



Wednesday June 9, 2010

Raymond Planning Board
423 Webbs Mills Road
Jordan Small Broadcast Studio

Minutes*

ATTENDANCE: Chairman Patrick Clark, Vice- Chairman Robert O'Neill, Ginger Wallace, William Priest, Sam Gifford and Greg Foster.

ABSENT: Bruce Sanford.

STAFF ATTENDANCE: Planner Hugh Coxe, Code Enforcement Officer Chris Hanson, and Karen Strout, CEO Administrative Assistant.

1. CALL TO ORDER: meeting was called to order at 7:14 pm by Chairman Patrick Clark. A quorum was declared. Agenda was read stating the purpose of the meeting to review two applications: one for Hall's Way and another for an extension of Whitney Way.

2. APPROVAL OF APRIL 14, 2010 MINUTES:

MOTION: moved by Robert O'Neill and seconded by Sam Gifford to accept the minutes of April 14, 2010 as distributed.

Vote: 5/0/1 (abstention- Clark not in attendance). Motion carried.

3. COMMUNICATIONS:

A letter from Board member Ginger Wallace stating her desire to resign was read into the record. The resignation was accepted and appreciation for her service was expressed. Members wished her well.

An email from Board member Bruce Sanford received by Chairman Pat Clark expressing his desire to be released from serving on the board at this time due to his inability to regularly attend meetings was also read into the record. Member Sam Gifford urged Chairman Clark to contact him to be sure if his decision was final. No formal action was taken on his resignation request.

4. APPLICATIONS:

a. An application referenced by Map 13, Lot 7D was presented to the Planning Board for an "after the fact" approval for private road known as **Hall's Way by Kevin Hall**. The road had already been built, but had not been permitted in accordance with the Street Ordinance. The Town has inspected the road and Public Works Director Nathan White has provided a letter indicating that the road complies with the Town's road standards.

Planner Coxe reviewed his prepared memo giving the background of the application (memo is attached).

A letter from Deborah Cole- Hall, addressed to the Board members, was read into the record expressing the hardships she had endured during this whole process of getting the Planning Board approval.

Board comments:

Consensus was to review the materials supplied in the application as a sketch plan and to give more detailed direction to applicant.

MOTION: moved by Robert O'Neill and seconded by Sam Gifford to review the application as a sketch plan. Vote: 6/0. Motion carried.

No formal action was taken on the application.
7:58 pm.

b. An application referenced by Map 8, Lot 117 for Anne Manning requesting approval for an extension of **Whitney Way** was presented by Dustin Roma of Sebago Technics and Mike Manning.

Planner Hugh Coxe addressed the Board using his prepared memo (attached) and outlined the issues.

Board and staff comments:

Chairman Clark stated that he was confused by the lots shown on the plan and asked for clarification of the consent agreement (copy attached). Code Officer Chris Hanson requested that the Town Attorney give a detailed explanation of the lots and the status of the lots. Clark stated that it looked like a 12 lot subdivision to him.

Public comments:

There was no public comment.

MOTION: moved by Robert O'Neill and seconded by Sam Gifford to table the application until further information could be supplied. Vote: 6/0. Motion carried.

5. ADJOURNMENT:

MOTION: moved by Ginger Wallace and seconded by Sam Gifford to adjourn at 9:01 pm.

Karen G. Strout

Recording Secretary

* Meetings are broadcast live on the public access channel and rebroadcast at a later time. Written minutes are an informal record maintained for the convenience of the public. The DVD is the official legal record of the meeting. DVD Copies may be signed out at the Town Office.

Raymond Planning Board Memorandum

To: Raymond Planning Board
From: Hugh Coxe, Contract Planner
Date: June 2, 2010
Re: Applications for June 9, 2010 Planning Board meeting

Halls Way – Kevin Hall & Deborah Hall

Map 13, Lot 7D – RR
Halls Way
Application for private road approval

Project Description

This is an “after-the-fact” application for approval of a private road known as Hall’s Way located off of Raymond Hill Road. The road is already built and serves three lots, one of which contains a house built in 2006. A second house is currently near completion. After the building permit was issued in 2009 for the second house, the Code Enforcement office discovered that the road had not been permitted in accordance with the Street Ordinance. The record appears to show that the applicants attempted to comply with all local and state regulations and proceeded with construction of the road and the buildings in reliance on permits issued from the town and the DEP.

The Planning Board considered this application at its July 2009 meeting, at which time the Board voted to treat that review as a pre-application/ sketch plan review and to request additional information from the applicants.

Decisions/ Issues

The Board will need to determine whether it will waive some of the submissions required under the Street Ordinance, whether the applicants have provided adequate information for the Board to evaluate the application, whether the road satisfies town standards, and whether the proposed road maintenance agreement is satisfactory.

Discussion

Submission requirements

Submission requirements for street applications are set out in *section 4.2 of the Street Ordinance* and include detailed construction drawings, a stormwater management plan (subsection D.), a soil and erosion sedimentation control plan (subsection J. (1st paragraph)), a phosphorous impact plan (subsection J. (2nd paragraph)), and a road maintenance agreement and plan (subsection J. (3rd paragraph)).

