

Arundel Planning Board Minutes

April 27, 2017 7:00 pm

ML Day School Library 600 Limerick Road

Board Attendees: Jamie Lowery, Chip Bassett, Marty Cain, Tom McGinn, and Tad Redway, *Town Planner*.

Public Attendees: Phillip Labbe, *Selectman*; Dan Dubois, *Selectman*; Rick Licht, *Licht Environmental Design*; Andy Kask, *Bentley's Campground*; Lisa Zatalava, *Bentley's Campground*; Roger Taschereau, *Arundel Public Works Director*; Tom Emery, *Foreside Architects*; Amy McNally, *Woodman Edmunds Danylik & Austin, PA*; Dave Wallace, *Seahog Concession*; Sylvain & Monan Theriault; Alan Shepard, *Shepard & Read, PA*; Ralph Toussaint

Call to Order: Chair Lowery called the meeting to order at 7:14 pm.

I. APPROVAL OF AGENDA

MOTION: Mr. Bassett moved and Mr. McGinn seconded the motion approve the agenda amended to exclude consideration of minutes.

VOTE: Unanimous in favor

II. APPROVAL OF MINUTES: Minutes deferred until the next mneeting.

III. PENDING APPLICATIONS

Item 1: Bentley's Campground: Conditional Use: Major Conditional Use- Proposal to expand the existing RV campground in five additional phases developing an additional 137 new sites with utility hookups and support facilities on 46.28 acres Tax Map 30, Lot 24 located at 1601 Portland Road in the DB-2 district. Bentley Warren III is the applicant and Rick Licht of Licht Environmental Design is the applicant's agent.

Rick Licht representing Bentley's Campground reported that, contrary to their discussion at the April 13th meeting, the applicant elected not to move the campers that had been overwintered in the campground to other sites as required by the Land Use Ordinance. As such the Campground was in violation of LUO Section 9.3.10.c. Knowing this continued violation evokes Selectmen "Policy #2", the applicant has applied to the Board of Selectmen to arrive at a consent agreement that will release the Board from the restrictions of that policy. Licht suggested that the Board can then proceed with action on the Campground expansion. In the interim, the applicant will pursue changing the Land Use Ordinance so that campers may be permanently stored and rented in campgrounds either .by Selectmen edict or citizen petition. Mr. Licht classified the current Ordinance as "ridiculous" and submitted proposed amendments. Selectman Labbe asked why the Board could not adopt the proposed changes, and was informed that changes at this point could not meet legal review and public hearing deadlines prior to Town Meeting.

Mr. Bassett noted that the applicant has a history of repeatedly and knowingly violating LUO § 9.3.10.c. and no action should be taken until the offending campers and RVs are moved to different sites as required by the LUO.

MOTION: Mr. Cain moved and Mr. McGinn seconded the motion to table the application until the applicant's violation is corrected or a Consent Agreement is granted by the Board of Selectmen.

VOTE: Unanimous in favor.

Item 2: Champagne Energy Parking Lot: Amendment to Site Plan Permit:- Proposal to implement a landscape restoration plan to replace an approved natural buffer along Old Post Road removed during the construction of a 41,000 square foot parking lot associated with the fuel storage and distribution facility on a 6.36 acre parcel located at 833 Old Post Road, Map 1 Lot 1A-1E in the BI district. Champagne's Energy is the owner applicant

Tom Emery of Foreside Architects presented the findings of his viewshed study of the Champagne parking lot, including photosimulations from inside the second story living spaces of the Toussaint home at 836 Old Post Road, as directed by the Planning Board. Findings show that the proposed 4 foot high berm with 8 foot trees will buffer the parking lot from the Toussaint home living spaces. The applicant could not evaluate the visibility of the parking lot from the Townsend home located at 830 Old Post Road, since the owner was in Florida for the winter. However, the applicant did provide ground level simulations and, along with the Planner, confirmed that the parking lot was not

visible from the second story deck. The applicant assumed that conditions at the Townsend house mirrored those at the adjoining Toussaint home.

While agreeing that the proposed berm and landscaping proposal achieved the objective of effectively blocking views of the parking lot from the two homes, Mr. Lowery expressed disappointment with the lack of diversity and variety in the plant material selected resulted in an architectural vs. a naturalized solution. Mr. Bassett and McGinn echoed this observation that the applicant eventually was approved for a landscape plan that was rejected by the Board when the applicant first proposed it.

