
TOWN OF SOUTHEAST PLANNING BOARD AGENDA

July 25, 2016

CIVIC CENTER, 1360 Route 22

7:30 p.m.

PUBLIC HEARINGS:

1. **SANTUCCI, 5 Shady Lane** – Public Hearing to Review Request from the Town of Southeast Building Inspector to Determine if a Special Permit for Excavations and Grading is Required

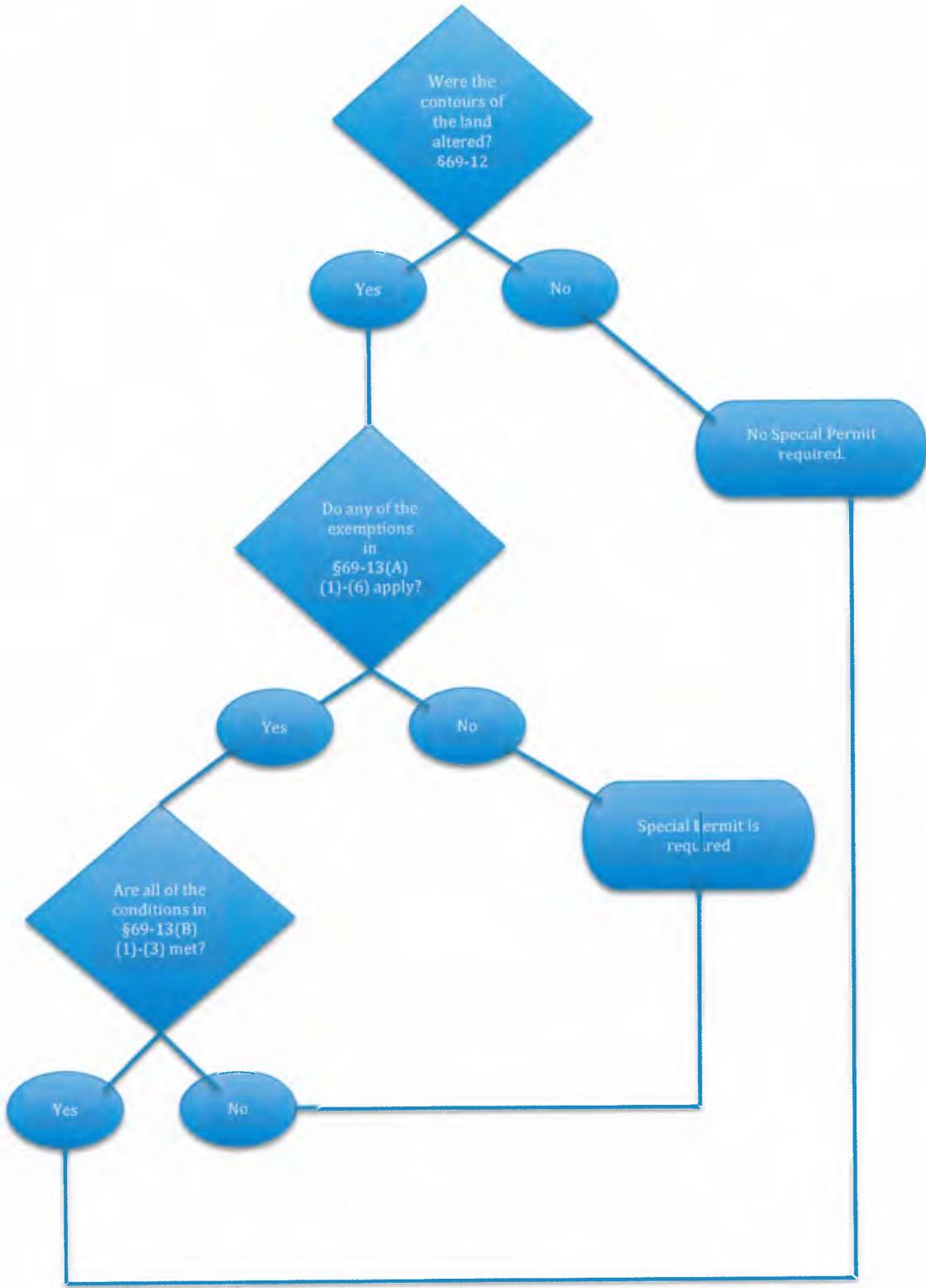
REGULAR SESSION:

1. **Approve Meeting Minutes from June 20, 2016**
2. **Approve Meeting Minutes from July 11, 2016**

July 19, 2016

VAD

Agenda Subject to Change



Chapter 69. Excavations and Grading

Article II. Grading and Earth Removal

[Adopted 2-21-1967]

§ 69-12. Compliance required.

No contours of any land for the Town of Southeast shall be altered by the excavation, removal or relocation of earth, loam, topsoil, sand, gravel, clay, stone or minerals or by the depositing of any material, natural or otherwise, except as provided in this article.

§ 69-13. Exemptions.

