

## **Meeting Minutes**

### **Planning Board**

Wednesday, May 5, 2021

Virtual Meeting via Zoom

**APPROVED**

**Members Present:** Peter Paicos, Chair; Leslie Matthews; Woody Knight; Larry Murphy; George Morse; 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 May 5, 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 agenda.

- A. Continued Concurrent Public Hearings – 15 Coleman Road (Map R02, Lots 12 & 13);  
Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager (continued from April 21, 2021)**
- 1. OSRD Special Permit Application**
  - 2. OSRD Definitive Subdivision Plan Application**

P. Paicos opened this session of the concurrent public hearings and stated that he had watched the video of the April 21, 2021 session of the hearings, which he had missed, and that he had provided the required Certification that he had done so to the Planning Director. He then informed the Board that he and M. Taylor had had a conversation with Tom Zahoruiko regarding the possibility of having an affordable unit in the development, but that no plans or agreements had been made. He asked the Board Members if they had any questions – there were none.

He then asked T. Zahoruiko if he had any new information to present to the Board. T. Zahoruiko said no – as he and his engineer have said previously, they will submit a final set of plans with all the changes that have been discussed with the Planning Board as well as the Conservation Commission. He said they have responded to Joe Serwatka's review letter and received comments back. There is nothing of consequence except for what they will discuss tonight to try to resolve loose ends. From T. Zahoruiko's perspective the things that are critical to try to nail down are the lot count, the public or private nature of the roadway, their short list of waivers, and the question of parking for access to the open space.

P. Paicos asked the Board members if they had any comments or questions.

L. Murphy said as far as the number of lots is concerned, that is still to be discussed. As far as the road being public or private, it has been his experience with this Board that for these short cul-de-sacs, the Board does not generally recommend that they be accepted as public ways, especially where you are looking for waivers in the roadway dimensions. He said as far as the parking goes, he thinks that needs to be discussed in further detail. He said he is not sure if parking in the cul-de-

sac would be acceptable. He said there seem to be two options. One would be off the neck that goes from the cul-de-sac to the open space. He wondered if the other option might be to have some portion of lot 7 adjacent to Coleman Road retained by the homeowners association and used for parking. We would then have to think about how the public would get back to the open space.

G. Morse agreed that parking in the middle of the cul-de-sac might be a public safety issue.

L. Matthews said she agreed about the parking.

W. Knight said that he agreed that that parking in the cul-de-sac could potentially be a public safety issue. He said he also agreed that the cul-de-sac should remain private because that is what the Board has done in the past. He said if they are going to have all this open space they do need to provide parking.

M. Stohn said that she didn't have anything to add.

P. Paicos asked L. Murphy about his parking thoughts.

L. Murphy said he thought it might be desirable to keep as much of the existing view from Coleman Road as possible and that he was wondering what the point of moving the shed/studio structure closer to the road was. He thought that some portion of Lot 7 might be an appropriate place for public parking, if we can find a way to direct people to the open space. He said he was thinking of two separate things – preserving the view from Coleman Road and trying to address the parking concern at the same time.

P. Paicos asked T. Zahoruiko's thoughts on this. T. Zahoruiko said that he had gotten the sense from the Board members that this building was something they would like to be preserved and that he had moved it to the front of Lot 7 so that it would be in the view with the other buildings as it has been.

L. Murphy said he is not suggesting that it should not be preserved, but just located elsewhere on site.

T. Zahoruiko said that is not something he has given much thought to. He said that the cul-de-sac is an island cul-de-sac. There is plenty of room on the paved surface for emergency vehicular access without any conflict. He said the cul-de-sac is 60 feet in diameter; there is certainly plenty of room for parking in that island without any interference at all with the paved surfaces or access of any kind. The island has plenty of capacity for four standard sized parking spaces. That location is close to the open space access point, which makes a lot of sense.

P. Paicos asked M. Taylor if we have ever had any parking on an island in a cul-de-sac.

M. Taylor said she can't think of anything off hand and said she would ask Public Safety how they would deal with that. She asked T. Zahoruiko if he had a sketch of how that might work.

T. Zahoruiko said he did and asked Phil Henry, Engineer, if he could pull it up.

M. Taylor asked if they were planning on using any of the island for stormwater management.

P. Henry said no, but there will still be a catch basin there.

When the sketch was on the screen. T. Zahoruiko said that the parking fits very comfortably and can be very easily screened and nicely landscaped without any interference with anything. He said in his estimation it is the ideal location.

M. Taylor asked what they are thinking the surface would be. T. Zahoruiko said they have built a number of parking lots and typically they provide a compacted gravel base, a shallow layer of loam and then a hardy grass mix that survives very well without maintenance and holds up well to minimal traffic.

P. Paicos asked if it would be cleared of snow in the winter. T. Zahoruiko said no, it would not.

L. Murphy said his concern would be keeping people from parking along the cul-de-sac itself. He said maybe his idea of putting the parking down near Coleman Road is not the best, so it has got to go off that neck somewhere. Referring back to the issue of the view from Coleman Road, he said he would really like to see some effort made to keep that appearance of open space, maybe a tree buffer or something.

T. Zahoruiko said he is trying to imagine how many parking spaces they could have on Lot 7. He said it is not like they would be able to have any great number of parking spaces anywhere.

