

Town of Northumberland
Planning Board
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Accepted by the Planning Board
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Planning Board Members Present: Melanie Eggleston, Lisa Black, Holly Rippon-Butler, Jeff King, Brit Bassinger, David Williams, Michael Haag and Chair Susan Martindale

Members Absent: Vice Chair James Heber

Town Employees Present: Dave Brennan, Town Counsel, Michael Terry, Code Enforcement and Tia Kilburn, Clerk

Chair Martindale opened the meeting and addressed all in attendance and asked them to stand and salute the flag at 7:00 pm. Quorum established.

Chair Martindale announced new business **application #: 0011-23, Ian Macicia, Major 2 lot subdivision corner of Goff Rd and Grange Hall Rd, Agricultural District, SBL: 156.-1-5.21.** She stated the owner of the property is Gordon Sacks and she asked if there was an authorization letter from him in the file, the Clerk responded yes.

Ian Macicia introduced himself to the Board and explained his proposal as a two-lot subdivision, subdividing 10 acres out of 17.49 acres to construct a single-family residence. Chair Martindale asked if there were any maps to look at, Mr. Macicia stated there should be small maps in the packets and he has a large map. The Board reviewed the map.

Chair Martindale reiterated it is now 17 acres, agricultural and he wants to split off 10 acres and the lot he wants to split off is labeled 1B, Mr. Macicia agreed, she asked if the lot 1A will be 7.49 acres, Mr. Macicia agreed. Chair Martindale asked if the lots had the minimum road frontage, she read 457' for one and confirmed the other had enough as well.

Chair Martindale asked if anybody had any questions, Mr. Williams asked where the house was located? Mr. Macicia replied it is vacant, Chair Martindale said there is a house in the area, Mr. Macicia showed the Board where an existing house was located, and it is not on the parcel they are subdividing. The Board reviewed the aerial of the property and discussed the existing house. It was determined it was on a separate lot. Mr. King asked if there was a proposed building site. Mr. Macicia replied he was unsure, but he will be building on the site.

Ms. Eggleston asked for clarity, she asked Mr. Macicia to show her the parcel he is subdividing, Mr. King asked if it was currently two parcels (one with the existing house), Mr. Terry replied yes, Mr. King asked if it would be a lot line adjustment? Mr. Terry stated the two parcels are separate, the applicant is subdividing the one outlined in blue. Discussion ensued on the original configuration and the proposal.

Chair Martindale asked if part of the lot was currently used for agricultural, Mr. Macicia replied yes and after he subdivides 10 acres he is going to build a house and maybe have a couple of horses on there.

The Board questioned why it was a major subdivision, Mr. Terry replied because it was previously subdivided and now it will be 4 lots from the original.

Chair Martindale asked if a SEQR, State Environmental Quality Review form has been submitted, the Clerk replied no, but she can assist them with that using the DEC Mapper.

Mr. King asked if he currently owned the property, Mr. Macicia replied no, Chair Martindale added he is looking to subdivide and get approval before he closes the deal, she added they have an authorization letter from Mr. Sacks, the owner for Mr. Macicia to proceed with the subdivision.

Ms. Eggleston stated the 7-acre parcel being in the agricultural district will be under the 10-acre requirement for farming. Discussion ensued. Mr. Terry stated it is 5 acres for a single-family residence in the agricultural district, Mr. Williams added they just can't farm on it but they could put a house on it. Ms. Eggleston agreed.

Chair Martindale asked if there were any additional comments or concerns from the Board, Ms. Eggleston asked if it was being farmed currently, Mr. Macicia stated at this point is just overgrown.

Chair Martindale asked if there were any historical markers, Mr. Macicia replied no, Chair Martindale said there is a historical thing in the area but not on this property, Mr. Williams said it is on the other side of the road.

Chair Martindale stated they need to have a public hearing, she asked if they were ready for that step. She asked if they needed to have the SEQR first before scheduling. She stated she was not hearing anything from the Board of being hesitant for approval, with preliminary approval they can get the SEQR, send it to County Planning and public hearing scheduled. She asked for a motion.

Mr. King asked if they needed any testing, perk or other test, Mr. Terry responded they can do that at the time of application for a building permit.

Mr. Basinger made a motion to accept preliminary approval, send it to Saratoga County Planning Board and schedule a public hearing for November.

