

Arundel Planning Board Minutes

December 13th, 2018 - 7:00pm

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

Board Attendees: Mr. Cain, Mr. McGinn, Mr. Lowery, Mr. Morin, Mr. Ganong, Mr. Bergen, Ms. Roth, Town Planner Mr. Redway, Secretary Ms. Goulet

Attendees: Lynn Howe

Call to Order: Chair Ganong calls meeting to order at 7:01pm.

I. APPROVAL OF AGENDA:

Motion: Mr. Cain motions to approve the agenda as written. Ms. Roth seconds.

Vote: Unanimous approval.

II. APPROVAL OF MINUTES:

Motion: Mr. McGinn motions that the approval of Minutes from November 29th, 2018 be tabled until the next meeting to allow time for review. Mr. Morin seconds.

Vote: Unanimous in favor.

III. CITIZEN COMMENTS:

Citizen comment period opened and closed at 7:04pm with no comments to record.

IV. PENDING APPLICATIONS

Item 1: Pave Tech Corp contractor Yard: Major Conditional Use: Signing of Findings of Fact for November 29, 2018 Planning Board denial of Pave Tech's conditional use application for a Contractor Yard 2 operation on the site of an existing paving contractor business located on Stilphen Lane, Tax Map 37, Lot 8A in the R-4 District. William Stilphen is the owner and Pave Tech Corp is the applicant.

Chair Ganong reads Findings of Fact/Conclusions/Notice of Decision.

Mr. Cain inquires if the applicant could reapply if he were able to show proof that the noise levels could be kept within the required standards.

Mr. Ganong confirms that the applicant could indeed reapply if proof could be obtained that noise levels could be appropriately mitigated in accordance to the Ordinance.

Motion: Mr. Lowery motions to attest that the Findings of Fact as they've been read are an accurate record of events on November 29th, 2018. Ms. Roth seconds.

Vote: Unanimous in favor. Mr. McGinn and Mr. Bergen abstain.

The Findings of Fact/Conclusions/Notice of Decision is signed. Please refer to the end of these Minutes for its documentation.

V. ZONING ORDINANCE REVISIONS:

Item 1: Review of LUO 5.11 Noise Standards for uses in all Districts:

Discussion begins and centers around the terms “regular”, “frequent”, and “continuous” as they are currently found in Arundel’s LUO Section 5.11 of Noise Standards.

Mr. Redway speaks emphatically that he believes that “frequent” and “regular” are dangerously vague and endanger even regular homeowner activities like mowing lawn. Risk is even greater for business activities such as those of a log yard.

Ms. Roth points out that defining too much endangers the Board’s ability to make choices on a case by case basis.

Mr. McGinn cautions on the amount of time that could be spent on this topic. Vast amounts of time could be invested and it’s quite possible that the result would be to muddy the waters even further.

Mr. Bergen suggests that adding the term “unreasonable” could provide clarity.

Webster’s definitions of “continuous” and “regular” are read for reference.

Mr. Redway tries to reinforce that the Board needs to look at/review these standards. He suggests that the Board look over the material he’s provided to further develop depth of knowledge on the subject. He also points out that it’s the mixed use districts that have been problematic and will likely only get more so.

Mr. Lowery suggests the exploration of more conditions and exemptions.

Attendee, Ms. Howe, speaks to encourage the Board to retain all 3 terms.

Mr. McGinn brings up the possibility that Arundel needs to be more stringent on home businesses that outgrow the location they start in.

Ms. Roth highlights the need for the Board to have foresight on how the community will develop in the future and mentions how several of the communities (in NH) that she had researched were indeed more restrictive with home business/home occupations.

Mr. Redway notes that he’s spoken extensively with the Code Enforcement Officer. The COE *needs* the Board to better define home occupation for enforcement purposes.

Significantly more discussion on this topic is expected at the joint Comprehensive Plan/Planning Board meeting next week.

Item 2: Organization of Districts: Review of organization of districts by principal uses:

****This item was actually discussed last****

Mr. Redway notes that this discussion is referencing the organization within the Ordinance itself and NOT the map. Most specifically, there is regularly confusion caused by the labeling of R-4/R-C zone. Perhaps the zone should be referenced as R-C (Rural Conservation).

