

Meeting Minutes
Newbury Planning Board
Wednesday, April 19, 2023
Virtual Meeting via Zoom

FINAL – Approved May 3, 2023

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

Planning Board Vice-Chair Peter Paicos opened the Planning Board (PB) meeting at 7:10 p.m. (Chair Larry Murphy was experiencing internet connection issues so joined late.) Paicos took a roll call and Planning Board members Morse, Matthews, Knight, and Stohn were present. Taylor and Grubbs were also present. Paicos welcomed applicants and their representatives, and explained that the meeting was starting slightly delayed so as to allow anyone who had anticipated the meeting to be in person to instead log in to the remote meeting via the Zoom link in the agenda and as posted at town offices.

Opening Statement from Chair: Paicos announced that this April 19, 2023 Open Meeting of the Newbury Planning Board was being conducted remotely in accordance with Chapter 2 of the Acts of 2023, 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, 2025. 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. Paicos 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. Paicos 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, Paicos turned to the agenda and asked Taylor to read the financial report.

A. March 2023 Financial Report: Taylor read the March 2023 financial report into the record.

B. Discussion of Remote vs. In-Person Meetings

Paicos explained that over the last three years during the COVID pandemic, the PB has been meeting in the remote format, via Zoom. Paicos stated that in general the Board has found this format to work very well, allowing the applicants, board members, and members of the public to share and view plans and other presented materials more easily. The virtual format has also allowed more people to participate. Paicos asked each PB member for input. Morse and Matthews stated preference for the virtual format. Knight said either format, virtual or live, is fine, but would be supportive of the preference of his fellow board members. Stohn asked if the Board has received any information about the preference of the residents of Newbury, whether they like the virtual format or whether they have had trouble connecting.

PB Chair Murphy joined the meeting at 7:20pm. He agreed that virtual is the best way to share information with the public. Matthews made a motion to stay in zoom until everyone feels comfortable getting back to a live situation. Morse seconded. A roll call vote was taken: Paicos, yes; Morse, yes; Matthews, yes; Knight, yes; Murphy, yes.

C. Public Hearings:

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

Murphy opened the continued public hearing for 170 Orchard St at 7:24pm, and asked for the applicant to give an update. Engineer Bob Griffin and applicant Michael McNiff were present to give the update. Griffin asked to share his screen and described two small changes to the plan: 1) The northeasterly lot line of Lot 3 was moved 15 feet to the southwest to give more room for Lot 4 septic line and thus avoid the concerns raised by the Board at the previous session of the public hearing about removing the buffer vegetation between the proposed development and the adjacent properties on Pearson Drive, and 2) The number of hydrants was reduced from 3 to 2 hydrants, following discussions with the fire chief. This leaves one hydrant in front of Lot 1 & 2 and one in front of Lot 3 & 4. The applicant had no further comments.

Murphy asked Paicos if he had any questions or concerns. Paicos listed some concerns raised by the Board during previous meetings, including drainage, grading, septic systems locations, the turning radius of the subdivision road, the location of the utility pole, the abutting driveway access, the need for HOA documents, and more information about the stated intent for preserving agricultural use of the property. Morse asked about the lighting at the entrance to the new road. Matthews asked for more information about the land remaining agricultural. Knight seconded concerns Paicos raised, including the location of the septic system for Lot 4. Stohn had no additional comments. Murphy asked the applicant to respond.

Griffin put the plan up on the screen, noted that the Town’s peer review took no exception to the drainage design, and further explained the drainage systems, saying they are not asking for any waivers regarding stormwater. Griffin said it was their opinion the electric pole at the entrance would not need to be moved. Regarding the site distance to the road entrance, he said they had more distance than what was required by American State Highway Standards. Griffin said they spent a lot of time trying to find good soils and that the septic for Lot 4 would all be included on that lot without the need for any easements. Griffin said Mr. McNiff could provide landscaping easements if needed for Lot 2, but otherwise they are not looking for any relief related to lot configurations. Griffin said they had provided a draft maintenance document already, and Mr. McNiff’s lawyers could provide the additional homeowners’ documents as needed for the shared private right of way.