Ms. Eggleston 2nd the motion,

All in attendance unanimously agreed.

Chair Martindale stated they will schedule the public hearing for November 27th, the fourth Monday in November, at 7 pm.

Chair Martindale announced the next item on the agenda; **application #: 0009-23, Peter Wells, POA for Joyce Wells, Minor 2 lot subdivision, West River Road, Agricultural District, SBL#: 91.-1-19.11.**

Mr. Wells introduced himself to the board, Michael Wells introduced himself as his brother. Mr. Peter Wells stated he is subdividing property for his aunt to sell, Chair Martindale stated it is currently one parcel and they are looking to split it into two, she said one parcel will be 59 acres and the 2nd one will be 183 acres. Mr. Wells agreed. Chair Martindale stated there is road access on West River Road for parcel #1, she said parcel #2 has no road frontage. Mr. Wells said it has an existing road that goes up to the back, an easement of 50' road frontage. He indicated on the map the location of the easement. Chair Martindale asked if there was going to be a dwelling constructed on the second parcel, Mr. Wells replied it is all farmland, he explained he would like to keep it that way and someone said he can put a stipulation in there that it remains farmland, he added the dump is out there so nobody will be building out there. Discussion ensued on different processes of protecting the parcel as farmland.

Discussion ensued on the 60' Right of Way for the 2nd parcel. Chair Martindale asked Mr. Brennan if it meets the Town Regulations having a 60' Right of Way. Mr. Brennan stated he was discussing that with Mr. Terry, he said he is not reading it as being a Right of Way he is seeing it as part of the lot, Mr. King said the way the lot lines are drawn it appears to be part of the lot. Mr. Brennan agreed and explained it is part of the lot and not a Right of Way because it is not crossing someone else's property, he said his next question was if 60' was enough under the code and Mr. Terry has already looked at it and he said yes that is acceptable configuration for the back lot. Mr. Wells stated his Aunt use to own 5 acres where one of the houses are and he left 60' there to go through. Mr. Brennan reiterated Ms. Wells kept the 60' and not that she sold the whole lot and made a 60' easement over it, reviewing the map Mr. Brennan explained that 60' was part of the entire family property, the 5 acres was carved out and the 60' was left for access to the property. Mr. Wells agreed.

For clarification Ms. Eggleston reiterated the farming is in the back and will be sold and then they will have 60' access for a driveway, part of the property and not a Right of Way. Mr. Wells agreed and said the front will be his and they are selling the back. Mr. King stated Counsel is telling them 60' is sufficient, Mr. Brennan stated it has to be 60' of road frontage and not a Right of Way over someone else's property because then you have a land locked lot, and there is part of the building code that says you can't issue a building permit, which may be fine today but it may not be fine in the future. Mr. Brennan added there was discussion that it is going to be used as agricultural which is a good starting point but there is nothing written that says that has to remain, he could sell it and the buyer could change their mind, he said it is next to the landfill which makes him nervous for the landfill buying it.

Chair Martindale asked about a conservatory, it can still be sold with the understanding it remains agricultural? Mr. Brennan explained it can still be sold, like a conservation easement but typically if it gets sold the person that holds the easement rights and if someone wants to sell it, it becomes less valuable down the road, the conservation easement is going to say they can pretty much not do anything, basically you cannot use it for much of anything except for agriculture or timbering. He explained a deed restriction is personal between the people who own and buy it, the deed restriction is nice for the two of them, such as if you put a deed restriction on there between the two of you that you don't want a gas station back there, and it turns around and a gas station wants to go there and it is worth \$50,000 they can sign off and release the restriction and this Board has nothing to say about it. He added a deed

restriction is helpful, but it is not for the long term like a conservation easement with a third party like Saratoga Plan. He added being next to the landfill makes him nervous, for the landfill buying it. Mr. Wells said they had the chance, and they can still go to this other buyer, it is not up to him. Discussion ensued on how to protect the land.

Mr. King made a motion to accept the preliminary maps, submit to Saratoga County Planning and schedule a public hearing,
Mr. Williams 2nd the motion,
All in attendance unanimously agreed.

