

TOWN OF LYNDEBOROUGH

PLANNING BOARD

May 21, 2020

APPROVED

Meeting held via Zoom technology as allowed by Governor's Emergency Order #12

7:34 p.m. Call to Order & Roll Call

Chairman Paul Best called the meeting to order at 7:34 p.m.

Member Present: Chairman Paul Best at Citizens' Hall; Selectmen's Mark Chamberlain at Citizens' Hall; Vice Chair Tom Chrisenton, Remote COVID-19 with his wife Ginny Chrisenton in the room; Charlie Post, Remote COVID-19 alone; Bob Rogers, Remote COVID-19 alone; Larry Larouche, Remote COVID-19 alone; Mike Decubellis, Remote COVID-19 from home alone.

Bret Mader, Remote COVID-19 alone; joined at 7:43pm.

Members Not Present: Alternate Julie Zebuhr

Public Present: Matt Fish, remote COVID-19 alone; Bob Bell and Diane Bell from their home remotely due to COVID-19

Town Employees Present: Road Agent Mark Chase at Citizens' Hall, Code Enforcement Officer/Building Inspector Leo Trudeau at Citizens' Hall, and T/A Russ Boland from his home

New Business:

Re-Hearing of Driveway Appeal, Map 234, Lot 6 at 714 Center Road. Owner Jason Murphy. Matt Fish was present via ZOOM remote from his home in Wilton

Property owner Jason Murphy, was not present, but sent a letter authorizing Matt Fish to represent him at the April 30, 2020 meeting, which is still valid. Mr. Fish is his son-in-law.

Code Enforcement Officer/Building Inspector Leo Trudeau read a letter he wrote the Selectmen dated 5/6/20 (**See file, Exhibit 1**). The letter referenced Zoning Section 200.01 abandonment.

Mr. Trudeau mentioned that Mr. Fish is a Selectman in Wilton, and he felt Wilton has tougher driveway regulations than Lyndeborough therefore Mr. Fish is aware of the procedures. The Town asked Mr. Fish to fill out a driveway permit after it was brought to their attention that a new driveway was constructed at 714 Center Road.

Audio issues around 7:40pm

Matt Fish disagreed with some of Mr. Trudeau's statement and said, "Leo called me out as a Wilton Selectman which is not right, wrong". Mr. Fish stated there were four visits to the site by the Road Agent and Mr. Trudeau.

Mr. Trudeau read an email dated 5/19/20 from Atty. Chris Drescher. The email letter referenced the Lyndeborough Zoning Ordinance definition of "Abandonment" and RSA 236:13. Atty.

Drescher agreed, “the portion of the driveway that Matt Fish ‘resurrected’ cannot be considered ‘grandfathered’ since it was in fact abandoned.” He also wrote that constructing the driveway without a permit violates RSA 236:13. **(See file, Exhibit 2)**

Mr. Fish felt he made it clear that he has nothing to hide and he thought the driveway was always there.

Paul Best felt that based on the facts presented, it did meet the definition of abandonment.

7:56pm: Lost audio with Matt Fish

Bob Rogers said he assume that driveway was abandoned and it was abandoned for more than one year. He wondered if the process should start over. His concerns included:

- 1) If the driveway does not meet sight distance then the Board should not allow it.
- 2) The Town has a long-standing policy to minimize curb cuts on Center Road.

To allow those driveway under those circumstance would violate both of those.

Paul Best asked about the 90-degree angle and what are the issues that need to be remediate. Leo Trudeau explained the approach needs to be corrected to become compliant with Town of Lyndeborough’s driveway specifications and there is no apron. He said there is an easy solution that was outlined in his letter that includes reworking the end 20 feet, move the rock and bush and turn the end of the driveway.

Bob Rogers asked for clarification on which driveway was being discussed.

Matt Fish said he lost connection about 8:00 pm and wondered if he missed much. He said his in-laws are willing to reconstruct the driveway if necessary. Mr. Fish earlier in the day submitted a few photographs that showed his mini-van and F550 dump truck in the driveway.

