

Town of Northumberland  
Planning Board  
Location; Town Hall  
Accepted by the Planning Board  
Monday, February 27, 2023  
7:00 pm  
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**Planning Board Members Present:** Vice Chair James Heber, Melanie Eggleston, Lisa Black and Marybeth McGarrahan

**Members Absent:** Jeff King, Brit Basinger, Holly Rippon-Butler and Chair Susan Martindale

**Town Employees Present:** Lindsay Dodd, Town Counsel, Charlie Baker, Town Engineer and Tia Kilburn, Clerk

Vice Chair Heber opened the meeting and addressed all in attendance and asked them to stand and salute the flag at 7:00 pm. Quorum established, with Ms. McGarrahan as acting member.

Vice Chair Heber announced the first item on the agenda; Application #: 0002-19, Site Plan / Shoreline Overlay, Irony Alliance / George Story, West River Road / Thompson Island. He asked Mr. Baker, Town Engineer if he had questions regarding this application? Mr. Baker asked if he received his letter sent today, the Board replied yes.

Mr. Dennis Phillips Attorney for the applicant stated he could start with what he has. Vice Chair Heber agreed. Mr. Phillips submitted a packet to Vice Chair Heber and stated he believes there are a lot of things that have been covered from the EDP, Environmental Design Partnership, Mr. Baker's letter dated February 27<sup>th</sup>, today. On the first page he has an index of some of the things that are in the record, going back before covid and things were shut down. 1<sup>st</sup>, going back to 2019 the Planning Board letter which indicated that as far as Saratoga County was concerned there was no significant county wide or inter-community impact with this project. Then there is a letter from DEC, National Heritage Program indicating there are no rare State listed plants or animals at this site, and in connection with that the last thing he has is an email from Dr. Sarah Hale and also a member of Irony Alliance, he explained she is a doctor of veterinarian medicine and also very familiar with wild life, there was a question the last time they were here as to if there are any Eagles nesting on Thompson Island and based on her daily walks around the island there are none, he added he thought she was qualified to make that statement and Mr. Story could probably make that statement as well that there are no Eagles nesting on Thompson Island. Also in the file is a report by GEO Engineering, it is engineering speak and there is nothing in there that would indicate that you cannot build anchor abutments to the bedrock in this area. Army Corp of Engineers has issued a non-jurisdictional letter in this case and no permit is required by the Corp. and the same with DEC they issued a non-jurisdictional email. He stated these are all in the record, otherwise this record has been building and building over the years. Vice Chair Heber reiterated all this stuff should be in the record, Mr. Phillips replied it is in the Board's record already and he was just doing a highlight because this has been around for a while. Mr. Phillips continued and stated they have a permit for the construction of the driveway, EDP mentioned that today, following that the new plans from MJ Engineering in terms of the drainage plan for the parking area, that is in the record. Vice Chair Heber asked Mr. Baker if he had that, Mr. Baker replied no, and the Clerk also stated she did not have that in the record. Mr. Phillips asked Mr. Story if he had delivered it. Mr. Story said he thought he did, the Clerk showed Mr. Phillips the last two items she had from Mr. Story. Mr. Phillips gave Mr. Baker an email with the drainage plan attached, Mr. Baker stated he did not receive that prior to the meeting.

Mr. Phillips stated in 2023 there is the Ambient PCB report and the Phase I Archeological Investigation, which indicates no further investigation is necessary at this site by Hartgen Archeological Associates and item #10 of the packet he submitted tonight is the MJ Engineering drainage and grading plan for the driveway and lastly you have the email from Dr. Sarah Hale, there are no Eagles on this property. These count as a response to some of the questions that were raised at the last meeting.

Vice Chair Heber stated Mr. Baker has not looked at it yet, and he asked if they actually got the driveway permit from the County? Mr. Phillips replied yes. He stated Mr. Baker needs to review the drainage plan, not tonight.

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and those are the people that are going to see it. Mr. Phillips stated going from North to South it is a fairly wooded area, Mr. Baker interjected the photo simulation might show no change, Mr. Phillips said going from South to North, which he did the previous day, and as you come into that area there is a curve to the left and you will want to keep your eyes on the road so you are not looking at the river you are looking at the road and that is quite far down river, probably more than 600'. He added he is trying to identify what spots you would like photos to be taken from. Mr. Baker stated they can have Saratoga Associates or whoever say they have evaluated the project from West River Rd and there will be no visual impacts then you don't necessarily need to do the photos.

