

Meeting Minutes

Planning Board

Wednesday, March 16, 2022

Virtual Meeting via Zoom

APPROVED

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

Peter Paicos opened the Planning Board meeting at 7:00 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this March 16, 2022 Open Meeting of the Newbury Planning Board was being conducted remotely consistent with the “Act relative to extending certain COVID-19 measures adopted during the State of Emergency,” which extends the Governor’s March 12, 2020 “Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A § 20,” until April 1, 2022. This Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible *physical* location and allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting. P. Paicos stated that the Planning Board was convening by video conference via Zoom, as posted on the Planning Board’s agenda, and provided information on how people could view and join the Zoom meeting and participate when public comment was invited. 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. Liaison Reports:** L. Matthews reported on the March 8, 2022, Select Board meeting, which included approval of the Right of Entry Agreement between Newbury and the Parish Commons developer for work to be done in the Larkin Road right-of-way. L. Murphy reported that the next ZBA meeting would be held the following night – the agenda included review of decisions and an executive session regarding Seacoast Canine. P. Paicos reported on the March 15, 2022 Conservation Commission meeting, which included discussion of work proposed for removal of the Larkin Mill Dam and updates on the proposed Wetland By-Law amendments. M. Taylor reported that the next MVPC Commissioners meeting would be held the next day.
- B. Planning Director’s Report:** M. Taylor reported that preconstruction conferences had been held for the PRESB at the Governor’s Academy and for John Colantoni’s subdivision at 108 Main Street and construction on both projects would be starting.
- C. Public Hearing (Continuance) – Proposed Zoning Amendment: To delete § 97-4.C. Wireless Communications Overlay District in its entirety and replace it with a new § 97-4.C. Wireless Communications Facilities, with revised and new provisions regarding wireless communications towers, wireless communications facilities, small wireless facilities, modifications and eligible facilities, permitting, and definitions**

P. Paicos, Chair, opened the public hearing continuance at 7:15 p.m. and turned the discussion over to M. Taylor, who noted that D. Maxson had recommended some minor modifications to the version of the draft By-Law that the Board had reviewed at the first

session of the public hearing in order to clarify a few provisions and make the language consistent throughout. There were no substantive changes from the previous draft and the revisions had been reviewed with Town Counsel. She then put the revised draft up on her screen and went through the proposed revisions, along with D. Maxson's comments explaining those revisions.

When review of the revised draft was complete, P. Paicos asked the Board members if they had any comments or questions. All said no.

P. Paicos then opened the hearing to public comment and asked if anyone from the public had any comments or questions. No one asked to speak.

Hearing no further comments or questions, P. Paicos called for a vote to approve the draft Wireless Communications By-Law as discussed and amended and to recommend it to the Select Board for the Annual Town Meeting.

Motion: A motion was made by L. Murphy and seconded by W. Knight to approve the draft Wireless Communications By-Law as discussed and amended and recommend it to the Select Board for inclusion on warrant for the April 26, 2022 Annual Town Meeting. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

Motion: A motion was made by L. Murphy and seconded by L. Matthews to close the Public Hearing on the Proposed Zoning Amendment: To delete § 97-4.C. Wireless Communications Overlay District in its entirety and replace it with a new § 97-4.C. Wireless Communications Facilities, with revised and new provisions regarding wireless communications towers, wireless communications facilities, small wireless facilities, modifications and eligible facilities, permitting, and definitions. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

D. Public Hearing (Continuance) – Special Permit Application for Ground-Mounted Solar Photovoltaic Installation, 75 Boston Road (Newbury Landfill) (Map R36, Lot 27); Applicant: Alliance Newbury I LLC; Owner: Town of Newbury (continued from February 2, 2022):

P. Paicos announced that on behalf of Alliance Newbury I, LLC, Eric McLean had requested that the public hearing on this special permit application be continued to the Planning Board meeting scheduled for April 6, 2022.

Motion: A motion was made by W. Knight and seconded by L. Matthews to continue the public hearing on the Special Permit Application for a Ground-Mounted Solar Photovoltaic Installation, 75 Boston Road (Newbury Landfill) (Map R36, Lot 27); Applicant: Alliance Newbury I LLC; Owner: Town of Newbury to April 6, 2022, at 7:15 p.m. via Zoom. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; W. Knight, yes; L. Matthews, yes; P. Paicos, yes.