Larry Larouche suggested a site visit. He also has concerns for other older properties, such as his farm on Center Road, where driveways openings are used for farming that are not used often and could the Town say they can’t use them. Bob Rogers agreed on a site visit.

Bret Mader said he drove by there twice a day for 25-years and never noticed the second driveway there. He asked if there is a simple solution other than making a second entrance.

Mr. Fish said there are historically two entrances to the driveway, which is memorialized in those plans. A former owner built the barn. There was a dispute with the Town on an additional driveway cut to the barn entrance. He mentioned other driveway cut to the barn. His in-laws do not, and will not, use the driveway cut.

Charlie Post had a comment on the photos submitted earlier today with the F550, which is much taller than an average vehicle, and worried of the sight distance. A response was that sight distance is calculated at 3 feet off the ground. In response to an earlier comment that aprons are not enforced, Mr. Post said that because there is a regulation that is not enforced, does that give him the right to drive 100 MPH down Center Road if it is not enforced, that is an invalid argument.

Tom Chrisenton wanted to refresh everybody’s memory that the Board voted that both driveway would be there at the last meeting and Matt Fish agreed to do whatever regulations the road agent would describe. In his opinion, abandonment 201.01 does not deal with driveways and that is a ZBA issue. He felt their decision still stands. He suggested the course of action is for the Board

to decide if they will remove the old decision. If the Board does not want to then the Selectmen or the Code Enforcement Officer can appeal.

Some members of the Board felt it would be challenging to prove the driveway was abandoned.

Mr. Chrisenton felt there are many driveways along Center Road that are not compliant and they should not single out this particular driveway.

Paul Best suggested the Board come to a fresh decision.

VOTE: Mark Chamberlain made a motion for the Planning Board to perform a site visit at 714 Center Road. Bob Rogers seconded the motion.

Discussion on a site walk and a debate if the last vote still stands. Mr. Chrisenton felt there should not be a site walk if they already agreed on the vote. Bob Rogers said it is because they voted to rehear the case. Debate continued.

VOTE: Tom Chrisenton moved to table the current motion on the table. Bret Mader seconded.

Roll call: Bob Rogers, Nay; Mark Chamberlain, Yes; Tom Chrisenton, Yes; Larry Larouche, Yes; Bret Mader, Yes; Mike Decubellis, Yes. **Motion passed 5-1-0.** 8:23 p.m.

The Board discussed that the vote last meeting did not address the apron and an amended vote should clarify that the owner is willing to comply with the Road Agent's requests.

Paul Best reminded the Board they agreed to rehear the case and it would make sense to continue the hearing and gather more information and have a site visit.

Larry Larouche said that what the Code Enforcement Officer presented tonight did not change his opinion of his vote from the last meeting, pending a site visit.

Charlie Post has a concern about the Town's liability if there is an accident due to the driveway cut with the "Entrance Only" sign. Currently, there is a flowerpot with that written on it.

Mark Chamberlain mentioned that the sign is not enforceable. Driveway regulations allow for second driveway for a disabled person, but suggested when the property is sold, and there is no longer a disabled person living there, that this caveat is no longer applicable therefore make it a temporary driveway. Previously, Mr. Fish expressed a future access need for a handicap ramp. *Mark Chamberlain provided a draft of construction drawing, See attached for Exhibit 4*

VOTE: Tom Chrisenton moved to amend the vote discussed at the last meeting. The northern driveway will have a sign, which was discussed at the last meeting that says it shall only be used as an entrance only. The Southerly driveway will have the have the correct angle. 8:35pm

Paul Best asked for the apron requirement to be included. Discussion continued for clarity in the motion. Last month's motion was reviewed. Matt Fish asked to speak but the Chairman said they are in the middle of a vote and it's not a good time.

Some members again asked clarification on which driveway is the north or south driveway. The southern has the angle and apron issue.

