

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Tom Emero, Member
Rori Stumpf, Member
Carol Gould, Associate Member



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Medway, MA 02053
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TOWN OF MEDWAY

COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

Wednesday, August 18, 2021 at 7:30 p.m.
Sanford Hall
155 Village Street Medway, MA

Meeting Minutes

Members Present: Brian White, Chair; Gibb Phenegar, Vice Chair; Tom Emero, Member; Christina Oster, Clerk

Members Participating Remotely: Rori Stumpf, Member; Carol Gould, Associate Member

Members Absent: none

Also Present: Barbara Saint Andre, Director, Community and Economic Development
Morgan Harris, Administrative Assistant, Community and Economic Development

Call to Order

Mr. White called the meeting to order at 7:30 p.m. and read that this meeting is being broadcast and recorded by Medway Cable Access.

Public Hearing

4 Hawthorne Road - The application is for the issuance of a **variance** under Section 6.1 of the Zoning Bylaw to construct an above-ground pool set back 11.3 feet from the rear lot line where a 15-foot setback is required.

Christina Oster recused herself from the hearing and Brian White designated Carol Gould to sit in on the application. The Applicant's representative, attorney Stephen Kenney from Kenney & Kenney Law, was present and explained the application. The applicants are seeking a variance of 3.7 feet from the rear lot line to construct an above-ground pool. Mr. Kenney stated that the lot is large, around 53,000 square feet in a zoning district with a minimum lot size of 22,500 square feet. The lot is unique due to a drainage easement and extensive wetlands covering a majority of the lot. Mr. Kenney stated that this is the only location a pool could go, with wetlands to the south, the driveway to the north, and the septic system in the front yard. The plan provided was approved by the Conservation Commission, with conditions of approval preventing the pool from being put in another location. He stated that there would be no harm to the public with a variance of only 3.7 feet on a 53,000 square-foot lot. He also argued that setbacks are intended to ensure structures are a reasonable distance from neighbors. Since this is not a building, but still a structure, it is much lower in profile. The yard also backs up to a heavily wooded area, so there will not be harm to any abutters. The size of the pool is 16 by 24 feet with a 10-foot deck attached.

Mr. Emero noted that the pool is a relatively modest size and is as close to the steps to the house as possible while still providing walking access. Mr. Phenegar noted that the septic system is close to the wetlands, and Mr. Kenney confirmed that it was at the 50-foot wetland buffer. There were no comments from the public. Mr. White then reviewed each of the statutory criteria for a variance with the members of the Board, and the members found based on the presentation and application that all the criteria have been met.

Motion that the Applicant has met all of the required variance decision criteria made by Gibb Phenegar, seconded Tom Emero, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Carol Gould – Aye

Brian White – Aye

Rori Stumpf – Aye

The Board then reviewed the Boilerplate Conditions with Mr. Kenney, who stated he had no objections to any of the conditions.

Motion to grant the variance with the conditions as stated made by Gibb Phenegar, seconded Tom Emero, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Carol Gould – Aye

Brian White – Aye

Rori Stumpf – Aye

Motion to close the public hearing for 4 Hawthorne Road and allow any one Board member to sign the decision made by Gibb Phenegar, seconded Tom Emero, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Carol Gould – Aye

Brian White – Aye

Rori Stumpf – Aye

4 Williams Street - The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 5 dogs.

The Applicant, Lee Skelton, was present and explained the application. She is looking to receive a special permit for a kennel for four dogs, which are already living on the property. Ms. Skelton stated that the fourth dog is an emotional support animal for her daughter. When prompted by the Board, Ms. Skelton stated that all the dogs live inside and are fixed. She also stated that all the dogs are companions, and no boarding or breeding will take place. Mr. Phenegar and Mr. White stated that they want to find conditions that work both for the applicant and the Animal Control Officer. The Animal Control Officer submitted written comments, including potential conditions. One of the conditions proposed by the Animal Control Officer was to automatically rescind the permit if there is a violation or one of the dogs

passes away. Ms. Skelton questioned whether the special permit would be rescinded if one dog passes away. Mr. Emero also questioned this condition. The Board agreed not to include automatic revocation as part of the conditions. Conditions limiting the number of dogs to four and requiring that all vaccines and licenses be kept up to date were discussed and agreed upon. Mr. White and the Board members reviewed the special permit criteria.