Mr. Toussaint, one of the affected abutters, reiterated to the Board his complaint that the vehicles in the parking lot are oriented so that the vehicle headlights shine into the family bedroom windows in the early morning. He further stated that he requested the applicant reorient the trucks to avert this nuisance, to which the applicant has not responded.

The Chair read the prepared Findings of Fact (see attached Exhibit A).

MOTION: Mr. Bassett moved and Mr. Lowery seconded the motion to amend Condition #4 of the Findings of Fact such that all landscape improvements will be installed in accordance with the plans no later than November 1, 2017.
VOTE: Unanimous in favor.

MOTION: Mr. Bassett moved and Mr. McGinn seconded the motion to amend Condition #5 of the Findings of Fact to read "The applicant shall maintain the landscape and berm buffer along Old Post Road consistent with the approved plans and the Land Use Ordinance".
VOTE: Unanimous in favor.

MOTION: Mr. McGinn moved and Mr. Cain seconded the motion to add the following Condition #5 to the Findings of Fact : "The applicant shall make every reasonable effort to park vehicles in the parking lot in order to minimize headlight intrusions into the Townsend and Toussaint properties."
VOTE: Unanimous in favor.

MOTION: Mr. McGinn moved and Mr. Cain seconded the motion to approve the Findings of Fact and Notice of Decision as amended.
VOTE: Unanimous in favor.

IV: NEW APPLICATIONS

Item 1: Cape Arundel Cottage Preserve: *Amendment to Original Subdivision Approval:* Request to modify approved construction schedule for secondary means of egress to Mountain Road based on number of units occupied vs. phasing, and relocation of units in Phase 2, 3, and 4 in a seasonal resort complex located at 1976 Portland Road, Tax Map 15, Lot 13 in the BI. RP, and SO District. Arundel Kennebunkport Cottage Preserve LLC is the owner, Joe Paolini is the applicant and Rick Light is the applicant's agent.

Joe Paolini of Cape Arundel Cottage Resort requested that the Planning Board amend the April 10, 2010 Subdivision/Conditional Use approval to permit Building Permits and Certificates of Occupancy to be issued for any unit in any phase to a maximum of 63 units before the emergency access to Hidden Meadows Road is completed. The original approval required that the emergency exit be installed prior to the beginning of construction of Phase 3.

Mr. Paolini stated that the phasing restricted Cape Arundel's ability to market desirable units to customers, and estimates that the second means of egress will be completed in November.

Mr. Bassett stated that he cannot make any decision on the request without first receiving the recommendation of the Arundel Fire Chief.

MOTION: Mr. Bassett moved and Mr. Cain seconded the motion to table the application of Cape Arundel Cottage Preserve until the Planning Board receives from the Arundel Fire Chief a recommendation on permitting unit construction beyond Phase 3 without the construction of the emergency access.

VOTE: Unanimous in favor.

V. AMENDMENTS TO LAND USE ORDINANCE

Item 1: Proposed Revisions to Arundel Subdivision Ordinance: Sections 11.2.A.3.d and 12.1.B.2 of the Subdivision Regulations regarding Fire Protection and Water Supply.

The Planner explained that the Subdivision Ordinance must be modified in concert with the regulations contained in the proposed LUO §5.7 Fire Protection, and the Planning Board had not decided on the short version referencing LUO §5.7, or the longer version provided by the Planner which replicated the subdivision standards in section 5.7. Chair Lowery stated he prefers the detailed version.

MOTION: Mr. McGinn moved and Mr. Bassett seconded the motion that the detailed language changes proposed by the Planner be proposed as revisions in Sections 11.2.A.3.d and 12.1.B.2 of the Subdivision Regulations.

VOTE: Unanimous in favor.

Item 2: Proposed Addition of Section 9.3.22: Food Trucks & Food Carts

The Planner informed Dave Wallace of *Seahog Concessions*, that given the late hour, the Planning Board would not have enough time to consider potential regulations for Food Trucks and Food Carts in the LUO. Mr. Wallace protested that he needed a decision from the Planning Board in order to receive a permit to operate a food truck this summer on Portland Road. The Planner advised the Mr. Wallace to seek a license from the Town Manager and the Board of Selectmen.

Adjourn: *MOTION:* Mr. McGinn moved and Mr. Cain seconded the motion to adjourn the meeting at 10:42 pm.

VOTE: Unanimous in favor.

I hereby attest the preceding is a true and accurate account of the Arundel Planning Board Meeting of April 27, 2017.