VOTE: Tom Chrisenton moved the motion shall require the new southern driveway to follow the intersection angel of 60-90 degrees, and the owner shall construct the paved

apron, and shall require the northerly driveway to be an “Entrance Only”, and shall erect a sign accordingly. Mike Decubellis seconded the motion.

The Board discussed the language in relation to the affirmative vote at the previous meeting. Mr. Chrisenton agreed to rescind this motion.

FINAL VOTE: Tom Chrisenton moved, the Motion is to affirm the prior month’s decision with clarification that shall the motion require the southern driveway to follow the intersection angel of 60-90 degrees, and the owner shall construct the paved apron, and shall require the northerly driveway to be an “Entrance Only”, and shall erect a sign accordingly. Larry Larouche seconded the motion.

Mark Chamberlain said he is opposed to leaving the second driveway there. He added a major discussion point is for the Road Agent to approve this. He reminded the Board they took this task out of the Road Agent’s hands.

Matt Fish asked the Chairman if he is taking any public comment. A back and forth with the Code Enforcement Office commenced that included the process of a driveway permit, compliance and the rehearing.

Lisa Post, remote from her home due to COVID-19, has a concern about the Town’s liability if someone gets injured at that approved driveway section and mentioned Vicarious Litigation. There is no legal enforcement of the proposed sign. Mark Chamberlain added that is someone violates the sign, it does not absolve the Town or Boards of anything because it is not enforceable.

VOTE: Bob Rogers, Abstained even though he thinks this is establishes a bad precedent; Tom Chrisenton, Yes; Mark Chamberlain, No; Larry Larouche, Yes; Bret Mader, Yes; Mike Decubellis, Yes; Paul Best voted Yes. Motion passed 5-1-1.

Request for Info:

Dan Holt regarding the former quilt shop building. Mr. Holt was not present.

Minutes:

December 2019

VOTE: Bob Rogers moved, Larry Larouche seconded to approve the December 19, 2019 minutes.

Roll Call: Paul Best, Yes; Selectman Chamberlain, Yes; Tom Chrisenton, Yes; Bob Rogers, Yes; Larry Larouche, Yes; Bret Mader, Yes; Mike Decubellis, Abstained. **Motion passed 6-0-1**

Matt Fish lost Zoom contact but reentered the Zoom meeting at 9:05 p.m. to ask another question. He asked which direction should the text on the “Entrance Only” sign face. The answer was to have it a Double Sided sign so it can be seen from inside the property and from the road.

April 23, 2020: Work Session -Test for Zoom

VOTE: Bob Rogers moved, Mark Chamberlain seconded to approve the April 23, 2020 Work Session

Roll Call: Paul Best, Yes; Selectman Chamberlain, Yes; Tom Chrisenton, Yes; Bob Rogers, Yes; Larry Larouche, Yes; Bret Mader, Yes; Mike Decubellis, Yes. **Motion passed 7-0-0**

April 30, 2020

The Board discussed amendments. An amended version was requested prior to a vote.

May 17, 2020: Site Visit to Bell-GSC Tabled until the June meeting. (*see below for vote*)

Review of research for procedures: Removing Note from a plan Map 232, Lot 20

Abutters have NOT been notified, a public notice has NOT been posted. Darrell Cooper and Karl Zahn were before the Board on Feb. 20, 2020 for an informal discussion.

This is an informal discussion for the Board to review the data that was requested at the last meeting to help make an informed decision on how to proceed with a request from Darrell Cooper of 41 Cooper Lane in Lyndeborough (formerly Center Road) to remove Note 11 from his 2015 subdivision plan, "No Further Subdivision". Map 232, Lot 20

The secretary provided meeting minutes from May 21, 2015 and June 18, 2015 when the most recent subdivision was approved. **See file.** The Board wanted to know the circumstances around why the note was put on the plan. In the minutes, it is clear that the applicant and his land use surveyor, Tom Carr of Meridian Land Surveyors, said there would be no further subdivision due to insufficient road frontage. Mr. Cooper's original lot was first subdivided around 2011, then again in 2015 for a total of three lots. There was also a lot-line adjustment. The property is in RRI and the Village District.