Motion that the Applicant has met all of the required special permit decision criteria made by Gibb Phenegar, seconded Tom Emero, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Rori Stumpf – Aye

The Board then reviewed the Boilerplate Conditions and additional conditions with Ms. Skelton, who agreed to the proposed conditions.

Motion to grant the special permit with the conditions as stated made by Gibb Phenegar, seconded Tom Emero, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Rori Stumpf – Aye

Motion to close the public hearing for 4 Williams Street and to allow any one Board member to sign the decision made by Gibb Phenegar, seconded Tom Emero, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Rori Stumpf – Aye

25 Winthrop Street - The application is an **appeal** under M.G.L. chapter 40A section 8 seeking to reverse a Cease and Desist order issued July 1, 2021, by the Building Commissioner acting as Zoning Enforcement Officer, which prohibits the applicant from operating at the site.

The Applicant's representative, John Maciolek of John Maciolek Law, was present and explained the application. The Applicant, Paul Doherty of D & D Mulch and Landscaping (D & D), is requesting a reversal of a Cease and Desist issued by Jack Mee, the Building Commissioner acting as Zoning Enforcement Officer. Mr. Maciolek stated that the property has had agricultural use for many years. D & D uses the property to cultivate soil, which he stated is an allowed use. He also stated that Mr. Doherty met with the necessary town officials prior to commencing work on the property around 2016. Mr. Maciolek claimed the use, which involves screening compost to produce loam, has not changed or intensified since then. He also claimed that, while there had been resident complaints, no violations had been identified. He cited that in 2021 Mr. Mee refused to take action on a complaint from Mr. Linardy.

Mr. Maciolek stated his belief that there has been no violation of the zoning by-law and, therefore, there is no basis for a Cease and Desist.

Mr. Phenegar questioned how many loads of material are brought to and taken off the property daily, where the offsite material comes from, and the percent that is sold versus used by the farm. Mr. Maciolek was not able to provide answers at the time. He stated that product that does not go to Mr. Briggs' farm goes to properties owned or operated by D & D. He also clarified that the hours of operation are 7 a.m. to 5 p.m. on weekdays and 7 a.m. to 2 p.m. on Saturdays. Mr. Phenegar stated that based on paperwork provided by Mr. Mee, they are only allowed to operate 275 days out of the year. Mr. Maciolek stated that he was not aware of any annual limitations, but that the company does not operate there all year, specifically not in the winter months. Mr. Maciolek also clarified that approximately 5 acres of the property are used for the compost operation. Mr. Phenegar pointed out that there is paperwork that lists the operation as haying. Mr. Maciolek stated that the rest of the property is used by Mr. Briggs for his farming operation.

Mr. Stumpf stated that based on paperwork filed with the Department of Environmental Protection (DEP), 3,100 tons of material was brought onsite for the year. He asked how much of that is used onsite. Mr. Maciolek stated that he does not have a breakdown of where the end product goes, but that the percentages are consistent with what they have been over the last five years. Mr. Stumpf noted that D & D is required to keep accurate records for the DEP, he requested that the applicant provide those records for the last three years. Mr. Stumpf clarified that the Board will need to know the percentages to determine if the operation is an accessory use or not. He also asked if D & D is aware of the noise and odor complaints and if they had done anything to mitigate the problem. Mr. Maciolek stated that they were aware of the complaints but was adamant that there was no odor issue. He also stated that riprap was added near the end of the driveway to cut down on noise, as well as moving the screening machine back from the road and instructing drivers on how to operate. When asked to explain how the composting is an accessory use, Mr. Maciolek stated that it is an agricultural use, so it does not matter whether it is accessory. However, it is accessory to the farm use because a portion of the finished product is used in the hayfield.