Chair Martindale stated the public hearing will be scheduled for the next meeting, November 27th. She asked if the SEQRA has been submitted, the Clerk replied yes, Mr. Brennan stated they may want to take care of the SEQRA tonight because technically it is suppose to be done and a negative declaration or findings statement prepared before the application is complete by the subdivision rules, he asked the Board to do that so when it is sent to County you can include that.

Ms. Eggleston read through part one (questions and answers) of the SEQRA which was completed online using the Department of Conservations online mapper tool, most of the questions are automatically filled out by the mapper tool.

Mr. Brennan read part two of the SEQRA form aloud and the Board answered, Mr. Brennan stated they can now determine that this project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, a negative declaration can be issued.

Mr. King made a motion to declare a negative declaration on the SEQRA full form,
Mr. Basinger 2nd the motion,
All in attendance unanimously agreed.

Chair Martindale announced the next item on the agenda, old business, **application # 0012-22, Major Subdivision / Shoreline Overlay for James O'Donnell located at 1439 West River Rd.** She stated they are here tonight to give a final review, Mr. Baker, Engineer for the Town has given his final review satisfied with information supplied by the applicant. She added Saratoga County Planning has responded. She asked if the applicant would like to give a presentation.

Mr. Basinger recused himself.

Dennis Phillips, Esq. counsel for the applicant introduced himself, he stated the Board has the engineering plans and final plat, he stated a couple of points he would like to make that have evolved since the last time they were here, he stated he prepared a letter to submit to the Board to put in writing the same set of notes requested. He stated the last time they were before the Board there was a great sense of concern regarding the aesthetic protection for the Colonel Sidney Berry house, that has been ongoing throughout the review. He stated he has put in prospective what the background is of that, item number 6 of the letter, the heading of Aesthetic Protection of the Colonel Sidney Berry House, he makes reference to the SHPO 2021 letter, where SHPO suggested to the extent this property should be developed there should be vegetative buffer, that was very important to SHPO, he said under the subcategory b of that section, he included the visual report from Saratoga Associates, that report was provided to the Board because the Board was very concerned, so that was to give the Board something to look at when looking in and looking out would be when it is built out. Mr. Phillips continued and stated they have the recommendation from Saratoga County Planning Board, that says there should be screening between lots one and two, so the integrity of the historical home would be intact. He stated in consultation with this Board and the Town Attorney for vegetative screening he suggested the Board look at page S2 of the maps, because that is the map that would be ultimately filed in the Clerks office, he stated there are 4 notes which will become conditions of the Planning Board, he explained note #4 deals with the vegetative screening; he read in part, Each deed for Lots 1 and 2 in the subdivision shall contain a restrictive covenant that reserve the 25 foot setback areas between Lots 1 and 2 for plantings and vegetative screening in accordance with the Landscape Plan shown on Sheet S5, he said if they look at sheet S5 you will see a landscape plan on the boundary line between lots 1 and 2, the purpose of the landscape plan would be to minimize the visibility between the historic Colonel Berry house, lot 1 and any new residential development on lot 2 and in addition to that, restrictive covenant, they will include a condition that the screening shall be maintained and replaced on a as need basis by the owners of lots 1 and 2, that will be a covenant restriction that will run with the land, to forever protect the integrity of the

aesthetics of the Colonel Berry house. Mr. Phillips stated what is new since the last meeting is the note on the S2 map which will be the filed map, the landscape plan that goes along with it, that was done to protect the aesthetics of the house and it seems to follow all the recommendations from the State Agencies, the County Agency and hopefully it satisfies the concerns he has heard from this Board. He stated next, something new there were additional concerns by some members of the Board for wetland protection, he said item number 10 in his letter states there will be two additional notes, #1 and #3, it not only protects the wetland, but it also protects the adjacent area, 100 feet from the wetland. He read note 1 aloud;

Deeds of conveyance for Lots 1-5 must contain the following language: "The Grantee herein acknowledges that there are wetlands on the property described herein and that such wetlands and adjacent area of 100 feet are protected by the New York State Freshwater Wetlands Act under Article 24 of the Environmental Conservation Law and the regulations promulgated thereunder, including the requirement for obtaining a permit from the New York State Department of Environmental Conservation before undertaking any regulated activity. Notwithstanding the foregoing, each deed to a Lot in the subdivision shall contain a restrictive covenant that there shall be no development of filling of wetlands located on the Lot." That is going to be prohibition, there is no sense in going to DEC and asking for a permit, as this Board is proposing a prohibition against any wetland development. He then stated note number 3 is going to extend that area of protection, 100 feet from the wetland boundary and he read note 3, "Each lot in the subdivision shall contain a restrictive covenant that says permanent markers shall be installed and placed along the wetland 100 foot buffer area in order to prevent landowners from expanding their yards into the buffer area and creeping into the wetlands." He added that prohibits people from slipping by over time and that will be enforceable by the Code Enforcement Officer, if there were any encroachment on that. Mr. Phillips stated there is added wetland protection over and above what they had originally talked about.