Mark Chamberlain shared information he obtained from Atty. Stephen Buckley at NHMA in an email dated 5/21/20 and shared that with the Board. In the email, Atty. Buckley discusses the Board's ability to revisit prior if there are material changes in circumstances as well as the importance of finality in Planning Board proceedings. (**See attached, "Exhibit 3"**)

The Board felt the note of, "No Further Subdivision" is clear.

It was also discussed that at the same meeting when Mr. Cooper's 2015 subdivision was heard, there was also a subdivision hearing for a property on Center Road that wanted to use a "paper" stub road for additional road frontage. Since then, zoning regulations have changed.

The secretary informed the Board that Mr. Cooper submitted a letter and abutter list but no action has been taken pending the Board review of their research. Mr. Cooper was emailed a letter on May 13, 2020 with this information.

Paul Best inferred from the NHMA letter that the Planning Board has the power but it is not advisable to revisit prior conditions of approval.

VOTE: Mike Decubellis moved, Bob Rogers seconded, that the Note 11, "No Further Subdivision", stands as it is and the Planning Board will not remove it from the Plat.

Roll Call: Bob Rogers, Yes; Mark Chamberlain, Yes; Tom Chrisenton, Abstained; Larry Larouche, Yes; Bret Mader, Yes; Mike Decubellis, Yes; Paul Best, Abstained.

Motion Passed 5-0-2.

The Board will not hear Darrell Cooper's request to remove the Note 11, "No Further Subdivision".
After meeting note: Mr. Cooper was mailed a letter with the Board's decision dated, May 26, 2020.

Continued Business:

Site Walk Discussion: Map 213, Lot 05. Property of Bob Bell at 38 Tarn Road.

Bob Bell and Diane Bell were present via Zoom. 9:31pm

A site walk took place on Sunday, May 17, 2020 at 1:00 p.m. Present were Bob and Diane Bell and Peter McClellan from Granite State Concrete. (*see minutes dated 5-17-20*)

Mr. Bell expressed that the only time he has any response from Mr. McClellan was when the Planning Board stepped in. He is frustrated because he has repeatedly made effort to resolve this. Diane Bell asked when they should expect the soil testing to be done. The Bell's would like to see a timeline put in place. Mr. Bell also inquired if the last time Granite State Concrete, Co. was in for their renewal permit, was the approval contingent on his satisfaction with the buffer. He said, "Right now he is not satisfied one bit." The Bells would like to avoid the past problem of the trees being planted at the wrong time.

The Board shall draft a letter to Granite State Concrete with the results of the site walk and the understanding they will reach out to the UNH Cooperative Extension or the last company that planted to trees to determine a plan then share that information with Bob and Diane Bell and the Planning Board.

Minutes Continued:

May 17, 2020: Site Visit to Bell-GSC at 38 Tarn Road

VOTE: Bob Rogers moved, Larry Larouche seconded to accept the minutes of the site walk to the Bell property at 38 Tarn Road, Map 213, Lot 05, to view the buffer.

Bob Rogers, Yes; Mark Chamberlain, Yes; Tom Chrisenton, Yes; Larry Larouche, Yes; Mike Decubellis, Abstained; Bret Mader, Yes; Paul Best, Yes. **Motion passed 6-0-1.**

Item Not on the Agenda:

None

Next Month's Agenda:

Vote for chairman and vice chair

Minutes: Amended April 30, 2020 and May 21, 2020

Follow-up with Bob Bell regarding his buffer and response from Granite State Concrete
Driveway update from Code Enforcement regarding Murphy driveway at 714 Center Rd.

A procedural discussion regarding the agenda was mentioned but the Zoom meeting time was close to ending so this can be discussed at the next meeting.

