

Meeting Minutes

Planning Board

Wednesday, March 24, 2021

Virtual Meeting via Zoom

APPROVED

Members Present: Peter Paicos, Chair; Larry Murphy; Leslie Matthews; Woody Knight; George Morse
Members Absent: Mary Stohn (Associate Member)
Staff Present: Martha Taylor, Town Planner; Emily Noble, Planning Board Administrator

P. Paicos opened the Planning Board meeting at 6:30 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this March 24, 2021 Open Meeting of the Newbury Planning Board was being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, suspending certain provisions of the Open Meeting Law due to the current State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus." He 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. He concluded by stating that each vote taken in the meeting would be conducted by roll call vote.

Following the opening remarks, P. Paicos turned to the first item on the agenda.

A. Liaison Reports

L. Matthews reported that at the Select Board's meeting the previous night the Board voted to approve the Water Protection Overlay District Special Permit for 3 Newburyport Turnpike and Leslie Haley, Town Clerk, gave the Select Board an update on early voting, which will be May 3rd through May 7th. L. Murphy reported the Zoning Board of Appeals finalized the decision for the Cricket Lane 40B. M. Taylor noted that the one thing the Applicant has not done yet is go before the Conservation Commission. P. Paicos said that the Conservation Commission had held a meeting the previous night, at which the Commission went over some By-law proposals. He said there was some public comment that the Commission needs to consider. M. Taylor said that MVPC had a Commissioners' meeting last week at which the Program Managers reported on everything that they are doing right now – she said they are doing an outstanding amount of work. She also reported that MVPC and the Town have signed the contract for the FY 2022 update of the Assessor's maps.

B. Public Hearing – Proposed Amendments to the Code of the Town of Newbury, Chapter 97, Zoning, ARTICLE XI – ADMINISTRATION, § 97-11.C. Special Permit Procedures

P. Paicos opened the Public Hearing and L. Matthews read the legal notice that was published March 8 and March 15, 2021 in the Newburyport Daily News.

M. Taylor said that all the proper notifications had been made.

L. Murphy said that this is a discussion they have been having for a while, but he wanted to acknowledge that the Planning Director M. Taylor along with Town Counsel have done most of the heavy lifting here and he appreciates that. He said one obvious purpose and goal of these amendments is to give direction to the various Boards and Committees when they are acting as Special Permit Granting Authorities (SPGA). He said another equal, if not greater, benefit here is to give guidance to Applicants and to the general public on what issues they might expect when they come before a SPGA in Newbury.

M. Taylor shared the document with the proposed amendments on her screen:

C. Special Permits. —~~Public Hearing. [Amended 4-24-2001 ATM, Art. 27]~~

1. **Procedures and Filing Requirements. An application for a special permit shall be filed in accordance with the following:**
 - a. Procedures. Any special permit which shall hereafter be issued under this By-Law, whether by the Selectmen, by the Planning Board, or by the Zoning Board of Appeals, shall be issued only following a public hearing held within 65 days after the filing of a petition or application with said Selectmen, Planning Board, or Zoning Board of Appeals, as appropriate, and provided that said applicant and/or petitioner has furnished written notice by U.S. Mail, certified or registered, not less than 21 days prior to said public hearing to all adjoining owners-abutters and furnished evidence of such written notice to the Selectmen, Planning Board, or Zoning Board of Appeals, as appropriate, a copy of which petition or application shall forthwith be given to the Town Clerk by the applicant. Any special permit granted under this By-Law shall lapse 2 years from the date of the granting of such permit (including time required to pursue or await the determination of an appeal from the grant thereof) if a substantial use thereof has not sooner commenced, or, in the case of a permit for construction, if such construction has not begun by such date, unless such failure is for good cause. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Selectmen providing the Selectmen find that the proposed accessory use does not substantially derogate from the public good. Petitions or applications for special permits under the By-Law shall be submitted to and reviewed by the following (such reviews may be held either jointly or severally): the Board of Health, the Planning Board, the Conservation Commission and any other Board or Commission of the Town to which petition or application to be submitted for review. Any such Board or Commission to which petitions or applications are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the Selectmen, Planning Board, or zoning Board of Appeals, as applicable, and to the applicant; provided, however, that failure of any such Board or Commission to make recommendations within 35 days of receipt by such Board or Commission of the petition or application shall be deemed lack of opposition thereto.
 - b. Granting Authority. **Except where otherwise designated herein or in the Table of Use Regulations, the Zoning Board of Appeals shall act as the SPGA.** When a

five-member Planning Board has been designated as the special permit-granting authority, one associate member may be authorized for a one-year term. The Board of Selectmen shall authorize/appoint the associate member who, upon the designation of the Chair~~man~~ of the Planning Board, shall sit on the Board for the purposes of acting on a special permit application in the case of absence, inability to act or conflict of interest on the part of any member or in the event of a vacancy on the Board. [Added 4-22-2003 ATM, Art. 8]