Mr. Phillips asked the Clerk for the packet he gave her tonight; he said item #6 is the report of Saratoga Associates they have a visual impact conclusion he read a portion; the bridge span itself is low profile comprised of semi-transparent timber and cable structure elements which create a low stimulus arch like form with minimal visual mass. The use of natural earth tone colors helps to blend the structure with the background of the shoreline, minimal tree removal is necessary allowing existing shoreline vegetation to provide a meaningful visual screen of the shoreline support towers, approach span, ramp and vantage points along the western shoreline of the Hudson River, and he added in the last paragraph it states based on the photo simulations the location and design of the proposed suspension bridge results in minor visual contrast with local river front landscape as such the design provides a minimally intrusive method for direct access to Thompson Island. Mr. Phillips stated that is the opinion of the expert on that, he wanted to make sure the Board had a complete photo shop to look at, looking at what the expert looked at without any direction from him or Mr. Story or anybody else, he added they have them in color. Vice Chair Heber stated he believes what Mr. Baker is saying is along the road, what they have before them is basically looking at the bridge, he added he thinks the bridge is fine, the impact is minimal, but the question has been raised about the view along the road, is there something in the packet about the view from the road? Mr. Phillips stated there are photos in the Hartgen report and also he can take some photos from the road. The Board reviewed the Hartgen report. Mr. Baker told Vice Chair Heber it was a recommendation and it is up to the Board if they think they have enough information to answer that question when it come to SEQRA as far as the visual impacts. Mr. Baker added if they look at the same Saratoga Associates report, read the paragraph at the bottom they clearly say the report is based on the views from the river, there is nothing in there that says it is not going to be visible from the road, and that is what he is suggesting, but it is the Board's decision whether or not they feel they have enough information. Mr. Phillips said he can provide what Mr. Baker is asking he said he was just confused about what do they do now. Vice Chair Heber said if they get a letter from Saratoga Associates, Mr. Baker interjected that says they have reviewed the project from view sheds along West River Rd and they feel it is not going to be visible due to existing vegetation or whatever conclusion they come up with that way the Board has something when it comes time for them to go through the SEQRA process and answer the visual impact questions they can refer to that as their evidence that they have looked at that and there is no issue. Mr. Phillips agreed, stating they understand.

Mr. Phillips asked on the other aspect of the report, item #3 on the soil testing, the findings appear to be incorrect, are they the mathematical calculations? Mr. Baker replied yes and explained they draw the conclusion in their report that the abutments are going to be 20' above the normal elevation of the water and that is incorrect, the abutments are actually going to be below the normal water elevation, to put the footings in for the abutments they are going to have to dig below the normal water level of the river according to the MJ Engineering plan. Mr. Phillips said none the less digging in the bank, so the abutment will be below the water level but in the bank the bedrock. Mr. Baker agreed, and added they conclude in their report that there are no PCB's based on the elevation being 20' above the normal water level, he said he didn't think it will change their conclusions at all but he thinks they need to take a look at it. Mr. Phillips asked Mr. Baker if he could have MJ Engineering speak with him about

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that so they can get it clarified. Mr. Baker said that report wasn't done by MJ it was actually done by Ambient Environmental, but yes they can certainly contact him, MJ or Ambient, but he thinks he clearly explained in his comment in the letter, if they look at the comment and the MJ plan they will know what he is talking about.

Mr. Phillips stated they have more homework to do, Vice Chair Heber agreed. Mr. Story, applicant discussed what is needed with Mr. Phillips. Mr. Baker reviewed the MJ plan with Mr. Phillips and Mr. Story to explain to Mr. Story the footings and the water level. Mr. Phillips stated it might be 5' above the normal level not 20' above. Mr. Baker agreed. Mr. Story asked what the problem was because if it is in the bedrock what is the difference?

Mr. Baker explained in order to put the footings in you have to excavate, they are going to be digging into the embankment, Mr. Story said it is solid rock, Mr. Baker said if it is solid rock ok, but there is going to be excavation there and if there were any PCB's that were deposited in there, and he is not saying there is, it is in the report that it is highly unlikely but they need to verify that knowing that there is going to be excavation down at that level and that the conclusions drawn in the report are still valid. Mr. Story replied they couldn't get through the rock to get there, because it is all solid ledge. Vice Chair Heber stated they need to show that on the plan if it is. Ms. Eggleston stated they need to apply it at the level it will be at, they have done it at the wrong level, Mr. Baker agreed, and said their conclusions don't support the plan that was submitted to the Board. Mr. Phillips asked if it is the Hartgen conclusion he is talking about? Mr. Baker replied no, it is the Ambient PCB report.

Mr. Phillips reiterated Ambient needs to coordinate with MJ relative to these locations, Mr. Baker agreed and said they should have in the beginning so they knew the elevations they were dealing with. Mr. Phillips stated that they would try to reconcile those things. Mr. Story asked what should they have done. Mr. Baker explained they should have had a copy of the plan and they should have based their report on those elevations.

Ms. Claudia Braymer, Esq. addressed the Board and stated she was representing Mr. Walsh, neighbor to Mr. Story and Mr. Walsh was unable to attend the meeting tonight. She said they support the Board in requesting additional information, they were two of their big concerns about PCB's in the riverbank and also the views and she thought it was the Boards consensus to ask the applicant last time to have that information so she is glad they are still looking for that because she thinks it will still be needed for the basis for the Board in determining with the SEQRA review there is a potential significant adverse impact or it could be the basis for the Board to deny this application as it has too many adverse impacts and does not meet the Town's site plan review criteria and the stringent shoreline protection criteria.

