

Arundel Planning Board Minutes

July 23, 2020 - 7:00pm

Planning Board Zoom Meeting

Board Attendees: Rich Ganong, Chair; Susan Roth, Vice Chair, Jens Bergen, Secretary; Marty Cain, Roger Morin and Tad Redway, Town Planner

Attendees: Amy McNally, Esq; Dwight Raymond, Nickolas Raymond, Joan Stephenson, Mary and Philip Berthiaume, Pricilla Coffin, Stacy and Dewey Giles, Bill Stilphen, Alicia Ouellette, Jason Vafiades, Atlantic Resource Consultants;

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

I. APPROVAL OF AGENDA:

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

Vote: Unanimous in favor.

II. APPROVAL OF MINUTES-

Motion: Mr. Bergen motions to approve the minutes of July 9, 2020, as written. Mr. Morin seconds.

Vote: Aye: Ganong, Roth, Bergen, Cain and Morin Abstain: Lowery

III. PUBLIC COMMENT: No public comment.

V: PENDING APPLICATIONS

Item 1: Raymond Acres- Shoreland Zone Application: Proposed amendment to alter the approved property line between Lots 5-03 and 5-03A on Tax Map 30 as well as reduction in the 75-foot Shoreland Stream Protection setback from Goff Mill Brook tributary on Tax Map 30 Lot 5-03A off of Black Dog Road in the R2 and SP Districts. Nickolas Raymond is the owner/applicant and Amy McNally is the applicant's agent.

The Chair read the following findings of fact:

**ARUNDEL PLANNING BOARD
Findings of Fact and Approval Motion
Raymond Acres Subdivision Amendment
July 23, 2020**

WHEREAS, on November 8, 2018, the Arundel Planning Board approved a Subdivision Revision 1 Nicholas Raymond for the proposed resubdivision of Lot 5-03 and addition of 1.46 acres from Tax Map 30, Lot 2 to create a fourth buildable lot in the Raymond Acres subdivision located at Black Dog Road, Tax Map 30, Lots 5-03 and 5-05 in the R-2, and Stream Protection and SO Shoreland Overlay districts..

WHEREAS on February 6, 2020 the applicant applied for and received a building permit for the construction of a 28' x 38' Cape-style dwelling with an approved septic system and well location outside of the Shoreland Zoning districts and within the R2 setbacks.

WHEREAS, on April 23, 2020, the Code Enforcement Officer informed the Planning Department the Raymond dwelling had been improperly sited on Lot 5-05 such that the dwelling and fill encroached significantly into the Stream Protection District and the north side of the building encroached 15 feet into the mandatory 25-foot side property line setback. A survey was prepared by Lower Village Survey confirming the encroachments.

WHEREAS, on May 28, 2020 the Planning Board received an application for an Amendment to an Approved Subdivision Plan from the applicant which proposed amendments to the northerly

property line of Lot 5-05 to correct the side setback violation, and requested a Special Exception from the 75-foot setback requirements of the *Stream Protection District*

WHEREAS on June 11, 2020 the Planning Board conducted a site walk on Lot 5-05 to examine the impact of the proposed changes to the lot line and the impact upon the Shoreland Zone.

WHEREAS, on June 25, 2020 the Planning Board received a Shoreland Zoning Application from the applicant requesting a Special Exception under the terms of sections 8.6.3.4 and 8.6.4 of the Arundel Land Use Ordinance. The Planning Board reviewed the application and deemed it complete.

WHEREAS on July 9, 2020, the Planning Board conducted a public hearing on the proposed project. In addition, the Planning Board granted a Special Exception to the applicant for a reduction in the Stream Protection District setback from 75 to 25 feet from the stream resource and associated wetlands.

WHEREUPON the Arundel Planning Board has reviewed and given due consideration of the applicant's amended application and has arrived at the following findings:

FINDINGS OF FACT

1. The owner with right title and interest in Tax Map Tax Map 30, Lot 5-05 is Nicholas Raymond. 2.
2. The property, Map 30 Lot 5-05, is located off Black Dog Lane in the R2 district and the Stream Protection and Shoreland Overlay Districts.
3. The applicant received an approval for a subdivision amendment in November 7, 2019 to create Lot 5-05 from portions of Tax Map 30 Lot 2 and Tax Map 30 lot 5-03 that included an adequate building window to construct a dwelling, garage, septic system and well within the side yard and the 75-foot Stream Protection District.
4. The applicant inadvertently constructed the dwelling on Lot 5-05 such the dwelling unit and supporting fill encroached substantially into the Stream Protection District and 15-feet into the required 25-foot side yard setback of Lot 5-05.
5. On July 9, 2020, the Planning Board granted a Shoreland Zone Special reducing the Stream Protection District setback to 25-feet from the Goff Brook tributary, thereby rendering the house and fill deposition on Lot 5-05 conforming.
6. To remedy the side yard setback violation, the applicant proposes to acquire a 1,092 square foot portion of land from Lot 5-03 in exchange for transferring a 1,263 square foot portion of land from Lot 5-05 to Lot 5-03, as shown on the Amended Subdivision Plan for Raymond Acres, prepared by Lower Village Survey Co. and dated May 14, 2020. The acquired portion of land will establish a 25-foot side setback for the principal building under construction on Lot 5-05.
7. The current cul-de-sac frontage on Lot 5-05 is 69 feet -6 feet short of the 75-foot frontage required under LUO § 6.2.3. To remedy this non-conformity, the applicant will also acquire 302 square feet from Lot 5-03 on the Black Dog cul-de-sac, thereby increasing the legal frontage of Lot 5-05 to 77 feet and rendering the Lot conforming with LUO 6.2.3.
8. The exchange of property described in Finding #7 will effectively maintain the same acreage of Lots 5-03 and 5-05 as approved by the Planning Board on November 7, 2019.

CONFORMANCE WITH ARTICLE XI PERFORMANCE STANDARDS

After due review and consideration, the Arundel Planning Board has determined the Amendments of the approved Subdivision Plan application dated May 14, 2020 have not effectively impacted the findings of conformance with the criteria of Section 11 of the Arundel Subdivision Regulations, as originally approved by the Planning Board on November 7, 2019.

CONCLUSIONS OF THE PLANNING BOARD

1. The criteria of Title 30-A MRSA §4404 have been met.
2. The standards of the Arundel Subdivision Regulations have been met.
3. The standards of Section 5.7, 6.2, and 8.0 of the Arundel Land Use Ordinance have been met.

THEREFORE, BE IT RESOLVED that based on the above findings and conclusions the Arundel Planning Board hereby approves the proposed amendments to the Subdivision Plan as prepared by Lower Village Survey, Co and dated May 14, 2020 contingent upon the following conditions:

1. The subdivision must be recorded in the York County Registry of Deeds within ninety (90) days of the date upon which the plan is approved and signed by the Board otherwise it shall become null and void.
2. The applicant is required to submit a mylar, paper copy and a pdf of the signed plan, as registered in the York County Registry of Deeds, to the Town Planner within 90 days of the approval date.
3. Revised property line pins and monuments shall be set by a Maine registered Land Surveyor for the adjusted property lined of Lots 5-03 and 5-05 prior to the issuance of a Certificate of Occupancy for the dwelling unit being constructed on Lot 5-05.
4. Failure to complete substantial construction of the subdivision within 2 years of the date of approval of the Plan shall render the Plan null and void.
5. Failure to obtain a NRPA Permit from the Maine Department of Environmental Protection for the encroachment into the 75-foot NRPA setback from the Goff Mill Brook tributary shall render this Subdivision Amendment approval null and void.

So approved by the Arundel Planning Board this 23^h day of July 2020

Motion: Mr. Morin motions to approve the Subdivision revision as read above.
Bergin seconds.

Discussion: Mr. Cain asked about the Covenants required to insure maintenance of the restoration plantings within the Shoreland Zone. The Chair stated that those provisions were made a requirement of the Shoreland Zoning permit

Vote: Unanimous in favor.

V. NEW APPLICATIONS

Item 1: Cape Arundel Cottage Resort: Discussion on amendment to conditions of use for Cape Arundel Cottage Resort project to redesignate the Mountain Road/ Hidden Meadow access as a temporary service entrance for light construction vehicles. The project is located at 1976 Portland Road, Tax Map 15, Lot 13 in the BI District. Arundel-Kennebunkport Cottage Preserve LLC is the owner and Joseph Paolini is the applicant.

Joan Stephenson, representative of Arundel-Kennebunkport Cottage Preserve LLC, explained that the Cape Arundel Cottage Resort was requesting an amendment to the 2010 approval that would permit service vehicles to use the Hidden Meadows emergency access during the construction season to reduce the amount of construction traffic moving through the Resort residential areas. The vehicles would be less than the posted 15-ton weight limit for Mountain Road, all security gates would be closed at the end of the day and weekends, and the Hidden Meadows residents favored the change since the road would be paved.