L. Murphy asked if the north side of Lot 3 could work.

P. Paicos asked if the intention was to keep it at four parking spaces.

L. Murphy said, if you have room, I would do six.

G. Morse said he questions how many people would be using this space, he thinks four is excessive.

L. Matthews said who is to say residents' guests won't take up these parking spaces. Is there enough open space in this area that this is not necessary.

P. Paicos said it is part of the OSRD that the public would have access to the open space. It is a beautiful place to walk and is part of the history of Newbury.

L. Matthews said she agrees, but she is looking at it from the perspective of a homeowner on a private way. She said if there is parking, then she would say additional parking spaces are a good idea, six spaces.

W. Knight said four spaces minimum. He said if the parking was by Coleman Road it would cause less disturbance for homeowners.

M. Stohn said she thinks four is plenty.

M. Taylor said her feeling is that four spaces is the right number.

P. Paicos said that the number of spaces seems to be appropriate. The question is if T. Zahoruiko would like the parking in the middle of the development or on the exterior and have people walk to the open space.

T. Zahoruiko said there are a couple of elements here. He asked if the studio building was important – he only proposed moving it in response to concern and interest in preserving it. He said it is not in good shape and is not sure it will survive the move.

P. Paicos asked M. Taylor if the Historical Commission had commented on this building. She said they had not and if the building needs to be rebuilt it loses some of its significance.

T. Zahoruiko also said that when he spoke to Historical, they did not comment on this building – he said by that time he had already proposed to move or rebuild it. He said in reference to parking that there is not as much space as some members think there might be to create parking. He said if it was near Coleman Road it would be two car lengths from the Road, he said he doesn't think that is a safe or practical thing to do. He said he doesn't think he could even get four spaces in there.

P. Paicos said this may be a topic that needs to be explored further and suggesting moving on to the other discussion points. He asked M. Taylor, if they had received any public comments – she said they had not. P. Paicos then asked if there were any comments from the public on what has been discussed thus far.

Gary MacCausland, 27 Coleman Road, said he has lived there for 22 years. He said the discussion doesn't directly affect him, but his observations are that the road most likely will be private, but there is a lot of talk about parking for the public, and that seems hypocritical. Secondly, his vision would be that the open space would primarily be used by people who are within walking distance – he said he would be surprised if people would make this a destination.

P. Paicos said that if they are going to have open space for the Town and community, what they are trying to do is have an avenue for access. If people do try to try to drive to the site, it is not unprecedented that there would be public access over private lands.

Richard Piccolo, 92 Caldwell Farm Road, said he applauds the developer for setting aside this amount of land. He said he thinks this land will be used mostly by pedestrians so with that said, he thinks the four spaces will be more than adequate.

Dave Stracher, 25 Greentree Lane, said that moving the parking up to the front by Coleman Road will be disturbing to the residents on Longbrook, Coleman Road, etc.

T. Zahoruiko said they have created spaces and access at many projects over the years, and the island idea to him is the most logical and least disturbing way to do it.

P. Paicos said he would like to go down the list of OSRD requirements to help with an understanding of how this proposal complies. He asked the Board if the Applicant has provided an appropriate Yield Plan.

L. Murphy said it looks okay at first blush, but it's pretty bare bones, without much information. He doesn't see where the building envelopes would be or where the viable locations for septic systems are. He said this information is important when considering the findings they have to make for the

OSRD: To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision; to minimize the total amount of disturbance on the site; and to facilitate the construction and maintenance of housing, streets, utilities, and the provision of public services in a more economical and efficient manner. If the five houses in the Yield Plan are all clustered around the cul-de-sac, then are they really meeting these requirements with the OSRD? He asked T. Zahoruiko if he could speak to that. Where would the houses be located? Where have you had successful percs?

T. Zahoruiko said that those percs are all documented in the plan set on each of those yield lots. He said the percs vary a little bit so the sizes of the systems would vary. The yield lots are substantial in size and so the systems would fit on the lot.

L. Murphy asked if they would have 300 foot long driveways on some of these lots or would the houses be by the cul-de-sac.

T. Zahoruiko said that lots 3 and 4 would have long driveways. L. Murphy said that was the information he was looking for.

G. Morse said he has no adverse comments, he finds it acceptable.

L. Matthews agreed.

W. Knight said he finds it to be an acceptable yield plan.

M. Stohn agreed that it was acceptable.

P. Paicos then asked, moving on to the next component with regards to the open space, whether the proposed open space meets the requirements of 50% of upland.

L. Murphy said yes, as far as he can see.

G. Morse, L. Matthews, W. Knight, and M. Stohn all agreed that yes it does.

P. Paicos then addressed bonus units and noted that based upon the open space calculations, the Applicant has requested two bonus units. Even though the project is eligible for two bonus units, is a second bonus unit appropriate for the site?

M. Taylor said that based on the amount of open space that is being set aside, T. Zahoruiko is eligible for two bonus units, but those are discretionary on the part of the Board. She said she thinks it is appropriate to weigh that request along with everything else.

P. Paicos said he would like to get a feel from the Board members.

L. Murphy asked him first what the result of the discussion about the affordable unit was.

P. Paicos said there was no conclusion, just discussion.

T. Zahoruiko said it is out there for discussion. He said he is very open minded, but he has not had a long time to consider or to look at the financial consequences of that, which are quite substantial. He said he would be open to discussing it further. He said there is a lot for him to think about. He said he has a history of being creative when it comes to these things. He said he can't say that he can do that today, it is a big impact on the project.