July 2009 pre-application meeting/ Planning Board direction

During the July 2009 meeting the Board directed the applicants to provide the following additional information:

- Calculations of the amount of impervious surface created by the project and whether it would trigger the requirement for a DEP stormwater permit
- A narrative description concerning street standards and how they are met or why they should be waived (150 foot street centerline radius and sight distance were specifically mentioned by the Board)
- A stormwater management plan sufficient to evaluate general impacts to abutters from the development on the quantity and the rate of stormwater runoff or a written rationale for waiving the stormwater plan supported by the opinion of an engineer
- Phosphorous control plan including an analysis of the amount of phosphorous export and the allowable allocation
- Provisions for maintenance of stormwater infrastructure

Impervious area & DEP permits

Although the applicants have provided “as built” drawings that appear to contain measurements of the road dimensions, they have not provided calculations of the amount of impervious area created by the project or an indication of whether the project triggers the requirement for a DEP stormwater permit¹. Furthermore, it is not clear that the drawings contain sufficient detail to make an accurate determination of the impervious area created by this project.

Waiver request & waiver standard

The applicants request that the board “waive some of the normal submission requirements in situations where an actual inspection of the road will do more to insure the purpose of the ordinance has been met.”

The Street Ordinance sets out the **waiver standard** in section 10.A. stating,

where the Board [finds] ... that there are special circumstances, it may waive portions of the submission requirements, the standards, or other requirements, to permit a more practical and economical development provided the waivers do not have the effect of nullifying the intent and purpose of ... this ordinance.

Construction drawings/ Street construction standards

The applicants request a waiver of the requirement for **detailed construction drawings**. They have provided several pages of “as built” drawings along with (previously provided) cross section drawings, an overall plan sheet, a two page wetland alteration plan, and a letter from the Public Works director. The applicants request that the Board accept these submissions as sufficient given that the town’s Public Works director has inspected the actual built road and “detailed construction drawings will be costly to the applicant, and largely unbeneficial of the board in determining the quality of the existing road construction.”

The Town has inspected the street and the Public Works director has provided a letter indicating that the construction complies with the town’s **road standards** and that “the road does not appear to have drainage or construction issues.” The applicants have not provided a narrative description concerning specific street design standards such as street centerline radius and sight distance (set out in **sections 5.5 and 5.8 of the Street Ordinance**) and how they are met or why they should be waived.

¹ DEP stormwater permit is required where a project includes one acre or more of “disturbed area” – land areas that are stripped, graded, grubbed, filled, or excavated - except that disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel may be exempt. Projects requiring a stormwater permit that contain 20,000 square feet or more of impervious area may be subject to additional review standards.

Stormwater management plan

The applicants have provided a written request and rationale seeking waiver of the submission requirement for a **stormwater management plan**. The applicants state that the road “conforms to the town’s requirements for stormwater management” because the lots have vegetated buffers of 25 feet or more on the downward sloped sides and the culvert was installed so that water flow is unimpeded and similar to pre-construction flow. They also suggest that the road has been built since last fall “without adverse effect” and they point to the letter from the Public Works director as evidence the road meets the town’s requirements for stormwater management.

The applicant has not provided submissions which evaluate general impacts to abutters from the development on the quantity and the rate of stormwater runoff and the letter from the director of Public Works (which the Board had at its July 2009 meeting) would not seem to satisfy the Board’s request for a written rationale for waiving the stormwater plan, supported by the opinion of an engineer.

Soil and erosion sedimentation control plan

A **soil and erosion sedimentation control plan** was part of the applicants’ DEP permit and is included in the submissions. Applicants also state that all areas involved in construction have already been loamed and seeded and are growing grass.

Phosphorous impact plan

The Planning Board typically requires a **phosphorous impact plan** on most projects involving road construction and specifically rejected the idea of granting a waiver during the July 2009 meeting. At that meeting the Board requested a plan that includes an analysis of the amount of phosphorous export and the allowable allocation for this project.

In the current application, the applicants request that the Board accept a plan that would “modify the road to prevent phosphorous runoff in a worst case scenario.” The applicants have not provided an analysis of the amount of phosphorous export and allowable allocation but suggest that DEP’s 2008 NRPA/ wetland alteration approval indicates DEP “believes there are no expected phosphorous issues.”

The applicants propose to modify the road by filling drainage ditches with $\frac{3}{4}$ crushed stone and by constructing three 18 cubic foot catch basins filled with $\frac{3}{4}$ crushed stone at the end of each downward slope on the road. The application does not include any drawings depicting the design or location of these proposed modifications.

Road maintenance agreement

The Street Ordinance requires, in subsection J. (3rd paragraph), “appropriate legal documentation” such as a road maintenance agreement “setting forth how the street and associated drainage structures are to be maintained.” The applicants have provided an agreement, identical to one previously reviewed and approved by the town attorney, which would appear to satisfy the requirements of the ordinance.

However the Board did request at the July 2009 meeting that the applicants provide more specific plans setting forth how any stormwater management structures or phosphorous control measures will be maintained. The applicants have not provided any additional material addressing this.