Mr. Ganong stated that he was under the impression that the service vehicles would be limited to only two axels and would be considerably smaller than 15 tons. He asked if Unitil had approved the passage of such heavy vehicles over their pipeline.

Mary and Philip Berthiaume, residents of Hidden Meadows Drive, stated that although there had been preliminary discussions, there was no agreements or contracts executed to permit CACP to use Hidden Meadow Drive for the stated purpose.

The Chair recommended the applicant resume the discussion with the Board after they secured an agreement with the Hidden Meadows residents to use the access and a release from Unitil to run additional vehicles over the gas pipeline crossing.

Item 2: PaveTek Inc: Major Conditional Use Application: Proposal to construct a 1,196 square foot garage to store construction equipment for an existing bituminous paving business located on a 5-acre parcel of land, Tax Map 37 Lot 8A, located at 31 Stilphen Way in the R4 District. William Stilphen is the owner and applicant.

Bill Stilphen explained that the site plan that had been provided to the Board was submitted upon the recommendation of the Planner and he just learned it contained all of the same information related to his unsuccessful 2018 application for a Contractor Yard II. He was only applying for a pole barn. The applicant's engineer, Jason Vafiades also explained that there was a communication issue between himself and his client and he was responsible for the error. He would remove all of the information superfluous to the current pole barn application.

Alicia Ouellette stated the Planning Office should have notified Pave Tek of their error sooner.

Motion: Mr. Lowery made the motion to table the application until the applicant resubmitted the plan corrections. Mr. Morin seconds.

Discussion: The Chair stated that if the applicant could submit the corrections to the Planner by July 30th, the application would be heard at the August 13th meeting.

Vote: Unanimous in favor.

V. LAND USE ORDINANCE REVISIONS:

Item 1 Discussion: Proposal to establish uniform construction and dimensional standards for commercial driveways in LUO section 5.2.

The Planner requested that this item be deferred to a later meeting.

Item 2: Discussion: Reduction of rear yard setback in the R4 from 50 to 25 feet for accessory non-inhabitable units, such as sheds and gazebos.

Ms. Roth explained the need for a reduction in setbacks for small accessory structures in the residential districts. The Planner presented a revised definition of a *Structure* and a new definition for an *Accessory Structure and Use* as well as reduced setbacks for Accessory Structures in R2, R3, and R4.

Dewey Giles asked if a large structure such as the proposed Pave Tek 4-bay garage would be considered an Accessory Structure that could be constructed only 25 feet from his rear property line. Ms. Roth stated that scale mattered as much as distance and she would propose that there be a limit to the size of an accessory structure.

Mr. Morin suggested that the size of such accessory structures be limited to 200 sf. The Planner will amend his proposed definitions and dimensional tables for the Board's consideration the next meeting.

Item 3: Discussion: Standards and criteria for Special Exceptions to buffer requirements in the Shoreland Zoning Districts

The Planner discussed the original intent of the Special Exception was triggered by unique environmental situations in which encroachment would have no deleterious effect on the functioning or the objectives of the shoreland zoning. He introduced a set of criteria for granting Special Exceptions in the Stream Protection District similar to those the Board passed for the Shoreland Overlay District. Ms. Roth recommended that the exceptions should not be used as relief for shoreland violations. The Board will resume deliberations of the proposal at a future meeting.

VI: OTHER BUSINESS

The Chair reminded the Board that under the Bylaws, Officers must be elected after the first meeting following Town Meeting. Consequently, Mr. Ganong opened the floor for nominations for the position of Planning Board Chair.

Motion: Mr. Morin nominated Richard Ganong as Chair. Ms. Roth seconded.

Discussion: There were no other nominations for the position.

Vote: Unanimous in favor.

The Chair opened the floor for nominations for the position of Vice Chair.

Motion: Mr. Bergen nominated Susan Roth to be Vice Chair. Mr. Morin seconded.

Discussion: There were no other nominations for the position.

Vote: Unanimous in favor.

The Chair opened the floor for nominations for the position of Secretary. Mr. Bergen inquired if a member not in attendance could be nominated for a officer's position. The Chair stated that was permissible.

Motion: Mr. Bergen nominated Tom McGinn to be Planning Board Secretary. Mr. Morin seconded.

Discussion: There were no other nominations for the position.

Vote: Unanimous in favor.

ADJOURN

Motion: Mr. Morin moved and Ms. Roth seconded the motion to adjourn the meeting at 8:45pm

Vote: *Unanimous in favor.*

Respectfully submitted,



Tad Redway
Secretary Pro Temp to the Planning Board