E. Old Business: 105 High Road OSRD – Request for approval of proposed grading and utility layout changes in Exclusive Use Areas 5, 6, 7, 8, and 9, as shown on OSRD Grading/Drainage Plan, Sheets C1.21 & C1.22, prepared by DCI, revised 2/18/22:

P. Paicos said that he would like to discuss the agenda items slightly out of order and turned to the Old Business item regarding the proposed grading and related changes to Exclusive Use Areas (EUAs) 5 through 9 at the 105 High Road OSRD Condominium Development. He recapped the discussion at the meeting of March 2, at which the Board determined that the proposed grading and related modifications to EUAs 5 through 9 could be approved as a minor modification and directed M. Taylor to draft a Decision to that effect. P. Paicos then asked M. Taylor to go through the draft Decision for the benefit of the Board. She put the draft Decision up on her screen and reviewed the various provisions of the Decision and the Conditions of Approval.

P. Paicos asked the Board members if they had any questions or comments. They had none.

He then entertained a motion to approve the Decision as reviewed.

Motion: A motion was made by L. Murphy and seconded by W. Knight to approve the Decision approving grading and related changes to EUAs 5 through 9 as a minor modification. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; W. Knight, yes; L. Matthews, yes; P. Paicos, yes.

F. New Business:

1. 105 High Road OSRD:

a. Request for approval of proposed grading and utility layout changes in Exclusive Use Areas 1, 2, 3, & 4, as shown on OSRD Grading/Drainage Plan, Sheets C1.21 & C1.22, prepared by DCI, revised 3/9/22:

P. Paicos asked M. Taylor to fill the Board in on where things stood with this modification request. She said that the Board had received a review letter from Joe Serwatka, which had been forwarded to the Board members and which included a number of concerns regarding the revised grading plan. She put a summary of his concerns up on the screen and went through them one by one – the most significant concerns were the apparent increase in the house footprints, the proposed addition of retaining walls on EUAs 1 and 2, and proposed changes to the grading of the drainage swale which caused the swale to no longer work.

P. Paicos said the question before the Board was whether the modifications that are being proposed are minor modifications or major modifications and turned to L. Murphy for his thoughts. L. Murphy replied that he honestly didn't know whether the modifications were minor or major. He said that the thing that struck him the most was that the drainage now doesn't work and we don't know what the fix is – it is hard therefore to make a determination on whether the modification is major or minor. He added that it seems that the other items can be addressed. P. Paicos then turned to W. Knight for his thoughts on whether the changes were minor or major. W. Knight said that he had concerns about the grading changes and the addition of the retaining walls and J. Serwatka's comment that the grading now doesn't work - these changes are not what was presented earlier and could be major changes. P. Paicos then turned to L. Matthews for her thoughts. She asked if the drainage

changes were due to the fact that the footprints of the houses have been enlarged and said the modifications look major to her.

P. Paicos then summarized the concerns. He noted that per J. Serwatka's comments the footprints of the structures are larger than those shown on the approved OSRD Plan, the plan shows retaining walls that were not on the approved OSRD Plan, and the drainage swale is not as shown on the approved OSRD Plan. S. Sawyer asked to address the comment regarding the size of the building footprints – he said that the building footprints are not doubled in size, and noted as an example that the Unit 6 footprint shown on the approved OSRD Plan is 2,772 s.f., not 1,200 s.f. as J. Serwatka said in his letter.

Discussion then turned to the process for approving a modification as minor or major under Subdivision Control and Site Plan Review. M. Taylor noted that there is no process for approval of a modification under zoning. In this case, the development was originally proposed as a subdivision. The Applicant then made the decision to make this a condominium development on one lot – the site plan must therefore be looked at holistically. Condition #5 of the OSRD Special Permit Decision authorizes the Board to approve a proposed modification as a field change or a minor modification – a major modification requires a public hearing. S. Sawyer asked about the Condition requiring submission of grading plans. M. Taylor referenced Condition #8 of the Decision, which states that there are to be no changes to the approved grading and drainage plan.