- A. The following are specifically exempt from this article, except as noted in Subsection **B**:
- (1) Changes in contour directly related to the bona fide construction or alteration of a building or structure when such construction or alteration is authorized by a valid building permit.
 - (2) Changes in contour in accordance with subdivision construction plans and contour maps approved by the Planning Board, provided that approval was granted within the three years preceding such change in contours. If such approval was granted over three years prior to the actual change in contours, the construction plans and contour maps must meet the most recent regulations of Chapter **138**, Zoning, and Chapter **123**, Subdivision of Land.
 - (3) Changes in contour directly related to the construction of an accessway or driveway.
 - (4) Changes in contour resulting from bona fide landscaping not involving the removal, depositing or relocation of more than 100 cubic yards per acre, except topsoil.
 - (5) Removal of unsuitable material and depositing of suitable material for the construction or reconstruction of sewerage systems, accessways and driveways.
 - (6) Changes in contour of public lands as may be authorized by Town officials having jurisdiction over such lands.
- B. The exemptions covered in Subsection **A(1)** through **(6)** shall not adversely affect adjacent property and shall meet the following conditions:
- (1) Natural drainage onto or from adjacent property shall not be adversely affected.
 - (2) Elevations at property lines shall not be changed, and changes in elevations 10 feet from the property line shall not exceed two feet.
 - (3) All artificial slopes shall not exceed 30° to the horizontal.

§ 69-14. Responsibility to stop questionable projects.



AKRF, Inc.
Environmental Planning Consultants
34 South Broadway
Suite 401
White Plains, NY 10601
tel: 914 949-7336
fax: 914 949-7559
www.akrf.com

Memorandum

To: Town of Southeast Planning Board
From: Ashley Ley, AICP
Date: July 21, 2016
Re: Santucci Residence – 5 Shady Lane
cc: Michael Ligouri

PROJECT DESCRIPTION

On February 10, 2016, pursuant to the Code of the Town of Southeast, Chapter 69, Section 13, the Town of Southeast Building Inspector referred the subject property for a questionable grading and excavating project to the Planning Board for a determination of whether or not a “Special Permit” is required under Chapter 69, “Excavation and Grading” of the Code of the Town of Southeast (see §69-14).¹ The area of concern was identified as the approximately ten foot wide area of disturbance between the new stone wall adjacent to the eastern property boundary and the new berm. This is because, the Town of Southeast Code §69-13.A(4) exempts “Changes in contour resulting from bona fide landscaping not involving the removal, depositing or relocation of more than 100 cubic yards per acre, except topsoil.” provided that the following conditions are met (see §69-13.B):

- (1) *Natural drainage onto or from adjacent property shall not be adversely affected.*
- (2) *Elevations at property lines shall not be changed, and changes in elevations 10 feet from the property line shall not exceed two feet.*
- (3) *All artificial slopes shall not exceed 30° to the horizontal.*

In observing the excavation and grading activities that had occurred on the property, the Building Inspector questioned whether or not the elevation at and within 10 feet of the property line had been modified to the extent that the project would not meet the criteria for exemption from a Special Permit. As such, the Building Inspector referred the application to the Planning Board for a determination.

Following this referral, representatives from the Planning Board, Town consultants, and Town staff met with the Santuccis and their representatives to determine the best course of action for resolving any outstanding stop work orders, as well as enabling the Santuccis to move forward on other landscaping projects on the property that also involved substantial grading. There was a disagreement between the

¹ Please refer to the attached letter from Thomas Fenton, PE, to the Planning Board dated April 6, 2016, for a complete history of the violations and stop work orders from March 14, 2016 to February 10, 2016.

Santucci's engineer and the Town Engineer as to the quantity of fill that was already brought in, and the extent of the grading that had already occurred on the property. As a result of these meetings, it was agreed that the best course of action was for the Santuccis to file an application for a Special Permit for new grading activities in several areas of the property that overlapped with the areas for which the stop work order that was issued. Under this permit, any previous work would be covered under the new and more comprehensive Special Permit. The Planning Board began processing this application and scheduled a public hearing. However, the Santuccis withdrew the application days before the public hearing.

RECOMMENDED ACTIONS

The Planning Board is now tasked with making a determination on the original referral from the Building Inspector. Based on the information provided by the Town Engineer, Town Building Inspector, and the site walk conducted on May 5, 2016, there is sufficient evidence to support the Town Engineer's recommendation that the Planning Board require a Special Permit for the work conducted. The materials provided by the property owners and their consultants were duly considered and reviewed in arriving at the conclusion that a special permit is required.