Mr. Phillips stated at the last meeting of the Planning Board, Vice Chair Heber stated there had to be the Right to Farm Law, note #2 puts anybody on notice that residents in the area should be aware that farmers have the rights to undertake farm practices which may generate dust, odor, smoke, noise and vibration.

Mr. Phillips said the notes and restrictions were a combination of the thoughts of this Board and the language recommended by the Town Attorney, he stated he thought it was restrictive when he first looked at it, Mr. O'Donnell is looking to please this Board and to protect the land, he still lives there in the Colonel Berry House, so as a landowner wants to save it to a certain extent and satisfy this Board to the greatest extent possible on the aesthetics and the environment protection of the area.

Mr. Phillips concluded he thinks the engineering that has been done as required by this Board has been detailed with the before and after pertaining to the 100-year flood. If you look at the engineer plans, reading some of the narrative on the engineer plans, it is a book because it is so detailed and involved, he added he thinks it was well done. He stated on behalf of Mr. O'Donnell, who is in attendance, based on the engineering, the expert reports in the record, the detail he would think that this Board would think they have passed the test and he hopes they have reached the point where they can get a final approval on this unanimously because they have worked hard to satisfy all the terms that this Board has set.

Chair Martindale asked if the Board would like to make any comments, Mr. Williams asked if there was a schedule for the vegetative plantings that will go in there? Chair Martindale replied yes, she went over them earlier in the day in the office, she discussed the plant schedule, she stated it appears it will go well with the rest of the plan they have there. Chair Martindale added that the fact they put in there that the owners cannot expand into the 100-foot wetland buffer she assumes that also includes fences, there will be no buildings, no sheds or play structures, no swimming pools. Mr. Phillips agreed. Mr. Williams asked what their idea was for the permanent markers, Mr. Phillips stated he thinks it will be probably low like the surveyors stakes they put in the ground, like re-bar they put in the ground with plastic caps, he is willing to discuss that with the Board. He added the wetland is already delineated not with permanent markers but with flags but as they work through all the areas they can go spot to spot and put re-bar with the plastic caps, that will make it permanent so it can be seen but they were not looking at anything that would stand up and be visible. Mr. Williams asked if the permanent markers would be denoted on the survey map in case they were moved or removed they could be found by a surveyor, and they can say it has been moved or removed? Mr. Phillips said he thinks as a condition of approval you can require when a building permit is issued or before a building permit is issued you can require that the markings are in place, so that is a condition of the building permit, that would be the time to do it because he imagines each new owner is going to have to have a site plan survey of the property. Mr.

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Williams said his thought was after 5 years of them living there they take it out there would be no maker. Mr. Phillips stated it is against the law to remove a survey stake, Mr. Williams said it is on the survey, Mr. Phillips stated that is what he is suggesting that on the site plan it be put on the survey. Discussion ensued on the markers on the survey / maps.

Mr. Brennan explained what he has seen in another Town that had this issue markers were kind of like fiber glass with a little curve to it, slender pole put in the ground that stuck up 2 or 3 feet so it was more permanent and wasn't a survey stake down in the ground where it would get lost or run over. He added he will defer to the Board for that and he does think that a condition of approval they decided at what spacing they want markers, not like every 10 feet, and it doesn't like it has to be every 1,000 feet but as a condition of approval the survey crew goes out and puts them in now and not in the future as to where the wetland boundary is, that is the way to do it. Mr. Brennan showed Mr. Phillips on his laptop what the markers look like he was referring to. Mr. O'Donnell also reviewed the marker and stated it is the same as what he has, Mr. Phillips asked Mr. O'Donnell if he was willing to do that, Mr. O'Donnell agreed. Mr. Haag reiterated it would be noted on the survey map, Mr. Phillips agreed.