Griffin showed the existing agricultural use areas on the plan and said that all of the field area to the west of the common driveway is on land owned by Lot 4. In theory they could divide the lot to leave about 8 acres of current agricultural activity plus some area of woods to stay in Chapter 61A. Matthews asked about the agricultural areas, who would own that land and maintain its use. Griffin said that half of Lot 4 would be in an agricultural restriction. It has been farmed with corn for the past few years. Paicos repeated that the Board was interested in preserving local agriculture and asked specifically for Mr. McNiff to explain the mechanism for doing this - creating a lot that would be held in fee (owned) as farmland, and possibly owned by a farmer or a land trust. This idea was discussed by the Board and the applicant.

Paicos asked the applicant to show on the screen and to discuss the grading for the lots. Paicos also asked for more information about the homeowner’s association documents and for legal review of all driveway easements and other documents. Paicos and Matthews asked about the telephone pole at the entrance. Griffin and McNiff offered to have National Grid out there to inspect the location of the pole.

Murphy suggested that the Board now take a look at the waivers requested for the project. Murphy said the Board may waive compliance with the regulations if it deems that the waivers are in the public interest and if they keep a written record of the waivers and the reasons for them. Murphy polled the Board members relative to their informal opinion about the granting of the following requested waivers:

List of Waivers:

1. Section 117-18.C. Environmental analysis – Paicos said he was still thinking about it. Morse was in favor of the waiver. Matthews was undecided. Knight felt an environmental analysis would be helpful. Murphy also felt that an environmental analysis would be helpful as it is a problematic site.
2. Section 117-23.D. General Layout & dimensions (no radius at street intersection instead of required 30' radius) – Paicos was not in support of waiver. Morse was okay with the waiver. Matthews and Knight stated they each had a problem with this waiver. Murphy shared concerns about granting this waiver.
3. Section 117-21 Street location and alignment (50' wide right-of-way instead of required 53') – Paicos, Morse, Matthews, Knight all expressed they were okay with this waiver. Murphy still had concerns about it.
4. Section 117-24 Typical roadway cross-section (no roadway crown; no street trees) – Paicos, Morse, Matthews, and Knight each expressed that they were okay with this waiver. Murphy would still like additional confirmation that the proposed drainage infrastructure is okay.
5. Section 117-35 Sidewalks/bikeways (no sidewalks) – Paicos, Morse, Matthews, Knight, and Murphy were okay with this waiver.
6. Section 117-42 Street trees (no street trees) – Paicos, Morse, Matthews, Knight, and Murphy were okay with this waiver.

Murphy asked Taylor to pull up on the shared screen the Common Driveway Special Permit criteria and findings. Murphy read this section of the bylaw, Section 97-5-D Special Permits, Common Driveway, and asked for a “straw poll” from Board members as to how the proposed project meets these criteria.

a) The use requested is noted in the Zoning By-law as a special permit in the district for which the application is made; – Paicos, Morse, Matthews, Knight, and Murphy were okay with this criterion.

(b) The requested use is essential and/or desirable to public convenience or welfare; – Paicos stated this requested use (common driveway) is not essential. Matthews agreed. Morse stated that the applicant has shown that the separate driveways are possible. Paicos stated that the Conservation Commission was not in favor of the driveways being located in the buffer zone. Morse said the common driveway may be desirable for the convenience of the public; however he is not sure it is essential. Matthews said she agreed with Morse and thought that while the driveway may be desirable, it is a small neighborhood, and she is not sure it is essential. Knight said the desirable aspect of the common driveway was so that the individual driveways would not be stacked on top of each other. Morse stated the common driveway would cut down on disturbance of the site.

(c) The requested use will not create undue traffic congestion or unduly impair pedestrian safety; – Paicos, Morse, Matthews, Knight, and Murphy were okay with this criterion.

(d) The requested use will not overload public water, drainage, sewer systems or any municipal systems to such an extent that the requested use or any developed use in the immediate area or any other area of the town will be unduly subjected to hazards affecting the health, safety and general welfare of the community; – Paicos, Morse, Matthews, Knight, and Murphy were okay with this criterion.

(e) Any special requirements for use set forth are fulfilled; – Murphy stated there has not been discussion of any special requirements yet.

(f) The requested use will not impair the integrity or character of the district or adjoining districts nor be detrimental to the health, safety or welfare of the immediate residents or the residents of the community. – Paicos, Morse, Matthews, Knight, and Murphy were okay with this criterion.