Ms. Roth does not object but does recommend that terminology should be consistent throughout the document.

Attendee, Ms. Howe, speaks in support of review of terminology in the Comprehensive Plan as well.

Item 3: Review of inconsistencies in LUO 9.3.14 Contractor Yards:

Mr. McGinn questions if there is even a need for the different categories "new" and "existing". If two categories are maintained, the space and bulk standards Table found in New Contractor Yards should also be included in Existing Contractor Yards.

Mr. Ganong asks if the Board should review the portion of the ordinance that calls for landscaping to "visibly block" a Yard from abutters.

Mr. Redway asks the Board if a simple solution to that problem could be to require such business to retain/maintain a 50 foot buffer/setback area to the lot line.

Motion: Mr. McGinn motions to change "visually blocked" to "buffered" and to match the Space and Bulk standards Table found in the New Contractor Yard requirements in the appropriate section of Existing Contractor Yard. Mr. Morin seconds.

Mr. Lowery points out that it may be beneficial to be able to allow, in certain situations, to waive the buffer requirements. Perhaps have a renewal process? This could be particularly helpful if circumstances change - like the sale of a property.

Mr. Redway indicates that this process would be considered a: Renewable conditional use property.

Both Mr. Ganong and Mr. Bergen believe that any abutting buyer (to a Contractor Yard) should be aware of circumstances upon purchase. Sort of like "buyer beware".

Vote: All in favor.

V. OTHER BUSINESS

Mr. Redway briefly reviews items on the docket for the busy January 10th meeting.

Mr. Cain asks what the Selectmen have been up to.

Mr. Redway indicates that they have approved the contract with the architects for the new Town Hall and are in the process of developing a plan for selling the current Town Hall. Additionally, the new Private Way standards are almost complete. They are now out for review by the members.

Ms. Roth motions to adjourn at 9:14pm. Mr. McGinn seconds.

Adjourn

Respectfully submitted,



Corinne A. Goulet
Secretary to the Planning Board

**Town of Arundel
Arundel Planning Board**

**FINDINGS OF FACT AND CONCLUSIONS
NOTICE OF DECISION
Pave Tech Corp.
Major Conditional Use Permit Application**

WHEREAS, the Arundel Planning Board granted William and Star Stilphen a one-year conditional use permit on April 16, 2003 to operate a paving business at the parcel Map 37, Lot 8A off of Stilphen Way in the then Rural Residential District. The Planning Board imposed a series of conditions on the permit, including limiting the parked fleet of over-the-road construction vehicles to two dump trucks and two equipment trailers, restricting vehicle idling times to no more than 15 minutes, and mandating business vehicles to start no earlier than 7 a.m.; and

WHEREAS, on May 13, 2004 the Arundel Planning Board granted a permanent Conditional Use Permit for the paving operation given the applicant's demonstrated compliance with the restrictions and limitations of the April 16, 2003 permit; and

WHEREAS, on April 13, 2017, the applicant was cited by Code Enforcement Officer for violating the 2003 Conditional Use Permit Conditions by exceeding the limitations on the number of vehicles parked on the site, as well as for the operation of a State-licensed Medical Marijuana Caregiver Production Facility without obtaining a conditional use permit from the Town of Arundel; and

WHEREAS, on June 13, 2017 and June 21, 2017, the applicant entered into Consent Agreements with the Town of Arundel to remove from the site all vehicles except those prescribed in the 2003 Conditional Use Permit and to remove the Medical Marijuana Caregiver Production facility from the property. The applicant also agreed to obtain a conditional use permit for operation of a Contractor Yard 2 before any additional road vehicles could be parked on the site; and

WHEREAS, on June 22, 2017, the Arundel Planning Board received a Conditional Use Preapplication for the operation of a Contractor Yard 2 on the existing site; and

WHEREAS, on July 8, 2017, the Planning Board conducted a public site walk of the proposed project site; and

WHEREAS, on July 13, 2017, the Planning Board informed the applicant what submission requirements would be required to apply for a Contractor Yard 2 license; and

