

Arundel Planning Board Minutes
Regular Meeting
July 27, 2017 7:00 pm
M.L. Day School Library 600 Limerick Road

Board Attendees: Chip Bassett, Rich Ganong, Marty Cain, and Roger Morin

Staff Attendees: Leah Rachin, *Town Attorney* and Tad Redway, *Town Planner*.

Public Attendees: Don Falvey, *Motorland Contractor*; Paul Gadbois, *PE*; Tim Stentiford, *Motorland*; Kris Woodward, *MaryMay Stables*.

Call to Order:

Chair Bassett convened the meeting at 7:05 pm

I. APPROVAL OF AGENDA

MOTION: Mr. Ganong moved and Mr. Cain seconded the motion to approve the agenda with the amendment that the proposed LUO § 9.3.19 Equestrian Centers and Riding Stables ordinance be considered for public hearing under Item V.

VOTE: Unanimous in favor

II. APPROVAL OF MINUTES: *July 13, 2017*

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion approve the minutes of July 13, 2017 as written.

VOTE: Unanimous in favor

III. PUBLIC HEARING

Item 1: Motorland: Conditional Use Application: Proposal modify an approved conditional use permit to include field changes including increased wetlands filling, propane tank relocation, increased parking area, modifications to approved detention basin, and relocated utilities at *Motorland Showroom & Service Center* located at 2564 Portland Road, Tax Map 2, Lot 1, in the BI district. *Motorland LLC* is the owner and applicant, and Paul Gadbois PE is the applicant's agent.

Chair Bassett opened the public hearing at 7:08 pm. No one from the public spoke and the Chair closed the hearing at 7:09 pm.

IV. PENDING APPLICATIONS

Item 1: Motorland: Conditional Use Application: Proposal modify an approved conditional use permit to include field changes including increased wetlands filling, propane tank relocation, increased parking area, modifications to approved detention basin, and relocated utilities at *Motorland Showroom & Service Center* located at 2564 Portland Road, Tax Map 2, Lot 1, in the BI district. *Motorland LLC* is the owner and applicant, and Paul Gadbois PE is the applicant's agent.

Mr. Ganong stated that the Board and staff have noted a recurring problem of busses and automobiles parked along Portland Road in front of Motorland rather than in the parking lot. In addition, it appeared that signage was lacking to direct customers and employees to designated parking areas. Tim accommodations for customers and visitors within the site.

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion to proceed with the reading of the Findings of Fact and Motion for Approval.

VOTE: Unanimous in favor

Chair Bassett read a Findings of Fact and Motion for Approval (see attached Exhibit A).

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion that the application meets the standard of LUO § 9.2.9.1.

VOTE: Unanimous in favor

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion that the application meets the standard of LUO § 9.2.9.2.

VOTE: Unanimous in favor

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion that the application meets the standard of LUO § 9.2.9.3.

VOTE: Unanimous in favor

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion that the application meets the standard of LUO § 9.2.9.4.

VOTE: Unanimous in favor

MOTION: Mr. moved and Mr. Ganong seconded the motion that the application meets the standard of LUO § 9.2.9.5.

VOTE: Unanimous in favor

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion that the application meets the standard of LUO § 9.2.9.6

VOTE: Unanimous in favor

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion that the application meets the standard of LUO § 9.2.9.7.

VOTE: Unanimous in favor

MOTION: Mr. Ganong moved and Mr. seconded the motion that the application meets the standard of LUO § 9.2.9.8.

VOTE: Unanimous in favor

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion to approve the application approves the Amended Conditional Use application and Site Plan for the existing *Motorland Showroom & Service Center* located at 2564 Portland Road, Tax Map 2, Lot 1, in the BI district, in accordance with the Findings of Fact and Motion of Approval and attached Conditions of Approval (Exhibit A attached).

VOTE: Unanimous in favor

V. NEW APPLICATIONS

Item 1: Dubois Livestock Inc: Conditional Use Application: *Determination of Completeness:* Proposal to issue a conditional use permit for the continued operation of a Solid Waste Composting Facility under the terms of Consent Decree CV-15 204 and CV-275 dated June 26, 2016, located at 2 Irving Road Tax Map 19, Lot 6 in the R-4 District and the Shoreland Overlay districts. Ranrick Trust is the owner and Dubois Livestock, Inc. is the applicant.

The Chair asked the audience if anyone representing Dubois Livestock Inc was in attendance. No representative of the applicant spoke up.

