

Meeting Minutes
Newbury Planning Board
Wednesday, January 4, 2023
Virtual Meeting via Zoom

Final – Approved at Planning Board Meeting March 1, 2023

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

Planning Board Chair Larry Murphy opened the meeting at 7:00 p.m. and by roll call verified that all members and persons expected to be present were in attendance.

Opening Statement from Chair: Murphy announced that this January 4, 2023 Open Meeting of the Newbury Planning Board was being conducted remotely in accordance with Chapter 107 of the Acts of 2022, which extends the Governor’s March 12, 2020 “Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A § 20,” until March 31, 2023. This Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible *physical* location and allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting. Murphy stated that the Planning Board was convening by video conference via Zoom, as posted on the Planning Board’s agenda, and provided information on how people could view and join the Zoom meeting and participate when public comment was invited. Murphy then described the ground rules and guidelines for the meeting proceedings and public participation. He concluded by stating that each vote taken in the meeting would be conducted by roll call vote.

Following the opening remarks, the Chair turned to the agenda.

A. Appearances/Submissions:

- 1. T.J. Melvin, P.E., Millennium Engineering, Inc.: Submission of an ANR Plan for division of 7 & 17 Marsh Avenue (Assessors Map R11, Lots 82 and 83) into four lots; Owner/Applicant: Peter Lariviere**

Murphy asked the Applicant’s engineer, T.J. Melvin, Millennium Engineering, to present the ANR Plan. Melvin put a plan up on his screen showing the division of two existing lots at 7 and 17 Marsh Avenue into four buildable lots. Melvin explained the layout of the lots on the 13 acres and the frontage on Marsh Ave. and requested that the Board endorse the Approval Not Required plan. Peter Lariviere, the property owner, provided background on the proposed division of land. Board members asked a few clarifying questions. Fred Thurlow, abutter at 23 Marsh Ave., said he would love to see the land not be developed further, but recognized that this was not realistic and stated that he was in support of what Mr. Lariviere wants to do. There being no further comments, Murphy called for a motion to endorse the ANR Plan.

Motion: Paicos made a motion to endorse the ANR plan for division of 7 & 17 Marsh Avenue (Assessors Map R11, Lots 82 and 83) into four lots as proposed. Knight seconded the motion. Morse modified the motion to authorize the Chair to endorse the plan. There was no further discussion on the motion. A roll call vote was taken and all Board members voted yes.

2. Robert H. Griffin, P.E., Griffin Engineering Group, LLC: Submission of a Definitive Subdivision Plan and a Common Driveway Special Permit Application for a proposed four-lot subdivision at 170 Orchard Street (Assessor Map R20, Lot 43A), with two of the proposed lots to be served by a common driveway; Owner/Applicant: Estate of Lewis Bulgaris, c/o Dianne Yurkavich

At 7:15pm, Murphy welcomed engineer Robert H. Griffin, P.E., Griffin Engineering Group. Taylor reminded the Chair of the two public hearings posted for a 7:15pm start. Murphy announced to the public that the scheduled public hearings would begin immediately after the Board's discussion regarding the 170 Orchard Street Applications. Griffin thanked the Board and briefly described the plans for the property at 170 Orchard St. He noted that the applicant completed soil tests in the fall and the current plan is a for 4-lot subdivision, with a common driveway serving two of the lots. Taylor said that she had reviewed the Applications and, following some revisions, they complied with the subdivision and common driveway special permit submission requirements. Murphy called for a motion to accept the applications and set a public hearing date for February 1, 2023, at 7:15 p.m.

Motion: Matthews made a motion to accept the submission of the definitive subdivision plan application and common driveway special permit application for 170 Orchard St; Morse seconded the motion. There was no discussion on the motion. A roll call vote was taken and all Board members voted yes.

Motion: Matthews made a motion to set the date for the two public hearings for February 1, 2023, at 7:15pm. Morse seconded the motion. There was no discussion on the motion. A roll call voted was taken and all Board members voted yes.

B. Public Hearings:

1. Public Hearing (Continuance): Special Permit Modification Application, 140R Main Street (Map R41, Lot 42), requesting modification of the Special Permit granted to Borrego Solar Systems, Inc., on May 16, 2018, to allow construction of a utility access road, including a bridge, in the location of an existing cart path; Applicant: New Leaf Energy; Owner: Karen E. Yesair Thiel and Kavy N. Yesair, Successor Trustees of the Ruth A. Yesair Trust, 138 Main Street, Byfield, MA 01922.

Murphy opened the continued public hearing on the Special Permit Modification Application for 140R Main Street at 7:19 p.m. At the previous session of the public hearing, the Board had requested Taylor to draft a decision on the Special Permit Modification Application. Taylor had provided the draft to the Applicant's representative, Robert Roseen of Waterstone Engineering, for review and received some suggested edits from him. She put the draft decision up on her screen and described minor revisions to the draft decision that had previously been sent to the Board for review. The Board members had the opportunity to review the edits. The Board discussed the requirement in the decision for the Applicant to compensate the Town of Newbury's Tree Fund for the trees proposed to be removed from the property. Taylor shared other communities' policies for mitigation of tree removal. The Board then considered use of formulas to value the loss of trees based on the diameter of the trees, using an online "woodlot estimator" tool from a website called Tree Plantation www.treeplantation.com (seedlings = not counted; saplings: 47 trees = \$3,716; timber: 45 trees = \$7,200; and veneer trees: 11 = \$3,300.) Using this estimator, the total value of the trees to be removed would equal \$14,260. R. Roseen asked

if the Board could take another look at the town's regulation(s) relative to tree clearing. After discussion, Murphy suggested the number proposed (\$14,260) be incorporated into the draft decision with the ability to be further considered when the Board votes to approve the full decision. Roseen queried whether the decision should reference the method used to determine this number, for future reference and setting precedence for the process used. Taylor and Murphy commented that the meeting minutes would reference the discussion as part of the record of the meeting, and be available for future consideration; however, they preferred not to include the website reference in the decision itself.