Adjournment:

VOTE: Mike Decubellis made a motion to adjourn at 9:53, Larry Larouche seconded.

Roll Call: Bob Rogers, Yes; Tom Chrisenton, Yes; Larry Larouche, Yes; Mike Decubellis, Yes; Bret Mader, Yes; Paul Best, Yes, and Mark Chamberlain, Yes. **Motion passed 7-0-0.**

Respectfully submitted,

Kathleen Humphreys
Planning Board Secretary



Town of Lyndeborough
Office of the Building Inspector

9 Citizens' Hall Road
Lyndeborough, New Hampshire 03082

Office:
Telephone: (603) 654-5955
Fax: (603) 654-5777

Leo Trudeau:
Cell Phone (603) 620-7428

PB 5-21-20, Exhibit 1
Submitted by Leo Trudeau
Reference: J. Murphy, M. Fish
714 Center Rd., Map 234, Lot 6

May 6, 2020

Planning Board
9 Citizen's Hall Rd
Lyndeborough, NH
Attn: Paul Best, Chair

Dear Paul and all members of the Planning Board,

Please consider this letter a professional and respectful request by the Board of Selectmen for you to re-hear the appeal of Jason Murphy's driveway denial, for the following reasons:

Whereas: the Owner, along with a member of the Board of Selectmen from the Town of Wilton, excavated an area of yard at 714 Center Rd, Lyndeborough, NH, for the purpose of installing a new driveway in the location of a decades-prior abandoned driveway. Please see Town of Lyndeborough Zoning Regulations Section 200.01 **Abandonment**.

Whereas: the Owner made the decision to excavate and construct said driveway without first applying for a permanent driveway permit.

Whereas: the Owner constructed the new driveway without regard or adherence to current and adopted Town of Lyndeborough Driveway design specifications. Specifically, the angle of approach to a public way and a required minimum paved apron.

Whereas: after repeated attempts by Road Agent M. Chase to have the Owner make a formal application for a driveway permit, finally a permit for a new permanent driveway was applied for and subsequently denied by Road Agent Chase, on the grounds that the already installed driveway was non-compliant with adopted regulations.

Whereas: the Owner continued using the non-compliant new driveway after denial by Road Agent Chase, and a brief phone conversation with Code Enforcement Officer L. Trudeau, and more than one phone conversation with Town Administrator R. Boland.

Whereas: after following precise instructions for attending the virtual appeal hearing dated April 30, 2020, Code Enforcement Officer Trudeau was denied the necessary audio

connection to attend, therefore denying Mr. Trudeau his right to express his perspective and his obligation to address the code violations which had been committed.

And Whereas: The Planning Board ruled in favor of allowing the Owner to continue using the non-compliant driveway without any correction or remediation of the still existing code violations.

Mr. Chairman and members of the Planning Board, any and all sets of adopted regulations that were voted on and approved at a legal Town Meeting, were designed and presented by the sitting Planning Board at the time of adoption. Therefore, the ruling by the Board, on April.30, in this matter was a direct contradiction of its own regulations. Therefore, a motion for reconsideration should be granted as soon as possible.

Code Enforcement Officer Trudeau has been duly instructed by Select Board members Douglas and McQuade—Chairman Chamberlain abstaining to avoid ethical conflict—to present this request for a rehearing directly to Chairman Best, in a respectful effort to move quickly towards resolution of this matter.

Please consider this low-cost remedy to bring the new driveway into compliance. Simply rework the end twenty (20) feet of driveway, correcting the entrance angle to within the 60 degrees allowed by Section V, paragraph H of current Town of Lyndeborough Driveway Regulations. Then install the required five (5) foot paved apron per Appendix A, paragraph 1.

Thank you, Mr. Chairman, for your consideration.

Respectfully,

A handwritten signature in dark ink, appearing to read "Leo M. Trudeau", is written over a horizontal line.