Murphy asked if the applicant wanted to respond to any of the concerns raised.

Griffin replied that the common driveway does eliminate the stacked driveway and also reduces stormwater runoff, and to his mind does satisfy all of the requirements of the special permit. Regarding the proposal to build the private way, he said that they have looked at all the dimensional issues over the past months of conversations, but some of the concerns arise simply from the constraints of the property. Their opinion is that the proposal to put four lots on this vacant land is not significantly dense for the property, is appropriate to the neighborhood, and is preferable to other possible uses.

Murphy asked whether Taylor had received any written comments; she noted that she had not. Murphy opened the discussion to any members of the public in attendance, but there were no questions or comments.

Murphy said that the applicants have heard the concerns of the Board and asked where they would like to go from here. Griffin said that they would like to provide the additional information the Board has asked for, including documents for the homeowner's association, telephone pole, and more. McNiff thanked the Board for their candor and opinions and also thanked Taylor for her assistance. McNiff stated that in his opinion this is a plan that is the most attractive for the property, adding that the neighbors feel this is a preferable option as compared to other previous proposals with more lots and compared to other uses such as horse farms, solar farms, and more.

Murphy said the project was on a timeline and noted that the Board had one more month to render a Decision on the Definitive Subdivision Plan and file it with the Town Clerk. He asked Taylor whether she would be ready to write a decision. She said it would be difficult at this point. Murphy asked for a straw poll on whether the Board was ready to vote on a decision tonight. Paicos said he thought there was more discussion and work to be done, including documents to review. Paicos said there has been discussion of keeping some of the land in Chapter 61A or some form of agriculture, and this was something the Conservation Commission was also in support of, but more discussion and more time is needed for this, and suggested an extension would be beneficial. Morse said he concurs with Paicos and added that the written easements and maintenance agreements are very important. Matthews stated she concurs with Paicos and Morse. Knight stated he would like more information and clarity on the concerns raised. Stohn agreed with the others, stating more time makes sense. Murphy concluded the discussion by saying that this is a very difficult site. He stated he has no quarrel with the work that has been done to date but feels that the proposal is a very aggressive use of the site and he still has some reservations. Murphy summarized that it seems that the majority of the Board would like to keep an open mind, get more information, and tighten up some of these issues, and asked the applicant if they would be willing to provide more time. Murphy asked the applicants if they were in agreement in granting an extension. Taylor suggested a month or two might be appropriate. The applicant asked to start with a 30-day extension from the May 19 deadline, suggesting they were comfortable with providing a written extension for action on the Definitive Subdivision Plan, to June 21, 2023.

Motion: Paicos made a motion to continue the Subdivision and Special Permit Public Hearings to May 17, 2023, at 7:15 p.m. via Zoom. Matthews seconded the motion. There was no further discussion. A roll call vote was taken: Paicos, yes; Morse, yes; Matthews, yes; Knight, yes; Murphy, yes.

2. Public Hearing (new): Site Plan Review Approval Application for construction of a sidewalk extension and pedestrian walkway and related site improvements on the Governor's Academy

campus, Byfield, MA, at 313 Newburyport Turnpike (Map R15, Parcel 11) and 306 Middle Road (Map R15, Parcel 5); Owner/Applicant: The Governor's Academy, 1 Elm Street, Byfield, MA

At 8:20pm, Murphy opened the public hearing for the Governor's Academy Site Plan Review Application. Knight read the public hearing notice and Taylor confirmed that the Applicant had provided proof of abutter notification and publication of the legal ad. Mark Beaudry from Civilworks New England, opened the presentation, and introduced Tom Woodruff Director Facilities at Governor's Academy (TGA) and Wendy Reed, Governor's Environmental, Health and Safety Manager. Beaudry noted that all of the peer review comments had been addressed and that the Conservation Commission had approved the project the previous night, April 18. He then requested that Taylor put the campus context plan up on the screen and provided an overview of the project.

The total pedestrian walkway will include 7,082 square feet of grading and regrading, which triggers Level II Site Plan Review. The project includes three sections of crushed rock path, totaling 432 feet in length, two sections of 5-foot wide elevated boardwalk totaling 132 feet in length, and 115 feet of paved sidewalk along the westerly side of Middle Road.