2. **Criteria. Special permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any other specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following criteria:**
 - a. **Social, economic, or community needs which are served by the proposal;**
 - b. **Traffic flow, volume, and vehicular and pedestrian safety, including traffic related to parking and loading;**
 - c. **Adequacy of utilities and other public services;**
 - d. **Neighborhood and community character;**
 - e. **Impacts on adjacent properties, neighborhoods, and zoning districts;**
 - f. **Impacts on the natural environment;**
 - g. **Potential fiscal impact, including impact on Town services, tax base, and employment; and**
 - h. **Consistency with the most recent Town of Newbury Master Plan.**
3. **Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the SPGA may deem necessary to serve the purposes of this By-law including, but not limited to, the following: front, side, or rear yards greater than the minimum required by this By-law; screening buffers or planting strips, fences, or walls; exterior lighting; modification of the exterior appearance of the structures; limitation upon the size, number of occupants, method and time of operation for the duration of permit, or extent of facilities; regulation of number, location of driveways or other traffic features; and off-street parking or loading or other special features beyond minimum required by this By-law. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the SPGA.**

Or take any other action thereon.

L. Murphy went through the Section of the By-law being discussed and highlighted the changes that are being proposed. He said he is not going to read through subsection (a) because there is no change to the substance and he said this section simply tracks the requirements of State Law.

He said under (b) Granting Authority the only change is to add the sentence clarifying that the Zoning Board of Appeals acts as SPGA unless some other Board or Commission is designated. He said that this is not a change in law, it is just intended as a clarification. He said ultimately what you would do is go to the Table of Use Regulations to determine what Board or Commission is the SPGA for a particular use.

He said (2) Criteria and (3) Conditions are new. He read through both. He said he doesn't think there is a lot that is new here – it is simply being restated in a format that is clearer and easier to understand and to give guidance for the SPGA and for applicants and the general public.

M. Taylor added that there are By-laws in Newbury's Zoning which are specific special permits and which have their own decision criteria and conditions, so this would apply to cases where under the Table of Use Regulations one of the Boards is SPGA and there is no specific By-law for that use.

P. Paicos asked the Board Members if they had any questions. When there were none he opened the hearing to public comments.

Glenna Etheridge, 6 Newman Road, said that she had not seen this before and asked if they could go through the conditions. M. Taylor said that L. Murphy had read through that section, but she could put it back up on the screen. She did and G. Etheridge agreed that they had gone through that previously. P. Paicos said again this is to give guidance to the SPGA and the applicant. He said these are things they already take into consideration, but here they are defined.

Jessica Brown, 275 High Road, said this seems like a positive step forward. She asked if this would apply to waivers and ANRs. She said she was wondering if this would apply to an ANR and if there are other conditions for waivers. L. Murphy said an ANR is a bit different – it is a determination by the Board on the petition of an applicant in a situation where they are creating a new lot that does not require subdivision approval. In other words for a lot that has adequate frontage, access, and acreage. He said a Special Permit goes to the use of a property. He said you can create a new lot with an ANR, but if you want to build on that property and put it to a use that requires a special permit, that is the point where the SPGA would come in. He said this will only apply in the case of someone applying for a special permit.

M. Taylor added that under Mass General Law the Board cannot put any conditions on an ANR plan.

J. Brown asked what about waivers. L. Murphy said he thinks you would need to look at the particular By-law. He said the Town has Special Permit By-laws that apply to specific uses, like an OSRD (Open Space Residential Development) or Wireless Communications. He said what is proposed here are the general overarching rules, but you would have to look at the specific By-laws to see what provisions the Board has the authority to waive. He said the information is there; you just have to look at the specific By-laws to see what waivers are or are not possible.

Angelica Reynoso, 10 Old Point Road, asked when the restaurant is supposed to be opening up. P. Paicos said that they are not talking about that public hearing right now they will be getting to that but right now they are talking about a By-law proposal and they can get to her comment during that hearing.

P. Paicos asked the Board if they had any additional comments or questions. There being none, he asked for a motion regarding the proposed by-law

Motion: A motion was made by L. Matthews and seconded by G. Morse to incorporate the changes and submit them for consideration and to recommend that these Amendments to the Code of the Town of Newbury, Chapter 97, Zoning, ARTICLE XI – ADMINISTRATION, § 97-11.C. Special Permit Procedures be placed on the Warrant for Town Meeting 2021. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

C. Planning Board Rules & Regulations – Submission Deadlines

M. Taylor shared the Draft of the Planning Board Rules & Regulations – Submission Deadlines on her screen. She said the plan was to go through the draft tonight – if there are amendments, they can go over those, or if they vote to adopt, they will become the Rules of the Board.