WHEREAS, on July 13, 2017, the Planning Board received a Major Conditional Use application for the operation of a Contractor Yard 2, limited to four (4) dump trucks and trailers and associated equipment; and

WHEREAS, on August 9, 2018, the Planning Board determined that Pave Tech Corp.'s Major Conditional Use application was complete in accordance with the Town of Arundel Land Ordinance ("the "LUO") §10.6.3.2; and

WHEREAS, in conformance with LUO §10.6.3.3, the Planning Board conducted a Public Hearing on August 23, 2018 with a continuance to September 13, 2018 to permit extended public comment; and

WHEREAS, on October 11, 2018 the Planning Board granted the applicant a 30-day extension to provide legal substantiation for noise easements purchased by the applicant from abutters and intended to serve as a noise mitigation measure; and

WHEREAS, on November 8, 2018 the Planning Board granted the applicant a 30-day extension to prepare and submit designs for physical sound attenuation barriers to meet the requirements of LUO section 5.11.1; and

WHEREAS, on November 29, 2018 the Planning Board conducted deliberations to consider and determine whether the applicant met governing performance criteria for the proposed Contractor Yard 2 under the LUO.

NOW THEREFORE, the Arundel Planning Board has determined the following Findings of Fact:

FINDINGS OF FACT

1. The owner of the property is William Stilphen and the applicant is Pave Tech Corp.
2. The property is located at Stilphen Way in the R4 district. There are no Shoreland Zoning Districts on or directly adjacent to the proposed site.
3. Pave Tech has a valid conditional use permit issued in 2003 and 2004 to operate a paving business on the site with road worthy equipment restricted to two dump trucks and two trailers, and assorted paving equipment such as a paver sidewalk paver, rollers and hand tools that can be carried on the trailers and trucks.
4. The applicant proposes to increase the Pave Tech fleet size over the limits of the 2004 Conditional Use permit, by an additional two dump trucks and trailers and associated equipment. These vehicles were parked and have operated on the site prior to the submission of this permit application June 2017 but have since been removed in compliance with a Notice of Violation issued by the Code Enforcement Officer, and the June 13, 2017 Consent Agreement with the Town of Arundel.
5. According to LUO § 9.3.14.4.a, Contractor Yard 2 operations are permitted in the R-4 district as conditional uses. The applicant's proposed layout of parking and storage areas on the site is in compliance with the space and bulk requirements of LUO §6.10.3.
6. The applicant provided a noise study prepared by *SE Ambrose* -Audiologist, dated July 24, 2018 with revisions and mitigation measures through to November 16, 2018, which asserts that the proposed four dump truck fleet can ingress and egress the site without violating the 60dB maximum sound pressure of LUO§ 5.11.1 for a mixed use district, as measured at the southern property line during the hours 7am-10pm. The same study contends that the noise from all four trucks operating at the same time will exceed the 60dB maximum for 7am-10pm operation along the northern and eastern boundary lines, unless traffic flow is restricted to two trucks ingressing or egressing the site at one time.
7. A critical study, prepared for abutters to the proposed site by *Acentech* of Cambridge Massachusetts and dated November 28, 2018, disputes *SE Ambrose's* conclusion on the