Mr. White asked Mr. Maciolek to describe the operation and how the product is moved around. Mr. Maciolek stated that the screener had to be warmed up before it is used, and that it is operational by about 7:15 or 7:30 a.m. Material that has been composting in piles is brought by front end loader to the screener, which removes the larger debris and produces useable loam. Product such as grass clippings and leaves need to be brought onsite in order to mix in and decompose. He explained that the useable loam augments the fertilization of the hay for Mr. Briggs' farm, and some is brought to other properties owned by D & D. On the property there are piles of composting material, material that has been brought in, usable loam, and material to be brought out.

Mr. Phenegar expressed doubt that the material that is brought in is mostly grass. He stated that when he walks around Choate Park in the morning, he can hear large rocks tumbling through the screener. Mr. Maciolek stated that there are other organic materials such as unscreened loam that are brought in. When asked where the material comes from, Mr. Maciolek only stated that it came to D & D through their different locations before being brought to 25 Winthrop Street. The Board stated that they would like to see paperwork associated with the purchase of materials. Mr. Stumpf noted that although there

seems to be a larger volume than before, the latest filing with the DEP show a decrease in raw materials coming in.

Mr. Mee recapped his involvement with the property. He stated that in the four years that D & D has been operating on the property, something has changed. He recalled first going to the property in 2017 for violations with the Conservation Commission and the Board of Health. At the time there were various materials around the property, including concrete, asphalt, bricks, and a boat. Mr. Doherty stated that he would be taking over the composting operation run by Mr. Briggs' son, would clean up the property, and would acquire all the necessary DEP permits. Mr. Mee stated that he returned to the site months later, and it had been cleaned up. There were no complaints from neighbors at the time.

Mr. Mee continued to say that he visited the property at a later time, when a screener was operating by the front of the property, closer to Winthrop Street. He had concerns over the level of noise that was created, but Mr. Doherty had already ordered a new screener. Mr. Mee went back to the property and confirmed that the new screener was much quieter. Over time, neighbors began to complain about the noise of rocks in the screener, the volume of trucks driving in and out, and other noise. Mr. Mee reiterated that when only decomposing material is passed through the screener, there is very little noise. He stated that it appears that what is going through the screener is not just organic materials. He stated his belief that the materials brought in to be mixed, and subsequently distributed to satellite locations, are what is causing the problem. Mr. Mee claimed that the use is not the same as it had been the first three years of operation because now the screener can be heard running all day long. He noted that the echoing of the rocks tumbling mentioned by Mr. Phenegar can be heard throughout the neighborhood. Mr. Mee stated his belief that the operation has become more of a commercial operation. Mr. Mee also provided pictures of the equipment on the property. There are several piles of materials, which include a pile of large rocks. He noted that there have been 27 citations to date with no stop in activity.

Tom Gay, an Associate Member on the Planning and Economic Development Board (PEDB) and a resident at 23 Maple Street, expressed concern over the operation. He stated the PEDB has long had concern over what seems to be a commercial operation rather than an agricultural one. He also stated that while living across from the hayfield, he has never seen loam spread.

The Board received public comments from David Linardy of 28 Winthrop Street, Gregory Bayse of 3 Maple Street, Arthur Bergeron of 3 Wild Turkey Run, and Ronald Brossi of 7 Maple Street. Concern was expressed over the large number of trucks, some with capacity up to 33 tons, in and out of the property daily, pervasive smell, ground shaking, and early start times. All stated that the noise of rocks tumbling is constant. Several abutters echoed the belief that no loam has been spread on the hayfield. They also stated that any outdoor activity at their properties has been restricted due to the noise and odor. Mr. Bergeron stated that the screening machine is now located next to his property and the noise is unbearable. Mr. Brossi stated that some of the trucks going into and out of the site are from paving companies and excavating companies. He stated that the operation is like a construction site that will never end. Mr. White asked that the Applicant find out how many days per week the operation is running and how often the equipment is running throughout the day.

Amy Kwessell, Town Counsel and attorney at KP Law, asked whether the haying operation was dependent upon the compost operation, the percentage of material used on the farm, and if operational

plans and records could be provided. It was clarified that although D & D started operation on the property in 2016, the lease was not signed until 2018 while the Applicant worked with the DEP. It was also clarified that the Applicant believes this is both an allowed primary and accessory use.

