

Meeting Minutes
Newbury Planning Board
Wednesday, March 1, 2023
Virtual Meeting via Zoom

Final – Approved April 19, 2023

Members Present: Larry Murphy (Chair), Peter Paicos, Leslie Matthews, Woody Knight, Mary Stohn (Associate)
Members Absent: George Morse
Staff Present: Martha Taylor, Planning Director; Kristen Grubbs, Assistant Planner

Planning Board Chair Larry Murphy opened the Planning Board (PB) meeting at 7:00 p.m. Murphy took a roll call and all board members and staff listed were stated to be present.

Opening Statement from Chair: Murphy announced that this March 1, 2023 Open Meeting of the Newbury Planning Board was being conducted remotely in accordance with Chapter 107 of the Acts of 2022, which extends the Governor’s March 12, 2020 “Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A § 20,” until March 31, 2023. This Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible *physical* location and allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting. Murphy stated that the Planning Board was convening by video conference via Zoom, as posted on the Planning Board’s agenda, and provided information on how people could view and join the Zoom meeting and participate when public comment was invited. Murphy then described the ground rules and guidelines for the meeting proceedings and public participation. He concluded by stating that each vote taken in the meeting would be conducted by roll call vote.

Following these opening remarks, Murphy turned to the agenda.

A. February 2023 Financial Report: Murphy read the Newbury Planning Board’s February 2023 financial report into the record.

B. Planning Director’s Report: Taylor gave the Planning Director’s Report. She reminded everyone about the March 7, 2023, joint meeting with the Select Board, Municipal Building, Capital Planning, and Finance committees in the library at 7pm to talk about the Town Hall project update. Taylor gave updates to the Board on several of the development projects, including 105 High Rd, 3 Newburyport Turnpike, and Governor’s Academy’s submission for a new walkway, all of which will be on the Board’s agenda on March 15.

C. Liaison reports:

Select Board: Matthews gave the Select Board liaison report. New State Representative Kristin Kassner came to SB meeting to introduce herself. The SB held a joint meeting with the Finance Committee on February 28 to review the draft warrant for spring Town Meeting on April 25.

ZBA: Murphy gave the ZBA liaison report for their Feb 16 meeting. They held two public hearings: 80 Northern Blvd was continued at applicant’s request, and the 16 Green St hearing for detached accessory dwelling unit was approved.

Conservation Commission: Paicos did not have a liaison report.

MVPC: Taylor said the MV Commissioners approved the regional budgets, including Newbury's annual assessment which went down slightly. The Town's Green Communities designation effort is moving forward.

D. Public Hearings – Continued:

- **Concurrent Public Hearings – 170 Orchard Street (Map R20, Lot 43A); Owner/Applicant: The Estate of Lewis Bulgaris, c/o Dianne Yurkavich**
 - **Definitive Subdivision Plan Application for “Fields Way,” 170 Orchard Street**
 - **Common Driveway Special Permit Application for Common Driveway serving two lots at proposed “Fields Way” Subdivision, 170 Orchard Street**

At 7:15pm, Murphy read the 170 Orchard St public hearing information and explained that the applicant had requested in writing that the joint hearings be continued to March 15, 2023 to allow for additional time to address peer review comments. The Board members had no discussion.

Motion: Murphy asked for a motion to continue the public hearing for the definitive subdivision special permit to March 15, 2023, at 7:15pm via Zoom. Matthews made the motion. Paicos seconded the motion. All members voted yes in a roll call vote.

Motion: Murphy asked for a motion to continue the public hearing for the common driveway special permit to March 15, 2023, at 7:15pm via Zoom. Paicos made the motion. Knight seconded. All members voted yes in a roll call vote.