Mr. Ganong stated that 1) the applicant had failed to provide the Planning Board with a complete application by July 1, 2017; 2) the June 26, 2017 Consent Decree supersedes the Land Use Ordinance and therefore Planning Board can only review the Dubois application based on the criteria established by the Consent Decree; 3) the applicant has been failed to secure a letter from the Code Enforcement Officer stating that the compost operation was in compliance with their DEP permit and all state regulations since DEP has served the applicant with a Notice of Violation on June 27, 2017 for multiple violations of their permit; and 4) the applicants failed to appear before the Planning Board at this meeting, even though they were well aware of the meeting.

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion for discussion purposes, that based on the violation of the June 26, 2016 Consent Decree, the Planning board denies the Dubois Livestock Inc application for a Conditional Use Permit.

DISCUSSION: The Chair noted that the Consent Decree abrogates the Town Land Use Ordinance and establishes only two criteria that the applicant must meet by a July 1, 2017 deadline in order to receive a Conditional Use Permit renewal. Mr. Cain stated that the failure to meet the submission requirement made the application incomplete. The Chair stated that the application can never be made “complete” after the July 1, 2017 deadline imposed by the Consent Decree because no more submissions can be accepted by the Board after July 1, 2017.

Town Attorney Leah Rachin noted that the agenda advertised the Planning Board action to be determination of application completion which denotes a specific process of review. That process must be observed.

Board members countered stating that the Consent Decree eliminated the usual review processes dictated by the Land Use Ordinance for granting a conditional use permit renewal. The Decree does not sanction the Board to conduct the usual Public Hearing or Site Walk. Instead the Consent Decree presumes that the permit renewal will be automatically granted if: 1) Dubois Livestock submits a renewal application to the Town no later than July 1, 2017, and 2) Dubois Livestock meets the following performance criteria: a) submission of an accurate map of the 5.9 acre compost site and b) being in compliance with their DEP Solid Waste Permit and with all pertinent DEP regulations, as verified by the Code Enforcement Officer.

Mr. Redway mentioned that the term “Determination of Completeness”, as employed in the LUO [§10.6.2], refers to an determination by the Board that they have been provided all the relevant information necessary for the Board to make a reasonable and informed decision on the application.

Mr. Ganong asked the Town Attorney whether it would be more appropriate to make a motion on the determination of application completeness, and then make a second motion on approval or denial of the application. Ms. Rachin stated that a two step process would be more appropriate: determination of completeness and then action.

MOTION WITHDRAWAL: Mr. Ganong moved and Mr. Morin seconded the motion to withdraw their previous motion.

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion that the Dubois Livestock Inc application be deemed incomplete because the applicant did not meet all of the criteria required in Section 1.a and 1.b.i & ii of the Consent Decree dated June 26, 2017.

VOTE: Unanimous in favor of the motion.

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion that the Conditional Use permit application of Dubois Livestock Inc be denied because the applicant failed to comply with all the terms of the Consent Decree dated June 26, 2017.

VOTE: Unanimous in favor of the motion.

Selectman Phil Labbe requested that the Board correct the record to show that the Board of Selectmen requested but never ordered the Planning Board to relinquish their jurisdictional police power over the Dubois Compost Permit when the Town signed the Consent Order of June 26, 2017. Chair Bassett stated that to his knowledge, the Planning Board was never consulted during the Town’s negotiations and was only advised on the content of the Consent Decree after the document had been executed. The rest of the Board concurred, with Mr. Ganong adding that the Consent Decree required the Board to forgo its normal legal procedures, and grant a Solid Waste Permit if the applicants met the two criteria specified in the Decree. The Board acknowledged that while the Selectmen’s intent may have been to suggest, the Consent Decree effectively dictated the Board’s action.

Item 2: Rontu’s Run Dog Daycare: Conditional Use Pre-Application: Proposal to establish a Pet Day Care Center in an existing Riding Stable located at 496 Limerick Road, Tax Map 27 Lot 2, in the R1 District. Kristin Woodward is the owner and applicant.

Kristin Woodward of *MerryMay Stables* was in attendance and presented to the Planning Board her plans to convert the existing stable into a Dog Day Care accommodating no more than 12 canines at any one time. The Planner

advised the Board that the applicant was compliant with the dimensional requirements of LUO 9.3.33.2.a and therefore qualifies for a Pet Care Center in the R-1 district. The applicant has most of the parking and site development features of the facility already installed on the ground as part of her existing horse stable operation.

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion that Planning Board schedule a site walk at the MerryMay Stable property on August 10, 2017 at 6:00pm.

VOTE: Unanimous in favor of the motion.

VI. ORDINANCE REVISIONS

Item 1: Ordinance Revisions: Set public hearing for proposed changes to § 3.2 and 9.3.10, Definitions and Campground Performance Standards.

The Planner stated that the Board must officially schedule the Public Hearing on the Ordinance revisions for LUO section 9.3.10 Campgrounds, in preparation for a potential Special Town Meeting to be called by the Selectmen prior to November 1st. The Board discussed the potential scheduling and logistics of the Special Town Meeting with Selectman Phil Labbe.