G. Morse asked when the discussion about the affordable unit would happen.

T. Zahoruiko said that he would prefer not to leave it as an open item that determines the ultimate destiny or design of this project.

L. Matthews said she shares P. Paicos' passion for affordable housing. She asked if there was a way to make that original house into a two family.

P. Paicos asked M. Taylor if that is feasible to do.

M. Taylor said that would mean eight units and under the OSRD Bylaw there is a 50% cap rounded down based on the yield plan, so with a yield of five the most he can have is seven including the bonus units.

L. Matthews said she doesn't really have a problem with the two bonus units.

M. Stohn said she thought the two bonus units could be granted. She said she likes the idea of being creative, but she also thinks she hears T. Zahoruiko saying no to the moderate income housing. She said if he would consider it seriously, then the two bonus units should be granted. She added it is not a condition, but with some creative thought she would be amenable to the two bonus units.

P. Paicos then moved on to the Purpose and Intent, and asked the Board members if they felt the proposed OSRD is consistent with the purpose and intent of the OSRD By-Law.

L. Murphy said overall yes.

G. Morse said he has no concerns.

L. Matthews, W. Knight, and M. Stohn all agreed and had nothing to add.

P. Paicos said in regards to the design process, has the design been done in compliance with the OSRD process approach.

M. Taylor said that for an OSRD, they need to go through four steps: Identifying the primary and secondary conservation areas, locating the house sites, laying out the road, and drawing in the lot lines. She said having walked through the process with them, her own feeling is that they have followed that process and met those requirements.

All the Board members said that they were fine with it.

P. Paicos then asked to discuss the waiver requests.

T. Zahoruiko read the first waiver request, which is to reduce the area and frontage from the required residential zoning dimensional regulations of 125 feet and 40,000 square feet.

No members had any issue with that waiver, and M. Taylor said this is something that is typically done.

T. Zahoruiko said the second waiver request pertains to the requirement that trees over six inches in diameter to be removed be marked. He said there are a great number of trees to be removed and it seems impractical to mark them all.

All members said that they were fine with this waiver. M. Taylor said that she was fine with it as well.

T. Zahoruiko said the third is a request to waive the requirement for an Environmental Analysis, due to the small scale of the project.

All members were ok with this waiver.

T. Zahoruiko said the next waiver is for the general layout and dimensions of the roadway, seeking a reduction of the following to reduce the disturbed area on the site: the right of way width from 53 to 40 feet, and the cul-de-sac diameter from 165 down to 140 with the paved diameter from 126 down to 120 feet.

L. Murphy said that is fine with the understanding that the roadway remains private.

G. Morse, L. Matthews, W. Knight and M. Stohn all agreed.

T. Zahoruiko said waiver request five is the utilities are proposed to use high density polyethylene piping instead of reinforced concrete pipe for drainage only. He said it is pretty standard in today's world.

L. Murphy said he believes T. Zahoruiko is right that it is fairly standard these days.

G. Morse, L. Matthews, W. Knight and M. Stohn all said they were fine with it.

T. Zahoruiko said the final waiver request is for no sidewalks, considering there are none on the adjacent streets and they are preserving the onsite trails.

L. Murphy, G. Morse, L. Matthews, W. Knight and M. Stohn all said they were comfortable with that.

P. Paicos said the next question for the Board to consider was if the roadway would be public or private. He said to T. Zahoruiko that he thinks he had heard from the Board that they feel it should remain a private way and that would be the recommendation of the Board.

T. Zahoruiko said he got that sense.

P. Paicos then asked what the Applicant's thought was regarding ownership of the open space and holder of the conservation restriction. He asked M. Taylor what the options were for that.

M. Taylor said for the ownership of the open space it could be the Town, a non-profit, or the homeowners association. She said ideally there would be a conservation restriction on it that would be held by a non-profit or the Town's Conservation Commission.

L. Murphy said he had a discussion with M. Taylor and it seems like the HOA with the conservation restriction. He said his understanding is that a non-profit like Greenbelt is likely not going to be interested because it doesn't connect with any of their other property and he said he doesn't know that there is any appetite for the Town to own it. He said he thinks the HOA is the logical way to go with this.

G. Morse said he agrees. He mentioned a liability issue, but he imagines that would be covered in the Associations insurance.

L. Matthews agreed with the HOA.

W. Knight said he agrees with what has been said.

M. Stohn said liability is an important issue and the HOA is best suited to deal with it.

M. Taylor commented that if the open space is open to the public that there is recreational use law that governs, as long as there is no charge for use.

P. Paicos then asked with regards to the decision criteria, if this proposal meets the criteria.

M. Taylor pulled the criteria up on the screen.

P. Paicos read:

Decision of the Planning Board.

(a) The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:

(01) Whether the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;

P. Paicos polled the Board and all members said they were fine with it.

(02) Whether the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archaeological resources;

P. Paicos polled the Board and all members said yes.

(03) Whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;



P. Paicos polled the Board and all members said they agreed.

04) Whether the OSRD reduces the total amount of disturbance on the site;

P. Paicos polled the Board and all members said it does.

05) Whether the OSRD furthers the goals and policies of the open space and master plans;

P. Paicos polled the Board and all members said yes it does.

06) Whether the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;

P. Paicos polled the Board and all members said yes.

07) Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning By-Law.