Therefore, at the July 23, 2016, Planning Board meeting, AKRF recommends that the Planning Board open and close the Public Hearing, and issue a determination as to whether or not Special Permit is required. *



Jacobson

April 6, 2016

Mr. Thomas LaPerch, Chairman
Town of Southeast Planning Board
One Main Street
Brewster, NY 10509

Re: Santucci Property
5 Shady Lane
Referral for Special Permit
Town Code Chapter 69 - Excavations and Grading
NLJ #0001-0972

Dear Mr. LaPerch:

As requested, we have reviewed the following information received for the subject project at our office through March 28, 2015:

- Item 1: Email from Michael T. Liguori dated March 28, 2016.
- Item 2: Drawing entitled, "Site Plan, Proposed Landscape Berm, 5 Shady Lane Southeast, NY", scale 1"=50', dated 4/18/2014 and revised 4/23/2014, prepared by Harry W. Nichols, Jr., P.E.
- Item 3: Drawing entitled "Topographical Map prepared for Tomasz & Zofia Bober situate in Town of Southeast, Putnam Co. N.Y., scale 1"=30', dated August 18, 2015, prepared by Robert H. Bergendorff, L.S.
- Item 4: Drawing entitled Topographic Sketch prepared for Dennis Santucci being 5 Shady Lane situate in, Town of Southeast", scale 1"=30' dated May 28, 2015, prepared by Terry Bergendorff Collins, L.S.
- Item 5: Correspondence including letters, emails, photographs and partial plans compiled from the Town of Southeast Building Department files for distribution to the Planning Board members.

The subject project has been referred to the Planning Board by the Building Inspector in accordance with §69-14 of the Town of Southeast Zoning Code which states in part "All exemptions listed in §69-13 shall be under the jurisdiction of the Building Inspector or any other agent designated by the Planning Board. Any individual serving in one or more of these capacities has the authority and responsibility of stopping questionable projects and referring them to the Planning Board."

To fully understand the nature, history, and conformance or non-conformance of the proposed activity with applicable sections of the Town Code, we will summarize these elements below along with providing our conclusions.



Jacobson

Mr. Thomas LaPerch, Chairman
Re: Santucci Property
5 Shady Lane
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Town Code Chapter 69 - Excavations and Grading
NLJ #0001-0972

April 6, 2016

Page 2

It should be noted that a review of the relevant materials in the Building Department file included correspondence concerning activities and/or violations related to other improvements or modifications to this site. It is our understanding that the scope of this review is limited specifically to fill placed along the front property line in conjunction with the construction of a landscape berm on the property. As such our comments below are limited to that activity.

Project History

1. On March 26, 2014 the Town of Southeast Building Inspector issued a Stop Work Order to the property owner, citing that fill material in excess of 100 cubic yards was imported and installed on the property, and directing the property owner to submit an application for a special permit to the Planning Board.
2. On June 24, 2014, the Town of Southeast Building Inspector issued a letter to the property owner rescinding the Stop Work Order subject to three conditions. Condition #1 was that the illegally filled area shall be restored to original grade with the exception of the proposed landscape berm. Condition #3 was that all work shall comply with the work proposed and approved for Building Permit 24434 and the proposed landscape berm delineated on the 4/23/14 Site Plan (Item 2 referenced above).
3. On January 5, 2015, in a response to a request for a renewal permit, the Building Inspector indicated that Conditions #1 and #3 of the removal of the June 24, 2014 Stop Work Order had not been met, that the site was not in compliance with the approved Landscape Berm Plan and directing the property owner to bring the site into compliance with that Plan.
4. On January 28, 2015, the Building Inspector issued a Stop Work Order noting that the property remains in violation of §69-12 of the Town Code and requesting additional information including an updated topographical survey of the front yard area including a calculation of the total fill added to this area.
5. On August 26, 2015, the Applicant's Engineer, Ronald J. Gainer, submitted a letter which purported to calculate the volume of fill placed for the landscape berm. The calculations utilize spot elevations from the May 2015 Topographic Sketch (Item 4 referenced above) as a baseline for original grades. The analysis indicates some additional material needed to be removed.



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Re: Santucci Property
5 Shady Lane
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Town Code Chapter 69 - Excavations and Grading
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April 6, 2016

Page 3

6. On September 18, 2015, the Building Inspector issued a letter which acknowledges receipt of the letter from the Applicant's Engineer which stated that additional material will be removed and that the work will be brought into compliance with the approved plan.
7. On October 16, 2015 the Building Inspector issued a Stop Work Order noting that, based on recent inspections, the site grading had not been brought into conformance with the approved plan and directing the Applicant to apply to the Planning Board for a Special Permit as stipulated in §69-14 of the Town Code.
8. On December 7, 2015, the Applicant's Engineer submitted a letter to the Building Inspector, indicating that based on spot elevations he had taken in comparison to the May 2015 Topographic Sketch, he felt the that the constructed berm conformed to the original plan.
9. On February 10, 2016, the Building Inspector issued a letter to the property owner indicating that it is questionable as to whether the project complies with Chapter 69 of the Town Code and referring the project to the Planning Board for their review and determination.

Conformance with Approved Plan and Applicable Sections of the Town Code

§69-12 of the Town Code requires that no contours of any land within the Town of Southeast shall be altered by the excavation, removal or relocation of earth, loam, topsoil, gravel, clay, stone or minerals or by the depositing of any material, natural or otherwise, except as provided in the article.

§69-13A list projects which are exempt from Chapter 69 which includes bona fide landscaping not involving the removal, depositing or relocation of more than 100 yards per acre. §69-13B notes that exemptions shall not adversely affect adjacent property and shall meet certain conditions, one of which is that elevations at property lines shall not be changed, and that changes in elevation 10 feet from the property line shall not exceed two feet.