- following bases: (a) its review of only idling (rather than moving) trucks; (b) the abutters' observance of larger trucks visiting the site in the past than were subject to the noise study; (c) the inconvenient and impractical restriction of a two-truck at a time ingress and egress protocol; and (d) challenging the 250 Hz attenuation properties of the proposed noise barrier given its mass, sound reflectivity, and gaps between timber slats.
8. In a response dated November 29, 2018 and through the project engineer, *SE Ambrose* countered that standard professional practice excludes the sound of moving, registered over the road vehicles from operational noise assessments, the noise study is based on the actual fleet of Pave Tech trucks (not on anecdotal information from abutters), no complex choreography is required for the vehicles to leave and the trucks rarely return in tandem, the 250 Hz attenuation for wood walls represents the least effective value for the material, and the reflective sound would be dispersed by distance, natural dispersal, and vegetation. *SE Ambrose* concurs that there should be no gaps between fence slats and a correction will be made on the detail. In addition, *SE Ambrose* notes that *Acentech* are architectural (not outdoor) acoustic designers who have not visited the site or its environs and are unfamiliar with sound in natural environments related to construction/industrial equipment.
 9. *Acentech* responded to *SE Ambrose*'s November 29th response submitting his resume to address questions about Mr. Markham's credentials. He indicated that in addition to interior acoustics, he is also an expert regarding environmental (outdoor) noise projects. Mr. Markham's resume also noted that he is a visiting professor at many institutions of higher learning, including MIT, Harvard, and Cornell. *Acentech* noted that the noise standards in the ordinance must not only account for idling trucks, but also for loading and unloading activities and vehicular movement (as opposed to simply idling), which were not accounted for in *SE Ambrose*'s calculations. He noted how abutters have seen larger Pave Tech. vehicles on the proposed site than what were subject to the noise testing. *Acentech* also challenged the assumptions and accuracy of *SE Ambrose*'s calculations regarding the true noise attenuation impact of the proposed sound barrier. Taken together, *Acentech* concluded that the noise likely to have been generated by Pave Tech's expanded operation is likely louder than *SE Ambrose* predicted and likely to exceed the limits under the LUO's noise standards.
 10. Although, the applicant has secured noise easements from the abutters to the east and the north that grant the applicant the right to project sound pressures exceeding the decibel limits of LUO§ 5.11.1, the Town Attorney has advised the Planning Board that these easements do not eclipse or abrogate the requirements of LUO§ 5.11.1, which requires that sound be measured at the property line.
 11. The applicant has conducted a Groundwater test of three wells on the Pave Tech property prepared by Nelson Analytical Lab and dated June 25, 2018, indicating no evidence of groundwater contamination from the parking site.
 12. Documentation provided by the applicant include site plans prepared by Atlantic Resource Consultants, dated August 2017 with revisions through to June 25, 2018; wetlands delineation and assessments prepared by Longview Partners Wetlands Consultants; noise impact assessment prepared by *SE Ambrose* and dated November 16, 2018.

CONFORMANCE WITH CONTRACTOR YARD 2 CRITERIA

After due review and consideration, the Arundel Planning Board concluded as follows with respect to whether the applicant's proposed expansion has demonstrated compliance with LUO § 9.3.14.4.b, Performance Standards of a Contractor Yard 2:

1. All parking and storage areas shall be visually blocked from both the street and abutting properties by a solid fence, earth barrier, and/or vegetative planting that at the time of installation shall not be less than (8) feet in height.

We conclude that with the imposition of an appropriate condition requiring fencing, this standard can be met because the proposed parking lot storage area in the northeast corner of the site will be visually blocked from adjacent properties. This requirement is also met because pavers and other equipment shall be stored on trailers in the existing storage barn and/or in the storage trailer.

2. That any storage yard illumination shall consist of shielded down-light fixtures and shall not shed more than 0.1 lumens at the property line, and at 0.05 lumens at the boundary of any residential property.

We conclude that this standard is met because there is no additional site lighting of the parking lot proposed by the applicant.

3. All materials likely to produce odors, dust, debris, or similar nuisances shall be contained either within an enclosed structure or container, or in a manner in which these nuisances shall not adversely impact adjacent properties.

We conclude that this standard is met because all liquid bituminous materials and solvents associated with the proposed use will be kept in existing storage barns or trailers.

4. Equipment and material storage are prohibited from location in the lot front, side, or rear setbacks.

We conclude that this standard is met because the site plan shows that no equipment shall be parked in the front, rear, or side setbacks of Lot 8A.

5. Parking: One parking space shall be provided for each employee and one parking space for every 300 square feet of showroom or customer office space. One additional handicap parking space shall be provided for customer use.

We conclude that this standard is met because Pave Tech will have less than 10 employees, but more than ten parking spaces are provided for employee parking on the site.

6. A fuel containment system shall be installed surrounding any above-ground fuel storage tanks and oil and water separators shall be installed to prevent runoff from such containment structures and on-site vehicle and equipment fueling locations.

We conclude that this standard has been met because no above-ground fuel storage tanks are proposed on the site.