Discussion ensued on placement and enforcement of survey markers, Mr. Williams said if he were to just throw re-bar in the ground, it can be moved or removed, that doesn't fall under the statute of the penal code because it is not an actual survey stake, but if it is on the survey map, and it says wetland marker noted by degrees and distances, as a Trooper you can say it becomes part of the penal code, Mr. Brennan said he was review the education law section, Mr. Williams continued otherwise how would they determine it was a wetland marker or a construction marker. Mr. Brennan read the law in part any person who knowingly damages, destroys, disturbs, moves or replaces any boundary marker placed on any tract of land placed by a licensed land surveyor or by any person by the direction of a licensed land surveyor for the purpose designating a point, course or line in the boundary of any tract of land of which he or she has no legal interest in shall be punished by a civil fine of not more than \$500 and the cost of reestablishing the line. Mr. Williams reiterated it should be on the survey, Mr. Brennan said it says any course, point or line in any boundary of such tract of land, so he said he does not think education law applies, he added for these markers they are not a boundary line so he is not sure it applies. He explained what they do is put a note on the filed map, S2, a note to show it, when you file a map then in twenty years when it re-sold they go to the County Clerk and get a copy of the filed map for the property it will be listing out the notes and a title company will list out they are subject to the following like lot #2 is the one that will have the 25' of plantings, the title company will have that map with your lawyer and in 5 years when they come in and you say why did you chop down all the trees and they say they can do what they want, you can say no, it is on the filed survey map. He said the same thing, a note on the survey map, markers delineating wetland buffer zones that are permanent and not to be removed or altered or something along those lines as a condition of approval. He added they want to add it is subject to the Town Code Enforcement Officer as part of the subdivision approval to box in the subsequent owners so down the road when they start selling the house people will tell you they didn't know about it, so you want it on the map and in the deeds. He stated his point is that it shows the plantings on the map, but what you want is for it to show on the filed map the extent of that area where the landscaping needs to be maintained. Mr. Phillips stated Mr. O'Donnell will be agreeable to putting the vegetative landscaping plan on S2 map and will also be agreeable to show on the map where permanent visible markers are going to be relative to the 100-foot adjacent area is.

Ms. Rippon-Butler asked if Mr. O'Donnell was planning on building the houses or just selling the lots and the people will build? Mr. O'Donnell said he will be building and selling them each. Ms. Rippon-Butler said she is looking at the map and the shape of the houses are the same, she is wondering if there is a way they can stipulate that all the houses do not look exactly the same, that would contribute to what they are trying to avoid, a subdivision along the road, she was unsure if that was within the Boards rights to comment on. Mr. O'Donnell stated they had represented the homes in a picture done by Saratoga Associates, and they showed 4 different houses, completely different designs and he would imagine that the homeowners would want different designs from the ones next to them, he added but they will all be in keeping with that period of time of the Colonel Berry house. Mr. Brennan reiterated they are borrowing architectural features from the house? Mr. O'Donnell agreed.

Mr. King stated he would like to make a comment. He said in his opinion, when Ms. Rippon-Butler speaks about the aesthetics, he thinks that for him it's the design, he thinks a lot of attention has been paid to the historical nature of the house, they have talked a lot about the parcel, a tremendous amount of engineering because they are in a sensitive area, in his opinion the layout of this doesn't quite match with the area. He said if they were evaluating this in any other area that didn't have a lot of historical value he maybe more into it, but he feels like they are in an area they are subdividing down the road

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there are large rural parcels and to him putting in houses one right after another close to this historical property, he doesn't feel it fits with the overall feel of the area. Mr. Phillips stated a subdivision has a lot of subjectivity, but he thinks what Mr. O'Donnell has tried to do in this case, to fit the subdivision within the law, in terms of what the lot sizes are, he hears what they are saying about other subdivisions in a non-suburban town he gets it and thinks there should be historical preservation and Mr. O'Donnell has made tremendous effort to take that issue off the table, he thinks going forward they don't want four same houses in a row, you want character and based on his conversation with Mr. O'Donnell he does to. He added there is subjectivity there and he can't deal with subjectivity he can only deal with what the law allows and protect the environment he is hoping those things will be taken into consideration. Mr. King stated there certainly is their code and there is what the law allows them as a Board, it is their job to take those other things into account as well.