P. Paicos polled the Board and all members said yes.

P. Paicos said he thought they still have a little work to do on figuring out the parking situation and he did not want to hammer on that any more tonight.

T. Zahoruiko said from his perspective there isn't much more to think about, that this is the best option, but he understands that there is a difference of opinion. He said he thinks the more critical issue is settling on a lot count because without that they are going nowhere.

P. Paicos opened the hearing to public comment.

Kristin Grubbs, 28 Elm Street, said that she has not been following along, but that she has looked at the plans on the Town website. She said that this looks like a really good OSRD and she commended T. Zahoruiko and the Planning Board. She asked what the term moderate affordable housing meant. She said regarding the open space, if Greenbelt has actually been asked. She said she would encourage them to be asked because in many cases they are an excellent owner of open space.

P. Paicos asked M. Taylor if she would like to address the question about moderate affordable housing.

M. Taylor said she is not sure what exactly T. Zahoruiko is talking about when he says moderate, but the HUD criteria talks about low income being 80% of the median income.

T. Zahoruiko said he can elaborate. Low income is considered affordable to someone making no more than 80% of the area's median income. Moderate affordable housing is affordable to someone who makes between 80-120% of the area's median income.

K. Grubbs said she understands the affordable housing at the 80% area median income is a unit that the Town could put on DHCD's subsidized housing inventory, which helps the Town in counting the affordable unit. She said she would just suggest if the Board pursues an affordable unit she would advocate for that unit being at that 80% mark so that the Town could move the dial on how many affordable units are counted in the Town.

P. Paicos asked M. Taylor if there had been any communication with Greenbelt to her knowledge.

M. Taylor said no.

T. Zahoruiko said that he had spoken unofficially with someone who is a member of Greenbelt who suggested that they might be interested. He said his experience with Greenbelt has been good, he said he thinks that would be a good option.

P. Paicos asked if that is the direction he would like to go.

T. Zahoruiko said if it is not going to be held by the Town, that would be his preferred route. He said it is good to have a good steward like Greenbelt.

P. Paicos asked if the Board is ready to direct M. Taylor to start drafting a Decision.

L. Murphy said yes, we have some unresolved issues but we can focus on them to get them resolved.

G. Morse said yes, he would love to see a follow up on contacting Greenbelt.

L. Matthews, W. Knight, and M. Stohn all agreed.

**Motion:** A motion was made by L. Murphy and seconded by W. Knight to direct M. Taylor to begin drafting an OSRD Special Permit Decision for 15 Coleman Road. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

The Board discussed the next steps.

L. Murphy said that the suggestion to reach out to Greenbelt is a very good one. He said as to the parking, it seems four spaces are enough and that parking off of Coleman is not the best location. He asked M. Taylor if she could reach out to public safety and see if they are comfortable with the parking in the location T. Zahoruiko has suggested.

M. Taylor said yes, they should weigh in.

L. Murphy said the only other issue is to come to grips with the number of bonus lots.

G. Morse asked how anyone would control the parking on the roadway. Would there be "No parking" signs on the road?

T. Zahoruiko said yes, there is not much more than you can do, people don't always do what they are supposed to, all we can do is make our best effort to inform people.

L. Matthews said the parking issue she understands. There shouldn't be any parking on Coleman Road and even if you put out signs there are still going to be those people who will think they are exempt. She said she is feeling good about the bonus lots.

W. Knight said Greenbelt would be a great fit. He said for the parking it will be important to check with public safety.

M. Stohn said she had nothing to add to what the others have said.

P. Paicos asked M. Taylor about where the Definitive Plan needs to go.

M. Taylor said that both the OSRD Special Permit and the Definitive Subdivision Plan were submitted concurrently. Typically they have had them sequentially. She said while the OSRD Special Permit hearing can stay open indefinitely there is a timeline on the Definitive Subdivision hearing. She said the Board has 130 days from when that was filed. She believes that leads them to a Decision needing to be filed with the Town Clerk on or before June 17, 2021 unless the applicant grants the Board an extension.

T. Zahoruiko said if there is a good reason for an extension then he would grant it. He said he doesn't see that there are that many lingering issues here. He said he is still a little in the dark with the issue of the lot count, that is an issue for his design team as far as moving forward.

P. Paicos asked L. Murphy what his feeling was on the straw poll they took on the number of units.

L. Murphy said he was not sure if there was a consensus. He said speaking for himself, he is very conflicted about it. He said he thinks this is worthy to go forward as an OSRD and certainly there would be no incentive for the developer without at least one bonus lot. He would certainly be in favor of that, he said he is a little in conflict whether it is in the public interest to perhaps instead of authorizing a second bonus lot, to keep lot seven in its natural state. Or in the alternate, an affordable unit might push that over the edge for him, to two bonus lots.

G. Morse asked if the second bonus lot would only arise with an affordable unit.

P. Paicos said they are just trying to determine what would be appropriate. We don't want to tell the applicant what to do, and we can't. We have expressed our concern.

M. Taylor said just to clarify T. Zahoruiko is eligible for the two bonus lots based on the amount of upland that is being set aside as open space, regardless of any affordable units. He could choose to do it differently, he could leave less upland as open space but create an affordable unit with the same result. But he is eligible for two bonus units as the plan is shown right now.