Other Issues

The proceedings of the June 9, 2010 meeting on this application do not constitute a public hearing but public comment may be taken. The Planning Board may schedule a public hearing pursuant to **section 4.6.C. of the Street Ordinance** if desired.

CONSENT AGREEMENT

This agreement is made as of this 22nd day of October 2009 by and between the Town of Raymond (“the Town”) and Michael S. Manning, Anne M. Manning and MGM Builders, Inc. (collectively “Manning”).

WHEREAS, Manning has conveyed a number of lots in a manner which the Town contends has violated Article 10, Sections 2 and 3 of the Town of Raymond Subdivision Regulations and 30-A M.R.S.A. § 4406(1); and

WHEREAS, Manning denies any violation of the Town of Raymond Subdivision Regulations or the state subdivision statute; and

WHEREAS, the Town and Manning wish to resolve their dispute without resorting to litigation; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and without either admitting or denying any of the contentions of any of the parties, the parties hereby agree as follows:

1. Simultaneously with the execution of this Agreement, Manning will pay a civil penalty to the Town in the amount of \$2,500 and will pay the Town the sum of \$6,556.53 as reimbursement for the attorney fees, planner fees and other expenses the Town has expended in connection with the investigation and resolution of this matter. The signature of the Town Manager on this Agreement constitutes acknowledgement of the receipt of those payments.
2. In exchange for said payments, and provided Manning complies in all respect with the obligations imposed on Manning by this Agreement, the Town will consider the following lots to be lawful under the Town of Raymond Subdivision Regulations and the state subdivision statute and will not take any enforcement action with respect to the creation of said lots.

Town of Raymond Tax Map 8, Lot 109A
Town of Raymond Tax Map 8, Lot 110
Town of Raymond Tax Map 8, Lot 112
Town of Raymond Tax Map 8, Lot 114
Town of Raymond Tax Map 8, Lot 115
Town of Raymond Tax Map 8, Lot 116

3. For subdivision review purposes, the parcel currently owned by Anne M. Manning identified on Raymond Tax Map 8 as Lot 117 shall not be considered a lot within a subdivision but shall be considered a separate tract or parcel of land, as defined in 30-A M.R.S.A. § 4401(6), as of October 28, 2002, the date of the last transfer of the land that determined the present boundaries of that parcel. Any further division of that parcel must be allowable under the state subdivision statute, 30-A M.R.S.A. §§ 4401, et seq.
4. For subdivision review purposes, the parcel currently owned by Shaun R. Dudley and Janice E. Dudley identified on Raymond Tax Map 8 as Lots 108A and 108B shall not be considered a lot within in a subdivision but shall be considered a single and separate tract or parcel of land, as defined in 30-A M.R.S.A. § 4401(6), as of December 12, 2002, the date of the last transfer of the land that determined the present boundaries of that parcel. Any further division of that parcel must be allowable under the state subdivision statute, 30-A M.R.S.A. §§ 4401, et seq.
5. Manning will pay for, and the Town will arrange for, an inspection by an inspector acceptable to the Town of the existing road known as Whitney Way and associated stormwater infrastructure to evaluate the design and functioning of the existing development for any significant problems that are causing, or are likely to cause, (1) unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result, or (2) inadequate stormwater management. At the time of execution of this Agreement, Manning will deposit funds in an escrow account to be held by the Town, in an amount determined by the Town to be sufficient to cover the estimated costs for such inspection and evaluation.
6. If the inspector is of the opinion that there are, or are likely to be, significant problems with the road as described in paragraph 5 above, Manning will, to the extent practicable, take prompt action to correct or mitigate the problem to the satisfaction of the inspector and the Town's Code Enforcement Officer. If the inspector has determined that such action is needed, the Town will not issue any permits for construction on the parcels described in paragraphs 3 and 4 above, until the corrective action has been taken or Manning has posted a performance guaranty acceptable to the Town to secure the completion of the corrective action in a timely manner.
7. Upon execution of this Agreement, Manning may re-file an application to the Raymond Planning Board to construct an extension of Whitney Way, and the Planning Board shall review the application under the provisions of the Raymond Street Ordinance.
8. Nothing in this Agreement relieves Manning of any obligations to comply with any requirements of the Natural Resources Protection Act, the Stormwater Management law or any other applicable statutes or regulations administered and enforced by the Maine Department of Environmental Protection.
9. This Agreement creates conditions running with the land which shall be binding on Manning and Manning's heirs, successors and assigns. The Town will record this Agreement in the Cumberland County Registry of Deeds.
10. By signing below, Shaun Dudley and Janice Dudley consent to the terms of paragraph 4 of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

WITNESS

Michael S. Manning

Anne M. Manning

MGM BUILDERS, INC.

By: _____

Its

TOWN OF RAYMOND

By: _____

Donald Willard
Its Town Manager

Seen and Agreed to:

Shaun R. Dudley

Janice E. Dudley

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.
_____, 2009

PERSONALLY APPEARED the above-named Donald Willard in his capacity as Town Manager of the Town of Raymond, Maine and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town.

Attorney at Law

Notary Public/