The height of the elevated walkway was discussed. TGA wanted to keep it low so as not to have to have railings. The Cons Comm and the town's peer review have accepted this design. There is a bumper on each side of elevated walkway for wheelchairs. The pathway will be fully ADA compliant. No signage is proposed and no vehicle trips will be generated. The science building is intended to be accessed by pedestrians from Middle Road and to have no conflicts with vehicles on Middle Road and to avoid additional impact on wetlands. No screening or additional vegetation buffer is warranted.

Murphy asked if Board members had questions. Paicos did not. Morse said his question about the bumpers was answered. Matthews asked if there was more detail about the crushed stone. Beaudry said it would be a quarter inch crushed rock stone all completely wheelchair accessible. The material does require maintenance and this will be included in the school's maintenance plan. Matthews asked about snow removal. Beaudry said shoveling and snow blowers would be used. The permeable surface would mean very minimal stormwater runoff and in compliance with the Massachusetts stormwater standards, and the project was reviewed by the Conservation Commission and the DEP and the peer review. Matthews asked about the elevation of the walkway. Beaudry said it was between 15 and 30 inches off the wetland, which is a shady quite dry wetland. Stohn asked about the stability of the stone for a wheelchair. Beaudry said the stones are fine, no bigger than a quarter inch, but more able to be compacted than stone dust while remaining permeable. Murphy had no additional comments. Grubbs added that other town staff have reviewed the project and are comfortable with the plans.

Murphy asked the applicant to present the photometric plan for lighting. Woodruff explained that the bollard fixture is a "dark sky" style, providing enough lighting for safe travel while reducing any extra nuisance lighting, an important choice for this natural area. Beaudry added the fixtures are 40 feet on center, and could be mounted on the posts of the boardwalk. The bollards are 42 inches tall. Taylor showed the site plan, page 5, to show the lighting specs. The lighting was discussed. Additional questions were discussed.

The Board discussed a site visit and decided each member could visit the property on his or her own time.

Motion: Morse made a motion to continue the public hearing to May 17, 2023, at 7:15 p.m. via Zoom. Matthews seconded the motion. There was no further discussion. A roll call vote was taken: Paicos, yes; Morse, yes; Matthews, yes; Knight, yes; Murphy, yes.

D. New Business:

1. 15 Coleman Road OSRD (Fieldstone Lane) Tom Zahoruiko, Manager, Zendko, LLC: Request for Release of Lots 3 and 6 from Restrictive Covenant

Tom Z. explained that the project is going well and they hope to finish work by the end of the fall. No Board members had questions. Taylor explained that Lots 3 and 6 could be released as Lot 4 will still be held in the restrictive covenant.

Motion: Paicos moved to release Lots 3 and 6 from the restrictive covenants. Knight seconded. A roll call vote was taken: Paicos, yes; Morse, yes; Matthews, yes; Knight, yes; Murphy, yes.

2. 7 Larkin Road, Sam Colombo, Millennium Engineering, and Coughlin Shea Professional Builders, LLP: Informal presentation and discussion of plan options for proposed residential subdivision at 7 Larkin Road

Sam Colombo from Millennium Engineering and Michael Shea and Chris Coughlin from Coughlin Shea Professional Builders were on the call to have an informal discussion for a potential residential development at 7 Larkin Road. Colombo shared his screen to show a conventional subdivision plan for 7 Larkin Road. He described the lot as 26.7 acres of beautiful land abutting the Parker River. The plan showed a 5-lot definitive yield plan with a 25 foot wide, 1200 + foot long road, approximately half of which is within 50-foot easement off of Larkin Road and 696 feet of which is on the property, ending in a turnaround. The regulations allow a maximum cul de sac length of 500 feet, and Colombo noted that it would be their intention to hold the length at 500-feet from the end of the easement to the end of the turnaround.

Columbo explained the plan would require waivers – one waiver for the right of way width, and another waiver for the overall roadway length, which would be more than the maximum 500-foot requirement. Columbo said these are the main points of discussion for the Board tonight.

Columbo also showed an open space residential development plan, showing 7 lots with approximately 78.3% of lot being set aside as open space. He said that two additional lots would be allowed due to the density bonus for open space the required 50% (one lot for each additional 10% of open space). The lots would use a common septic system next to Lot 1. The plan shows a parking area dedicated to the public for the open space to access a trail system within the open space. The applicants understand that this plan would need a waiver-free yield plan, but they are wondering if the town might be interested in this kind of collaboration. This open space plan would be the preferred alternative for the applicant if this was favorable to the town.