Leo M. Trudeau
Code Enforcement Official

christopher.drescher@drescherdokmo.com Tue, May 19, 2:03 PM (2 days ago)

to Russ, **william.drescher@drescherdokmo.com**, me

Hi Leo,

As you requested, we have reviewed the Lyndeborough Zoning Ordinance's ("LZO") definition of "**Abandonment**." (*LZO Section 200.01*). We have also taken a look at RSA 236:13, which is the controlling statute on this matter.

We agree with your interpretation of LZO Section 200.01's definition of Abandonment. There is no evidence to suggest that the portion of driveway at issue was used anytime in recent years, indeed, at all. As such, we agree with you that the portion of the driveway that Matt Fish 'resurrected' cannot be considered 'grandfathered' since it was, in fact, abandoned.

However, that is only part of the problem. The real 'sin' is that Matt Fish ran off and did the construction with no permit – thus, no permission, which violates the provisions of RSA 236:13, as well as, the Town's own rules as outlined in the Permit Application. Furthermore, the construction that Fish did (*with no permission*) was also *not* done to the required specifications. As for the details of said specifications I will defer to your capable knowledge. I just want to be sure that the 'big picture problem' is not lost.

Give us a call if you have any more questions and be well,

-Chris

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From : Mar chamberlain <civilmac@tds.net> Subject : Fwd: Lyndeborough: No further subdivision note To : Paul K Best <paul.k.best@gmail.com>, Tom & Ginny C <roads@tds.net>, bret m mader <bret.m.mader@baesystems.com>, mikedecubellis@gmail.com, bobrogers@netzero.net, Charlie Post <skituckermans@gmail.com>, sharonakers12@gmail.com Cc : Russell <rboland@lyndeboroughnh.us>, Kathleen Humphreys <kmbh@tds.net>	Thu, May 21, 2020 09:28 PM PB Meeting 5-21-20, Exhibit 3 Submitted by M. Chamberlain Reference: Darrell Cooper, Map 232, Lot 20
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Information received regarding the Darrell Cooper application.

Mark

Begin forwarded message:

From: Legal Inquiries <legalinquiries@nhmunicipal.org>
Date: May 21, 2020 at 3:22:28 PM EDT
To: "civilmac@tds.net" <civilmac@tds.net>
Subject: Lyndeborough: No further subdivision note

Good Afternoon Mark:

Planning Boards have the ability to revisit prior conditions of approval, such as this one concerning no further subdivision of the subject property. If there has been a material change in circumstances since the original approval in 2015, then the board might be justified in granting permission to further subdivide the property. Generally, a prior decision of the planning board should not be lightly reconsidered and revised in the absence of new or different circumstances. Finality is essential to planning board proceedings. Administrative finality prevents repetitive applications for the same relief, conserving the resources of the planning board and of interested third parties that may intervene. It also limits arbitrary and capricious administrative decision-making, while still preserving the ability of the planning board to revisit earlier decisions when circumstances have changed. CBDA Dev. v. Town of Thornton, 168 N.H. 715, 716 (2016).

If the board determines that there are sufficient changed circumstances to warrant removal of the no further subdivision condition, then the board would have the applicant apply for subdivision approval to create the proposed additional

lots and remove the condition prohibiting further division of the property.

Stephen C. Buckley
Legal Services Counsel
NH Municipal Association
25 Triangle Park Drive
Concord, NH 03301
Tel: (603) 224-7447
Email: legalinquiries@nhmunicipal.org

-----Original Message-----

From: Mark Chamberlain <civilmac@tds.net>
Sent: Monday, May 18, 2020 12:52 PM
To: Legal Inquiries <legalinquiries@nhmunicipal.org>
Subject: No further subdivision note

