

Meeting Minutes

Newbury Planning Board

Wednesday, August 16, 2023

Virtual Meeting via Zoom

FINAL - Approved September 20, 2023

Planning Board Chair Larry Murphy opened the Planning Board (PB) meeting at 7:01 p.m. Murphy took a roll call of Planning Board members present: Peter Paicos, yes; Woody Knight, yes; Mary Stohn, yes; Murphy, yes. Board member George Morse was not present. Planning Director Martha Taylor and Assistant Planner Kristen Grubbs were present and stated so. Murphy welcomed applicants and their representatives.

Opening Statement from Chair: Murphy announced that this August 16, 2023 Open Meeting of the Newbury Planning Board was being conducted remotely in accordance with Chapter 2 of the Acts of 2023, which extends the Governor's March 12, 2020 "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A § 20," until March 31, 2025. This Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible *physical* location and allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting. 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 these opening remarks, Murphy turned to the first agenda item.

A. Liaison/Meeting Reports:

- Select Board - Taylor reported that at the last SB meeting she gave a brief presentation on the Green Communities application to the SB. The Town's Energy Reduction Plan (part of the application) is under review and will be back before the SB for adoption on August 22, 2023. The plan is to submit the complete Green Communities application to the State in mid-September. Green Communities designation will enable the Town to receive grant funds to support energy efficiency projects throughout town.
- Zoning Board of Appeals - Murphy reported that the most recent ZBA meeting included a continued public hearing for an application on Northern Boulevard to convert a commercial building to residential.
- Conservation Commission - Knight reported that the Conservation met last night and reviewed multiple projects: new septic systems, decks, enforcement orders. There was a discussion about flooding at 68 Green St affecting an abutting property.
- MVPC - No Commissioners meetings until September.

Because it was not yet 7:15pm, Murphy took agenda items out of order.

B. Planning Director's report – Taylor elaborated on the issues regarding stormwater runoff and flooding at the 68 Green St development, saying she and the Conservation Agent had met on site with the developer and abutters to look at the issues. There appear to be problems with the runoff from the roof down spouts bubbling up from the ground, and grading issues regarding the slope of the Lot 1 property towards 70 Green St. TJ Melvin from Millenium Engineering will propose grading changes and other modifications to address the issues. The house that has been built on this lot is much larger than the footprint shown on the originally approved plans, which is likely a cause of the additional stormwater runoff.

Taylor shared that the Self-Storage project at 131 Newburyport Turnpike has received a Certificate of Compliance from the Conservation Commission and is requesting to close out the project at a future Planning Board meeting. There is a site walk at the Golf Center property on Scotland Road to inspect the wetlands, tree plantings, and other field modifications as shown on the as-built that has been submitted. The Cons Comm and the PB will need to review these changes once the final as-built is complete.

C. Planning Board Meeting Minutes

Murphy asked if there were any questions or edits on the August 2, 2023 minutes. There were none.

Motion: Paicos made a motion to approve the August 2, 2023 minutes as written. Stohn seconded. Members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes.

D. Public Hearings:

1. Concurrent Public Hearings (continuances): 170 Orchard Street (Map R20, Lot 43A);

Owner/Applicant: The Estate of Lewis Bulgaris, c/o Dianne Yurkavich

- **Definitive Subdivision Plan Application for “Fields Way,” 170 Orchard Street**
- **Common Driveway Special Permit Application for Common Driveway serving two lots at proposed “Fields Way” Subdivision, 170 Orchard Street**

Murphy opened the continued concurrent public hearings for the 170 Orchard St application at 7:15pm, and explained that the applicant has submitted a written request for a continuance of the hearing to September 6, 2023.

Motion: Stohn moved that the concurrent public hearings for 170 Orchard St be continued to September 6, 2023, at 7:15pm on Zoom. Knight seconded. All members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes.

2. 7 Bittersweet Lane (Map U09, Lot 21B), Common Driveway Special Permit Application (continuance); Owner: David W. Foley Sr. and Nancy J. Foley; Applicant: Gage Foley

At 7:16pm, Murphy opened the public hearing for the 7 Bittersweet Lane Common Driveway Special Permit application from Gage Foley, and explained that the applicant has submitted a written request for a continuance of the hearing to September 6, 2023.