Shea commented that they would be excited about the opportunity to work with the town for the open space outcome so the town residents could enjoy the riverfront property. Coughlin said he sees a lot of “up” sides for everyone and would like to explore this with the town, collaborating to “share the wealth” of a beautiful property.

Murphy said he sees the plan as having a legal problem, in terms of it needing an as-of-right (waiver-free) yield plan. Board members like the idea but commented that what is being proposed is not by right. Taylor has walked the site and would be in support of public access and open space. The Board says they like the intent of the project but they are constrained by the bylaw and the need for waivers.

Paicos expressed that the town needs affordable housing and also needs multi-family housing, and wondered if the applicants wanted to explore thinking outside the box. Matthews commented that the town is in need of actual affordable housing, to allow people to remain in the community. Shea commented that they would be very interested in working with the Town to do a project.

- E. Planning Director's Report:** Murphy requested Taylor begin the Planning Director's report. Taylor stated that the working draft of the town's master plan was distributed to the Board members to review. Public distribution, a survey, and additional public meetings will begin in May.
- F. Liaison Reports:** Board members gave brief reports as liaison to the following committees.
- **Select Board:** Matthews noted that the Select Board had held a number of informational meetings regarding the proposed Town Hall project.
 - **Zoning Board of Appeals:** Murphy noted that the April ZBA meeting was scheduled for the next night; the agenda included two Special Permit hearings for detached accessory apartments, one at 177 Middle Road and one at 229 High Road.
 - **Conservation Commission:** Paicos noted, as stated previously, that the Conservation Commission had discussed the 170 Orchard Street applications at its meeting the night before.
 - **MVPC:** Taylor reminded the board about the updates of the regional housing production plan, the hazard mitigation plan, and the Community Economic Development Strategy draft plan.
- G. Planning Board Minutes – Review and Approve**
- October 19, 2022
 - November 2, 2022
 - November 16, 2022
 - December 14, 2022
 - January 18, 2023
 - February 15, 2023
 - March 1, 2023
 - March 7, 2023
 - March 15, 2023

Motion: Paicos made a motion to authorize Murphy to review and approve the minutes on behalf of the Board. Morse seconded. A roll call vote was taken: Paicos, yes; Morse, yes; Matthews, yes; Knight, yes; Murphy, yes.

Motion to Adjourn: There being no further business, Matthews moved to adjourn the meeting. Morse seconded. A roll call vote was taken: Paicos, yes; Morse, yes; Matthews, yes; Knight, yes; Murphy, yes.

The meeting was adjourned at 9:55pm.

Materials reviewed at the meeting:

- "Plan of Land, 2 Fieldstone Lane, Town of Newbury (Byfield)"; prepared for Owner: Zendko, LLC, 4 High Street, North Andover, MA 01845; surveyed by Joseph I Levesque III, PLS, Levesque Geomatics, Inc. 43 Glendale Road, Sturbridge, MA; dated 12/07/2021
- "Definitive Subdivision Plan for Fields Way," 170 Orchard Street, Newbury, MA, January 2023; Prepared for Owner/Applicant: The Estate of Lewis Bulgaris, c/o Dianne Yurkavich, 2 Lavallee Lane, Newburyport, MA 01915; prepared by Robert H. Griffin, Griffin Engineering Group, LLC, 495 Cabot Street, 2nd Floor, Beverly, MA 01915; dated 1/4/23.
- "Application for Definitive Subdivision Plan & Common Driveway Special Permit for Fields Way (4-Lot Residential Subdivision), Assessor's Map R-20, Parcel 43A - 170 Orchard Street", prepared by Griffin Engineering Group, LLC, dated January 4, 2023.
- "Campus Context Exhibit, Proposed Walkway Project, Middle Road, Byfield, MA," prepared for the Governor's Academy by Civilworks New England.

- “Conceptual Plan 12” and “OSRD Concept” at 7 Larkin Road, prepared for Coughlin Shea Builders by Millennium Engineering, Inc.

Respectfully Submitted,

Kristen Grubbs
Assistant Planner