As has been acknowledged by the Applicant's Engineer, this project does include relocation of over 100 cubic yards of fill, and it is our opinion that the project has changed the grade at a property line and appears to have changed the grade by more than two feet within 10 feet of the property line. As such, the project would not be eligible for an exemption to Chapter 69.

Therefore the only means by which by the project would not need a Special Permit under Chapter 69 is if compliance to the original approved plan can be established. In our opinion that compliance has not been established for the following reasons:



Jacobson

Mr. Thomas LaPerch, Chairman

Re: Santucci Property
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NLJ #0001-0972

April 6, 2016

Page 4

1. In our February 19, 2016 letter to you, we asked for an as-built plan showing the current topography on the site. Such a plan has not been submitted. The most recent site topography of the area in question is depicted on the May 15, 2016 Topographic Sketch (Item 4 referenced above).
2. The approved Landscape Berm Plan was prepared by Harry W. Nichols P.E., and uses for existing conditions topography, contours from the 2005 Robert Bergendorff Survey (Item 3 referenced above). A copy of the approved Landscape Berm Section is shown on that plan and included herein as Attachment 1. This Section shows a 10' wide and 2' high berm located a distance of 10' from the property line. No as-built plan has yet been submitted demonstrating conformance with that Plan or Section.
3. We overlaid a cross-section taken from the May 15 2016 Topographic Sketch on the approved Landscape Berm Section and have included this as Attachment 2. This shows a significant difference in the grades of the constructed and proposed berm.
4. Among the ancillary drawings we reviewed from the Building Department File was a drawing accompanying the August 26, 2015 Gainer letter which includes cross section graphs at various locations through the constructed berm. What is relevant about this is that the sections show an abrupt change in grade rising over 2' feet at the property line and extending into the property. This grade is identified as "assume old ground". Based on all information we have reviewed there was not a 2 foot or more change in grade at the property line prior to construction of the wall and landscape berm. We have included a partial copy of these Sections as Attachment 3.
5. We have attached a photograph which we understand shows a view along the driveway after the unauthorized fill had started to be placed but before any approvals were obtained and before the wall was constructed (Attachment 4). This photo appears to show that there was no change in grade at the property line (red topped stakes) prior to the project. We have asked the property owner, through his attorney, for permission to take a current photo for comparison purposes but have not yet been granted permission to do that.

Conclusions

Based on the above, it is our opinion that the filling and grading activities on this site are subject to the Special Permit requirements of Chapter 69 of the Town Code. A review under this Chapter must then consider the requirements of §69-15E which details conditions of approval. Among these



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Re: Santucci Property
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NLJ #0001-0972

April 6, 2016

Page 5

conditions is the requirement that no change in contour shall be made within 25 feet of the property line, which the subject activity is not in compliance with. However, §69-15F, as variance of conditions, allows the Planning Board to vary or alter certain conditions under Subsection E if, in its opinion, such variance or alteration is in harmony with the original application and the purpose and intent of the permit granted.

It is our opinion then, that the Applicant has two options going forward:

1. Bring the activity into compliance with the original approved Landscape Berm Plan (Item 2 referenced above).
2. Seek a Special Permit under Chapter 69 of the Town Code, identifying any aspects of §69-15E that the activity does not comply with and seeking Planning Board variances to those items in accordance with §69-15F of the Town Code.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

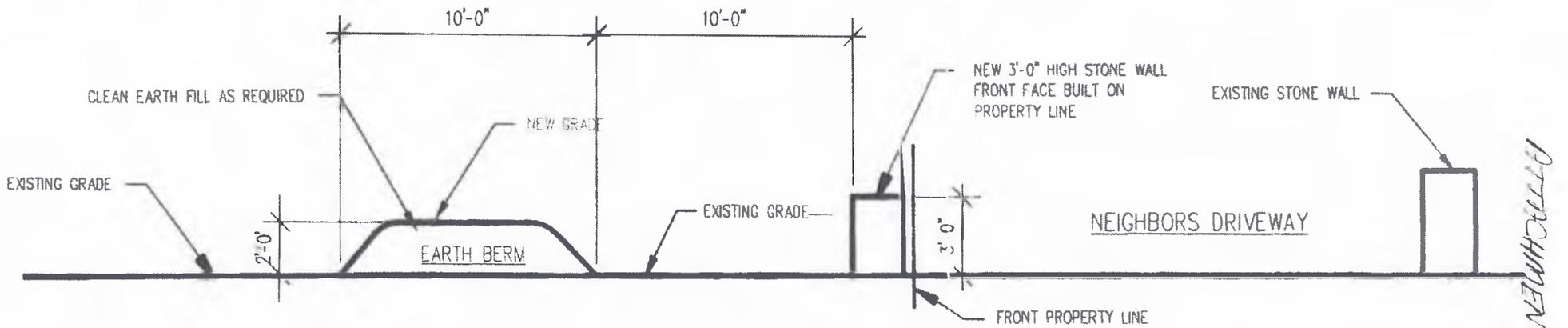
NATHAN L. JACOBSON & ASSOCIATES, P.C.

Thomas H. Fenton, P.E.