P. Paicos went through the draft and said he thought everyone had seen it because they have been working on it.

RULES OF THE NEWBURY PLANNING BOARD REGARDING AGENDAS AND DEADLINES FOR SUBMISSION OF APPLICATIONS AND MATERIALS

DRAFT v. 1 – 3/3/2021

1. Meeting Schedule: The Planning Board shall meet regularly on the first and third Wednesdays of every month. Additional meetings may be called by the Chair and scheduled as needed, with proper posting of the Agenda in accordance with the Open Meeting Law. Meetings may be rescheduled or cancelled.[PB1]
2. Preparation of Agenda for Planning Board Meetings:

- a. The agenda for each Planning Board meeting shall be prepared by the Planning Director after conferring with the Chair. Agenda items suggested by other members of the Board may be included on the Agenda with the Chair's approval.
 - b. The agenda will close at 12:00 p.m. seven (7) calendar days before a regular bi-monthly meeting of the Board or no less than three days before any other meeting, excluding Saturdays, Sundays and legal holidays, and no changes to the agenda shall take place thereafter except as follows:
 - i. Any matter coming to the attention of the Town Planner or a member of the Board after the above stated closing time and considered to be an emergency matter may be included on the agenda. The Chair will be notified of any such changes.
 - ii. Consideration of matters of a non-emergency nature may be allowed at the discretion of the Chair, if permitted under the Open Meeting Law, but may be tabled until the next regular meeting.
3. Submission Deadlines:
- a. New Applications: Drafts of new applications to be filed with the Planning Board shall be submitted to the Planning Director to review for compliance with submission requirements no less than two weeks prior to the anticipated filing date. Applications shall be filed at a regularly scheduled Planning Board meeting.
 - b. All Other Materials: Any materials to be considered by the Planning Board at a regularly scheduled meeting shall be submitted to the Planning Director in both hard copy and electronic format no less than seven (7) calendar days prior to the meeting date at which the materials will be discussed. This includes revised documents for continued public hearings.

P. Paicos asked the Board for any questions or comments. There were none.

Motion: A motion was made by L. Murphy and seconded by G. Morse to adopt Planning Board Rules & Regulations – Submission Deadlines. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

D. Public Hearing – Site Plan Review Application, 2 and 8R Old Point Road, Map U02, Lots 154 & 154; Owner/Applicant: The Cottages Commercial, LLC, Vincent Godin, Manager (continued from March 3, 2021)

P. Paicos opened the public hearing. He said some revised plans and a traffic memo had been submitted to the Board. He said Joe Serwatka, the Town's Peer Review Engineer, has not had a chance to look at them yet. P. Paicos asked the Applicant to describe the revisions.

Steve Sawyer, Design Consultants Inc. (DCI), said the whole design team is here along with Vincent Godin. S. Sawyer shared the plans on the screen. He said around the time of the last meeting they had received some comments from DEP. They said the new pavement for handicapped parking did not meet dune standards, also that the permeable pavers did not meet dune standards. He said he has tried to have discussions with the reviewer, but has not had much response, so what they are going to do is go to another handicap viable surface, which would be compacted stone dust, which would comply with the DEP Standard. He said the parking and the walkway will be stone dust and the apron will also be stone dust.

S. Sawyer said another item that came up was traffic. He said they revised the original Traffic Memo they had submitted January 5, 2021 to include the additional concerns that came up. He said M. Taylor had reached out to MVPC for some material which unfortunately didn't come in until Saturday. He said they thought that it was prudent to reverse the direction of the entry into and exit from the property. He said as far as visibility is concerned, you want the main entry on Plum Island Boulevard, but as far as operation is concerned, he said he doesn't think they have an issue.

The other change was the permeable pavers. They changed where there were permeable pavers to wood decking to meet DEP standards. He said at the last Conservation meeting the Commission was fine with what they were proposing, but they agreed that they should appease DEP to stay clear of any intervention. He said he thinks Conservation will be fine with these changes.

Vincent Godin, The Cottages Commercial, Manager, said that they have more clarity on the hours of operation throughout the year. He said it will be 11 a.m. to 11 p.m. seven days a week and during the off season it will be 4 p.m. to 11 p.m. Monday through Thursday.

