

## Arundel Planning Board Minutes

July 9, 2020 - 7:00pm  
Planning Board Meeting  
Remote Zoom Meeting

**Board Attendees:** Rich Ganong, Chair; Susan Roth, Vice Chair, Jens Bergen, Secretary; Marty Cain (at 7:42 pm), Tom McGinn, Roger Morin and Tad Redway, Town Planner

**Attendees:** Amy McNally, Esq; Dwight Raymond, Nickolas Raymond, Steven Doe, Sebago Technics;

**Call to Order:** Chair Ganong calls meeting to order at 7:15 PM.

### I. APPROVAL OF AGENDA:

**Motion:** Mr. Morin 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 June 25, 2020, as written. Mr. McGinn seconds.

**Vote:** Unanimous in favor.

**III. PUBLIC COMMENT:** No public comment.

### IV: PUBLIC HEARINGS

**Item 1: 35 DMR Drive: Plenary Site Plan Review-Determination of Completeness:** Proposal to construct a 4,251-sf metal building complimenting an existing 3,440 sf commercial building on a 2.83-acre site located at 35 DMR Drive, Tax Map 1 Lot 1D in the BI district. Gary Martin is the owner and applicant and Amy Mc Nally, Esq. is the applicant's agent.

The Chair opened the Public Hearing at 7:21 pm.

No one from the public spoke.

The Chair closed the public hearing at 7:22 pm.

**Item 2: 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 opened the Public Hearing at 7:22 pm.

No one from the public spoke.

The Chair closed the public hearing at 7:23 pm.

### V: PENDING APPLICATIONS

**Item 1: 35 DMR Drive: Plenary Site Plan Review-Determination of Completeness:** Proposal to construct a 4,251-sf metal building complimenting an existing 3,440 sf commercial building on a 2.83-acre site located at 35 DMR Drive, Tax Map 1 Lot 1D in the BI district. Gary Martin is the owner and applicant and Amy Mc Nally, Esq. is the applicant's agent.

Ms. McNally presented the revisions to the Site Plan in response to the Town Engineer's project review dated June 24, 2020 (received June 29, 2020). The Town Planner highlighted several omissions in the revisions, including lack of a no-cut buffer designation, remediation of the 15-foot utility cut through the buffer, soil erosion control details, and revised cost estimate.

To expedite the application, Ms. McNally requested that these items be made a condition of approval. The Board noted that the Findings of Fact had not been drafted due to the omissions, but if the applicant could submit the revisions on or before July 16th, the application could be acted upon at the July 23<sup>rd</sup> meeting. Ms. McNally requested a letter from the Planner, enumerating the submission requirements, by July 10<sup>th</sup>.

**Item 2: 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.

Mr. Doe of Sebago Technics, Inc, presented an extensive landscape reclamation plan for the fill intrusion into the Stream Protection District, along with the cost estimates and rationale for the plant selection. The Board discussed the submission and how to proceed. Ms. McNally insisted that the whole application including the lot line change be acted upon. Ms. Roth stated that the Special Exception was to be acted upon first since a denial would render any further action moot.

**Motion:** Ms. McGinn motions to approve the Special Exception for the reduction of the setback in the SP zone. Mr. Bergin seconds the motion.

The Chair read the following Findings of Fact with the Board voting on each of the approval criteria:

### **Findings of Fact and Approval Motion** ***Raymond Acres Shoreland Zoning Application for Special Exception***

**WHEREAS**, on November 8, 2018, the Arundel Planning Board approved a Subdivision Revision by 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 Shoreland Overlay districts. Although significant portions of the new lot were situated in the Stream Protection and Shoreland Overlay Districts, the applicant was able to identify a suitable building window on the approved that provided adequate area for a dwelling, septic system, and well outside of all dimensional setbacks for the R2 district and the Shoreland Zones.

**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 5-5 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 fill and construction encroachments into the SP District. At the subsequent Planning Board meeting, the applicant was advised to submit a Shoreland Zoning Application in order to request a Special Exception from the resource setback requirements.

**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.

**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. On February 6, the applicant submitted and received a building permit with an HHE-200 showing the location of the proposed residential dwelling on Lot 5-05 situated outside the SP and sideline setbacks.
5. On a map dated May 14, 2020, the applicant's surveyor has plotted the field location of the encroachment of the SP zone as being 19-foot encroachment of the building at its greatest point, and 28-40 feet of fill encroachment.
6. The applicant has explained that the building contractor ran over the building location pins during the foundation excavation phase and reset the pins without the benefit of a surveyor. When the applicant was made aware of the encroachments, he ceased work on April 23, 2020.
7. The applicant has petitioned for the granting of a Special Exception for a reduction of the SP setback as permitted in LUO section 8.6.3.4 for the following reasons:
  - a. The encroachment was an error made by a third party without the applicant's knowledge or consent.
  - b. Relocation of the existing dwelling and fill from the Stream Protection District is an unreasonable financial burden that will only result in more environmental impact to the remaining upland area of Lot 5-05.
  - c. Special Exceptions are historically granted for unique and unusual circumstance. The accidental encroachment of the building and its fill into the Shoreland District by a third party represents such a unique circumstance the Planning Board was envisioning when it devised the special exception provisions.

- d. The applicant is prepared to revegetate the fill area with upland plant material that will stabilize the slope and over time help to re-naturalize the area.

## **CONFORMANCE WITH THE SHORELAND ZONING CRITERIA-LUO 8.6.7**

- 1. The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in Sections 5, 8, and 9 of this Ordinance;**

The applicant has violated the 75-foot setback of the Stream Protection District. However, under section 8.6.3.4 of the LUO, the Planning Board has determined that the applicant is entitled to a receipt of a Special Exception to reduce the SP buffer from 75 feet to 25 feet due to the following factors:

- a. The violation was accidental and therefore out of the applicant's control.
- b. Relocation of the building and fill encroachments would result in an unreasonable financial hardship to the applicant
- c. Relocation of the building and fill encroachments would result in an unreasonable and environmental impact to the upland areas outside of the RP District.
- d. The applicant proposes to revegetate the fill area within the encroachment area with naturalized upland species in order to restore parts of the removed vegetative buffer. The final planting plan must be approved by DEP and the Town Planner.
- e. The Special Exception provision in section 8.6.3.4 is designed to address unique circumstances, such as an accidental encroachment, and in situations where environmental conditions and the integrity of the wildlife corridor are not compromised.

**Motion:** Mr. Bergen motions that the application is in conformance with LUO section 8.6.7.1. Mr. McGinn seconds.

**Discussion:** In response to Mr. Cain's question, Mr. Ganong referenced an email from Jeff Kalinich of DEP confirming that the applicant's NRPA permit for the encroachment had been denied and the Maine Attorney General's office confirmed that the remedy available was through ZBA. The applicant responded that the denial was based on the Shoreland Zoning violation and if the Special Exception is granted by Arundel, the NRPA permit would be granted. Mr. McGinn stated that the Town Attorney had recommended hearing the Special Exception application. Mr. Bergin stated that the applicant should not be penalized for lack of specificity in qualifications for a special exception, and the mitigation plan appears to resolve the damage.

**Vote: Aye:** Messrs. Bergen, Cain, McGinn and Morin. **Nay:** Ganong and Roth. Motion passes.

**2. The proposed project conforms to the goals and objectives of the Arundel Comprehensive Plan;**

The 2016 Comprehensive Plan has designated the R2 area as a growth area and residential development is encouraged. Policy 49.1 however recommends a 250-foot zone around Goff Mill Brook and a minimum 50-foot setback from streams. If not for the granting of a Special Exception, the project does not conform to the 2016 Comprehensive Plan.

**Motion:** Mr. Morin motions that the application is in conformance with LUO section 8.6.7.2. Mr. McGinn seconds.

**Vote:** Unanimous in favor.

**3. The proposed project has received all applicable Federal and State Permits;**

The applicant was initially denied his NRPA permit for the proposed encroachment by DEP because of Shoreland Zoning violations. The reapplication of and receipt of the NRPA permit must be made a condition of approval.

**Motion:** Mr. Morin motions that the application is in conformance with LUO section 8.6.7.3. Mr. Bergen seconds.

**Vote:** Unanimous in favor.

**4. The proposed project will not adversely impact upon the existing water regime, hydrology, salinity, water chemistry, flow volume, or flow velocity of wetlands, ponds, streams and watercourses;**

The current fill close to the associated wetlands of the tributary does pose as potential localized impact of sedimentation and increased runoff velocity into the associated wetlands of the tributary. The reconstruction of a vegetative filter on the slopes of the fill encroachment will mitigate this local impact.

**Motion:** Mr. Cain motions that the application is in conformance with LUO section 8.6.7.4. Mr. Bergen seconds.

**Vote:** Unanimous in favor.

**5. The proposed project will not have an adverse impact upon the quality of groundwater resources;**

Proper Revegetation of the fill in the encroachment area and continual maintenance of that natural buffer will minimize impacts to groundwater resources.

**Motion:** Mr. Cain motions that the application is in conformance with LUO section 8.6.7.5. Mr. Bergen seconds.

**Vote:** Unanimous in favor.

- 6. The proposed project will not result in sedimentation, erosion, and/or nutrient loading of adjacent and downstream wetlands, waterbodies, streams and watercourses;**

Proper Revegetation of the fill in the encroachment area and continual maintenance of that natural buffer will minimize impacts to groundwater resources. The applicant will submit a maintenance easement requiring the applicant and assigns to retain the revegetated area in a natural state in perpetuity.

**Motion:** Mr. McGinn motions that the application is in conformance with LUO section 8.6.7.6. Mr. Roth seconds.

**Vote:** Unanimous in favor.

- 7. The proposed project will not have a deleterious impact upon existing and valuable aquatic and wildlife habitats and populations;**

Proper Revegetation of the fill in the encroachment area and continual maintenance of that natural buffer will minimize impacts to groundwater resources. The applicant will submit a maintenance easement requiring the applicant and assigns to retain the revegetated area in a natural state ad infinitum.

**Motion:** Mr. McGinn motions that the application is in conformance with LUO section 8.6.7.7. Mr. Morin seconds.

**Vote:** Unanimous in favor.

- 8. The proposed project will not adversely impact critical wildlife habitats and marine resources;**

The project will not have an adverse impact upon terrestrial wildlife movement once the tree and shrub cover in the fill encroachment area is stabilized and maturing.

**Motion:** Mr. Morin motions that the application is in conformance with LUO section 8.6.7.8. Mr. McGinn seconds.

**Vote:** Unanimous in favor

- 9. The proposed project will not adversely impact important local cultural resources, archeological and historic resources, or the visual quality of shorelines and surrounding environs as viewed from the resource and public spaces;**

The project will have no impact upon local cultural, historical, or archeological resources nor create a visual impact to public spaces.

**Motion:** Mr. McGinn motions that the application is in conformance with LUO section 8.6.7.9. Mr. Cain seconds.

**Vote:** Unanimous in favor.

- 10. The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life in the resource area;**

The project will produce no unusual impacts for a residential district.

**Motion:** Ms. Roth motions that the application is in conformance with LUO section 8.6.7.10. Mr. McGinn seconds.

**Vote:** Unanimous in favor.

- 11. The proposed project will not adversely impact the integrity of important vegetative stands as well as unique natural areas as identified by the Maine Department of Conservation;**

The project is not located in a Unique Natural Area as determined by the DOC.

**Motion:** Mr. Morin motions that the application is in conformance with LUO section 8.6.7.11. Mr. Bergen seconds.

**Vote:** Unanimous in favor.

- 12. The proposed project meets the approval standards of LUO § 10.6.4.**

The project meets all other Site Plan criteria of LUO § 10.6.4.

**Motion:** Mr. McGinn motions that the application is in conformance with LUO section 8.6.7.12. Mr. Morin seconds.

**Vote:** Unanimous in favor.

**THEREFORE BE IT RESOLVED** that based on the above findings and conclusions the Arundel Planning Board hereby grants a Special Exception under the tenets of LUO section 8.6.3.4 to reduce the Stream Protection District buffer from 75 feet to no less than 25 feet directly to the west of the dwelling located on Lot 5-05 and grants a Shoreland Zoning Permit for the completion of said structure within the SP district, subject to the following conditions:

1. The applicant must receive a Subdivision Amendment approval from the Planning Board prior to any further work on Lot 5-05.
2. There shall be no further encroachment of the 75-foot setback on Lot 5-05 including vegetation removal outside of the currently defined encroachment area.
3. The Town Planner and DEP shall approve the proposed revegetation plan as proposed by the applicant's consultants and performance assurance in the amount of the reclamation costs before further work is performed on the structure.
4. This permit is contingent upon receipt of a NRPA Permit from DEP for the proposed encroachment and restoration activities. Failure to receive such a permit renders this approval null and void.

5. The applicant shall submit a maintenance covenant, agreement, or other such binding legal document to the Town Attorney's approval which requires the property owner maintain and replace the restoration vegetation on the fill encroachment in perpetuity.

So approved by the Arundel Planning Board this 9<sup>th</sup> day of July 2020

**Vote: Aye:** Messrs. Bergen, Cain, McGinn and Morin. **Nay:** Ganong and Roth. Motion to Approve the Special Exception passes 4-2.

The Chair stated that the Board will rule on the Subdivision Amendment that at the next meeting. The applicant and his attorney objected to the schedule stating that the application has been before the Board for a month and a half and there was adequate time to review the lot line amendments. Staff reminded the Board that no Findings of Fact had been written yet and the Board should not act without such as document. The Board informed the applicant that the Findings would be prepared for the July 23<sup>rd</sup> meeting.

- Item 4: Wellness Center: *Plenary Site Plan Review-Determination Completeness:*** Proposal to expand an existing parking lot serving two commercial structures by approximately 5,100+/- square feet at 1009 and 1005 Portland Road on a 4.18-acre parcel, Tax Map 43 Lots 52 and 52A, in the DB-1 and the RP Districts. Elizabeth Boucher is the owner and applicant.

Since the applicant could not have the materials prepared in time for the meeting, the applicants requested their application to be tabled for this meeting.

#### 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 Commercial Driveway discussion was postponed to the July 23<sup>rd</sup> meeting.

#### VI: OTHER BUSINESS

Planner discussed Cape Arundel Cottage Resort's request for temporary access to the Hidden Meadows emergency access road for building contractors in two-axle light-duty vehicles. Joe Paolini stated that conflict between contractor and resident vehicles could be minimized if framers, electricians, plumbers and other contractors working in the CACP project would access the back end of the project site where they are working via Mountain Road. Mr. Paolini states that the Hidden Meadow residents are in favor of the proposal, the road will be paved, so dust will not be tracked onto Mountain Road, and the contractor vehicles will observe weight restrictions on Mountain Road.

The Planning Board discussed how to proceed and determined that Mr. Paolini should meet with the Board at the July 23<sup>rd</sup> meeting.

**ADJOURN**

**Motion:** Mr. Morin moved and Ms. Roth seconded the motion to adjourn the meeting at 9:43 pm

**Vote:** *Unanimous in favor.*

Respectfully submitted,



Tad Redway  
Secretary Pro Temp to the Planning Board