L. Matthews and W. Knight had no additional thoughts.

M. Stohn said she thinks he should get the two units, that has been her feeling all along.

The Board looked at dates to continue the hearings. The Board discussed starting early on May 19, 2021 or having a special meeting on May 26, 2021.

**Motion:** A motion was made by L. Murphy and seconded by W. Knight to continue the Public Hearings – 15 Coleman Road (Map R02, Lots 12 & 13); Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager OSRD Special Permit Application and OSRD Definitive Subdivision Plan Application to May 26, 2021 at 7:00 p.m.. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

**B. Public Hearing – Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC (continued from March 24, 2021)**

P. Paicos opened the session of the public hearing. He said they had received revised architectural drawings and that there seems to be a discrepancy in the number of units. He turned it over to the Applicant to present any revisions or to respond to any comments or questions.

T.J. Melvin, Millennium Engineering, said that the architectural plans do show 12 units. That is an error, they are still proposing 14 residential units. He said as far as any responses to Joe Serwatka are concerned, he thinks that they have satisfied everything from him.

T.J. Melvin said some concerns had come up regarding the lighting plan. He said he spoke to their lighting consultant today. They can't change the fixtures themselves, but they can change the model specifications to provide more of a warm light. He said they have not made any revisions to the site plan since the Board has last seen it. He shared the architectural plans on the screen.

P. Paicos asked if these are condos or apartments.

T.J. Melvin said the plan is that they are set up as condos, so that they will have their own individual services. He believes that the intent is that they will be condos.

P. Paicos said the first floor is showing 50% as commercial designated and 50% as a gym or workout area.

T.J. Melvin said that that space would be an accessory use to the residential, whether it is a gym or a storage area. It will not be residential units or commercial space.

L. Murphy asked to clarify the number of units they are talking about.

T.J. Melvin said the architectural plans are wrong, they show 12 units. The site plan and the parking are all based on 14 units.

L. Murphy asked how they are going to fit in the two additional units.

T.J. Melvin said that in their previous submission they had the same building footprint showing 14 units. He shared the floor plans that show 14 units.

L. Murphy said he would like to see a corrected set of plans before they sign off on anything.

W. Knight asked in the new plans if the exterior color shown will be the color of the building.

M. Taylor said it is a sort of gray-green.

T.J. Melvin said he believes that is the intent, but that he will double check.

M. Taylor said that the Board has not received any public comment.

P. Paicos opened the hearing to public comment. There was none.

P. Paicos turned to the draft decision and asked if they should focus on the findings and conditions.

M. Taylor said yes and noted there are a couple of items to review in the project description and other sections, so it might make sense to go through section by section. M. Taylor shared the draft on her screen.

M. Taylor said under the project description, there was a discrepancy between the narrative and the square footages on the drawing. She said she thinks there was incorrect square footage representing the whole parcel. She said the areas that are shown here are 1.67 acres in total area, 1.59 acres in Newbury and 0.78 acres in Newburyport.

T.J. Melvin confirmed that those are the correct areas.

M. Taylor said the next note was about the discrepancy in the number of units, so that will be clarified.

M. Taylor said her understanding is that the applicant is still waiting for approval from MassDOT.

T.J. Melvin said yes, they did receive some comments from them today. The comments were regarding the signage on the traffic management plan and they want them to look at putting a sidewalk in across the front of the lot.

M. Taylor said, so that will be a change to the plan that the Board will see on a final set.

T.J. Melvin said yes.

M. Taylor moved on and pointed out where T.J. Melvin had added the total area of impervious surface and the locations of the fire hydrant and the generator. He noted that there will be an update on the lighting. M. Taylor said one thing they haven't seen is any details on signage. She said she doesn't know if the Board would like to see any or if that would be a condition of approval.

She asked if natural gas is still in discussion.

T.J. Melvin said they plan on bringing in natural gas for the generator, but each of the units will have a dual heat/AC wall mounted unit.

P. Paicos asked what the role of the generator is.

T.J. Melvin said it is primarily for the Environmental one pump they have for the sewage disposal. That is what necessitated it.

P. Paicos said, so it doesn't have anything to do with the commercial or residential usage, it is part of the remediation.

T.J. Melvin said yes, but at this point since they need it for the pump, it will probably provide backup power to the building, but it wasn't initially planned.

L. Matthews asked about the heat/AC unit. Would it be wall mounted and all tied into one system?

T.J. Melvin said yes that is what the Applicant wanted to do.

M. Taylor moved along through the draft. She said she believes there was never any request for a waiver from the Community Impact Assessment. She said T.J. Melvin has noted that they can submit a formal waiver if the Board would like.

P. Paicos asked the Board members.

L. Murphy asked if they need the waiver right.

M. Taylor said yes.

L. Murphy said as long as it is recognized and referenced in the Decision, he doesn't care if they submit a formal request.

G. Morse, L. Matthews, W. Knight, and M. Stohn all said they were comfortable with that as well.

M. Taylor moved on to the Findings.

P. Paicos asked if anyone had any questions on the Findings as they are. There were none.

The Board moved on to the Conditions of Approval. P. Paicos asked if there were any concerns in this section.