Steve Siragusa, Transportation Manager, DCI, said this is the second revision of this report. He said they took the MVPC numbers that were sent to them. He said they have seen the trip generation numbers that they had. They compared the MVPC numbers at that intersection during the peak hours. He said they are expecting less than a 3% increase in traffic. He said they are expecting it to generate about 23 new vehicle trips during the week evening peak hour and 19 new trips on Saturday. He said that is less than 3% of what is currently out there. He said now that it will most likely be a right turn on and right turn off it should hopefully alleviate a lot of the conflicts. He said with this change they don't think the project is going to have much impact in terms of delay or safety for anyone that is in that area.

P. Paicos asked for any questions or comments from the Board.

G. Morse asked what the composition of the wood decking is. V. Godin said he thinks it will be a pressure treated board. Mike DeAngelo, MDLA, the Landscape Architect, said he thinks it would be some type of pressure treated or red cedar or some type of hardwood that would be a durable material. G. Morse asked for confirmation that it would be wood and not a composite material. V. Godin said correct.

L. Matthews said the traffic was described as turning right and turning right. If you are coming off of the bridge you are going to have to turn left then right to get onto this property. Then when you leave you have the option of turning left or right. She said she is just wondering how the left is going to be coming off the bridge because that is a heavily trafficked area. V. Godin said he thinks the idea was that changing from a left straight into the site to a left at the intersection was that the intersection is much wider and would allow a car to pass a car waiting to turn left. Further down where the road is narrower it would potentially create more congestion and back up. M. Taylor said MVPC thought that would be a better traffic flow for that reason among others.

P. Paicos said he thinks their acceptance of M. Taylor and MVPC's traffic suggestions is beneficial and makes the most sense.

P. Paicos said he had a question about DEP and stone dust. He said stone dust is great in dry weather conditions, but come spring time it is probably going to be pretty muddy there. S. Sawyer said with a gravel base and compacted stone dust it doesn't rut and it doesn't get soft. He said there will have to be some maintenance to the driveway and parking spaces to make sure it is smooth and compacted. He said he doesn't think the walking area will require much maintenance at all.

M. Taylor said you are going to have cars that are pulling in to parking spaces that are directly facing residences either immediately adjacent or across McLeod Avenue. She said she knows there is going to be some fencing there and asked if they think that is going to be adequate for screening the glare of headlights from the residences. V. Godin said their plan on that is to add some landscaping, depending on where there is room, on the side of the residences, since those are residences that they own, or on the side of the fencing. He said it is going to be a little bit trial and error. He said the one that will be the most impacted is the one that Jeff, his business partner, lives in. M. Taylor said you may not own these forever, so it could be other people.

P. Paicos said he would like to open the hearing to public comment. He asked M. Taylor for any comments they have received since the March 3, 2021 public hearing. She said the only letter received was from Susan Mitchell, which came in on March 16, 2021, and which she had forwarded to the Board.

Jeremiah Murphy, 81 Southern Boulevard, said his family also owns property at the end of Old Point Road, so they have a direct concern. He said he thinks the traffic concern really needs to be addressed and a traffic study should be done during peak season. He said the big problem with this intersection, no matter which way the direction of traffic is moving, is that those entrances are in very close proximity to the intersection, which becomes very busy. He said without any improvements to the intersection, traffic is going to back up. He said other concerns are the five porta-potties for the amount of people that will be frequenting this restaurant. He said he would like to point out that this was not the original proposal that was presented to people, this is significantly different. He said he wonders if there is broad support for this type of restaurant going in. He said on the decking, he is surprised they are not going with a more synthetic decking.

Steven Mangion, 21 14th Street, said the plan is changing over time as they adjust to input. He said he wonders how close this is to what the ZBA approved. He said at some

point the plans need to be harmonized and he is hesitant to make a determination given that it seems that different plans seem to be on the table. He said at the end of the day they need to have one set of plans that the various Boards and Commissions have approved.

S. Mangion said regarding hours of operation, he heard 11 a.m. to 11 p.m. being proposed. He said that as a person who lives in hearing distance, he is a little bit concerned with late night operation, particularly for outdoor dining. It is one thing to have the indoor restaurant open, it is another to have outdoor dining the way noise carries. He said he can't support being open until 11 p.m. for outdoor dining. He said as he recalls the issue of any alcohol license which may be pursued by the Applicant is something that the Select Board would be in charge of approving. P. Paicos said that the Liquor Commission would be involved and asked L. Murphy if that is correct. L. Murphy said that the Select Board would first take it up and determine if they were going to issue the license and any conditions of operation that they might impose on that. Then it would go to the ABCC and they would review it. With outdoor dining what they are going to be very concerned about is security, line of sight security in the sense that the staff can see the areas where liquor is going to be consumed. Also barriers to keep unauthorized people from getting access to it. He said we shouldn't try to anticipate what the Select Board might do, if the Select Board or the ABCC make some changes the Applicant will have to come back to see this Board again for modification.