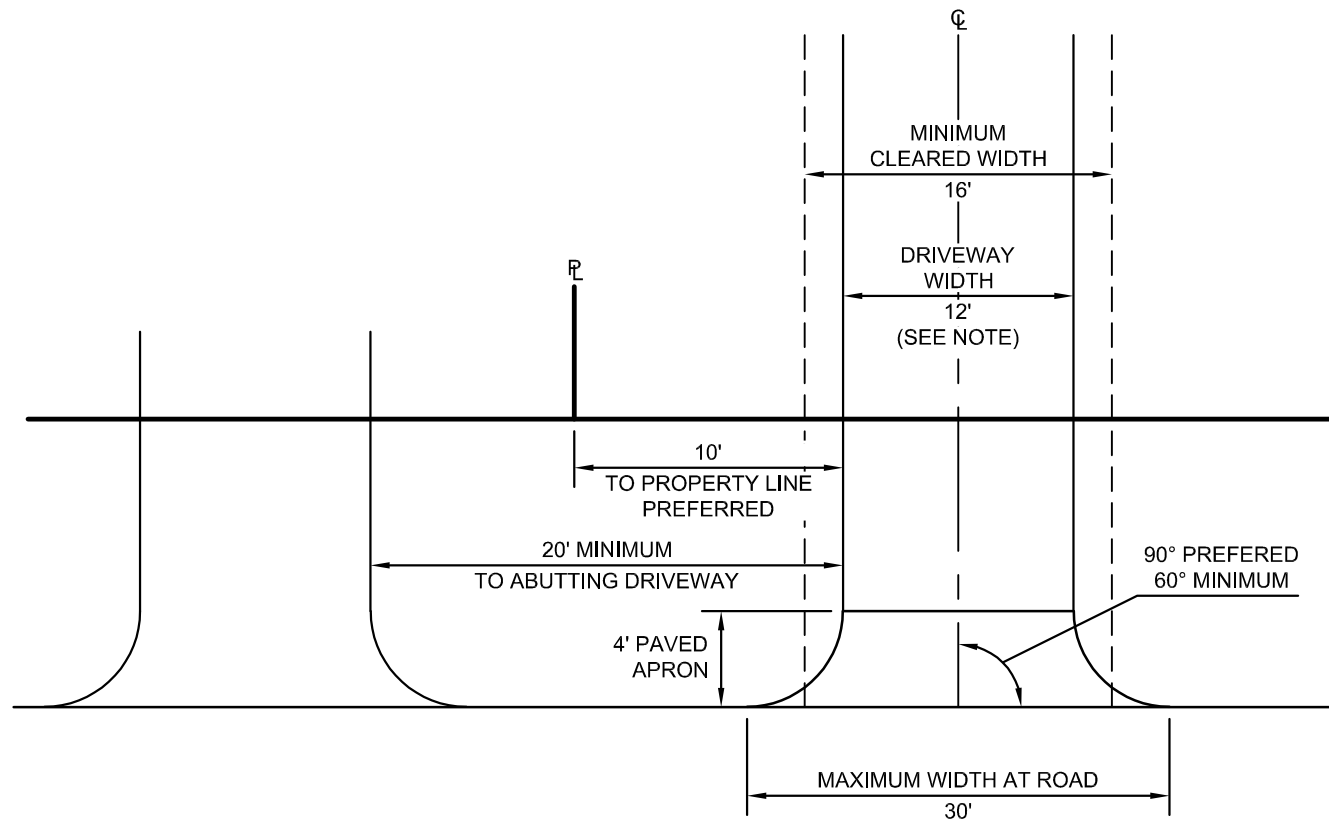
The Lyndeborough Planning Board has been presented an application to request an amendment to a two lot subdivision plan approved in 2015 (HCRD #38582), a condition of which was to add a note to the plan. The note states "THERE IS TO BE NO FURTHER SUBDIVISION OF TAX MAP 230 LOT 20." The applicant/owner for both the 2015 subdivision and the 2020 application is the same. He agreed to the language at the 2015 meeting. This subdivision followed a 2011 two lot subdivision of the original parcel.

The Boards question is, having put that requirement on the plan, can or should they hear a request to remove it?

If it is possible to remove the language, and the Board decides to do so, what would be involved in doing so?