CONFORMANCE WITH CONDITIONAL USE CRITERIA

After due review and consideration, the Arundel Planning Board concluded as follows with respect to whether the applicant's proposed expansion has demonstrated compliance with the conditional use permit performance criteria under LUO § 9.2.9:

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

We conclude that this standard has been met. The record evidence established that while the neighborhood is largely residential, there are other businesses located there, including the Red Apple Campground, as well as various home occupations and a log yard, which uses are specifically allowed under the LUO in the mixed use R4 district.

9.2.9.2 The use is consistent with the Comprehensive Plan and the anticipated future development of the neighborhood.

We conclude that this standard has been met because the Comprehensive Plan specifies that the R4 district is to serve as a mixed-use district in the future, supporting a mixture of residential, forestry, farming and resource-based industries such as gravel pits, quarries, and log yards, and contractor operations such as contractor yards.

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.

We conclude that this standard has been met because the proposed use will not result in significant trip generation and the proposed plan will reduce pedestrian-vehicle conflicts on the property. No changes are proposed to occur to driveway access or internal circulation.

9.2.9.4 That there is adequate water supply and sewage disposal available to service the use.

We conclude that this standard has been met because the operation will not place any demands on existing on-site septic or water supplies.

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.

We conclude that this standard has not been met. While we find that the proposed use will not generate undue amounts of glare (because no additional lighting is proposed), odor (because all bituminous materials and solvents are proposed to be kept in storage units and all vehicles and equipment will be cleaned off-site), or dust (because the proposed use does not produce undue amounts of dust), based on the record evidence, we conclude that the amount of noise that will result from the proposed use will adversely affect neighboring properties. We had credible testimony (both in person and in writing) from direct abutters and nearby residents that even at its current level of operation, the applicant's existing use has adversely impacted abutters and

residents in the general vicinity. The current application proposes to increase the current fleet by an additional two dump trucks along with associated trailers and equipment. The addition of more vehicles will result in the increase of existing noise levels generated by the proposed use. Testimony from neighbors, in conjunction with expert evidence submitted by *Acentech*, leads us to conclude that the additional noise that would be generated by the proposed use would adversely affect neighboring properties and is likely to exceed the decibel limits established in the LUO.

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.

We conclude that this standard has been met because the applicant is proposing no expansion of existing parking areas or structures on the site. Therefore, there is no anticipated impact to existing slopes, vegetative cover, soils, or increased stormwater drainage from the site. Moreover, the applicant proposes to use DEP-approved non-hydrocarbon-based solvents to degrease paving equipment and proposes to do all such cleaning only on the job site.

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

For the reasons stated above, we conclude that this standard has not been met. The noise generated by the existing use is of such a nature, duration, and or amount that it has interfered with neighbors' quiet enjoyment of their property. The proposed use, (which will involve additional vehicles) will likely increase the amount of noise and further negatively impact neighbors' quiet enjoyment of their properties.

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

We conclude that this condition has been met. Other than the performance criteria specified above and the particular concerns identified by abutters regarding noise and whether the use is an appropriate fit for the particular neighborhood, no other performance criteria are indicated nor have any other concerns been expressed.

THEREFORE, BE IT RESOLVED that based on the above findings and conclusions, the Arundel Planning Board hereby denies the Major Conditional Use application of Pave Tech Corp. to operate a Contractor Yard 2 on the property identified as Tax Map 37, Lot 8A.

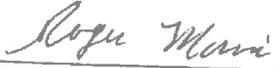
The original vote to deny the application was made on November 29, 2018, with these written findings being reviewed and adopted on December 13, 2018.

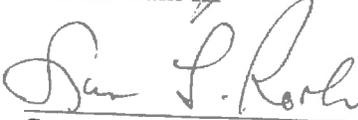
Under § 9.2.11 of the LUO, “[d]ecisions of the Planning Board on conditional use applications are not appealable to the Arundel Board of Appeals, but may be appealed to the Superior Court pursuant to M.R.Civ.P. 80B.”

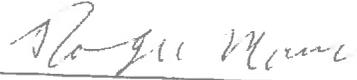

Richard Ganong, Chair


James Lowery, Vice Chair


Martin Cain III


Roger Morin


Susan Roth


Roger Morin