Ms. Rippon Butler asked what as a Board are they approving at this meeting? Mr. Brennan explained at the last meeting they approved preliminary now they are asking for final subdivision and any conditions of approval that have come up when you look at the final plans, he stated he pointed out a couple and some of them he has sent in an email with some comments that have subsequently been incorporated into the notes. Ms. Rippon Butler reiterated they are commenting on the lines where they currently are, Mr. Brennan said the lines were approved last month. Ms. Rippon Butler said ok the lines were approved but can they comment on the location of the houses? Mr. Brennan said he thinks the location of the houses is still within some flexibility within the setbacks, the layout of the subdivision itself was approved last month so typically on subdivision approval you are not going back and saying where the lines are, they were basically approved last month, you are looking at if there has been a subsequent change with the final that you should re-visit something.

Chair Martindale asked if there were any additional comments or concerns to be discussed, none were noted. She asked for a motion for a final approval.

Ms. Eggleston made a motion to approve the subdivision, Chair Martindale added with the conditions discussed that have been included on the survey map, Chair Martindale asked if there was anything else they wanted to add to the conditions, Mr. Brennan stated the buffer was also going to be included on the S2 map, including the area where it has been delineated so a subsequent purchaser can see that on the map, Mr. Williams added the perpetual maintenance, Mr. Brennan stated that is on the notes, he read on the map it says lots 1 & 2 have a restrictive covenant which reserves the 25' area in accordance with the landscape plan, in which plantings will be maintained and replaced on an as needed basis by the owners of lots 1 & 2. Mr. Brennan suggested the Board could empower the Code Enforcement Officer in the building permit process to confirm that the plans proposed are borrowing from the architectural features of the Colonel Berry House, that is represented that is what is going to be built. He said what you would typically see is that the building inspector be tasked with it, it will not be whether he likes it or doesn't like it but it must be something that those architectural features can be demonstrated on a set of plans so there is some adherence to that representation. Chair Martindale stated Ms. Eggleston's motion would include those points, Ms. Eggleston asked what the guidelines for the building inspector are, it seems subjective. Mr. Brennan stated they would tell an architect that they need to build houses that in the architectural features they will have 6 over 6 windows, shutters and that it is not a brick ranch house, he added there is subjective and then there is not clearly keeping with the architectural, it has to be something Code Enforcement can look at, not like a 1960's ranch house that has nothing to do with this federal with Greek revival. If they get into a fight with Code Enforcement, they can come back to the Planning Board and show you the plans and you can talk about it, he stated he is talking about gross deviations.

Chair Martindale stated the motion includes that the Code Enforcement Officer will make sure the building plans include the architectural features that are in the Colonel Berry House, that the permanent markers for 100-foot from the wetlands is noted on the final document, Mr. Brennan added and installed prior to the building permit, Chair Martindale continued and said the vegetative buffer zone is included on page S2 for the final plat, she asked if there were a second to the motion, Mr. Williams 2nd the motion.

Chair Martindale asked for a roll call vote;

Vice Chair James Heber	absent	Melanie Eggleston	yea
Lisa Black	yea	Holly Rippon-Butler	yea
Jeff King	yea	Michael Haag	yea
Chair Susan Martindale	yea	Brit Basinger	abstained
Dave Williams	yea		

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Motion passed unanimously.

Mr. Brennan stated before Mr. Phillips leaves, he had handed out tonight the decision for Mr. Story regarding the bridge, that claim was dismissed if you want to read it, it is all there, he said basically they went through the SEQR form and talked about a lot of stuff, he said that is why they do it because when it comes to litigation we can win the case. He said that is behind them and now they have papers due on Friday for the mine litigation. He added they also won the other one on Cornell and Foreman.

Chair Martindale stated this is an important job they have, and she discussed co-operation among the members of the Board and thanked them for their work and thoroughness, she stated other Towns you hear about arguments. She said she appreciated how this Board gets along and makes decisions.

Chair Martindale made a motion to adjourn the meeting at 8:35 pm,
Ms. Eggleston 2nd the motion,
All in attendance unanimously agreed.

Respectfully submitted,
Tia Kilburn
Planning Board Clerk