L. Murphy asked, referring to Condition I, if we are going to plug in 3000K there for the lighting.

M. Taylor asked T.J. Melvin if that is what they were looking at. He said yes.

P. Paicos noted construction activity hours are between 7:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturdays, with no construction activity on Sundays.

As to hours of operation, P. Paicos asked M. Taylor what the note said.

M. Taylor said given the mixed use and location of this building near and adjacent to other commercial uses, she was questioning whether there needs to be any condition.

P. Paicos asked if they have any conditions on other hours of operation in this mixed use area.

M. Taylor said this is the first new project the Town has had in this area. We certainly have conditions on other projects.

P. Paicos asked L. Murphy for any thoughts on restricting hours.

L. Murphy said he doesn't see any need for it.

G. Morse, L. Matthews, W. Knight, and M. Stohn all said they were comfortable with that.

P. Paicos asked if there were any additional comments on page 8. There were none and the next page was the signature page. He said they will need a final set of coordinated plans, M. Taylor will need the lighting package, and he asked if there was anything else.

M. Taylor said she thinks that is it.

P. Paicos said they discussed that the tenant gym would be use by tenants, there would be no commercial usage of that space.

M. Taylor asked if the Board would like to put in a condition to that effect.

L. Murphy said he doesn't know that it is necessary. G. Morse, L. Matthews, W. Knight, and M. Stohn all agreed.

Paicos said he said he thinks they need the outstanding pieces before they can vote on the final project.

M. Taylor agreed and said since the Board is expecting additional material they should keep the public hearing open.

P. Paicos asked if there was a public comment.

M. Taylor said there is a hand raised.

K. Grubbs, 28 Elm, said this is the first time she is taking a look at this so she is trying to catch up. She said she is noting that part of the structure is in the wetlands buffer and what looks to her like floodplain. She said she is wondering about the decision to waive the community impact statement, she is not sure what that would entail, but asked if it would look at impact to wetlands, floodplains, etc. Or has that already been done.

P. Paicos said that this did go through the Conservation Commission.

M. Taylor said the Conservation Commission approved this. She said she believes some of their remaining comments had to do with the plantings in the bioretention area and that was resolved. She believes an Order of Conditions has been issued. She said almost the entire site is in the wetland buffer.

T.J. Melvin said they did receive the Order of Conditions. He said they are outside of the floodplain. He said regarding the Community Impact Statement, he recalls the Bylaw said that the Board may require it. That was his initial understanding of why they did not submit it.

M. Taylor said yes, but typically applicants would submit a waiver if they are not going to submit the Community Impact Statement.

M. Taylor said to K. Grubbs that the other thing about this project is that it is in the Water Supply Protection Overlay District, so there was a submission/application made to the Select Board, as the Special Permit Granting Authority for projects in the WSPOD, and they did issue the Special Permit. There was a lot of discussion about the site – it is the old Circle Finishing site and a lot of remediation has been done on the site. There was a lot of concern on potential impact on groundwater. Because of the way this site is being treated – they are going to bring in fill, raise the site up and minimize excavation – it was felt that there was minimal to no potential impact there. Newburyport has also reviewed it and their Water and Sewer Department looked at it. They were concerned about what might happen, because of the previous contamination, if there was a breach in the water system, and all of those questions were resolved.

K. Grubbs thanked the Board, said that all was helpful, and apologized for coming in late on a lengthy process.

The Board then looked for a date to continue to.

**Motion:** A motion was made by L. Matthews and seconded by L. Murphy 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 19, 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; M. Stohn, yes.

At this time (approximately 8:45 p.m.), G. Morse left the meeting.

**C. Public Hearing – Definitive Subdivision Plan Application, 217/221 High Road (Map R27, Lots 51, 53, 54, & 56); Applicant: Gadsden Lane, LLC, Adam True, Manager; Owners: MDM Nominee Trust, Dale B. Batchelder and Carl A. Brown, Trustees (Lots 51 & 53) and Carl Brown & Margaret B. Brown (Estate of Margaret Brown) (Lots 54 & 56) (continued from April 7, 2021)**

P. Paicos opened the session of the public hearing. He asked if there were any new materials or information from the applicant or engineer.

M. Taylor said they had received an updated drainage plan that day.

Douglas Deschene, representing Gadsden Lane LLC, said that with him there tonight were Adam True, Manager of Gadsden Lane LLC, and Scott Cameron, Morin Cameron Group. He said the Board will recall at the last meeting they did address a number of open issues, including the neighbor's concerns and that they reviewed and the Board voted on the waivers. He said, however, there was still work ongoing between the peer reviewer and their engineer. He said he believes that they have finally resolved and addressed all of the outstanding issues and concerns. He said they are here tonight to confirm that with the Board and address any remaining questions or concerns they may have.

P. Paicos asked M. Taylor if she could just clarify the recommendation from both Bill Holt, Conservation Commissioner, and Joe Serwatka, Peer Review Engineer.



M. Taylor said it might help if S. Cameron pulled the plan up and they could discuss it in that context.

S. Cameron pulled up the plans. He said the Board has seen the Plan and that there is one item that they did change. He said they had talked to B. Holt and J. Serwatka and that their one concern was about where the water is draining to, which is a coastal resource. The significance being, do they need mitigation or do they need to put a detention pond on the property or not? J. Serwatka had asked that they put back into the design a level spreader. He said what they did to address the concern about the direction of the flow was add directional arrows which follow the natural topography of the land to illustrate where the water will go once it exits the best management practices for the road. He said these do not require any work, the forest bed itself will act as a filter as water travels through the path that water travels through anyway. He said that was the extent of the changes. He said his understanding was that this was satisfactory.