S. Mangion said he too is concerned with the traffic and thinks this project warrants a site specific study. He asked if the increase in trips is 29 per day or 29 per hour.

S. Siragusa said that is the peak hour, not all day Saturday, but the peak hour.

S. Mangion asked about parking and if it is their intention that parking will be available at the restaurant facility only when the restaurant is open and not during non-business hours.

P. Paicos let S. Mangion know that the Conservation Commission and the Planning Board have the same plans. P. Paicos said M. Taylor did reach out to the existing businesses to get a feel for the existing business hours.

M. Taylor said that it was essentially 11 a.m. to 11 p.m. for both the Plum Island Grille and The Beachcoma, she said one might even be open until 11:30 p.m. but she doesn't have it right in front of her. S. Mangion noted that they do not do outdoor dining so it is not an apples to apples comparison. P. Paicos said he thinks that might be changing, The Beachcoma may be going to outdoor seating.

L. Murphy confirmed the specific hours. The Plum Island Grille is 11 a.m. to 11 p.m. Monday through Saturday and 10 a.m. to 11 p.m. on Sunday. The Beachcoma is 11:30 a.m. to 11:30 p.m. Sunday through Saturday. That information is off their Liquor Licenses. He said if they were to authorize service within certain hours, he thinks it would be within the Select Board's discretion to further limit the service of alcohol if they felt it was appropriate to do so.

S. Mangion noted that if the hours of operation are until 11 or 11:30 p.m., he would strongly urge the Board to recommend to the Select Board that outdoor alcohol consumption not be allowed until 11:30 at night.

V. Godin asked to address one more of S. Mangion's questions on the parking situation. He said that what they got Zoning Approval for was restaurant parking, if they wanted to do any more than that they would have to go back to the ZBA and get a change of use. So that is not something that they are approved for or plan on doing.

L. Matthews asked if there is a plan for any outdoor music and/or entertainment. She said she knows that the Beachcoma has music from 4 p.m. to 7 p.m. on Sunday. She said she is not sure what the Plum Island Grille has. She said she thinks if you grant a restaurant a liquor license until 11 p.m. that is across the board. She said the way she understands it much of the indoor dining is going to be for handicapped use. V. Godin said there will be handicapped seating outside as well as inside. Inside is where the handicapped restrooms will be located. He said the indoor is going to be for off season and bad weather when people can't be outside. He said they are planning a limited amount of live music. He said he has seen the Plum Island Grille have bands on the back porch area. He said they would limit it to special events during the day only.

M. Taylor said she believes that any entertainment will have to go before the Select Board. She said she knows that the Beachcoma went before the Select Board for their live entertainment. L. Matthews said Georgie Porgie's is going through it right now.

Lynne Petty, 11 Basin Street, said what is being proposed is a restaurant, outdoors, which is with the times and what we want. When you have a new venue you are going to have increased traffic and that is just the way it is. She asked if we all want to continue looking at this service station on the corner or do we want to bring a well thought out plan to this island. She said there has been meeting after meeting and she is hearing the same issues. She said she thinks they need to think of this as something new and positive for our islanders to enjoy.

Sheila Christensen, 8R Old Point Road, thanked L. Petty for her comments and said she also holds them as true. She said she has been a resident of Plum Island, Newbury, and a Newburyport resident for the last 41 years and she has been coming to Plum Island since she was five years old. She said she is asking everyone to open their minds up to a common sense approach, especially to traffic. She said she walks there and rides her bike, the traffic on Plum Island goes to the Refuge and to the beach, anyone who lives here knows. She said people are not going to come all at once to this restaurant, they will come in increments.

Angelica Reynoso, 10 Old Point Road, asked how many parking spaces this restaurant is going to have. S. Sawyer said that there are 54 spaces. A. Reynoso said with that and the proposal of opening this restaurant come spring or summer, she has concerns. She said she lives right next to the proposed restaurant, there is no barrier or fence to protect her two younger children from 50 plus cars going through the yard, and asked if a barrier is going to be placed between this yard and that access road.

Mike Rettenmeier, MDLA, Landscape Architect, said they do have a six foot privacy fence along that side of the property.

A. Reynoso asked when that will be put up because there will be a lot of construction and a lot of traffic trying to get this operational. V. Godin said that is one of the first things that will get put up and that construction fencing will be put up before they do any sort of construction to make sure that people can't wander onto a construction site.

