

MEMO



TO: Planning Board
FROM: Scott Hastings, Assistant Town Planner
DATE: November 28, 2016
RE: Application Review — 7 Carriage Barn Lane
Map & Lot: 0051-0037-A

OVERVIEW

The applicant is seeking approval for a driveway, building envelope, and septic location on the parcel to create access to the potential building location. The parcel is in the wetland overlay, the limited residential shoreland zone, and the Business One zone.

JURISDICTION

The subdivision plans for this parcel as approved in 1990 (and revised in 1991) require that all lots be held to shoreland standards and that any building on the lots be reviewed by the planning board to determine that these standards are met. At the Planning Board's request this application was reviewed by the Town Attorney to determine if the board has jurisdiction to hear the application. The opinion of the Town Attorney is the board does have jurisdiction as described above (see the full response uploaded with the application materials). Procedure for Planning Board review of a shoreland permit application is located in §18.2.5 of the Zoning ordinance. The proposal does not state that wetland will be impacted but given the tight constraints the board should also review wetland permit issuance as outlined in §11.2 and §18.5 of the zoning ordinance, should it become necessary.

RECOMMENDATIONS

1. Application Acceptance. I have reviewed all application materials and find there is sufficient information for the Board to begin its review process.
2. Public Hearing. Following the application acceptance vote or lack thereof, conduct the public hearing to identify any issues or concerns relevant to the decision-making process.
3. Substantive Review and Deliberation. I believe the relevant issues for the Planning Board as part of this application include:
 - A. **Shoreland Review**: Planning board review of shoreland issues is based on the criteria outlined in §18.2.6 of the Zoning Ordinance. The applicant must show to

the Board's satisfaction that the proposed driveway, house, and septic locations consider these points.

- B. Driveway locations in the Limited Residential Shoreland Zone:** The applicant attests that the driveway location is an existing access way and not a new driveway. Driveways are a defined use in the limited residential shoreland zone (§8.2.1.B) however it is non-conforming in regards to shoreland setbacks per §8.3.8.2. §17 governs non-conforming situations. Per §17.1.2 a non-conforming use must be maintained continuously and if it is discontinued for a period greater than 24 months it cannot be resumed. This access way has been abandoned for many years, likely decades, and has only been used in recent memory in conjunction with timber harvesting and/or forest management activities. Both of these uses are permitted uses under §8.2.1.B and separate from driveways.

If it is a new driveway than §8.3.8.2 requires that it follow the structure setbacks in the shoreland zone which can be reduced, with Planning Board approval, to a minimum of 50'. Exact setbacks are not shown but the driveway location is well within the 50' setback for large parts of its length. The Planning Board does not have jurisdiction to reduce this setback below 50'.

The applicant has stated that they feel that the roadbed constitutes a structure. If the board agrees it must review it under §17.2. §17.2.4 states that a structure cannot be reconstructed if it has been damaged for more than 2 years. If the board finds this an existing non-conforming structure it must review the application under §17.2.1.2 and §8.3.11.4. Insufficient information has been submitted to find compliance with §8.3.11.4 with the submitted plan not being detailed enough in regards to exact extents of the proposed drive, grading and draining, or any changes in non-conformity.

- C. Driveway Construction Standards:** The applicant has not submitted a grading plan or construction specifications for the driveway. These elements can be reviewed and approved by the code office when construction permits are applied for. The board should make it a condition subsequent of any approval that the code office determine the driveway will be constructed to the standards outlined in the ordinance.
- D. Septic Locations in the shoreland zone:** Subsurface septic systems are allowed in the limited residential zone per §8.3.9. No clearing of woody vegetation for the purpose of a septic system is allowed within 75' of the wetland. The proposed septic location meets this criteria. The applicant has submitted a septic design which includes a soil test showing the location has appropriate soils.
- E. House location:** The house meets the setback requirements outlined in §8.3.11.2 which require a 100ft set back from the upland edge of the wetland.

F. **Erosion Control:** Erosion control measures are required per §8.3.2 and have been proposed both for during construction and for stabilizing the site (see notes on “Plan Showing Compilation of Previous Site Plans”). These measures were not designed by an engineer. The applicant has not submitted a plan showing grading of the site but the city’s GIS data does not show any slopes over 15% grade which would need to be avoided per §8.3.2.2. Given the lack of a grading plan of construction specifications the board should make it a condition subsequent of any approval that the code office determine that the erosion control plan meets the standards outlined in the ordinance.