M. Taylor said they did have a second technical meeting and by the end there was a meeting of the minds on this issue. The feeling was that something like a detention basin would create much more disturbance on the site. She said the one concern or recommendation that J. Serwatka has is that there should be a very clearly defined easement for this drainage so that the homeowners don't take it upon themselves to do something in their yards where the flow is supposed to be going.

S. Cameron said an easement would encompass the entire back part of the property because everything on the property drains to this area. He said they do have an easement over the key BMPs, Best Management Practices. He said if a homeowner were to do any work in the back of the property that would trigger Conservation Commission review. He said there is sort of overlapping oversight here. He said he doesn't see the benefit of encumbering a property with an easement in this case.

P. Paicos asked S. Cameron if this was the first time he was hearing about this.

S. Cameron replied that they are showing an easement.

P. Paicos asked M. Taylor if the recommendation would be that that easement be extended.

M. Taylor said yes, that it would include the vegetated filter strip that is being shown here.

S. Cameron said that the vegetated filter strip is all of the woods.

M. Taylor said you are showing a flow that is coming from the level spreader that is going in that direction with the arrows.

S. Cameron said they don't need it, they are dealing with a regulatory measure. He said normally they would cut in a swale, which requires cutting down trees and other disturbance where it is not necessary.

P. Paicos said he thinks the recommendation is to make sure that this stays functional and in place, and that is what we want right?

S. Cameron said it is not a question of function, it is a question of the laws of gravity, he said unless somebody were to get water to flow uphill, which they wouldn't be able to do without altering in a

buffer zone to a wetland and triggering Conservation Commission jurisdiction, there is no way they can change where the water is going. He said what he doesn't want happening is for someone to change the structural measures that they are putting in. They want to make sure that people can get in there to maintain and that they are not getting altered. He said those are actually credited, he didn't take any credit for any of the mitigation or renovation that a filter strip would normally be put in for. Again he is just using this as a mechanism to show everyone that the water is going in this direction. He could draw this arrow anywhere, it all goes to the same point on the property.

P. Paicos said he is beginning to think it would be good to have a meeting, a conversation between J. Serwatka and S. Cameron. He said he understands what he is saying, but wants to prevent somebody doing something in their backyard that alters this flow.

S. Cameron said he just doesn't see the need for an easement.

M. Taylor said maybe there is some other way to deal with it, such as the homeowner documents. She noted not all of the area is in the buffer zone.

S. Cameron asked wouldn't people have the right to use their back yard as long as they are complying with the applicable buffer zone and conservation. Does the Board typically require easements on people's yards on other applications?

P. Paicos said he thinks M. Taylor was taking a step back from the easement and suggesting something possibly in the homeowner's association documents to give guidance.

S. Cameron said he defers to D. Deschenes as far as the legality of encumbering someone's yard.

D. Deschenes said they can certainly provide for a no disturb area, where the homeowners would essentially not be able to disturb it. He said while he certainly wouldn't suggest we put a no disturb on the entirety of the backyards of these two homes, he wondered if they could extend from the current easement and maybe flare it out a little to satisfy J. Serwatka's concern.

S. Cameron said that he thought this could be something that the Board could condition and they could work with J. Serwatka on it. He said it could be something along the lines of having the plans illustrate that the stormwater will enter the land subject to coastal storm flowage on the property and this shall not be modified or altered by the homeowners. He said again that he doesn't think that it is something an easement will cover well – if he tries to draw an easement, it will be arbitrary because the water flows across the entire property. He said he can imagine homeowners down the road being frustrated with an easement and not understanding why it is there. He said he thinks it would be more effective to document with the subdivision decision that they should not inhibit the ability of the water to freely drain to the coastal resource on the property. He said he thinks that would be a good control during construction or with anyone buying the home, that would be a good catch all regardless of what is shown on the plan, this is the grading intent and they need to maintain that intent.

D. Deschenes said that he thinks the way that could be accomplished, that would satisfy J. Serwatka's concern, would be to draft a restrictive covenant on those two lots that says exactly what you just said. They cannot do anything on that back yard that would impede or prevent the drainage flow from this BMP from naturally draining to the coastal resource.

L. Murphy said he thinks you would probably want something in the Homeowners Association giving them the right and the obligation to maintain it.

L. Matthews said she agrees with L. Murphy.

W. Knight agreed as well.

M. Stohn said a restrictive covenant is important.

D. Deschenes, S. Cameron, and A. True all agreed to those terms.

P. Paicos asked if they had received any public comments. M. Taylor said they had not. P. Paicos asked if there was anyone in the audience who had any questions or concerns. M. Taylor said she was not seeing any raised hands.

P. Paicos said we reviewed the waivers last time. In regards to the performance guarantees, they have not had this discussion yet. He asked M. Taylor what the options are.

M. Taylor said they are a cash deposit, bond, negotiable securities, tripartite agreement, or a performance convenient.

P. Paicos asked the applicant if they have preferred method at this time.

D. Deschenes said no. He said the way he had done it in the past is a performance covenant, but at any point you can bond completion of the road through a tripartite agreement or cash bond.