S. Sawyer then said that he had been away and didn't have a chance to review the revised grading and drainage plan before it was submitted, since they wanted to submit it timely. He said that he could respond to J. Serwatka's comments and modify the grading so that there are no issues, similar to the previous plan for EUAs 5 through 9.

P. Paicos said a revised Plan was submitted to the Board, it had been reviewed, and what was presented to the Board was what the Board needed to discuss. S. Sawyer responded that he received Joe Serwatka's comments less than 24 hours before the meeting and he hadn't had a chance to respond to the comments as would be typical. P. Paicos said that if S. Sawyer would like to continue this discussion, he could respond to the comments, but noted that there was currently a question before Board based on what had been presented.

P. Paicos then said that the Board and the Applicant had gone through a lot of discussion in the public hearing to arrive at an approved OSRD plan and that if this was deemed a major modification, he didn't want to have a discussion without the public involved. This Plan is different from what was approved.

L. Murphy said that he felt the Applicant should have an opportunity to respond to the comments and that the Board didn't have enough information to determine if the proposed modifications are minor or major. He said it would be helpful if S. Sawyer could go through the points one by one: Building footprint sizes - resolve the question with J. Serwatka. If they are larger, advise how this impacts drainage. EUA boundary changes - what is the effect of the boundary changes and how do those

changes affect the overall integrity of project and will they affect the drainage. Retaining walls – advise why are these needed and how they will affect the overall project. Same with the drainage swale. He concluded by reiterating that he felt it was only fair to allow the Applicant an opportunity to respond more fully and to get peer review comments – that would provide the Board more information with which to make a decision.

P. Paicos said that was an excellent idea, but didn't want to have a discussion about this at this point, outside of a public hearing. He agreed that it would be good to give the Applicant an opportunity to respond and report back to the Board and the Board could then have more comfort in making a decision, since the members had expressed concerns about the proposed modifications.

It was agreed that the Applicant would revise the plans and address the issues raised by J. Serwatka and submit a response in time for the next meeting. M. DePiero noted that the footprints include front and back porches and requested that S. Sawyer and J. Serwatka be able to have a dialogue about the revisions prior to submission of the response to the Board. No concerns were raised about this dialogue taking place.

P. Paicos then asked the Board members if they had any further comments. Hearing none, P. Paicos suggested that the discussion be continued at the Board's next meeting, scheduled for April 6, 2022.

Motion: A motion was made by L. Matthews and seconded by L. Murphy to continue the discussion on the proposed grading and related changes at the April 6, 2022 Planning Board meeting. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

- b. **Condominium Master Deed, Declaration of Trust, and Tripartite Agreement for "Seagate Condominium":** M. Taylor reported that the most recent versions of the Master Deed, the Declaration of Trust, and the Tripartite Agreement were under review by Town Counsel and had not yet been finalized. These will be taken up by the Board at a later date.
2. **68 Green Street Subdivision: Request from Michael Dos Santos for release of Lot 3 from Restrictive Covenant:**

Jennifer DiCarlo, an attorney with Heney & Associates of Beverly, MA, was present to speak on behalf of the developer, Michael Dos Santos. She noted that this is a small subdivision and what they were requesting – release of Lot 3 with respect to construction – was akin to a request for a minor modification and results from an apparent conflict between the Subdivision Decision and the Restrictive Covenant regarding construction on the lots. She said the Decision states that the road surface and utilities need to be installed and inspected prior to issuance of an occupancy permit, but Para. 3 of the Restrictive Covenant prohibits conveying any lot or erecting or placing any permanent building on any lot until the construction of ways and the installation of municipal services necessary to serve such lot have been completed. J. DiCarlo said that the issue in this case is that the Developer will not be able to get permanent power to the site for six to eight weeks. The electrical plan has been approved by NGrid, work is scheduled to