The Board decided to continue the hearing to allow the Applicant time to gather the information and documents requested by the Board. Mr. White also voiced his displeasure that the Applicant did not come prepared with the necessary information. Ms. Kwessell noted that the burden is on the Applicant to provide evidence in favor of the appeal. Ms. Saint Andre reviewed and confirmed the list of items of information requested of the Applicant by the Board. She will follow-up with an email to attorney Maciolek tomorrow confirming the list of information requested.

Motion to continue the public hearing for 25 Winthrop Street to September 1, 2021 at 7:30 p.m. by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Rori Stumpf – Aye

Other Business

Approval of Minutes

- July 7, 2021

Motion to approve the minutes for July 7, 2021 as presented made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of:

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Rori Stumpf – Aye

Upcoming Meetings

- September 1, 2021
- September 15, 2021

The Board decided to move the September 15th meeting to September 22nd due to the Yom Kippur holiday.

Adjournment

Motion to adjourn the meeting at 9:58 p.m. made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 5-0

Tom Emero – Aye

Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye
Rori Stumpf – Aye

Items viewed at this meeting:

- Plot Plan for 4 Hawthorne Road
- Plot Plan for 4 Williams Street
- Photos of the property at 25 Winthrop Street

Respectfully submitted,

Morgan Harris
Administrative Assistant
Community and Economic Development

Edited by
Barbara J. Saint Andre
Director, Community and Economic Development

PROPOSED POOL
PLAN OF LAND

SCALE: 1" = 20' MARCH 25, 2021
REVISED: JUNE 2, 2021
REVISED: JUNE 15, 2021

OWNER: Greg & Elizabeth Antonuccio
S.F. 4 Hawthorne Road
Medway, Ma. 02053

COLONIAL ENGINEERING INC.
11 AWL STREET MEDWAY, MA.
508-533-1844

REQUEST WAIVER OF ZONING REARYARD
FROM 15' TO 11.3'

I CERTIFY THAT THE PROPOSED POOL
DOES NOT LIE WITHIN THE FLOOD PLAIN



Amthor, Nellore

PROPOSED DISTURBANCE 480 S.F.
PROPOSED STRUCTURE COVERAGE 4.29%
PROPOSED STRUCT. & IMPERV. 8.34%
LAND REMOVED IN THE 25' BUFFER FOR

NOTE: NO CHANGE TO TOPOGRAPHY PROPOSED
LARGE ROCK TO BE REMOVED OR HAMMERED.