Vice Chair Heber stated there was more to get, Mr. Phillips agreed.

Vice Chair Heber announced the next item on the agenda, application #: 0012-22, major subdivision / shoreline overlay for James O'Donnell, 1439 West River Rd, Mr. Phillips also represents Mr. O'Donnell

Mr. Phillips stated relative to the application tonight is the response from Saratoga County Planning Board, he said he has never seen a County Planning Board want to be a Town Planning Board, it seems to him that the County Planning Board wants to do this Board's job for you. In terms of some of the Engineering they talked about, the last time they were here they talked about; as they take baby steps with the project before they get too far down the road because each step they take cost so much money, you have a report from MJ Engineering relative to the engineering studies, that they know they have to do there is a \$10,000 cost to that, that is in a letter in the file. Mr. O'Donnell is prepared to do that but they are looking to get a preliminary approval contingent upon the feasibility

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of that engineering not creating any kind of adverse impact relative to the drainage of the Hudson River and the area. Now, based on what the County Planning Board is saying they want them to do that upfront and they are not going to look at this application as being complete unless they have what would normally be your job instead of their job. Vice Chair Heber stated he suggest they talk to the County Planning Board because this Board as a Town Planning Board wont be able to give them approval until they can give them an approval. Mr. Phillips said County gives recommendations, Vice Chair Heber agreed and said it has always been this Board follows any recommendations that they come out with, especially because it is on a County Road. He added they are asking for a little bit more then they usually ask for. Mr. Phillips stated the reason they are on the agenda tonight is that they did not want to go out of step they want to follow a due process of the law and basically ask this Board if they can deal with the County Planning Board directly relative to some of the information you have in the file; for example on the SHIPO stuff, there is one SHIPO letter in the file but both SHIPO letters are not in the file before the County Planning Board and the first SHIPO letter went back to 2005 and identified what the historic site was and then the Federal Register shows the historic site and the more recent SHIPO letter seems to broaden that dramatically and they thought that the County Planning Board should have that information. They want to make sure the County Planning Board has all the correct information because the County Planning Board, he thought, went off on a couple of tangents on the SHIPO stuff, which they have talked about at great lengths before this Board, he stated they would like to talk to County Planning Board but they don't want to overstep their bounds in doing that, they want to follow a proper procedure, so if they could coordinate with the Clerk relative to what they have, what was sent already and where they think the gaps might be they would like to have the opportunity to do that. Mr. Phillips added he has never seen a County Planning Board come back with a letter like this before. Vice Chair Heber stated the Board has, every once in a while they come back with something. Mr. Phillips stated he has been in front of many Planning Boards, probably 10 Counties, the nice thing about it is there is always a first.

Vice Chair Heber stated he agrees they should work with the Clerk for whatever (County Planning) they need. He added they wont get SEQRA done until County gives a recommendation, that is just the way it is, Mr. Phillips stated they already have given a negative declaration on SEQRA, Vice Chair Heber asked why County is concerned, Ms. McGarahan stated County disagrees with it. Mr. Phillips stated they are not lead agency in this process, they are not an involved agency with this project so he is saying he is not disagreeing with what they say but he felt they were usurping what would typically be a Town Planning Board function. Ms. Eggleston stated it seems the first thing County is commenting on is the historical thing. Mr. Phillips stated he doesn't think they have the most recent report from Saratoga Associates before them, because he thinks that report may have come in after the referral when to the Saratoga County Planning Board, because they were concerned about a lot of the visual stuff, the visual mitigation between the existing historical house and what the other properties might look like in relationship to the historical house, so he is saying did they miss that, or didn't they have it? He reiterated they should see what County Planning has and what they don't have. Mr. King asked Mr. Phillips if he had a copy of the Saratoga County Planning letter, Mr. Phillips replied yes.

Vice Chair Heber said as far as this Board, they have to get it through County Planning first, discussion ensued on the delay and what information Saratoga County Planning Board has. The Clerk said additional information was sent after she received the letter, like Mr. Phillips is saying. Mr. Phillips asked the Clerk if Ms. Bender could work with her and see what they have and then they can talk to the Planning Board as well, the Clerk agreed, Vice Chair Heber and the Board all agreed.

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The Board agreed to table recommendations for Chair and Vice Chair to the Town Board until more members are present.

Vice Chair Heber asked if there were minutes to approve?

Ms. Eggleston made a motion to approve the December meeting minutes,  
Ms. McGarrahan 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Vice Chair Heber asked if there were any additional business for the Board, none was noted.

Ms. Eggleston made a motion to adjourn at 7:45 pm,  
Ms. Black 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Respectfully Submitted,  
Tia Kilburn  
Planning Board Clerk