begin on March 23 and will take about two weeks, but it may be 6 to 8 weeks before NGrid can come to the site to inspect the work and power up the project. The Developer would like to deviate from the Covenant and obtain a building permit only with respect to Lot 3 in light of this potential delay with NGrid. In addition the Developer is experiencing a delay in completing the roadway due to the location of a pole supplying power to a barn on the abutting property – per the deed, they can't disconnect the existing power and move the pole to complete the roadway until the new service to the barn is in. L. Murphy asked for confirmation that it was their position that the Covenant is inconsistent with the language of the Decision. J. DiCarlo replied yes. He then asked if it was their position that the Decision only prohibits occupancy until all infrastructure is in and the road is brought to binder. J. DiCarlo replied yes. J. DiCarlo then pulled the Decision up on her screen and reviewed those provisions with the Board (p. 5, section C., items 2 and 3) and noted that the Covenant is essentially the standard Form D, updated somewhat from the Form on website. M. Taylor confirmed that the Form D had been modified to allow for the conveyance of Parcel Y to the abutter. In response to additional questions, J. DiCarlo and M. Dos Santos confirmed that there is no Tripartite Agreement in place for the project, just the Restrictive Covenant, that the Declaration of Homeowner's Trust is still being drafted, and that the houses are being built on spec.

P. Paicos asked the Board members if they had any further comments or questions. L. Murphy said that if what is being requested is consistent with the Decision, he had no issues. He suggested that the Board might want to look at amending the Form D Covenant in the future. There were no further comments or questions.

M. Taylor asked the Developer to confirm that they were requesting release only from the provision of the Covenant that pertains to building permits and not for full release of Parcel 3 from the Covenant. It was confirmed that they were looking just for a building permit and that Lot 3 will remain subject to the Covenant in terms of conveyance.

P. Paicos said that if the feeling of the Board is that this is hardship, he would entertain a motion.

Motion: A motion was made by L. Murphy and seconded by W. Knight to release Lot 3 from so much of the Form D Restrictive Covenant that prohibits the issuance of a building permit until the construction of the roadway and installation of municipal utilities are complete; in all other respects Lot 3 will continue to be subject to the restrictions of the Covenant. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

G. Old Business: Multi-Family Zoning Requirement for MBTA Communities:

M. Taylor reported that she was scheduled to provide the required presentation to the Select Board on March 22, in order to have this done before the comment period ends on March 31, and that she would be working with Town Counsel to draft a letter, which will need to be submitted before the Board's next meeting. She ask whether the Board had any further comments or questions on the Multi-Family Zoning Requirement. L. Murphy said that he had reviewed the Guidelines and thinks this would be a tough fit for Newbury – the goal is laudable, but one size doesn't fit all. W. Knight said he also had reviewed the Guidelines and agreed that this would be a tough fit. M. Stohn said that is the conundrum – the intent is

good, but implementation might or might not be do-able and it will be different for different communities. P. Paicos asked whether the Select Board would have the opportunity to determine if this is in the best interest of the Town. M. Taylor said that the legislation has passed; the comment period is for the Guidelines only. She then summarized the provisions in the guidelines regarding number of units that the Town must zone for and the deadlines that need to be adhered to in order to be in compliance. L. Murphy noted that the Town only needs to zone for the required number of units, it doesn't need to build them. There was further discussion related to the legislation and Guidelines, including potential impact on the Town if it is not in compliance and becomes ineligible to apply to certain grant programs, the development constraints that the Town faces, and what the Planning Board's responsibility will be.

There being no further business, P. Paicos called for a motion to adjourn. A motion was made by L. Matthews and seconded by L. Murphy to adjourn the Planning Board meeting at 8:38 p.m. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

Materials reviewed at the meeting:

- Public Hearing:
 - Wireless Communications:
 - Revised draft of the Wireless Communications Facilities By-Law revision
- Old Business - 105 High Road OSRD:
 - Draft Decision to approve proposed grading and utility layout changes in EUAs 5 through 9 as a minor modification
- New Business:
 - 105 High Road OSRD:
 - Summary of comments from Joe Serwatka regarding revised grading/drainage plan dated March 9, 2022, for EUAs 1 through 4
 - 68 Green Street:
 - Definitive Subdivision Plan Decision

Respectfully Submitted,

Martha Taylor
Planning Director