THF:thf

cc: T. Hay
M. Levine
S. Coleman
M. Bruen
M. Stancati
A. Ley
J. DePaola
M. Liguori

MILLTOWN



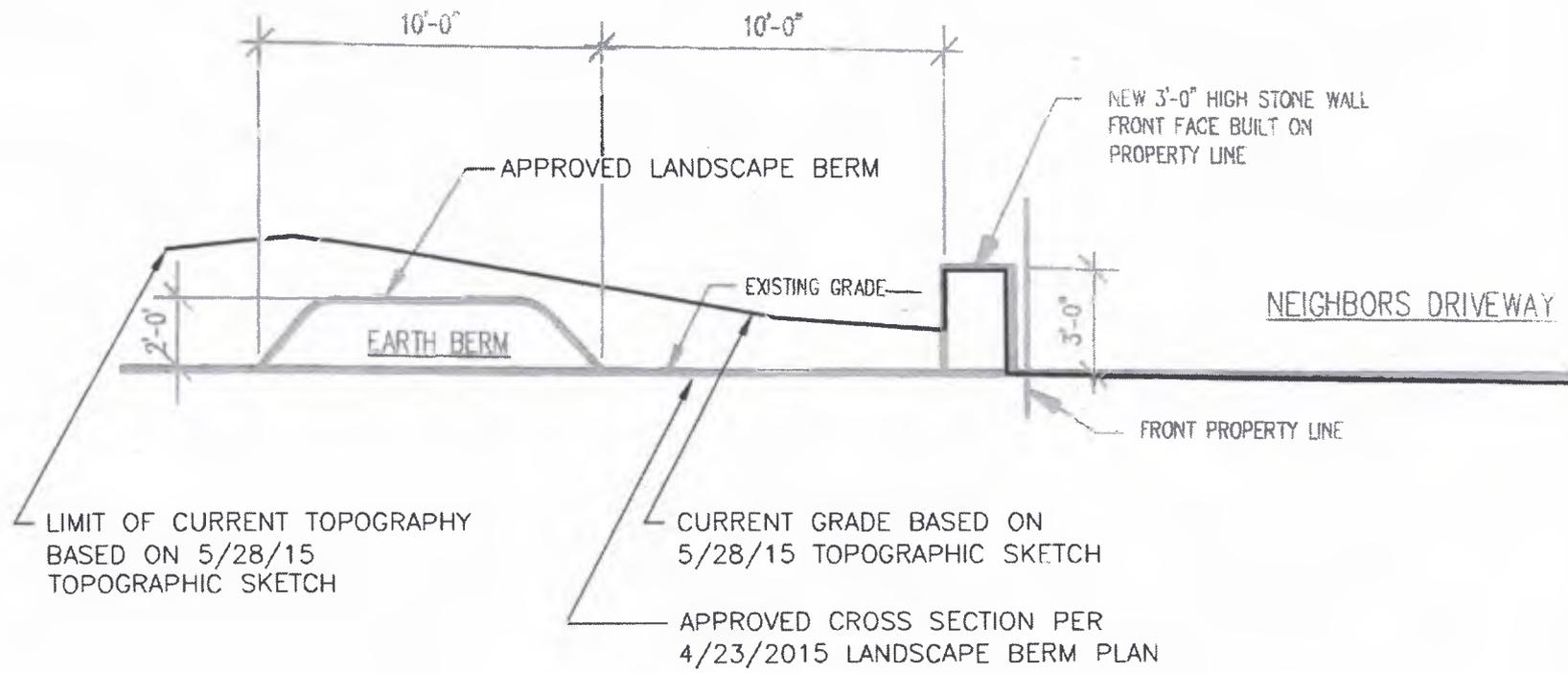
SECTION THROUGH LANDSCAPE BERM

A-A

N.T.S

ATTACHMENT 1

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SECTION A-A
 (LOCATION AS SHOWN ON
 4/23/2015 APPROVED PLAN)