Tad Redway
Secretary Pro Temp

Exhibit A

Town of Arundel Arundel Planning Board FINDINGS OF FACT AND MOTION FOR APPROVAL Amendment Champagne Energy Parking Lot Expansion

WHEREAS on September 9, 2015 the Arundel Planning Board approved the Plenary Site Plan application from **Champagne Energy** to construct a new 41,555 square foot parking lot with exterior lighting to accommodate the storage of delivery/ transport vehicles associated with the fuel storage and distribution facility on a 6.36 acre parcel located at 833 Old Post Road.

WHEREAS, one of the requirements of the Plenary Site Plan approval was that the applicant would retain existing natural vegetative stands along the eastern property line with Old Post Road for a depth of 20 feet, providing a visual buffer to the adjacent residences and passing traffic on Old Post Road.

WHEREAS, in June of 2016, the Arundel Planning Board was informed by the Arundel Code Enforcement Officer that the mandated natural vegetation buffer along the applicant's eastern boundary line had been effectively clearcut in violation of the approved plan.

WHEREAS, on July 14, 2016, Champagne Energy submitted an application to amend the approved plan and by installing a landscape buffer on the eastern boundary to shield the residences from views of the parking lot. After considerable deliberation the Planning Board set a parameter that the applicant must visually buffer the parking lot from the second floor prime living spaces of the residences of Ralph & Mary Toussaint, Tax Map1/Lot 34B, and Russell Townsend (Map 1/Lot 34A), at a viewing height of 5 feet above the floor.

WHEREAS, on October 13, 2016, the applicant submitted a new remedial plan which the Planning Board determined required additional verification that the proposed landscape remedy would achieve the Planning Board buffering requirements.

WHEREAS, on April 27, 2017, the applicant submitted revised planting plans, supported by photosimulations taken from inside the designated living spaces of the Toussaint dwelling at the required viewer height as mandated by the Planning Board.

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

FINDINGS OF FACT

1. The photosimulations verify that the proposed remedial planting plan consisting of a 4-foot high berm, planted with a staggered double row of 8 foot tall arborvitae (*Thuja occidentalis* varieties) will effectively block immediate views of the parking lot from the second floor living spaces of the Toussaint home. As such the buffer will also block views of the parking lot from the ground floor spaces as well.
2. As the trees grow in the first three years and thereafter, the buffer should achieve 95% visual blockage.
3. The Townsend property was unoccupied during the study period and access to the living spaces was unavailable. Field observation verified that views of the parking lot were obstructed by the house structure from the second floor deck. Given the similarity between the elevation of the Toussaint and the Townsend second floors it is a reasonable assumption that the assumed that the proposed landscape strip will be equally effective in buffering views from the second floor of the Townsend house.
4. There is a gap between the southern extension of the landscaped berm in the simulations and the proposed landscape plan dated April 14, 2017 and prepared by Thomas Emery MLLA of Foreside Architects. To

achieve the desired buffering on the Townsend property, it appears that the landscaped buffer be extended another 40 feet to the south.

5. The applicant has submitted a planting schedule with 6-8 foot arborvitaes. Given the submitted photosimulations, the height of these trees at installation should not be less than 7 feet.

THEREFORE BE IT RESOLVED that based on the above findings and conclusions the Arundel Planning Board hereby approves the landscape buffering amendments to the Plenary Site Plan application of **Champaign Energy** to construction and operation of its parking lot, located at 833 Old Post Road, Tax Map 1 Lot 1A-1E in the BI district, subject to the following conditions:

1. The planting schedule shall be modified so that the height of the specified Thuja occidentalis species shall be 7-8 feet.
2. The southern end of the proposed landscape berm shall be extended another 40 feet to the south to obstruct views from the Townsend property.
3. To insure soil stability, the berm shall be constructed with side slopes not to exceed a 3:1 gradient.
4. The applicant shall complete all approved landscape improvements no later than November 1, 2017.
5. Any vegetation that dies within three years of installation shall be immediately replaced. The applicant shall maintain the landscape and berm buffer along Old Post Road consistent with the approved plans and the Land Use Ordinance
6. Failure to construct the proposed remedial landscape plan in accordance with the approved drawings and conditions of approval shall subject the applicant to enforcement actions including revocation of the site plan permit.
7. The applicant shall make every reasonable effort to park vehicles in the parking lot in order to minimize headlight intrusions into the Townsend and Toussaint properties..

SO APPROVED by the Arundel Planning Board this 27th day of April 2017: