



Planning Board Minutes

Wednesday, May 10, 2006
7:00 pm.

**Raymond Town Hall
401 Webbs Mills Road**

Planning Board Attendance: Patrick Clark, Chairman; Robert O'Neill, Vice Chairman; Ginger Wallace; Nelson Henry; Patrick Smith; Allen Tait; and Samuel Gifford.

Members absent: none

Staff Attendance: Hugh Coxe, Town Planner; Joshua Stevens, Fire Inspector and Assistant Code Enforcement Officer; and Karen Strout, Recording Secretary.

1. Call to order: Chairman Clark called the meeting to order at 7:02 pm. Chairman Clark asked for a roll call, and stated that there was a quorum in attendance to conduct business.

2. Consideration of minutes:

MOTION: moved by Bob O'Neill and seconded by Sam Gifford to approve the minutes dated April 12, 2006 as amended. Motion carried 6 /1 (abstention).

MOTION: moved by Allen Tait and seconded by Bob O'Neill to table the workshop minutes dated April 26, 2006. Motion carried 5 /2 (abstentions).

3. Correspondence:

- a. A letter from LT. Joshua Stevens, Fire Inspector dated May 8, 2006 was received regarding Valley Heights Subdivision which stated that "The Raymond Fire Department is **NOT** in favor of the applicants request to waive on-site water supply for fire suppression." The letter has been placed in the Planning Board files.
- b. A letter was received from LT. Joshua Stevens, Fire Inspector dated May 9, 2006 was received regarding the Amended Subdivision of Gary E. Miller. "The decision to require a sprinkler system or a cistern was never ironed out by the Planning Board in 2002. There needs to be clarification on: **Do the existing subdivisions that create a new lot need to comply with the current standards?"**

4. Public Hearings:

**a. Lee F. Adams Jr – Valley Heights
Map 16, Lot 47 - RR - Spiller Hill Road
Preliminary (and final if procedural waiver granted) application for
4-lot subdivision.**

Chairman Clark opened the Public Hearing at 7:10 pm.

Presentation was given by applicant's agent, Bob Berry of Main-land Development Consultant, Inc. He outlined the project and reviewed the waivers that were being requested. Berry further informed the Board that the applicant had withdrawn the waiver request for fire suppression after they had received the correspondence from the Fire Department dated May 8, 2006, which did not support their request. Berry handed out an updated survey with a plan note reflecting the additional information the fire department and the planner had suggested.

Planner Hugh Coxe reviewed his memo:

This is a preliminary application for a 4-lot subdivision – 3 house lots and one area of land to be retained by the owner/ applicant. All lots have existing frontage on either Valley Road or Spiller Hill Road. The land proposed for development consists of about 46 acres - Lot 1 is 3.94 acres, Lot 2 is 2.15 acres and Lot 3 is 40.09 acres. Lot 1 was previously split off and sold but has not been developed. The project is located in the Rural Residential district.

The lots presented on the applicant's plan all appear to meet the basic dimensional zoning requirements of the Rural Residential district. They have sufficient frontage and lot sizes are adequate. The applicant is not proposing any new roads or infrastructure and is simply seeking subdivision approval in order to sell approved lots for others to build on. The applicant has requested a procedural waiver to have the board review this for both preliminary and final approval.

Decisions/ Issues

The applicant has requested several waivers in addition to the procedural waiver. These are discussed in more detail below but the most significant waiver request for the board is the request that the subdivision not be required to have all lots served by an interior road with no access directly onto a public road. The applicant has proposed that all lots have direct access onto the public roads.

Discussion

Subdivision Review Criteria

In reviewing this application the ordinance requires the board to apply the subdivision criteria found in **Article I, Section 1 of the Subdivision Ordinance**, the General Requirements of **Article VIII** and the Design Standards of **Article IX**. The burden of demonstrating that the requirements have been met is on the applicant.

Waiver Standards

Article XI, Section 1 of the Subdivision Ordinance permits the Board to grant waivers if it finds that undue hardship will result from strict compliance with the ordinance and that a waiver will not have the effect of nullifying the intent and purpose

of the ordinance. The Board is further directed by **Section 2** to determine whether there is “sufficient evidence to establish that the practical difficulties and unusual hardships are caused by special conditions peculiar to the particular property” and that such waivers can be granted without detriment to the area.

Procedural Waiver

The subdivision ordinance requires applicants to appear before the board separately for a preliminary approval and a final approval. The board has the authority to waive this requirement pursuant to waiver standards of **Article XI, Section 1 of the Subdivision Ordinance** and the applicant has requested that the board review this as both a preliminary and final submission due to the small size of the project.

Road Access

The plans propose that access to the lots be from the existing public roads abutting the proposed lots. **Article IX, Section 3.2.9 of the Subdivision Ordinance** requires that “all subdivisions shall be designed to provide access to individual lots only by interior subdivision roads.” It further prohibits direct access from any public road to any lot unless the Planning board determines “that physical conditions unique to the parcel justify the granting of a waiver.”

The applicant has requested a waiver from this standard on the basis that “this unique property shape and layout makes allowing individual lot access off the existing public streets a reasonable and economic solution. A new road to access these three lots would be impractical due to the separation distance between the lots and the existing topography of the site.”

Storm Water Management and Erosion & Sedimentation Control

Article V, Section 2.2.12 and 2.2.17 of the Subdivision Ordinance requires applicants to submit a storm water management plan and an erosion and sedimentation plan. The applicant has requested a waiver from these standards on the basis that no new road or parking infrastructure is planned which would increase storm water runoff, the project proposes only 3 new house lots on over 46 acres of woodland, and the applicant does not propose to build the houses. His engineer indicates “soils on site are previous and free draining, allowing much of the minimal amount of runoff generated by this small project to infiltrate into the ground.”

In recent history the board has required applicants to provide most submission materials - even for small subdivisions. But in some instances where there is evidence that the lots will not be built on immediately, the board has permitted waivers of plans for storm water management and erosion control with the condition that any building permits be subject to the requirements of **Article IX, sections U.4, and U.7 of the Land Use Ordinance** which requires those plans.

Firefighting Water Supply Waiver

The applicant has requested a waiver of the **Article V, Section 2.2.24** requirement to provide on-site water supply for fire suppression stating that the three new lots have direct access off existing public streets already served by the fire department. I have asked Josh Stevens to comment on this waiver request on behalf of the fire department.

Historic Preservation Waiver

Article V, Section 2.2.23 of the Subdivision Ordinance requires applicants to provide information on the location of the proposed development to the State Historic Preservation Office. The applicant has requested a waiver of this requirement on the basis that “no significant ground disturbance will occur that could disturb prehistoric sites” since no new infrastructure is proposed and that the surrounding residences are recently built.

Phosphorous Control

The applicant has submitted a phosphorous control plan that appears to meet the ordinance standards based on the assumptions listed in the development assumptions listed in the plan (found at tab #6 of the applicant’s materials) including the assumption that the driveway for lot 3 will be 300 feet long.

Additional Plan Notations

The final plan is required to include a statement indicating that any change or modification to any aspect of the approved plan shall be considered an amendment to the plan and shall require approval of the Planning Board. **Article V, Section 2.1.10 of the Subdivision Ordinance.** The town attorney has recommended the following standard note be included on all final subdivision plans concerning compliance with the approved plan:

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

Other Issues

•**Article VIII, section 4.1 of the Subdivision Ordinance** requires a minimum of 10% of the land in a subdivision to be set aside as open space. The applicants have not complied with this provision with these submissions and have not requested a waiver.

1. It is not clear from the submissions that Lot 3 has passing soils for a septic system as a HHE-200 form was not submitted for that lot and the soil investigation report appears to be limited to lots 1 and 2.

2. **Article V, Section 2.2.21 of the Subdivision Ordinance** requires applicants to provide information about the location of significant wildlife habitat. The applicant states in his submissions that there are “no known areas of significant natural resources” but does not indicate what if anything was done to make that determination.

3. **Article V, Section 2.2.22 of the Subdivision Ordinance** requires applicants to provide information about the location of any trails on the property. The applicant states in his submissions that “there are no easements or public trails on the project site.” The ordinance is not restricted to public trails; it requires the location of any trail.

Comments from the public:

There were no comments from the public.

Comments from staff:

Fire Inspector Joshua Stevens asked to have the following Plan note from the applicant's latest submitted survey read into the record:

“The Raymond Fire Department requires houses on lots 2 & 3 of this subdivision to have a NFPA approved sprinkler system.” This note was from a Survey Plan for Valley Heights dated May 2006 with the seal and signature of David J. Adelson, Professional Land Surveyor, of Main-Land Development Consultants, Inc. Stevens commented that the note should include lot 4 as well. The applicant responded that adding that lot to the note would not be a problem and they would make the note change.

Public Hearing was closed at 7:35 pm.

Comments from the Board members:

Board member Allen Tait asked whether or not this plan would be updated? Hugh Coxe responded “only if there are any other lot splits. Tait asked whether or not lot 4 should be shown on the plan. Chairman Clark asked Pat Cayer to respond regarding the status of lot 4. Pat Cayer responded that it had met lot requirement standards, and that lot 4 was being retained by the owner who had no intention of developing this lot at this time. There was discussion by the Board about frontage for lot 4. The majority of the Board commented that they felt that it was difficult to determine the frontage given the limitations of the plan provided.

Coxe stated that the Board could put a prohibition on lot 4 and require the applicant to come back to the Board to get approval before the issuance of a building permit for that lot. Consensus of the Board was that the applicant have a note placed on the plan that would state that the applicant would be required to come back to the PB before a building permit would be issued.

Tait also had concerns about the lack of information about the location of wildlife habitat and historical areas on the proposed lots. The applicant stated that they were confident they were no issues with wildlife habitat or historical sites because the development was not disturbing any land, and there were no older buildings in the area.

At this time the applicant provided the Board a copy of a soils investigation that was dated February 17, 1988 from Darryl N. Brown of Main-Land Development Consultants, Inc. (A copy has been placed in the PB file). Board member Gifford inquired as to whether or not there would have been any changes since this report was dated 1988. Chairman Clark responded that there should not be any problem with accepting that report.

O'Neill inquired about the 10% open space requirement. Berry responded that addressing this requirement had been an oversight on the applicant's part, and that applicant would be requesting a waiver.

Smith commented that he wanted to see all of the waivers requested listed on the plan along with the set backs, and zoning requirements. Smith also had issues with lot 4. He stated his reluctance to give approval when he could not see the frontage for lot 4. Smith further added that he would like to see the 10% open space requirement filled by the strip of property along the boundary with Spring Valley. Another request from Smith was that lot 4 be labeled as land to be retained by owner.

The following action was taken by the Planning Board:

MOTION: moved by O'Neill and seconded by Gifford to grant a procedural waiver to permit the Board to review this application as both a preliminary and final submission. Vote was unanimous 7/0 to approve.

MOTION: moved by Smith and seconded by Tait to grant a waiver to allow access to the lots from existing public roads. Vote was unanimous 7/0 to approve.

MOTION: moved by O'Neill and seconded by Smith to grant a waiver for the submission of a storm water management plan. Vote was unanimous 7/0 to approve the waiver request.

MOTION: moved by Wallace and seconded by Smith to grant a waiver for an erosion and sedimentation plan. This will be addressed as a condition of approval with documentation submitted to Code Enforcement Office before building permit will be issued. Vote was unanimous 7/0.

MOTION: moved by O'Neill and seconded by Smith to grant a waiver for the requirement to provide information on the location of the proposed development to the State Historic Preservation Office. Vote was unanimous 7/0.

MOTION: moved by Smith and seconded by O'Neill to deny approval of a waiver for the 10% Open Space requirement of the ordinance. Motion failed 1/6.

MOTION: moved by Nelson and seconded by Gifford to grant a waiver for the 10% Open Space requirement. Motion carried 6/1.

Discussion: Tait commented that he was reluctant to approve a waiver on Open Space not knowing anything about the surrounding land (referencing lot 4). He further requested lot clarification by having an inset placed on the plan with a verbal definition or plan definition determining the location of lot 4 based on tax map information.

MOTION: moved by Tait and seconded by O'Neill to grant both preliminary and final approval to Lee F. Adams, Jr. for Valley Heights referenced by Tax Map 16, Lot 47 with the following waivers and conditions of approval:

Waivers

Based on its finding that this is a small and uncomplicated subdivision proposal, that it would be an unnecessary burden on the applicant to present applications for both preliminary and final subdivision approval at separate planning board meetings, and that a waiver of that requirement will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of that **procedural** requirement so as to allow the applicant to combine its applications for preliminary and final review.

Based on its finding that the unique property shape and layout makes allowing **individual lot access** off the existing public streets a reasonable and economic solution, that a new road to access the three proposed lots would be impractical due to the separation distance between the lots and the existing topography of the site, and that a waiver will not have the effect of nullifying the intent and purpose of the

ordinance, the board grants a waiver of the requirement in Article IX, Section 3.2.9 of the Subdivision Ordinance.

Based on its finding that there is evidence that the proposed lots will not be built on immediately, that there will be no new road construction, and that that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the requirement for submission of a storm water **management plan** for subdivision approval.

Based on its finding that there is evidence that the proposed lots will not be built on immediately, that there will be no new road construction, and that that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the requirement for submission of a **sedimentation and erosion control plan** for subdivision approval on the condition that completed plans for sedimentation and erosion control, that meet the requirements of Article IX, sections U.7 of the Land Use Ordinance must be submitted to the town prior to the issuance of a building permit for each lot within the subdivision, and that a note to that effect be included on the final subdivision plan.

Based on its finding that no new infrastructure is being proposed, no significant ground disturbance will occur, that the surrounding buildings are not historic, and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the Article V, Section 2.2.23 requirement for submission of information on the location of the proposed development to the Maine Historic Preservation Commission.

Based on its finding that the subdivision as proposed leaves significant areas of land undeveloped, that any future development of lots 3 or 4 would require additional Planning Board review and approval, and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the Article VIII, section 4.1 requirement for 10% of the land in the subdivision to be set aside as **open space**.

Conditions of Approval

1. The development shall be constructed and maintained in accordance with the plans, specifications, testimony, submissions, and supporting documents presented to the Planning Board in conjunction with the developer's application for subdivision approval.

2. Prior to release of the recording mylar, but not later than November 10, 2006, the applicant shall revise the subdivision plan pursuant to the testimony and proceedings of the May 10, 2006 Planning Board meeting. Those revisions shall include, but not be limited to:

A list of all waivers granted by the Planning Board.

Space and bulk zoning regulations for the applicable zoning district.

Lines depicting building setbacks for lots 1, 2 and 3.

A location map that depicts the full extent of lot 4 and provides information about road frontage, acreage and location based on the Town of Raymond tax parcel maps.

A note stating that the land in lot 4 is to be retained by the owner.

A note indicating that lot 4 was not reviewed by the Planning Board and any proposed development of lot 4 must be presented to the Planning Board for review and approval.

A note stating that any homes built on lots 2, 3 or 4 will be built with sprinkler systems that meet the requirements of the Raymond Fire Department.

A note stating:

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

Motion carried 7/0.

b. Gary E. Miller – Amended Subdivision
Map 1, Lot 8 - LRRII – 24 Anderson Road
Amended Subdivision to create one new lot.

Chairman Clark opened the Public Hearing at 8:10 pm.

Presentation was given by applicant's agent Pat Cayer of Land Services, Inc. Cayer gave background on the original subdivision that had been approved in 1984 and stated that he felt that this was a very minor project. He directed the Board to their packets and the waivers being requested. Cayer reference a letter that had been written by the Fire Inspector asking for clarification as to which ordinance standard would apply to the amended subdivision.

Planner Hugh Coxe reviewed his memo:

Project Description

This is an application to amend an existing approved subdivision to create one new lot. The applicant is the owner of Lot # 2 of a three lot subdivision that was created from a parcel of land in 1984. A copy of the subdivision plan approved by the town of Raymond in January of 1984 is included as part of the applicant's submittal package. Lot #2 contains 7.61 acres and is situated on the northwestern side of Anderson Road. A single-family residence with an attached garage is situated on the southwest portion of the lot. The applicant proposes to divide the subject parcel into two lots thus creating one new 3.5 acre lot. While the creation of two lots within a five-year period does not constitute a subdivision, the applicant is required to seek planning board approval as this is an amendment to a previously approved subdivision.

The topography of lot # 2 is gently to moderately sloping and the parcel is wooded except in the area immediately surrounding the existing home site and access drive. The site contains some areas of visible ledge outcroppings and there is a forested wetland area of varying width that traverses the site in a northeasterly to southwesterly direction.

The application appears to meet all basic zoning requirements including the net density calculations. The applicant is requesting waivers of certain applicable requirements contained in subdivision regulations including the requirements for storm water management, erosion and sedimentation control, and phosphorus control plans. A list of all the requested waivers has been provided with the applicant's submittal.

Decisions/ Issues

In addition to addressing the applicant's waiver requests, the board will need to decide whether all of the subdivision submission requirements apply to this amended subdivision approval.

Discussion

Submission Requirements

The applicant has provided most submissions required by **Article V, Section 2 of the Subdivision Ordinance** with a few exceptions. He has not provided information about water supply (**subsection 2.7**) or a plan for on-site fire suppression (**subsection 2.24**). The applicant has also not provided information about location of habitat (**subsection 2.21**), existing trails (**subsection 2.22**), or evidence that the State Historic Preservation Office has been notified (**subsection 2.23**). Generally an amended subdivision should comply with all current subdivision standards but where the original subdivision is over 20 years old and was permitted under different standards and where this project seeks to split out only one new lot, the board should decide whether each of these submission requirements are applicable in this instance.

Waiver Standards

Article XI, Section 1 of the Subdivision Ordinance permits the Board to grant waivers if it finds that undue hardship will result from strict compliance with the ordinance and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance. The Board is further directed by **Section 2** to determine whether there is "sufficient evidence to establish that the practical difficulties and unusual hardships are caused by special conditions peculiar to the particular property" and that such waivers can be granted without detriment to the area.

Contours

Article V, Section 2.2.5 requires applicants to provide five foot contour lines on the plan for all areas of the property proposed for development. The applicant has provided detailed topographic information on the plan for the anticipated building envelope for Lot 2B and has requested a partial waiver for the remaining areas on the basis that Lot 2A is already developed, the scope of this amended subdivision is minor, and a full topographic survey of the entire 7.61 site "would seem to add little benefit to the review process while adding considerable expense to the applicant."

Storm Water Management, Erosion & Sedimentation Control, and Phosphorous Control Plans

Article V, Section 2.2.12, 2.2.17 and 2.2.26 of the Subdivision Ordinance requires applicants to submit a storm water management plan, an erosion and sedimentation plan and a phosphorous control plan. The applicant has requested a waiver from these standards on the basis that there is no interior roadway and related

infrastructure proposed, the nature and extent of the future improvements on proposed lot 2B are unknown at this time, and “due to minor nature and scope of this proposed subdivision.”

In recent history the board has required applicants to provide most submission materials - even for small subdivisions. But in some instances where there is evidence that the lots will not be built on immediately, the board has permitted waivers of plans for storm water management, erosion control and phosphorous control with the condition that any building permits be subject to the requirements of **Article IX, sections U.4, U.6 and U.7 of the Land Use Ordinance** which requires those plans. The applicant has requested that the board take that approach here and has provided a note on the amended plan that would require the owner to comply with these standards before a building permit is issued.

Comments from the public: There was no public comment.
Public Hearing was closed at 8:25 pm.

Comments from the Board:

There was considerable discussion regarding how the project would be reviewed and which submission requirements needed to be met for an amended subdivision. Chairman Clark stated that amendments to a previously approved plan need to come back to the PB for review. Coxe commented that you review with the standards that apply. Clark reference the fact that State Law treats subdivisions differently, but the Board is bound by the stricter municipal standards. Our local ordinances require that the Board review this single lot with the Subdivision Standards of the Town of Raymond.

Board member Nelson Henry asked if there was an association involved with this subdivision. He was told that it was a requirement of the State for subdivisions. Henry also voiced concerns about how they would deal with the storm water and phosphorous. Tait asked about the proximity to the water. Cayer responded that they were about 1000' from the water. Tait also asked why the Willis application was withdrawn. Cayer answered that subdivision review and fire suppression requirements led to his withdrawing his application. Wallace asked whether sprinklers would be required. She was told that this was a requirement of new subdivisions. O'Neill stated that he would like to see the building envelop shown, and the topography for the entire lot. Gifford commented that he thought it was overdoing it to have a sprinkler system installed. There was considerable discussion among the Board and Staff regarding fire suppression.

There were members of the public who spoke out (without going through the chair or identifying themselves) in opposition to sprinkler ordinances.

Comments from Staff:

Fire Inspector Josh Stevens brought up past attempts to develop this lot. One was proposed in 2002, another in 2003. Both applications were withdrawn. Referencing old PB minutes, Stevens explained that the issue of water supply, or a plan for on site fire suppression was left unresolved at that time. Stevens in his letter dated May 9th said he would appreciate clarification by the Board.

The following action was taken by the Planning Board:

MOTION: moved by Henry and seconded by Smith to grant a waiver for a partial topographic survey which would not include the existing lot, only the newly proposed lot at 5' contour intervals. Motion failed 3 / 4. Waiver denied.

MOTION: moved by Wallace and seconded by Gifford to grant a waiver for the submission requirement for a storm water management plan on the condition that the information be submitted prior to issuance of a building permit.
Vote 7/0 to approve.

MOTION: moved by Wallace and seconded by Gifford to grant a waiver for the submission requirement for a phosphorus control plan on the condition that the information be submitted prior to issuance of a building permit.
Vote 7/0 to approve.

MOTION: moved by O'Neill and seconded by Wallace to grant a waiver for the submission requirement for sedimentation and erosion control Plan on the condition that the information be submitted prior to issuance of a building permit.
Vote 7/0 to approve.

MOTION: moved by O'Neill and seconded by Smith to grant a waiver for the submission requirement for landscaping. Vote 7/0 to approve.

MOTION: moved by O'Neill and seconded by Gifford to grant a waiver for the internal road access requirement for lots within a subdivision 7/0 to approve.

MOTION: moved by Wallace and seconded by Smith to deny a waiver from fire suppression requirements. Motion carried 5/2.

MOTION: moved by O'Neill and seconded by Tait to table the application until the time the applicant can address the concerns with additional submission. Vote 3 /4. motion failed.

Pat Cayer asked if there were any way that the Board would reconsider their vote. After some discussion by the Board, it was determined that the deficiencies could be addressed as conditions of approval.

MOTION: moved by Smith and seconded by Gifford to approve the amended subdivision plan of Gary E. Miller referenced by Tax map 1, lot 8 with the following waivers and conditions of approval:

Waivers

Based on its finding that there is evidence that the proposed lot will not be built on immediately, that there will be no new road construction, and that that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the requirement for submission of storm water **management plans** for subdivision approval on the condition that completed plans for storm water management, that meet the requirements of Article IX, sections U.4 of the Land Use Ordinance must be submitted to the town prior to the issuance of a building permit for lot 2B.

Based on its finding that there is evidence that the proposed lot will not be built on immediately, that there will be no new road construction, and that that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a

waiver of the requirement for submission of **phosphorous control plan** for subdivision approval on the condition that completed plans for sedimentation and erosion control, that meet the requirements of Article IX, section U.6 of the Land Use Ordinance must be submitted to the town prior to the issuance of a building permit for lot 2B.

Based on its finding that there is evidence that the proposed lot will not be built on immediately, that there will be no new road construction, and that that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the requirement for submission of **sedimentation and erosion control plans** for subdivision approval on the condition that completed plans for sedimentation and erosion control, that meet the requirements of Article IX, sections U.7 of the Land Use Ordinance must be submitted to the town prior to the issuance of a building permit for lot 2B.

Based on its finding that only one lot is proposed for development, that there will be no new road or infrastructure construction, and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the Subdivision Ordinance requirements in Article V, Section 2.2.20 and Article VI, Section 2.1.9 of the for a **landscaping plan**.

Based on its finding that the existing subdivision layout and proposed lot location makes requiring a new road to access the one proposed lot impractical, that allowing **individual lot access** off the existing streets is a reasonable solution, and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the requirement in Article IX, Section 3.2.9 of the Subdivision Ordinance.

Conditions of Approval

1. The development shall be constructed and maintained in accordance with the plans, specifications, testimony, submissions, and supporting documents presented to the Planning Board in conjunction with the developer's application for amended subdivision approval.
2. Prior to release of the recording mylar, but not later than November 10, 2006, the applicant shall revise the plans pursuant to the testimony and proceedings of the May 10, 2006 Planning Board meeting. Those revisions shall include, but not be limited to:
3. A note stating that any home built on lot 2B will be built with a sprinkler system that meets the requirements of the Raymond Fire Department.
4. A listing, on the plan, of all the waivers granted by the planning board.
5. A plan that depicts at least five foot contour lines for those portions of the property designated as lot 2B that did not contain contour lines on the April 18, 2006 version of the subdivision plan.

Vote to approve 4/3.

c. Town of Frye Island
Map 2, Lot 11, Limited Residential/ Recreation II – o Cape Road
Application for a Shore land Zoning Permit and Site Plan Review for a
new municipal use

Chairman Clark opened the Public Hearing at 9:25 pm.

Presentation was given by applicant's agent Pat Cayer of Land Services, Inc. He reviewed the topography of the area and outlined the proposed grading. He stated that the applicant was requesting several waivers.

Planner Hugh Coxe reviewed his memo:

Project Description

This is an application for a site plan review and shore land zoning permit for a proposed staging area for the Town of Frye Island (“the applicant”). The applicant has purchased a 25.67 acre parcel which is mostly wooded and is located on the southern end of the Cape. The applicant wishes to develop an area of approximately 5000 square feet for storing gravel and reclaim materials needed for road maintenance on Frye Island. The site would be used exclusively by Frye Island. The applicant does not, at this time, have any further development plans for the parcel. The site would be accessed off Quarry Cove Road.

The applicant was before the Board at the March meeting for a pre-application meeting for the purpose of determining what submissions the board would require and what it would consider waiving given the small area of disturbance relative to the overall size of the parcel. At that time the Board also discussed whether the project could be considered a “minor development” under **Article X, Section B.a of the Land Use Ordinance** which normally would not require planning board review. The primary concern of the Board at the pre-application meeting was that the applicant demonstrates that the site will be stabilized during and after site development so that disturbed soils, and materials stored on site, will not be transported off site and into the nearby lake during storm events.

Decisions/ Issues

This application presents an issue as to what ordinance provisions are applicable and thus what review standards are applicable and whether the board would need to waive certain submission requirements. However ultimately the review standards are very similar and the primary responsibility of the Board will be to determine whether the application meets the relevant review standards

Discussion

Applicable Ordinance Provisions

Based on the discussions at the pre-application review, the Board requested an opinion from the town attorney as to 1) whether it has the authority to delegate its review of this matter to the CEO and 2) whether the proposed project might be considered something other than a “municipal use” - as that term is used in the shore land zone table of uses - that does not require Planning Board approval.

The town attorney responded that the use category within the Shore land Zoning Provisions which best categorizes this use is “Municipal” and as a municipal use, the proposal requires review and approval by the Planning Board under **Section 16(D) of**

the Shore land Zoning Provisions. Section 16(D) states specifically that the Planning Board must make a positive finding that the proposed use will comply with the nine enumerated standards of that section. The obligation to make that finding cannot be delegated by the Planning Board.

But he also said that he did not look into the question of whether under the site plan review provisions of ***Article X of the Land Use Ordinance*** this may qualify as a minor development which can be reviewed by the Code Enforcement Officer. If that is the case, then the Planning Board does not need to conduct site plan review; that can be done by the CEO; however, site plan approval is a different permit from the use permit required under the Shore land Zoning Provisions. Planning Board review under the Shore land Zoning Provisions is required even if the site plan under the Land Use Ordinance can be approved by the CEO.

Ultimately whether the Planning Board conducts a review under both Shore land Zoning and Site Plan, or only under the Shore land Zoning provisions, the review of issues is similar. However, the submittal requirements under Site Plan review are more detailed and would probably require that the Planning Board review and approve a waiver on several Site Plan submission standards in the Land Use Ordinance.

Shore land Zoning

Section 16(D) of the Shore land Zoning Provisions states specifically that the Planning Board must make a positive finding that the proposed use will comply with the nine enumerated standards of that section. These include that the proposed use “will not result in water pollution, erosion, or sedimentation to surface waters” and is in conformance with the provisions of ***Section 15***, Land Use Standards.

Site Plan Review Standards

The relevant Site Plan Review standards are set out in ***Article X, Sections D & E of the Land Use Ordinance***. These standards require applicants to provide adequate surface drainage, minimize erosion and stabilize disturbed soils. The standards also require the applicant to preserve the natural landscape or create buffering or screening to the extent necessary to “shield structures and uses from the view of noncompatible abutting properties.”

Submission Requirements

The primary difference in reviewing this application just under Shore land Zoning as opposed to under both Shore land Zoning and Site Plan review is that for Shore land Zoning purposes the applicant need only submit those materials necessary for satisfying his burden of demonstrating compliance with the ***Section 16(D)*** standards, while submission requirements for Site Plan review (***Article X, Section D of the Land Use Ordinance***) includes a list of mandatory submissions.

The applicant has provided all submission requirements applicable for Site Plan review except for those several items he has requested waivers on (topographic mapping and storm water analysis). The applicant has provided a basis for those waivers but the waivers would not be necessary if reviewed only as a Shore land Zoning application but will be necessary if reviewed under both Shore land Zoning and Site Plan review.

In the final analysis, the primary issue for the board to determine is whether the applicant has demonstrated that the site will be stabilized during and after site development so that disturbed soils, and materials stored on site, will not be transported

off site and into the nearby lake during storm events. The submissions appear to be sufficient for making that determination.

Comments from the public:

Several people spoke in opposition to the project. Russ Keith of the Quarry Cove Association stated his concerns about the impact on Quarry Cove. He said he did not believe that this was a permitted use and that it had been closed down last year. He said it was now an open area that is used for dumping by contractors. Mike Lebel of 12 Sebago Road spoke in opposition to the proposal. One of his concerns was the abuse that the road received whenever there was any construction in the area. He felt that Frye Island should share in the expense of the upkeep of the road. Paul White, Code Enforcement Officer for Frye Island stated that he expected them to share some of the expenses.

They asked White about the use of the road. He said that presently they make about 7 trips a day to Windham with the small trucks. With the bigger trucks (holding 14 yards) they would probably make enough trips in one day for their use, and it will be all over. There would not be continuous use of the roads. Cape Road is a posted road and would prevent access to Quarry during the time of road postings.

Public Hearing was closed at 9:50 pm.

Comments from the Board members:

There was some discussion by the Board as to reviewing the project under site plan review. The Town Attorney had informed the Board that Shore land Zoning Requirements applied. It was the consensus of the Board that they go thru the waiver requests and site stabilization requirements, too, rather than focusing strictly on the shore land zoning requirements alone.

Wallace asked about the area surrounding the site. She was told it was wooded. Wallace stated that she felt it was important to keep the project screened from the neighbors. She also inquired about the closing of the site last year. She was told it was closed because of its commercial use. This will be municipal, which is allowed.

Tait inquired about contribution to the road association. White said he would talk to the Town. Tait responded that it would be the neighborly thing to do. O'Neill asked if everyone contributed to the road fund. He was told that it was a few people. O'Neill's comment was that there should be some compensation for the use of the road. White agreed that the Town should pay something.

The following action was taken by the Planning Board:

MOTION: moved by O'Neill and seconded by Wallace to grant a waiver of the requirement for storm management plan on the condition that storm water management measures be maintained in accordance with the Maine Erosion and Sediment Control Best Management Practices Manual, and a note be put on the plan. Vote 7/0 to approve.

MOTION: moved by O'Neill and seconded by Smith to grant a waiver of the requirement for a full topographic survey. Vote 7/0 to approve.

MOTION: moved by O'Neill and seconded by Smith to grant to the Town of Frye Island

Site Plan Review & Shore land Zoning Approval Permit Approval for the property referenced by Map 2, lot 11 with the following waivers and conditions of approval. Vote 7/0 to approve.

Waivers

Based on its finding that the applicant has proposed reasonable storm water management measures to protect water quality, that only a 9300 square foot portion of the 25.67 acre parcel is proposed for development, and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the requirement for submission of storm water **management plans** for Site Plan approval beyond those submissions already provided with the plan set dated April 18, 2006 on the condition that the storm water management measures be maintained in accordance with the Maine Erosion and Sediment Control Best Management Practices Manual.

Based on its findings that the applicant has provided detailed topographic information on the plan for the area proposed for development, that a full topographic survey of the entire 25.67 parcel would add little benefit to the review process while adding unnecessary expense to the applicant, and that a waiver will not have the effect of nullifying the intent and purpose of the ordinance, the board grants a waiver of the Article V subsection 2.5 requirement that the plan include **contour lines** for all portions of the property.

Conditions of Approval

1. The development shall be constructed and maintained in accordance with the plans, specifications, testimony, submissions, and supporting documents presented to the Planning Board in conjunction with the developer's application for Site Plan Review and a Shore land Zoning permit.
2. Prior to release of the recording mylar, but not later than November 10, 2006, the applicant shall revise the plans pursuant to the testimony and proceedings of the May 10, 2006 Planning Board meeting. Those revisions shall include, but not be limited to:
3. A note stating that all the storm water management measures be maintained in accordance with the State of Maine Erosion and Sediment Control Best Management Practices Manual.

MOTION: moved by Gifford and seconded by Smith to waive the 10 o'clock rule which states that no new business will be taken up after 10:00 without a unanimous vote of the Board. Vote 7/0 to continue.

10:10 pm

5. Applications:

Liastasa Management LLC, Meyer Development & Associates Map 17, Lot 43, LRR1 and Rural – Inlet Point Road

Mineral Extraction Reclamation Plan Amendment

Presentation was given by Pat Cayer of Land Services, Inc. He reviewed the changes that were not on the plan before. He showed the removal of the second entrance, and pointed out the Haul Road. The Haul Road is intended to be temporary and will be revegetated when the project is complete. He stated the applicant is only here because of the new access road as they had received approval for their plan at the January meeting.

Chairman Clark complimented the applicant for the new scenario which he deemed much better. It takes the traffic off from the Inlet Point Road except for passenger vehicles getting to the site. Cayer stated he felt the new element met the standards.

Planner Hugh Coxe reviewed his memo:

Project Description

This application is for an amendment to a mineral extraction reclamation plan which the Board approved at its January meeting. The applicant plans to ultimately develop the 63 acre site with up to 32 age-restricted multi-family condominium units and 14 single family units but first wants to remove approximately 300,000 cubic yards of sand and gravel from the site. As part of that process he sought and received Planning Board approval for a post-extraction reclamation and grading plan.

At the January 2006 Planning Board meeting the applicant presented a plan to remove the extracted material from the site by means of Inlet Point Road to North Raymond Road. The applicant's consultant also indicated at that time that they were exploring the possibility of entering an agreement with Walnut Hill Associates, an abutter in New Gloucester, for Walnut Hill to remove the materials from the applicant's site via the Walnut Hill Property. As a condition of the approval, the Board required that "[a]ny revision to the vehicular access to the mineral extraction site, including access across land located in the Town of New Gloucester, shall require approval of an amended reclamation plan by the Planning Board."

The applicant now has such an agreement in place and is back before the board for approval of an amendment to the original plan to reflect this change. Under the amended plan Inlet Pond Road will not be used for the mineral extraction operation with the exception of possible access to the site with passenger vehicles.

Decisions/ Issues

The board will need to decide if the applicant's proposed amendments to the reclamation plan continue to meet **Article IX, Section E of the Land Use Ordinance** and **Section 15.M of the Shore land Zoning Ordinance**.

Discussion

The amendments to the previously approved plans consist of the following:

- Show proposed grading for the temporary haul road leading to Walnut Hill Associates property
- Remove stockpile area closest to Inlet Point Road
- Remove southerly exit to Inlet Point Road
- Revise language in the “Plan of Operation” section of the Mineral Extraction Plan
- Minor revision to note #1 referencing the temporary haul road on Reclamation Plan

The proposed amendments appear to continue to meet the provisions of the Land Use Ordinance and the Shoreland Zoning Ordinance and almost certainly provide a better solution for removing material from the site. At the January meeting abutters living on or near Inlet Pond Road, voiced concern about the site distance coming out Inlet Pond Road onto the Raymond Hill Road. They testified that the grade is such towards Poland that you cannot see 50' and that big trucks would be a hazard on this road. The proposed amendments to the plans seem to alleviate that concern.

Comments from the Board members:

Clark requested that the applicant submit a letter of approval from the Town of New Gloucester for the project, even though Cayer commented that there was no review needed by New Gloucester for the Expansion of an existing pit.

Nelson Henry questioned the location of the stockpile areas and whether or not that was the best place for them. He further commented that he liked seeing the Haul Road.

Tait inquired about blasting. He was told that none was planned, but if it did occur it would be regulated by the State.

There was further inquiry about the natural river bog. Cayer commented that there would be no disruption and that they were securing a stream crossing permit.

Clark asked about access to a camp road and was told that they would keep the access open.

The following action was taken by the Planning Board:

MOTION: moved by O'Neill and seconded by Gifford to give approval to the amended plan for mineral extraction and reclamation submitted by Liastasa Management, LL.C. Referenced by Tax map 17, lot 43 with the following conditions:

1. The amended mineral extraction reclamation plan shall be followed in accordance with the plans, specifications, testimony, submissions, and supporting documents presented to the Planning Board in conjunction with the application.
2. All conditions from the Planning Board's original approval of the reclamation plan shall remain in effect and shall be met.
3. The applicant shall obtain a letter from the Town of New Gloucester stating that the Town does not have any concerns about the proposal.

At this time a member of the public asked if the Board would allow the public to speak. Although this was not a public hearing, public comment was allowed.

Mickey Carr expressed concerns about resource protection, and what the length of duration would be for the mineral extraction. Cayer commented that they were anxious to get the project underway and go on.

Archie Tripp of 85 North Raymond Road asked about the hauling of wood products and what would be happening to the large boulders. He was told that the logs would be hauled, the tree stumps would be put thru a grinder, and the boulders would be hauled over to the pit to be crushed.

John and Margaret Carr of 49 Inlet Point Road and 16 Watson Circle, Yarmouth, expressed concerns over noise from the grinding and the effect that would have on renting property in the area.

A call was made to vote on the motion. Motion carried 6/1.

Chairman Clark thanked the public for coming.

6. Other Business:

Comprehensive Plan Implementation Committee update was given by Planner Hugh Coxe. CPIC did not have a quorum at the May 4, 2006 meeting. Next CPIC meeting is scheduled for May 25, 2006, and they are looking for additional people to submit volunteer applications with the Town Clerk for appointment by the Selectmen.

7. Adjournment:

MOTION: moved by O'Neill and seconded by Wallace to adjourn at 10:51 pm.

Karen G. Strout
Planning Board Secretary