**Motion:** Mr. Morin motions to accept. Mr. McGinn seconds.

**Vote:** Unanimous in favor.

- 9.2.9.5 That there will be no noise, dust, odor, vibration or smoke generated by the use that will adversely affect neighboring properties in that -

*Some dog barking is anticipated to be generated from the proposed use, however since the proposed use is as a canine training facility, it is expected that barking nuisances will be mitigated and controlled and will not be a significant impact to neighbors.*

*No additional exterior lighting sources are proposed. An existing par 38 floodlight provides illumination of the proposed parking lot.*

**Motion:** Mr. Morin motions to accept. Mr. Cain seconds.

**Vote:** Unanimous in favor.

- 9.2.9.6 That the physical characteristics of the site including location, slope, soils, drainage and vegetative cover are suitable for the proposed use.

*The proposed use will not measurably change the existing topography, slopes, soils, or vegetative cover of the site.*

**Motion:** Mr. McGinn motions to accept. Mr. Cain seconds.

**Vote:** Unanimous in favor.

- 9.2.9.7 That the use will not constitute a public or private nuisance.

*No additional nuisances will be generated by the proposed use.*

**Motion:** Mr. Morin motions to accept. Mr. McGinn seconds.

**Vote:** Unanimous in favor.

- 9.2.9.8 That all other requirements and applicable provisions of this ordinance, particularly any pertinent performance standards, are met.

*The applicant has met all pertinent portions of the Arundel Land Use Ordinance in the design of the proposed activities.*

**Motion:** Mr. McGinn motions to accept. Mr. Morin seconds.

**Vote:** Unanimous in favor.

**THEREFORE, BE IT RESOLVED** that based on the above findings and conclusions, the Arundel Planning Board hereby approves the Conditional Use application of Jessica Robichaud to convert a portion of an existing residential structure into a dog kennel and training facility on a 8.9 acre parcel located at 863 Alfred Road, Tax Map 5, Lot 1 in the R-4 district, subject to the following conditions:

1. The applicant cannot secure a Certificate of Occupancy for the proposed use until the State of Maine inspects and issues a Dog Kennel license for the Capable Canine facility and all of the site improvements are installed as approved by the Planning Board.
- ~~2. The applicant shall post a surety instrument in the amount of \$5,000 as required in Section 10.7 of the Land Use Ordinance to assure that all work is performed in accordance with the plans.~~

**Motion:** Mr. McGinn motions to approve the Findings of Fact as amended (BI changed to R4 in section 9.2.9.1 and removing #2 in conditions). Mr. Morin seconds.

**Vote:** Unanimous in favor.

**Item 2: Legros Lane: Private Way Application:** *Proposal to extend Legros Lane an additional 625 linear feet for the purpose of providing legal access and frontage for two residential lots exempt from subdivision review under 30-A MRSA 4401.4 and 4401.4.D-4. Frances V. Legros is the owner and applicant. Dana Libby RLS is the applicant's agent.*

Applicant's agent, Mr. Libby, asks the Board for a conditional approval pending an agreed upon road maintenance agreement. In this case, no permit to proceed would be issued until a road maintenance agreement approved by all parties was secured.

The Board decides that they cannot move on the application until a formal road maintenance agreement is in place. The application is tabled until the next meeting to afford representation from both sides to work it out.

With the arrival of Ms. Roth, the Board feels it important to vote upon the Site Walk Minutes from July 26<sup>th</sup>, 2018.

**Motion:** Mr. McGinn motions to approve the minutes as written. Mr. Cain seconds.

**Vote:** Mr. Morin abstains. Mr. McGinn, Mr. Cain, Mr. Ganong and Ms. Roth in favor. Motion carries.

## **VII. PUBLIC HEARING** (continuance from August 23, 2018)

**Item 1: Pave Tech Corp Contractor Yard: Conditional Use:** *Proposal for the establishment of a Contractor Yard 2 operation for an existing paving contractor business located on an interior 5 acre parcel. Tax Map 37, Lot 8A, served by the private way Stilphen Lane with access off Sinnott Road in the R4 District. William Stilphen is the owner and applicant and Atlantic Resource Consultants are the applicant's agent.*

Hearing reopened at 7:36pm.

Mr. Read opens up discussion by expressing shock/concern about how Mr. Ganong conducted himself and the hearing during the last meeting. In light of that, Mr. Read suggests that Mr. Ganong recuse himself due to bias/conflict of interest.

Mr. McGinn voices lack of intent to motion for Mr. Ganong's recusal. Ms. Roth points out that Mr. Ganong should not be the target of discussion. The target should be regarding whether or not the applicant's character could or should be taken into consideration in all instances.

Mr. Ganong individually confirms with present Board members that they are in approval with him staying on to consider the issue.

Mr. Jones, attorney representing Mr. Stilphen, speaks to introduce Jim Logan, wetlands scientist.