CROSS SECTION
LANDSCAPE BERM - SANTUCCI PROPERTY
 5 SHADY LANE, BREWSTER, NY

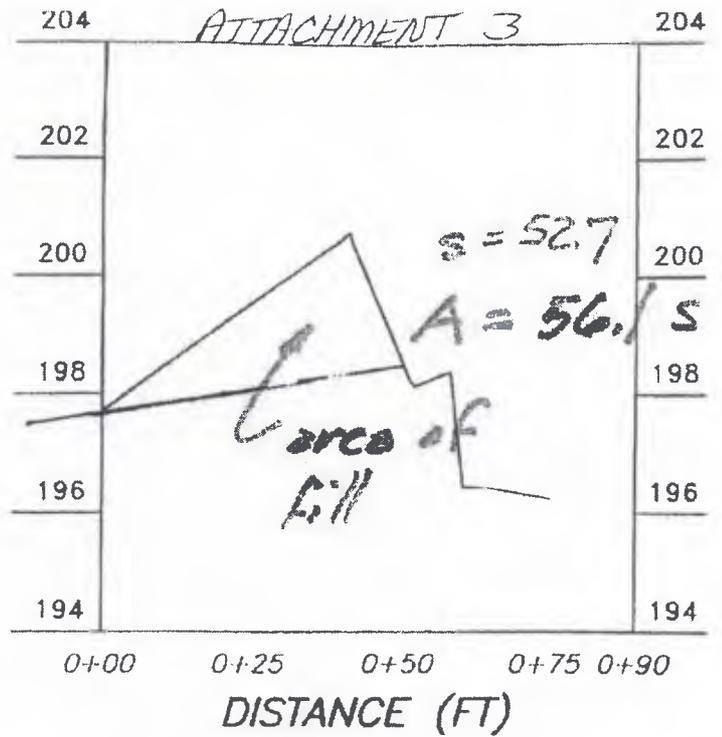
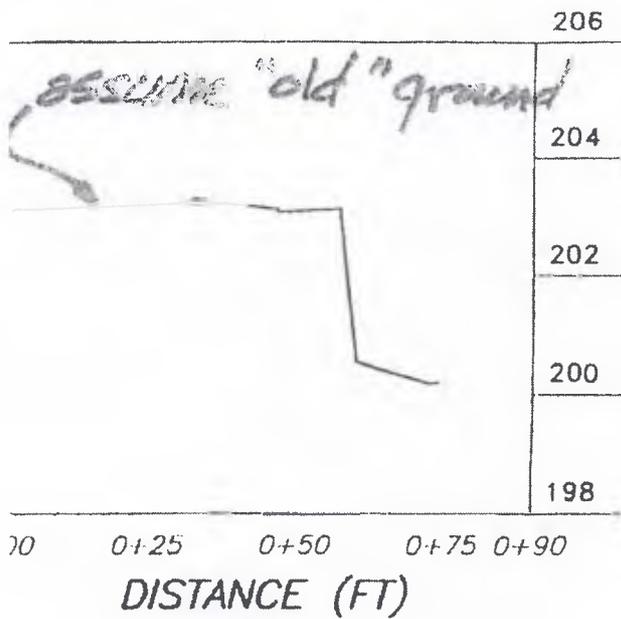
PROJECT No: 00010972

APRIL 2016

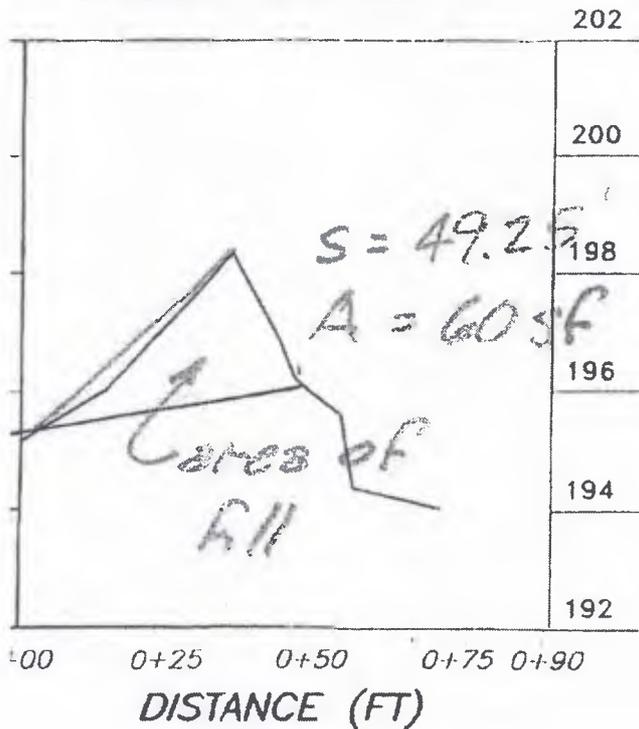
SCALE: 1"=5'

Jacobson
 Robert L. Jacobson & Associates, P.C.
 45 Main Street, P.O. Box 132
 Chester, Connecticut 06412-0132
 Tel: (860) 626-6500 Fax: (860) 626-5016
 www.ja18.com
 Creating the landscape you envision

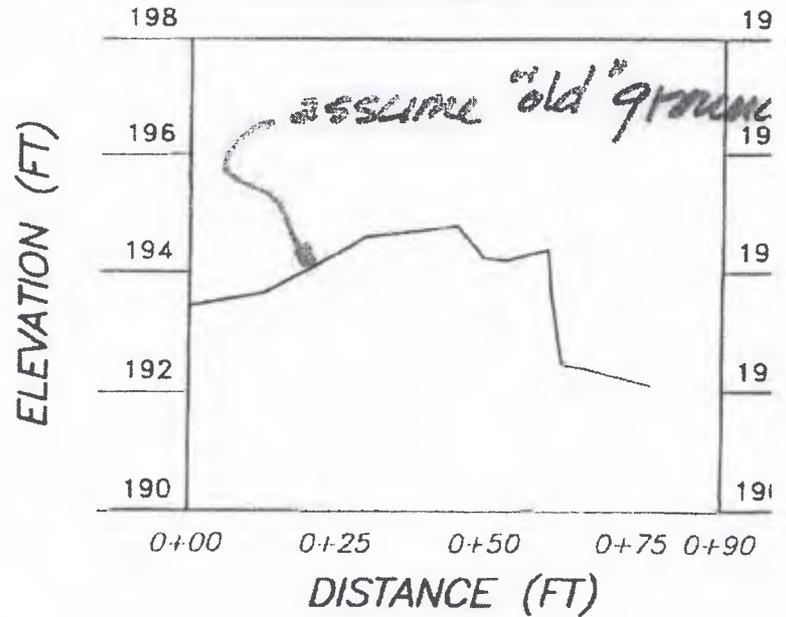
ATTACHMENT 2



CROSS SECTION 3



CROSS SECTION 4



CROSS SECTION GRAPHS
 HORIZONTAL SCALE: 1' = 30'
 VERTICAL SCALE: 1" = ~~30~~ 3'