E. New Business:

- The Sunset Club, 4 Old Point Road (aka 2 & 8R Old Point Road): Informal discussion regarding request from Beau Sturm, Starlight Management Company, for approval of seasonal tent and other changes to approved Site Plan

Murphy opened the discussion concerning The Sunset Club at 4 Old Point Road, and asked applicant Beau Sturm to explain the request. Sturm expressed the desire of the business to install a seasonal, 30x40 foot tent in the corner of their property near Plum Island Boulevard, where they currently have two bocce pits. He stated that the tent would be for weather-contingent seating. Sturm explained they don't want to lose business during the summer months to rain. Sturm showed an image of the proposed tent on the screen. Murphy asked what he meant by “seasonal”. Sturm explained they would like to set the tent up in early May and take down the fabric portion of it in early November. He said this was a temporary proposal while they pursue the longer process of permitting a more permanent solution. Sturm said if the permanent structure was denied for any reason, this would be a way to have a semi-permanent tent.

Murphy asked Taylor if there was anything she wanted to add. She asked Sturm if he would like her to pull up the site plan on the shared screen and he said yes. Sturm explained that the location of the tent would not impinge on any parking, and is an area of the property that is not used for much now.

Taylor mentioned that there is also a 8x20 storage mobile container that had been placed on the site after construction was complete, and she showed the Board the location of the container on the site plan. Sturm said it was for merchandise and that it is inside the fence line of the approved site plan and does not impinge on the car or bicycle parking areas. He said they pulled up a fence and dropped the mobile container down on a gravel pad. Sturm apologized and said he did not realize that the container would require approval from the Board and expressed his apologies for not coming to the Town for review sooner. Matthews asked for more description.

Sturm explained it is a mobile storage unit but they did add two windows to it and have run electricity to it for the cash register. He said it is functioning as a retail space.

Murphy clarified that the discussion tonight was to give Sturm some input as to whether the request was a minor or major modification to the previously approved site plan decision, and asked Sturm if that was also his understanding. Sturm said yes.

Murphy asked if Paicos had any questions. Paicos asked if the intention was to keep the posts for the tent in place but to take the tent on and off? The applicant said yes but that would be at the discretion of the board. Paicos asked if the tent would function as an impervious surface in contrast to what is on site now, and asked how the tent would change the flow of the rain and stormwater? Sturm said they would not be changing or adding anything to the floor and thought there would be very little change to the original site plan which had a rain garden. Paicos also asked about the logo on the tent. Sturm said they might or might not have the logo and said the tent color would be sand-colored not white. Paicos said when he visited the site earlier in the day he saw 3 or 4 signs on the site showing the business logo and name.

Matthews asked if the tent would be open sided or would have walls. Sturm said there would be roll-down walls for wind or rain protection but the intention would be to have them up as much as possible.

Knight asked for clarification about the size. Sturm said they had reduced the size from 40x50 to comply with setbacks and the proposed tent size is 40x30. Knight asked about all the anchors and ropes shown in the assembly instructions and asked if there would be any hazards to people walking around? Sturm can get more information about the assembly of the tent. Knight commented that it would be helpful to have the town's engineering peer review look at the plans to review the stormwater management.

Stohn asked if the applicant can reiterate the purpose of the tent and expressed concerns about the windy location and about the sun, heat, and need for ventilation. Sturm said the flaps would be down for the rain, and would not be closed on sunny days. Sturm said it would be a benefit to their business to be able to provide relief from the sun on hot summer days. Sturm said they would also like to have some fans moving air from the sides on hot days.

Murphy shared questions that had been shared in advance from Planning Board member George Morse who was not in attendance. What is the tent's wind loading? Sturm answered 120 mph. Is there lightning protection? Applicants did not know but said they would find out.

Murphy read from the project's original site plan decision regarding the process for requesting modifications to the plan. Murphy said the way he understands the language it requires the request be considered as a major not minor modification. Paicos agreed he did not think this would not be considered minor. Matthews agreed. Knight agreed it would be a major modification. Stohn also agreed. Murphy asked for a motion.