A. True said that is his preference, to get it underway and bond it as they go.

D. Deschenes said they would do a restrictive covenant until the road's complete, however at some point they would seek a release from that covenant, probably in succession. They would then provide the Board with a bond, likely through a tripartite agreement.

L. Murphy said it is the applicant's choice. L. Matthews, W. Knight, and M. Stohn all said they were comfortable.

P. Paicos said the next point of discussion is the Homeowners' Trust. He said we touched on the drainage. He asked if there are other considerations that need to be discussed.

M. Taylor said basically the legal documents concerning the Homeowners' Association and the covenants.

A. True asked if they wanted a snow management plan as well.

M. Taylor said yes.

D. Deschenes said yes, usually in the Homeowners' documents we will require the homeowners to contract with a snow removal company. He said he would ask M. Taylor what the process typically is. He said they usually see a condition in the Decision that requires that they provide the draft Homeowners' Association to the Board for review before the ability to seek any occupancy permit.

M. Taylor said they have had that condition on other subdivisions.

D. Deschenes said whatever the Board prefers, they are happy to condition the fact that they will give the Board and their Counsel an opportunity to review the Homeowners' Association for conformance to the Board's requests and legal viability and that they will provide that prior to whatever milestone the Board usually imposes. He said he knows the first occupancy permit is typical.

P. Paicos asked the Board members what their thoughts were.

L. Murphy said that sounds reasonable.

L. Matthews said yes.

W. Knight said good.

M. Stohn said yes.

P. Paicos asked if there were any other outstanding questions or concerns. There was nothing from either the Board or the applicant team.

P. Paicos said he would entertain a motion for M. Taylor to begin to draft a decision.

**Motion:** A motion was made by L. Murphy and seconded by L. Matthews to direct M. Taylor to draft a decision for the Definitive Subdivision Plan Application, 217/221 High Road (Map R27, Lots 51, 53, 54, & 56); Applicant: Gadsden Lane, LLC, Adam True, Manager; Owners: MDM Nominee Trust, Dale B. Batchelder and Carl A. Brown, Trustees (Lots 51 & 53) and Carl Brown & Margaret B. Brown (Estate of Margaret Brown) (Lots 54 & 56). A roll call vote was taken. L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

**Motion:** A motion was made by L. Matthews and seconded by W. Knight to continue the Public Hearing on the Definitive Subdivision Plan Application, 217/221 High Road (Map R27, Lots 51, 53, 54, & 56); Applicant: Gadsden Lane, LLC, Adam True, Manager; Owners: MDM Nominee Trust, Dale B. Batchelder and Carl A. Brown, Trustees (Lots 51 & 53) and Carl Brown & Margaret B. Brown (Estate of Margaret Brown) (Lots 54 & 56) to May 26, 2021 at 7:00 p.m. A roll call vote was taken. L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

#### **D. April Financial Report**

P. Paicos read the April 2021 Financial Report into the record.

#### **E. Planning Director's Report**

M. Taylor reported that she had received notification from one of the Planning Board Members in Georgetown and also a communication from one of the residents on Larkin Road about a pre-construction conference to be held the next day for a 10 unit OSRD in Georgetown, with access

from Larkin Road. She said this development has been in the works for a long time and that during the permitting process with Georgetown the Applicant came before the Newbury Select Board offering to rebuild the culvert over Wheeler Brook, which had failed and been closed for several years. That culvert replacement went through permitting with the Conservation Commissions in both Newbury and Georgetown, since it is on the municipal boundary, and was granted Orders of Conditions by both Commissions. She said she has contacted the Georgetown Planner to see if there are any objections to Newbury having some representation at the pre-construction meeting and that she plans to attend.

In response to questions from the Board, M. Taylor clarified that the parcel being developed is entirely in Georgetown, but that the only access is from Larkin Road. One of the Georgetown Planning Board's conditions of approval for the OSRD is that the culvert repair be done before the first occupancy permit is granted. The project has been sold to a new developer, John Colantoni, who will be responsible for replacing the culvert. Per the agreement previously reached with the Town, Newbury will then be responsible for paving it.

She said when this project was before the Georgetown Planning Board, she talked to Town Counsel to see if the developer needed to submit a Subdivision Application to Newbury. Counsel's opinion was that there was nothing that needed to come before the Newbury Planning Board for approval, since no new roadway and no new parcels are being created in Newbury. The Town as an abutter could, however, have some rights or concerns regarding work in Larkin Road.

M. Taylor also reported that an ANR may be submitted for the next meeting and the Landfill Solar project may be moving forward.

#### **F. Liaison Reports**

L. Matthews reported on discussion at a Select Board meeting held the previous Thursday regarding the liquor license at the Sunset Club - a few concerns with outdoor service of alcohol and outdoor entertainment need to be resolved before they sign off on it. L. Murphy reported that the Zoning Board of Appeals would be holding a Special Meeting the next night. M. Taylor said that the Merrimack Valley Planning Commission is narrowing down their search for their Executive Director. P. Paicos had nothing to report on the Conservation Commission.

A motion was made by L. Matthews and seconded by W. Knight to adjourn the Planning Board meeting at 9:25 p.m. A roll call vote was taken L. Murphy, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

Respectfully Submitted,

Emily Noble  
Planning Board Administrator