MOTION: Mr. Morin moved and Mr. Ganong seconded the motion that Planning Board schedule a Public Hearing for the proposed revisions to the Campground performance standards on August 24, 2017 at 7:00pm.

VOTE: Unanimous in favor of the motion.

Chair Bassett advised the Planner that in the definition of a *Recreational Vehicle* the term “tires” should be replaced with the more accurate term “wheels”.

Item 1: Ordinance Revisions: Set public hearing for proposed changes to § 3.2 and 9.3.19, Definitions and Equestrian & Riding Stables Performance Standards.

Mr. Morin and Mr. Bassett stated that it would be prudent to hold a public hearing for the proposed Equestrian and Riding Stable performance standards, LUO §9.3.19. This proposed addition had been delayed for over a year while the equestrian owners worked on revisions to the original document prepared by the Board. Members advocated for its passage in response to property owner requests.

MOTION: Mr. Cain moved and Mr. Morin seconded the motion that Planning Board schedule a Public Hearing for the proposed performance standards for Equestrian Centers & Riding Stables LUO §9.3.19 on August 24, 2017.

VOTE: Unanimous in favor of the motion.

VII. OTHER BUSINESS

Mr. Redway described a situation where an application was before the Staff Review Committee for a 3 lot private way on an existing 25 foot right-of-way. The applicant owns a back lot which existed prior to 2011, which he would like to divide in two to finance the road construction. Both the back lot and the right-of-way were created in the last century in accordance with the then existing zoning laws. However, the requirements changed in 1996 and 2000 increasing the right of way width from 25 to 50 feet. Due to a relatively gentle topography, the applicant can fit most of the road improvements within the existing boundaries of the ROW. The Planner requested that the Board consider reviewing the proposed road provided that he could fit all improvements within the confines of the 25 foot right-of-way. The Board discussed the matter extensively. However the Board finally determined that since the applicant could not build the private way entirely within the 25 foot easement permission to build a 3-lot private way in a 25 foot easement could not be granted.

The Chair asked about the status of Ruckville Lane. The Planner stated that the road for this year 2000 three-lot subdivision had never appeared to have been completed, nor are there any records that the road was inspected by the Town’s engineer before a building permit was granted for the existing trailer on Lot 1. The Findings of Fact for the project required the road be substantially completed by 2002, and apparently that task was not completed. After much deliberation, the Planning Board ordered that the applicant appear before the Planning Board for an evaluation of compliance with the 2000 permit.

The Chair asked for the status of Black Dog Lane. The Planner explained the situation on Black Dog Lane subdivision where the Board had amended an approved subdivision plan to remedy a house lot built too close to the cul de sac. Deeds for the approved revision were never drafted or recorded at YCRD, leaving a third generation homeowner unable to sell his lot because financing for the buyer was refused by the lending institution. Conveyances approved by the Board from the parent lot cannot be executed now because of numerous liens on the same parent lot.

Adjourn:

MOTION: Mr. Ganong moved and Mr. Morin seconded the motion to adjourn at 9:56 pm.

VOTE: Unanimous in favor of the motion.

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



Tad Redway

Secretary Pro Temp

Exhibit A
FINDINGS OF FACT AND MOTION FOR APPROVAL
Motorland Inc Amendment to Conditional Use Permit

WHEREAS on July 14, 2016 the Arundel Planning Board approved a conditional use application to construct a 60 foot x 210 foot metal multi-purpose building with associated parking and loading areas, septic system and stormwater drainage improvements at the existing *Motorland Showroom & Service Center* located at 2564 Portland Road, Tax Map 2, Lot 1, in the BI district.

WHEREAS, on February 23, 2017 the Planning Board reviewed an application by the applicant to permit recreational uses to occur on the Motorland site. During the review the Board determined that significant and unauthorized changes had been made on the project site that deviated significantly from the approved site plan. The Planning Board furthermore determined that these violations either had to be corrected or the applicant had to submit an application for revisions to the July 14, 2016 conditional use permit.

WHEREAS, on March 23, 2017 the Planning Board received an pre-application to make revisions to the approved conditional use permit to include field changes including increased wetlands filling, propane tank relocation, increased parking area, modifications to approved detention basin, containment of a streambed in a subsurface drainage facilities, and relocated utilities.

WHEREAS on April 20, 2017 the Planning Board conducted public site walk of the violations on the project site.

WHEREAS May 25, 2017 the Planning Board provided the applicants with an inventory of items that must be included on the re-submitted conditional use application.

WHEREAS, on July 13, 2017 the Planning Board deemed the submitted conditional use application complete and scheduled a Public Hearing for July 27, 2017.