Property owner Vince Godin asked if he could ask a question. He said when they first were thinking about this they had asked for the opinion of the town's building inspector, who said he has the right to approve temporary structures. Godin had the understanding that that was an appropriate process for this request and asked why it would need to go through the Planning Board modification process. Murphy explained that this project was subject to site plan review, so a modification, even a temporary structure, would need to go through the Planning Board review. Taylor furthered explained the site plan review regulations. Godin expressed it would be a hardship to go through this extensive review process which would mean they might not be able to have the tent for this summer. Paicos reiterated the Board's responsibility to review any minor or major modifications to a site plan

review decision. Murphy reiterated concerns about the environmental sensitivity of the site and the high visibility and scenic character of a commercial project in a residential neighborhood.

Murphy asked for any further discussion from the Board members. Godin asked for further clarification. The group reviewed and discussed the Site Plan Review section of the zoning bylaw. Murphy clarified that this request, for the tent and the storage container structure, was a modification of a Level II site plan review. Paicos explained the Board's opinion was that this was not a minor modification. Taylor further explained the bylaw.

Motion: Murphy asked for a motion to treat this request as a major modification. Paicos so moved. Matthews seconded the motion. All members present voted yes in a roll call vote.

Murphy turned to the next item:

68 Green Street Subdivision (Farm View Lane), request from Michael Dos Santos, Crane Properties, for approval of:

- Declaration of Trust, 68 Green Street Homeowners Trust
- Declaration of Common Scheme Restrictions, and for
- Full release of Lot 3 from the Restrictive Covenant, dated February 16, 2021, recorded at Southern Essex Registry of Deeds, Book 39692, Page 181.

Murphy asked if Attorney Heney had seen the late email response from Town Counsel at 6pm. Heney had not, so Murphy read the comments aloud, describing multiple outstanding questions. Heney explained their efforts to resolve the issues regarding these documents. Heney said he had received a confirmatory deed from Eva Jackman, previous owner of the property just that day, and was asking for conditional approval from the Planning Board tonight, to release one lot (Lot 3) from the Restrictive Covenant, contingent upon approval from Town Counsel of all the documents.

Murphy asked for discussion from the Board. Paicos said he thinks things need to be further resolved before the Board could approve the release of the Lot. Matthews, Knight, and Murphy agreed there are too many things still unresolved. Dos Santos stated he thought things were nearly resolved. Attorney Heney said he would connect with Town Counsel to resolve the final documents, and would bring this to the Board's agenda for March 15.

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Murphy explained that three sets of minutes had been distributed to the Board and were available for review and approval.

- January 4, 2023 - Paicos made a motion to approve the 1/4/23 minutes. Matthews seconded. All members present voted in favor by roll call vote.
- January 5, 2023 - Knight made a motion to approve the 1/5/23 minutes. Paicos seconded the motion. All members present voted yes by roll call vote
- February 1, 2023 - Murphy and Stohn were not in attendance at the February 1, 2023 meeting. Paicos moved to approve the 2/1/23 minutes. Knight seconded. Paicos, Matthews, and Knight voted to approve the minutes in roll call vote. Murphy abstained from the vote.

Motion: With no further agenda items, Murphy asked for a motion to adjourn the meeting. Matthews moved to adjourn the meeting and Knight seconded. A roll call vote was taken and all members voted in favor.

The meeting was adjourned at 8:20pm.

Materials reviewed at the meeting:

- The Sunset Club, 4 Old Point Road (aka 2 & 8R Old Point Road): “SUNSET CLUB 8' x 20' TENT & 30' x 40' NAVI-TRAC LT CS TO SCALE ON PLAN – dated 2/21/2023”
- 68 Green Street (Farm View Lane), 68 Green Street Homeowners Trust and Declaration of Restrictive Covenants, 3/1/23 email from Town Counsel (read into the record by Murphy)

Respectfully Submitted,

Kristen Grubbs
Assistant Planner