ATTACHMENT 4



3.26.2014

Victoria Desidero

From: Thomas H. Fenton, P.E. [tfenton@nlja.com]
Sent: Monday, July 25, 2016 3:34 PM
To: Ashley Ley; Victoria Desidero; Tom LaPerch; David Rush; Phil Wissel; Dan Armstrong; Eric Cyprus; Mike Hecht; Paul Jonke; Will Stephens; Stephen Coleman; Peter Feroe
Cc: Michael Liguori
Subject: Santucci
Attachments: SKM_C454e16072516060.pdf

Attached is some supplemental information I will be discussing at the meeting tonight. Most of the attachments are already in the record or from the Building Department File I believe. The last two photos were taken at our May 5, 2016 Site meeting.

Tom

Thomas H. Fenton, P.E.



Nathan L. Jacobson & Associates

Consulting Civil and Environmental Engineers Since 1972

86 Main Street, P.O. Box 337, Chester, Connecticut 06412-0337

Tel: 860.526.9591 • Fax: 860.526.5416 • Cell: 860.377.3761

www.nlja.com • tfenton@nlja.com

From: scanner@nlja.com [mailto:scanner@nlja.com]

Sent: Monday, July 25, 2016 4:07 PM

To: Thomas H. Fenton, P.E.

Subject: Message from KM_C454e

Article II: Grading and Earth Removal

[Adopted 2-21-1967]

§ 69-12 Compliance required.

No contours of any land for the Town of Southeast shall be altered by the excavation, removal or relocation of earth, loam, topsoil, sand, gravel, clay, stone or minerals or by the depositing of any material, natural or otherwise, except as provided in this article.

§ 69-13 Exemptions.

A. The following are specifically exempt from this article, except as noted in Subsection B:

- (1) Changes in contour directly related to the bona fide construction or alteration of a building or structure when such construction or alteration is authorized by a valid building permit.
- (2) Changes in contour in accordance with subdivision construction plans and contour maps approved by the Planning Board, provided that approval was granted within the three years preceding such change in contours. If such approval was granted over three years prior to the actual change in contours, the construction plans and contour maps must meet the most recent regulations of Chapter 138, Zoning, and Chapter 123, Subdivision of Land.
- (3) Changes in contour directly related to the construction of an accessway or driveway.
- (4) Changes in contour resulting from bona fide landscaping not involving the removal, depositing or relocation of more than 100 cubic yards per acre, except topsoil.
- (5) Removal of unsuitable material and depositing of suitable material for the construction or reconstruction of sewerage systems, accessways and driveways.
- (6) Changes in contour of public lands as may be authorized by Town officials having jurisdiction over such lands.

B. The exemptions covered in Subsection A(1) through (6) shall not adversely affect adjacent property and shall meet the following conditions:

- (1) Natural drainage onto or from adjacent property shall not be adversely affected.
- (2) Elevations at property lines shall not be changed, and changes in elevations 10 feet from the property line shall not exceed two feet.
- (3) All artificial slopes shall not exceed 30° to the horizontal.

§ 69-14 Responsibility to stop questionable projects.

All exemptions listed in § 69-13 shall be under the jurisdiction of the Building Inspector or any other agent designated by the Planning Board. Any individual serving in any one or more of these capacities has the authority and responsibility of stopping questionable projects and referring them to the Planning Board.

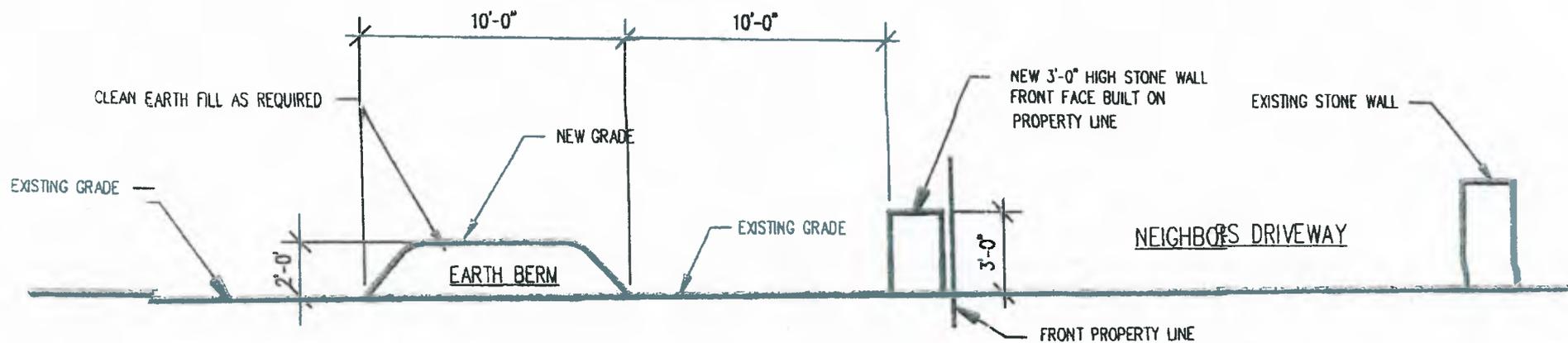
§ 69-15 Special permits.