WHEREAS, on July 27, 2017, the Planning Board conducted a public hearing, in conformance with LUO section 10.6.3.3.

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

FINDINGS OF FACT

1. The owner of the property is Motorland Inc.
2. The property is located at 2564 Portland Road, Tax Map 2, Lot 1, in the BI district.
3. The property currently contains an automobile sales and service facility approved by the Arundel Planning Board on October 27, 2011, and currently occupied by a classic auto dealership dba *Motorland*. A 60 x 220 foot cold storage building was approved by the Planning Board on December 10, 2016 and is currently under construction.
4. The applicant proposes to remove the culverted stream and reinstall a rip-rap open channel watercourse between the wetland located on the western portion of the property to the wetlands located along the northern border of the property.
5. The applicant proposes to install an enlarged two-chambered detention basin on the northern side of Building #2 discharging into the wetland located on the northern edge of the property.
6. Additional lighting will consist of (4) 37 w wall packs located over the entries to the proposed building.
7. The applicant has installed 2300 sf of additional paved area and proposes to install a 160 sf concrete pad for air conditioning units on the west side of Building #2, and has installed two propane tanks in the wetland west of Building #2.
8. The applicant proposes to run a new electrical line in conduit from the pole drop at the parking lot entrance into Building # 2.
9. Submissions documenting the proposed amendments include Amended *Site Plan for Motorland*, Sheets 1 & 2 dated February 9, 2017 with revisions to July 20, 2017, Erosion Control & Details, dated June 29, 2017, and Stormwater Management calculations as prepared by Paul Gadbois, PE.

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 an expansion of an existing permitted use in the BI district and is consistent in scale and use with other uses in the surrounding neighborhood and the district.
- 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 automobile sales and service facilities to be appropriate in and the use is consistent with the long range plan for the BI district to serve as Arundel's premier industrial and business zone.
- 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 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.

- The proposed use will require the installation of a new and relocated septic system. An HHE 200 permit has been prepared of sufficient capacity to accommodate the additional employees that will be supported by the facility and the existing car wash facility. Existing water supply on the site is sufficient to meet the needs of the proposed new structure.*
- 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 -
- Noise, Dust and Smoke: The nature of the business does not generate any undue noise, dust or smoke generation outside of the structure.*
- Glare: The applicant is installing additional 37 watt Wall pack with full cut-off shields that will not generate any dangerous glare for passing motorists or a nuisance to adjacent properties.*
- 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 require limited alteration of the existing site topography. Tree cover will be retained on the perimeter of the site. The installation of stormwater detention basin along the northern boundary of the proposed building will capture runoff from the proposed building and parking facilities resulting in no increase in the downstream peak runoff generated by the site improvements during a 25-year storm event.*
- 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.*
- 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.*

THEREFORE BE IT RESOLVED that based on the above findings and conclusions the Arundel Planning Board hereby approves the Amended Conditional Use application and Site Plan for the existing *Motorland Showroom & Service Center* located at 2564 Portland Road, Tax Map 2, Lot 1, in the BI district, subject to the following conditions:

1. The applicant cannot secure a Certificate of Occupancy until the Code Enforcement Officer is satisfied that the building design meets all of the Arundel Building Codes including use group separations for the multiple uses proposed for the new building.
2. The applicant shall produce to the Planner a letter from the Maine Department of Environmental Protection a letter within 60 days, confirming that the redevelopment of impervious surface on the Motorland site in existence as of November 16, 2005 will result in no increase in the stormwater impacts generated by the site in conformance with Chapter 500 standards. Such letter shall be provided the Planning Board no later than 60 days from July 27, 2017.
3. The applicant shall install no parking signs along the wall facing Portland Road (Route 1) and shall prevent customers and visitors from parking off-site along the road.
4. The applicant shall clearly sign all areas of designated customer and employee parking approved on the July 14, 2016 site plan and shall provide directional signage from the driveway entrance to these parking areas, as approved by the Town Planner.
5. Customer and employee parking shall never be used to park or display automotive stock.

6. The 12 employee parking spaces shall be designated on the record plan and signed to reserve it for that purpose. Customer parking area in front of the office shall be designated on the record plan and signed on the site.
7. There shall be no further disturbance of the diversion stream channel located in the rear of the property without first securing a permit from the Planning Board.
8. The existing car wash facility shall not be modified for public use, and shall be restricted only for vehicles being stored, renovated, or sold by Motorland.
9. No Certificate of Occupancy shall be issued by the Arundel Code Enforcement Officer until the Town Planner presents a Letter bearing the seal of Paul Gadbois, PE certifying that all improvements have been completed in accordance with the approved plans and this Conditional Use permit.
10. Violations of the conditions of this permit may shall be subject to a hearing by the Planning Board and possible revocation of this conditional use permit.

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