Paul Duffy, 12R Old Point Road, said he had lived there for a little over two and a half years. He said he can understand the concerns and he deals with the delivery trucks and the mail and the parking, and while all that is somewhat of a concern for him, he is more concerned with the image that you see when you drive onto Plum Island. The thought of a well-planned restaurant and facility that is pleasing to the eye as you come on to the Island appeals to him in the aesthetic sense and part of the allure of Plum Island for him was the musical community there. He thinks something that will breathe a little bit of life and culture into Plum Island will go a long way. He said he thinks they have laid out a pretty nice plan and it would be a benefit to the Island.

G. Morse asked how they might practically control who parks in the lot to ensure it is someone who parks there to go to the restaurant as opposed to someone who might park there to go to the beach. V. Godin said they have thought about that. Their initial thought and what they have witnessed over the past five years is that the busiest time is between 9:30 and 11:00 a.m. He said their thought is that they would maybe put some sort of nautical rope across the parking lot during non-operation hours. He said he has a feeling they might have to utilize towing at some point. G. Morse asked if they would have someone at the gate or each end during open hours. V. Godin said their initial thought is that they will have a hostess right at the entrance where they have a view of the parking lot and that will be part of their responsibility.

P. Paicos summarized. Since their last meeting the traffic flow has changed, the hours of operation have been discussed. M. Taylor added that they have changed some materials based on DEP's comments. She said they may want to get some feedback from J. Serwatka.

S. Sawyer said they are actually increasing the permeability, so if anything the stormwater will be reduced.

L. Murphy clarified that he wasn't suggesting that they shouldn't include some hours of operation in their decision. His point was that if the Select Board feel that it is inappropriate to serve alcohol beyond a certain hour, then they could reduce the alcohol service time.

L. Matthews said hours of operation are just open and close, she asked what time the kitchen would close. V. Godin said they are anticipating that the kitchen would close at 10 p.m. and last call would be 30 minutes before close.

W. Knight asked if the residents next to the project were affected by the reversal of the traffic through the site. V. Godin said that they use McLeod Avenue so they were not affected either way.

L. Matthews asked since they changed the direction of traffic, are they going to change the parking to make it easier to maneuver through. V. Godin said the drive is at or above the required width to give people ample room for people to turn into a 90 degree spot. S. Sawyer said it is the most efficient way to go.

P. Paicos said he would like to review the Site Plan Review Criteria at this time.

M. Taylor pulled the Criteria up on her screen from Chapter 97-9 of the by-law.

- (6) Decision Criteria: The Planning Board shall approve an application for site plan review if it finds that the Applicant has submitted sufficient information from which it can determine that the proposed project will:
 - (a) Minimize:
 - 01) The volume of cut and fill;
 - 02) The number of removed trees 6" caliper or larger;
 - 03) The area of wetland vegetation displaced;
 - 04) Soil erosion;
 - 05) The threat of air and water pollution; and
 - 06) Traffic congestion.
 - (b) Avoid removal of existing stone walls or, where removal is required, minimize length of removal;
 - (c) Provide adequate stormwater management and other utilities consistent with the requirements of Newbury's Stormwater By-Law and the Planning Board's Subdivision Rules and Regulations;
 - (d) Maximize safety for pedestrians and vehicles both on the site and entering onto and egressing from it;
 - (e) Provide adequate access to each structure for fire and emergency service equipment;
 - (f) Minimize obstruction of scenic views from publicly accessible locations;
 - (g) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

- (h) Minimize intrusion of glare from headlights and site lighting on surrounding properties;
- (i) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;
- (j) Prevent contamination of groundwater from any source;
- (k) Enhance the appearance of the property to the greatest degree possible by means of landscaping and other site amenities;
- (l) Minimize impacts of the use on adjacent properties through regulation of hours of operation, deliveries, noise, rubbish removal, and on-site storage;
- (m) Ensure compliance with the provisions of Newbury's Zoning By-Law, including parking and signs.

Notwithstanding the above, regulation of uses and structures referred to in G.L. c. 40A, § 3 (exemptions from zoning) shall be limited to the extent allowed under said section of the General Laws.

P. Paicos read through the criteria. He asked if there were any concerns with item “06) Traffic congestion”.

All members said that they were good. P. Paicos said that he thinks the concerns have been addressed.

P. Paicos continued and found that “(c) Provide adequate stormwater management and other utilities consistent with the requirements of Newbury's Stormwater By-Law and the Planning Board's Subdivision Rules and Regulations” applied to this project and asked the Board if there were any concerns. There were none.

Next he asked if there were any concerns related to “(d) Maximize safety for pedestrians and vehicles both on the site and entering onto and egressing from it.” L. Murphy said this is what they have been discussing at length and they still have to hear back from the Peer Reviewer on the traffic information. W. Knight said the reversal of traffic through the site helps.

P. Paicos asked if there were any concerns in regards to “(e) Provide adequate access to each structure for fire and emergency service equipment.” There were none.

Similarly there were no concerns with (f) or (g).

P. Paicos asked if there were any concerns with “(h) Minimize intrusion of glare from headlights and site lighting on surrounding properties.” L. Murphy said he is not sure he

quite understands what site barriers are being proposed. G. Morse said there has been a question raised about glare and he thinks that is something that can be addressed. P. Paicos asked as a condition? G. Morse said yes. L. Matthews agreed. W. Knight said the only place he sees the issue is for the houses on the other side of McLeod, something needs to be done in case they ever do sell those houses.

There were no concerns with (i), (j), or (k).

P. Paicos asked if there were any concerns regarding “(l) Minimize impacts of the use on adjacent properties through regulation of hours of operation, deliveries, noise, rubbish removal, and on-site storage.” L. Murphy said they are going to have to make a decision on the hours of operation certainly, but he thinks again the Select Board through their function can put any limits on alcohol service. He noted any outdoor entertainment is going to require a permit from the Select Board as well. He said he does not have any concerns. G. Morse said that he did not have any concerns. L. Matthews asked about noise for rubbish removal because a lot of times that can be at 7- 7:30 in the morning. She said just to be courteous of the neighbors. V. Godin said there has been a dumpster on site for a number of years and they come normally on Wednesday mornings.

There were no concerns with (m).

P. Paicos said that completes the Site Plan Review Criteria. He asked if there was anything further from the Applicant.

S. Sawyer said as far as the process for the Peer Review is concerned, he knows J. Serwatka didn't have any issues with the traffic the last time and the changes are really insignificant. He said he is just wondering what the process will, hoping to get this moving along.

P. Paicos asked the Board members if they felt that are at the point where we could ask M. Taylor to start drafting a decision. All members thought that they could move ahead. M. Taylor said she has enough input to get started, and assuming they get input from J. Serwatka in the meantime, if there is anything that requires a condition or further discussion, that could be done.

The Board looked at the schedule for a date to continue this hearing.

V. Godin asked if it would be possible for them to begin some site work. He said demo of the existing buildings. M. Taylor said it would be at their risk and they would need a Demo Permit from the Building Commissioner. Demo of the existing buildings is somewhat separate from this project.

Motion: A motion was made by L. Matthews and seconded by W. Knight to continue the Public Hearing – Site Plan Review Application, 2 and 8R Old Point Road, Map U02, Lots 154 & 154; Owner/Applicant: The Cottages Commercial, LLC, Vincent Godin, Manager to April 21, 2021 at 7:15 p.m. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

E. Public Hearing – Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC (continued from February 3, 2021)

P. Paicos opened the public hearing and asked M. Taylor if there were new materials.

M. Taylor said yes, they do have revised plans and architectural drawings that were submitted last Wednesday and they had been sent to the Planning Board members. M. Taylor said TJ Melvin, Millennium Engineering Inc., and Phil Kritikos, Architect, are both here.

TJ Melvin updated the Board. He said they had received Site Plan Approval from the Newburyport Planning Board that they had received approval the previous night from the Newbury Select Board for the Water Supply Protection Overlay District Special Permit.

He said as far as the Site Plans are concerned, they made one minor revision, which was to add a note on a detail, as requested by J. Serwatka. He also said that P. Kritikos had talked with M. Taylor and had revised the Architectural Plans. He said he can bring them up and P. Kritikos can go through the changes.

TJ shared his screen. P. Kritikos said what he did was change the look of the existing design. He bumped out the areas around the windows to give it some accents, removed one of the roof bands, and added some wainscoting on the bottom of the building.

P. Paicos then asked the Board Members for questions or comments. P. Paicos asked if they had requested a visual of what this would actually look like on the landscape. M. Taylor said they had a very good conversation and said they did talk about the possibility of inserting this in an aerial photo of the area. She said he has the Subway/Domino's building right next to it but not the whole traffic circle. P. Kritikos said unfortunately he doesn't have the capability to do an aerial of the whole area and that what is shown is the extent of his capability.

P. Paicos said that the area doesn't have a lot of landscaping, so there is going to be this three story red building that is going to be standing up there that is going to be very noticeable and different from other buildings in this area. He said he didn't know if there was a way to have it not sticking out so much, looking like a big red barn. He said he saw his reference to the building in Topsfield and that building was perfect for that context. Here this building is going to kind of be on its own. He asked P. Kritikos if he had been to the site and what his thoughts on that are.

P. Kritikos said that the owner wanted to replicate the Depot in Topsfield, since they are close to a railroad station – that is what their aim was and he tried to do that as well as he could. He said if that is not what the Board is looking for, maybe they can change the look, make it more contemporary, and change some of the features. He said they can change the color. Someone mentioned the roof forms, we can modify things like that.

P. Paicos said he appreciated the openness. P. Kritikos said he will have to talk to his client, but he is sure they will be willing.

M. Taylor said she saw their original reference point and she said she understands perfectly why that was chosen. This is a little bit of a different structure as a three story building. She said if it were possible to increase the roof height and bring the eave down, so that the top floor was dormered, that would help, but spatially that does not work with the need for square footage inside. She said she looked at all the other buildings around the traffic circle and other than the Courthouse, this is significantly higher than all the other buildings, so it will certainly have a presence. She said one certainly can't say there are any great architectural examples on the circle. She said the color, red, will draw a little bit more attention to it. She said she appreciated the effort to modulate the exterior a little bit.

M. Taylor said, as was noted, that the Select Board did vote to grant the Water Supply Protection Overlay District Special Permit. They imposed a couple of conditions based on J. Serwatka's review letter.

M. Taylor said that she has not received any public comment. There was an email from the fire department saying that the project has met their criteria.

L. Matthews asked if they had done a site walk here. M. Taylor said they had not, mostly because the site is so visible.

W. Knight asked if M. Taylor was saying that dormering the third floor and changing the pitch of the roof was not a possibility. M. Taylor said if you do that then you start losing square footage in the units on the third floor. The height is restricted by Zoning.

P. Paicos said he would like to go through the criteria. M. Taylor pulled the Criteria up on her screen from Chapter 97-9 of the by-law.

- (6) Decision Criteria: The Planning Board shall approve an application for site plan review if it finds that the Applicant has submitted sufficient information from which it can determine that the proposed project will:

(a) Minimize:

- 01) The volume of cut and fill;
- 02) The number of removed trees 6" caliper or larger;
- 03) The area of wetland vegetation displaced;
- 04) Soil erosion;
- 05) The threat of air and water pollution; and
- 06) Traffic congestion.

- (b) Avoid removal of existing stone walls or, where removal is required, minimize length of removal;

- (c) Provide adequate stormwater management and other utilities consistent with the requirements of Newbury's Stormwater By-Law and the Planning Board's Subdivision Rules and Regulations;
- (d) Maximize safety for pedestrians and vehicles both on the site and entering onto and egressing from it;
- (e) Provide adequate access to each structure for fire and emergency service equipment;
- (f) Minimize obstruction of scenic views from publicly accessible locations;
- (g) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- (h) Minimize intrusion of glare from headlights and site lighting on surrounding properties;
- (i) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;
- (j) Prevent contamination of groundwater from any source;
- (k) Enhance the appearance of the property to the greatest degree possible by means of landscaping and other site amenities;
- (l) Minimize impacts of the use on adjacent properties through regulation of hours of operation, deliveries, noise, rubbish removal, and on-site storage;
- (m) Ensure compliance with the provisions of Newbury's Zoning By-Law, including parking and signs.

Notwithstanding the above, regulation of uses and structures referred to in G.L. c. 40A, § 3 (exemptions from zoning) shall be limited to the extent allowed under said section of the General Laws.

P. Paicos said he is going to go through these quickly. He said he doesn't think (6) (a) 01), 02), 03), 04), 05), or 06) apply. He said he doesn't think (b) applies, there are no stone walls. In reference to (c) stormwater, he said he doesn't think that is going to be a concern and that has been addressed by Peer Review. He asked if there were any concerns with (d).

G. Morse said the only question he had was about people making entry and exit from the rotary, but said the more he thinks about it, the more he thinks it is ok.

P. Paicos asked if anyone had any additional concerns or comments with (e) through (m) and there were none from any of the Board Members.

P. Paicos asked M. Taylor if there was anything else she needed from the Board. He asked if the applicant's representatives had any questions or comments. There were none.

Motion: A motion was made by G. Morse and seconded by L. Murphy to direct M. Taylor to draft a Decision for Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC to April 21, 2021 at 7:15 p.m.. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

Motion: A motion was made by L. Murphy and seconded by L. Matthews to continue the Public Hearing – Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC to May 5, 2021 at 7:15 p.m.. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

A motion made by L. Matthews and seconded by L. Murphy to adjourn the Planning Board meeting at 8:53 p.m. A roll call vote was taken. L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

Respectfully Submitted,

Emily Noble
Planning Board Administrator