The Planning Board may authorize the changing of contours within an area not exceeding five acres by the excavation, removal or relocation of earth, loam, topsoil, sand, gravel, clay, stone or minerals or by the depositing of any material, natural or otherwise, by granting a special permit as provided for herein:

A. Application. An application for the granting of a special permit shall be submitted to the Planning Board, in writing, on forms prescribed by the Board. If the application is by a person other than the owner of the land involved, the application must be signed by all owners and the applicant. The applicant must contain the following information:

- (1) The date of application.
- (2) The name of the applicant and the address to which notices may be sent.
- (3) Title(s) and date(s) of map(s).
- (4) The name(s) of the land surveyor(s) or engineer(s) preparing the map(s).
- (5) The name(s) of record owner(s) of the property.
- (6) The existence of mortgage or other encumbrances on the property, including the name and address of the mortgagee.
- (7) A statement of any easements or deed restrictions affecting the property.
- (8) The zone in which the property is located.
- (9) The area of the property in acres.

MILLTOWN APPROVED BY BUILDING DEPT.



SECTION THROUGH LANDSCAPE BERM

A-A

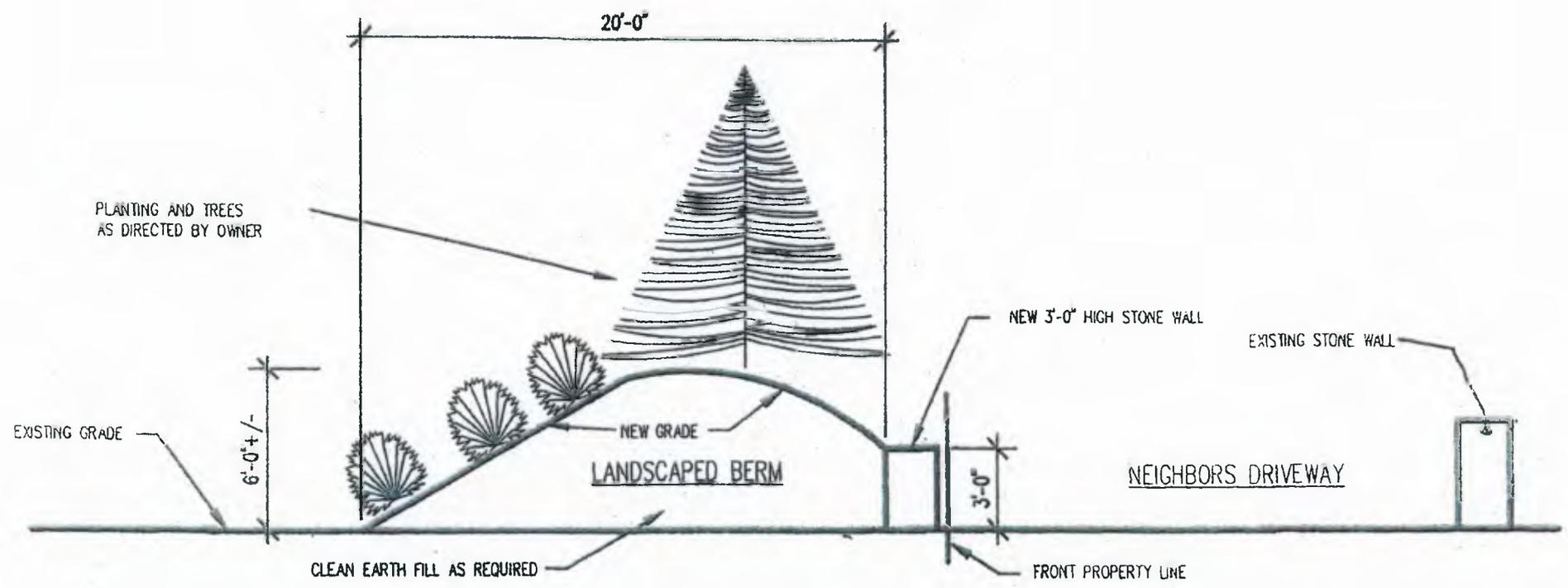
N.T.S



3.26.2014

MILLTOWN

REQUIRED SPECIAL PERMIT



SECTION THROUGH LANDSCAPE BERM

A-A

N.T.S



01/11/2017