Murphy asked for any comments from the public in attendance and there were none. There were no written comments. Roseen had no further comments. There being no further comments, Murphy asked for a motion to approve the Decision.

Motion: Paicos made a motion to accept the draft decision as amended at the meeting. Knight seconded the motion. A roll call vote was taken and all members voted yes.

Morse then asked if the language regarding snow removal had been modified in the decision. Roseen stated that the approved Operations & Maintenance Plan, also a binding document, clearly spelled out the requirements related to snow removal.

Motion: Morse made a motion to modify the snow removal language in Section 3 of the draft decision and to amend the first sentence of Condition 3 of the amended decision to read, "The applicant shall be responsible for plowing the road when there is an accumulation of snow 8 inches or greater." Matthews seconded the motion. A roll call vote was taken and all members voted to amend the amended decision.

Motion: Morse made a motion to close the public hearing. Knight seconded the motion. A roll call vote was taken and all Board members voted yes.

2. **Public Hearing (Continuance): Application for Modification of an approved Definitive Subdivision Plan on property previously known as 15 Coleman Road (Map R02, Lots 12 and 13), requesting a waiver from the requirements of the Code of the Town of Newbury, Chapter 117, Subdivision of Land, § 117-21.D., to allow for a property line radius of 20 feet, instead of the required 30 feet, on the easterly side of the intersection of the subdivision road, Fieldstone Lane, and Coleman Road, and approval of related changes to the area and frontage of Lot 7 (now #2 Fieldstone Lane, Map R02, Lot 13G) and the layout and area of the subdivision road; Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager.**

Murphy opened this session of the public hearing at 8:16 p.m. and gave the Applicant, Tom Zahoruiko, the floor. Zahoruiko stated that he had had an opportunity to review the draft decision for the modification of the subdivision approval to allow the requested waiver and didn't have any material concerns. The Board had also had the opportunity to review the decision earlier; one member had advised Taylor of one typo that should be corrected. Taylor screen-shared the draft decision. Matthews asked to review the plan showing the road layout and the division of the Father Stone/Witchstone lot. Taylor screen-shared the previous road layout showing a 30-foot radius at the property line at the intersection of Coleman Road and Fieldstone Lane and the new plan showing a 20-foot radius. The modification is being made so as to have the Witchstone fully within the parcel that is to be divided off from Lot 7 and conveyed to the Historical Commission. Matthews asked about the

tree planting and Zahoruiko stated a fair amount of landscaping had been done already and more could be done if requested.

There were no public comments. Murphy called for a motion to approve the decision.

Motion: Paicos made a motion to approve the draft decision as presented. Knight seconded the motion. There was no discussion on the motion. A roll call vote was taken and all Board members voted yes.

Murphy then called for a motion to close the public hearing.

Motion: Morse made a motion to close the public hearing. Matthews seconded the motion. There was no discussion on the motion. A roll call vote was taken and all Board members voted yes.

The applicant requested the Board sign the decision as soon as possible and the Board stated they would do their best to accommodate that request.

C. **December 2022 Financial Report:** At Murphy's request, Taylor read the financial report for December 2022 into the record.

D. **Planning Director's Report:** Taylor shared a few comments about upcoming planning projects and meetings, including the Board's workshop on the MBTA housing legislation scheduled for the next day.

E. **Liaison Reports:**

1. Select Board: Matthews briefly summarized the most recent Select Board meeting proceedings, which included grant awards; employee recognition and hiring updates; a presentation about electric aggregation; approval of ARPA funding including \$126,000+ for restoration and presentation of historic materials dating back to the 1700s, and \$150,000 for completion of the fiber optic network; change to the tax rate;
2. Zoning Board of Appeals: Murphy reported there are two special permits being considered by the ZBA
3. Conservation Commission: Paicos had nothing to report
4. MVPC: Taylor reported the last Commissioners meeting was a holiday gathering. There are three staff retirements and they have hired a new planner for the community and economic development program.

There being no further business, Murphy called for a motion to adjourn the meeting.

A motion was made by Morse and seconded by Matthews to adjourn the Planning Board meeting. A roll call vote was taken and all Board members voted in favor.

The meeting was adjourned at 8:37 p.m.

Materials reviewed at the meeting:

- "Plan of Land in Newbury, MA, showing Proposed Subdivision at 7 & 17 Marsh Avenue (Assessors Map R11, Lots 82 and 83), prepared for Peter Lariviere by T.J. Melvin, P.E., Millennium Engineering, Inc., dated 1/4/2023

- Draft Findings and Decision on the Application of New Leaf Energy for a Modification to the Special Permit Granted to Borrego Solar Systems, Inc. For a 2.795 mW Solar Energy Generating Facility; located at 140R Main Street, Newbury, MA, Assessors Map R41, Lot 42; Property Owner: Karen E. Yesair Thiel and Kavy N. Yesair, Successor Trustees of the Ruth A. Yesair Trust; Project Owner: Main Street Solar 1, LLC
- “Definitive Subdivision – Open Space Residential Development Plan for 15 Coleman Road, Newbury, MA, Sheet 13.2”, prepared by Civil Design Group, LLC, 21 High Street, Suite 207, North Andover, MA; surveyed by Joseph I Levesque III, Levesque Geomatics, Inc, 43 Glendale Road, Sturbridge, MA; dated 6/10/2021, rev. 8/4/2021, rev. 11/21/2022; prepared for Zendko, LLC, 4 High Street, North Andover, MA.

Respectfully Submitted,

Kristen Grubbs
Assistant Planner