Mr. Logan speaks regarding the lot in question and the immediate surroundings that he had access to. Mr. Logan reviews the areas of wetlands and how it is his professional assessment that the total wetlands area is under the 2-acre threshold.

Mr. Jones rises to speak on several topics;

- Noise easement from two abutters, from the Northerly and Easterly boundaries, is presented/discussed.
- 3 realtor letters are read that speak in favor of Mr. Stilphen and his application. One each from: Helen Curry, David Trottier, and Kevin Talty
- It's highlighted that, with the current conditional use permit in place, that there would only be 2 additional trucks and trailers if this Contractor 2 Yard were to be approved.
- Letters of support are read from neighbors.
- The sound recordings previously presented by Ms. Gile was misleading as it was difficult to discern just how loud the activity was because the volume on the computer was turned way up.
- It's reiterated how Mr. Stilphen's younger, non-business-related conduct, should not bear weight in consideration of this issue.

Mr. Sol Fedder, of 135 Sinnott Rd, speaks up to state that Mr. Stilphen and his employees have never been anything but polite. If anything, his trucks abide too well to the speed limit and it can be a pain to be stuck behind them. States that the business has had no negative impact on the neighborhood. Mr. Fedder also feels that Mr. Stilphen's business predates most residences.

Stacy and Dewey Gile emphatically disagree that Pave Tech predates the residential neighbors.

Mr. Ted Daggett, of 118 Sinnott Rd, says that Mr. Stilphen, is a stand up guy that would help anyone out of a tough spot.

Mr. Norm Nunan, of 170 Sinnott Rd, feels that the silent majority of the neighborhood has no issue with the business being run by Mr. Stilphen.

Mr. Juan Landry, 159 Sinnott Rd, says that even when he's on vacation and home during the day he does not feel that Pave Tech is disruptive. He thinks that the bicycle traffic is more of a nuisance than the truck traffic generated by the business.

Mr. Raincourt has a few questions and, due to specificity, they are directed to Mr. Stilphen.

Q: Has any land area been filled? If so, how much?

A: In 2004 Maine DEP came out to the property and approved some fill. No more was filled than the site evaluator permitted.

Q: When was Stilphen Way built? Did wetlands need to be filled in to construct the road?

A: Mr. Vafiades indicates that the Town would have required appropriate permitting. Given the size of the lot, his road development would have been grandfathered.

Q: Has equipment ever been sprayed with petroleum solvents?

A: No.

Q: Has there been any asphalt or concrete buried on the lot?

A: Yes, concrete and some asphalt.

Mr. Vafiades and Mr. Logan are in agreement that it's *extremely* difficult to impossible to identify with 100% certainty were fill has been placed in the past. However, in this case, there are no distinct areas that stick out as having been filled. The high/dry areas have somewhat irregular edges and this is atypical of an area that has been filled.

Ms. Howe reviews noise study and reiterates concern that, even though noise easements have been secured for the North and the East of Mr. Stilphen's property, the properties to the South experience noise decibel levels of 59 when more than one truck is running. This level exceeds limitations for a residential zone. Ms. Howe recognizes the proposed plan to stagger truck start times but feels that a history of non-compliance has been identified and shows it to be unlikely that this plan will actually be put to practice.

Mr. Read reiterates concerns regarding Mr. Stilphen's past actions and the water testing methods. Additionally, Mr. Read inquires if additional soil sampling should be required.

Mr. Matt Collard states that the trucks *never* all pull back into the yard at the same time in the afternoon.

Ms. Gile requests to view available large-scale maps so that she can identify and verify what trucks/trailers are existing and currently permitted. There seems to be some gray area regarding a trailer. Ms. Gile states that she has been told it should be considered a trailer and some Board members were under the impression that it was storage.

Mr. Cain suggests that the Board reach out to Code Enforcement to identify if the applicant is currently in compliance. It may also be important to ascertain what level of frequency the Code Enforcement Officer has visited the property.

Ms. Teresa O'Donnell speaks up to voice her support for Mr. Stilphen's application as an immediate neighbor – not just as a friend.

Ms. Elizabeth Erickson raises her concern with water quality. She is hoping to begin some organic farming on her parcel that is to the Southwest of the applicant's land. She is looking to get assurance that there would be no contaminants in the water working its way toward her property. Mr. Logan states that since her property rests on a knoll and wetlands are naturally excellent filtration systems, she should not experience any issues.

Public Hearing (cont'd) Closed at 8:49pm.

Mr. Ganong reviews the noise ordinance in relation to the Noise Study done on the property. Ms. Howe points out her concerns in direct relation to the ordinance.

Mr. Ganong advises that everyone must submit any additional materials by September 27, 2018.

Mr. Cain advises the Chair that he will not be in attendance when this will next be on the agenda (Oct 11).

#### **V. OTHER BUSINESS**

No Other Business discussed.

Mr. Morin motions to adjourn at 9:03pm.

#### **Adjourn**

Respectfully submitted,



Corinne A. Goulet  
Secretary to the Planning Board