Motion: Stohn moved that the public hearing for 7 Bittersweet Lane be continued to September 6, 2023, at 7:15pm on Zoom. Knight seconded. Members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes.

E. New Business: There was no new business.

F. Old Business - Tom Zahoruiko, Zendko, LLC, re. Fieldstone Lane (15 Coleman Road):

- Request to release Lot 4 (8 Fieldstone Lane) from the Restrictive Covenant and to release the Restrictive Covenant;
- Alternative form and amount of security in lieu of Restrictive Covenant

Murphy welcomed Tom Zahoruiko and explained his request. Mr. Zahoruiko is requesting release of Lot 4 (8 Fieldstone Lane) in order to convey the lot; a closing is scheduled for 8/23/23. This is the last lot being held, so releasing this lot effectively means releasing the Performance Covenant which is the form of Performance Guarantee for the project. Zahoruiko has submitted both draft of Form E (Release of Lot) and draft Release of the Performance Covenant for the Board's consideration. Before the Lot and the Covenant are released, there needs to be agreement with the applicant on an amount for the Board to hold until all remaining items are complete. The Town's peer review engineer has reviewed the interim as-built and visited the property and has recommended that the amount of \$30,000 be submitted to cover completion of the as-built and any adjustments that need to be made pursuant to final inspection. Zahoruiko explained to the Board that he was taken aback by the \$30,000 and thought it was excessive. The project has been through two winters of the binder pavement, and the finish pavement completed recently has been working fine including the heavy storms over the past week. He said the surveyed house foundations are on file with inspectional services, and all the water/sewer services are documented with Byfield Water. Septic systems have been certified by the Board of Health. The work left to complete the final as-built is mostly just merging files onto one plan, and the only field survey work needed is grading, identifying driveways and walkways on the plan, and final boundary monumentation. He stated that only administrative work is left; there is no more physical work to do on site. The development has been operating with complete infrastructure for more than a year and a half. Board members discussed the outstanding items with the applicant, stating they were very pleased with the outcome of the project. However, the Board members were uncomfortable not accepting the recommendation of the Town's peer review engineer and thought the amount to be held by the Town as security should be \$30,000. Zahoruiko stated he did not feel this was reasonable however he would accept the will of the Board and bring a check by in the morning. Murphy commented that the information in the form should be stricken from saying that the subdivision road will be accepted by Town Meeting, since this will remain a private road (a condition of the decision).

Motion: Paicos made a motion to approve the release form and the amount of security \$30,000 to be held in lieu of Performance Covenant; Knight seconded. Members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes.

Motion: Knight made a motion to release Lot 4 and the Performance Covenant, contingent on the submission of a bond or deposit of funds with the Town for security; Stohn seconded. Members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes.

Motion: Stohn made a motion to authorize the Chair to sign the Form E, the Release of the performance covenant, and an agreement for the new form of security. Paicos seconded. Members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes.

Murphy stated that Zahoruiko is welcome to come back in to the Board to revisit the amount of the security at a future date. Zahoruiko thanked the Board and said he would be in to the town offices with a check the next day.

G. Meeting Adjournment

Motion: Paicos made a motion to adjourn the meeting. Knight seconded. Members voted: Paicos, yes; Knight, yes; Stohn, yes; Murphy, yes. The meeting was adjourned at 7:51pm.

Materials reviewed at the meeting:

- Written request for continuance from the applicant for the public hearing for the 170 Orchard St. Subdivision and Common Driveway Special permit applications
- Written request for continuance from the applicant for the public hearing for 7 Bittersweet Lane Common Driveway Special Permit application
- 15 Coleman Road - Form E, Certificate of Performance, Lot Release for Lot 4 draft 081623
- 15 Coleman Road - Release of Performance Covenant draft 081623

Respectfully Submitted,

Kristen Grubbs
Assistant Planner