REQUEST WAIVER IN WORK IN 25' BUFFER ZONE

- = 12 ASSORTED SHRUBS
- 4 SHEEP LAUREL
- 4 HOBBLE BUSH
- 4 LOWBUSH BLUEBERRY

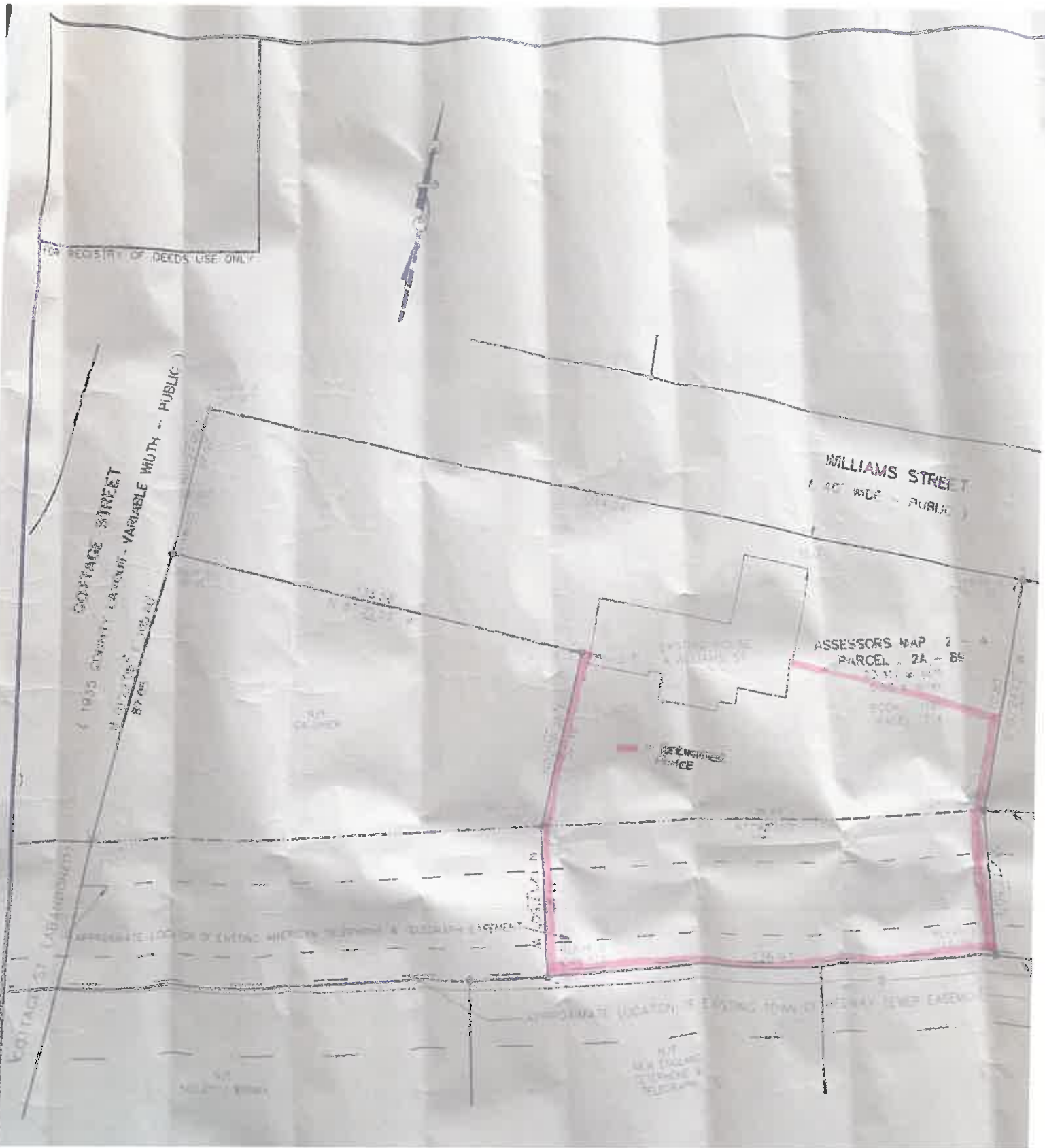
- 1) INSTALL EROSION CONTROL
- 2) INSPECTION BY CON. COMM.
- 3) EXCAVATE FOR POOL (2' DEEP)
- 4) STOCKPILE MATERIAL OUTSIDE 25' BUFFER.
- 5) CONSTRUCT POOL.
- 6) BACKFILL AROUND POOL.
- 7) REMOVE EXCESS MATERIAL FROM SITE.
- 8) SET MONUMENTS.
- 9) LOAM AND SEED DISTURBED AREA
- 10) FINAL INSPECTION BY CON. COMM.
- 11) REQUEST CERTIFICATE OF COMPLIANCE WITH AS-BUILT PLAN.
- 12) REMOVE EROSION CONTROL AFTER GROWTH.



AND FILTER ROCK TO BE CONSTRUCTED BY A 12" DIAMETER RIG. ROCK SHALL BE PLACED WITH FILTER ROCK (DIAMETER 1/2" OR SMALLER). FILTER ROCK CAN BE PLACED IN SITU OR PRE-PLACED. IF PRE-PLACED, JOINTS SHALL BE OVERLAPPED BY AT LEAST TWO FEET.

FILTER SOCK WITH SILT FENCE DETAIL

EXHIBIT B
PLOT LAYOUT







April 2018

Legend



200 ft

Google Earth



October 2020

Legend

Google Earth

300 ft