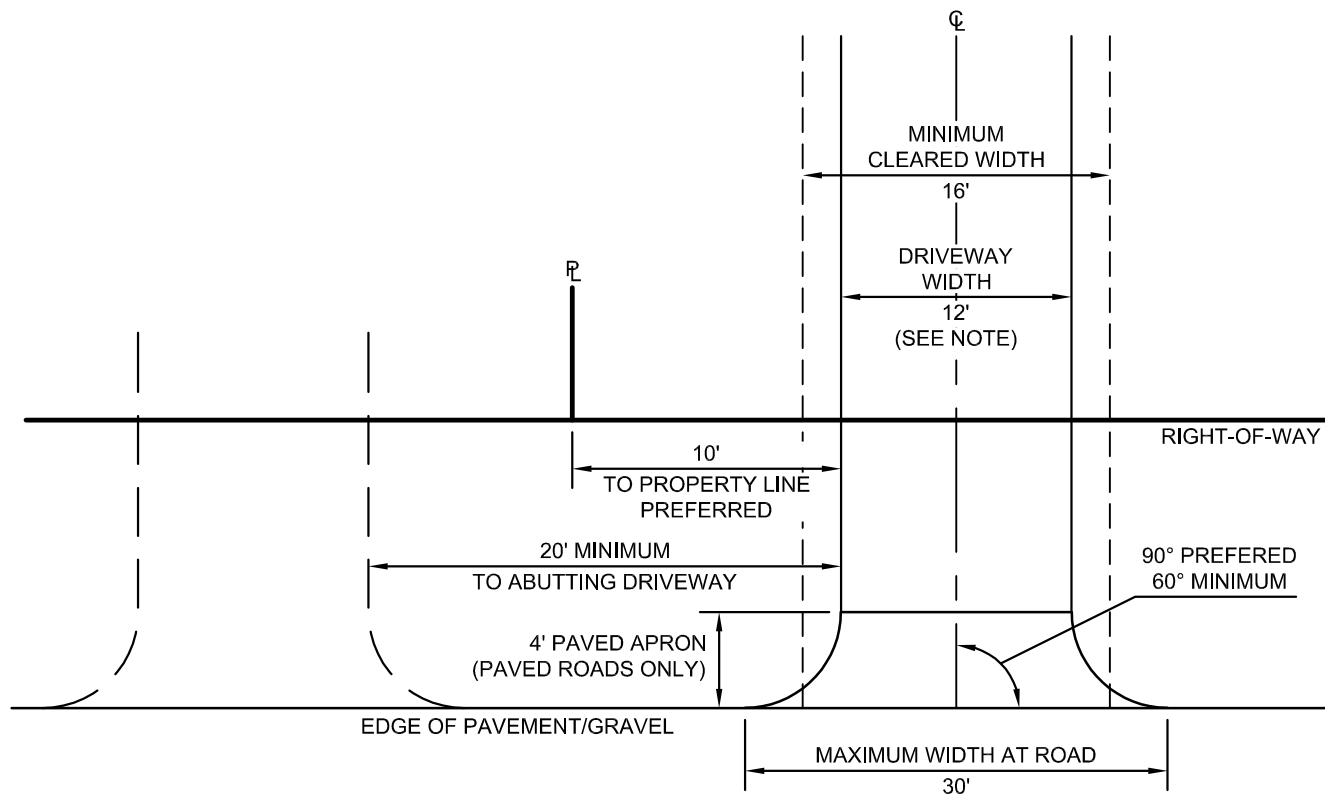
For the Lyndeborough Planning Board
Mark Chamberlain, Selectmen's Representative

PB 5-21-20, Exhibit 4
Submitted by Mark Chamberlain
Reference: Murphy-Fish
714 Center Rd.
Map 234, Lot 6



PLAN

RESIDENTIAL DRIVEWAY
NOT TO SCALE



PLAN

RESIDENTIAL DRIVEWAY

NOT TO SCALE