G. **Wetlands:** The applicant has not stated that there will be any intrusion into the wetlands but the erosion control berms shown on the plan seem to intrude into the wetland delineation. If the improvements to the road bed require any clearing or filling that extends into the wetland the applicant must receive a wetland permit for those impacts. The MaineDEP has done an evaluation of the wetland and determined it to be one of special significance. As such if the project extends into the wetland it will need a state permit as well. If the impact to the wetland is limited to minor clearing along the wetland edge it is allowed in our ordinances as “incidental to a plan or permit issued by CEO or Planning Board” per §11.3.3.d. Driveways are allowed to impact a wetland per §11.3.2 but the applicant will need to numerate the number of square feet to be affected and show that it will not bring total fill on the lot to an amount greater than 4,300 square feet. There is reason to believe that some fill was done on the site in the past. The applicant would also need to have the impacts evaluated per the requirements of §11.4.1.

Site design elements, such as the driveway design, outside the Wetlands Overlay Protection District must be done in such a way as to minimize wetland impacts per §11.4.2. As such the board must determine that the location is a least impact scenario. Given the lack of engineered plans this can be a part of the condition for Code Office review of construction documents.

- Given the proximity to the wetlands the applicant should be aware that §11.4.6 requires that all “Ancillary damage to the wetland and **adjacent uplands** shall be restored as nearly as possible to the original grade and condition”. The code office can withhold building or occupancy permits or require a performance guarantee to ensure that this condition is met.

Code Office Review: The application was originally submitted to the code office and they have reviewed the driveway portion. They conducted a site visit in May of 2016, at which time the proposed centerline of the drive was flagged. The Code Officer felt that at that time the proposed location was the most appropriate one for a drive accessing the building envelope and that it appeared to follow the old right of way for the majority of its length. The Code Officer did feel that the proximity to the wetland was such that they could not rule out impacts to the wetland without professional documentation such as that required for wetland impacts by §11.4.1. A full statement from the code office has been included in the supporting materials for this application.

Decision:

The board must make two primary determinations before they can begin to rule on this application:

1. The current accessway as the applicant describes is non-conforming in regards to setbacks per §8.3.8.2. The board must determine if this makes the driveway **use** non-conforming (§17.1) or does the roadbed constitute a non-conforming **structure** (§17.2)?
2. If the board feels it is a use, has that use been continuous without a 2 year period of non-use (§17.1.2)? Alternately, if it is a structure has the roadbed been damaged or demolished (including through neglect) for a period of more than 18 months?

If the Board feels that the use or structure has been discontinued or damaged (as applicable) for a period of more than 2 years for a use or 18 months for a structure then the application must be reviewed as a new driveway. The proposed location is not permitted per §8.3.2. The Planning Board does not have the jurisdiction to waive this portion of the zoning ordinance. **On these grounds I cannot recommend approval of this application.**

If the board feels that this is a use that has been continuing and the application constitutes a grandfathered non-conforming use it must review the application per §17.1.6.

If the board feels that the roadbed is a grandfathered non-conforming structure than it must be review the application per §17.2.1.2; enlargement of a non-conforming structure.

In either case the submission is not detailed enough to determine fully the impacts and/or changes proposed at this time. The board can chose to postpone the vote until such time that a site visit can be held. It can request that the wetland extents, current roadbed location, and proposed driveway extents be flagged so as to best evaluate the impact of the proposed driveway; including any expansion or deviation from the existing location. Any site walk will be open to the public.

If the board feels that the uncertainties around the proposal are greater than can be addressed in a site walk or they have not been cleared up by a site walk then **it can issue a “denial without prejudice,”** which would allow for resubmittal with more information. The applicant could then have a more detailed, engineered, driveway plan created so exact extents and grading can be reviewed. This would determine if any impact the wetlands is expected by the build out of the driveway (per §11.4). It would also show that the proposed driveway is not any more non-conforming than the existing roadbed or use as required by §8.3.11.4 or §17.1.6.

If the board reaches a point where it is comfortable making a motion of approval and engineered plans have not been submitted for the driveway, then it should include the following condition subsequent in any approval:

- The applicant must receive approval from the Code Office of complete engineered plans showing that the driveway and associated stormwater and erosion control measures will be in compliance with all applicable standards in the ordinance before construction is begun.