

Meeting Minutes

APPROVED

Planning Board

Wednesday, January 16, 2019

Newbury Municipal Offices

Members Present:

Rachel McManus, Chair; Larry Murphy; Peter Paicos;
Kristen Grubbs (Associate Member)

Members Participating Remotely:

George Morse

Staff Present:

Martha Taylor, Town Planner

Rachel McManus, Chair, called the meeting to order at 7:00 p.m. She announced that George Morse would be participating in the meeting remotely due to personal illness in accordance with 940 CMR 29.10 and that all votes would be roll call votes.

A. Liaison Reports

M. Taylor reported that the Board of Selectmen at their January 8, 2019, meeting discussed ongoing issues regarding Bob Lobster, heard a presentation on the Green Communities Program from Neal Duffy and agreed to look into the program, and approved Marshal Jespersen's request to dismantle and rebuild the barn at 1 Marsh Meadow Lane. R. McManus reported that the Conservation Commission at their January 15, 2019, meeting approved an emergency generator and an emergency certificate for the MassDOT for work in the vicinity of the Route 1 traffic circle that was already completed. M. Taylor reported that she and P. Paicos would be attending the Merrimack Valley Planning Commissioners meeting the next night.

B. Town Planner's Report

M. Taylor reported that she had met with Geordie Vining, Project Manager in Newburyport's Planning and Development Office, regarding the proposed route along Parker Street for Phase III of the Clipper City Rail Trail.

C. Continued Public Hearing – 170 Orchard Street OSRD Special Permit Application; Applicant: Charing Cross Realty Trust:

R. McManus opened the continued public hearing for the 170 Orchard Street OSRD Special Permit Application. The Applicant, Bill Luster of Charing Cross Realty Trust, summarized where things stood from his perspective in the public hearing and permitting process. He noted that there had been a site visit since the last public hearing session and that his engineer, Chris Mello, had responded to the Town's first peer review letter and was working to address the Town's comments. B. Luster apologized for Chris Mello's absence that evening and said that he had decided to come to the meeting on his own, although he had no further responses or new information to present, in order to hear any additional items that he and his team should be working on for the next session of the public hearing.

L. Murphy noted that one of the questions that Joe Serwatka, the Town's engineering consultant, had raised was what type of foundation B. Luster anticipated for the homes – slab on grade or basement – and said that he did not think that question had really been answered. L. Murphy said that his concern was that if they were planning to put in full basements, they would have to raise the grade due to the high water table. L. Murphy

also asked if B. Luster could respond to J. Serwatka's January 6, 2019, letter regarding the yield plan.

K. Grubbs noted that, as the Board had discussed previously, the parcel is in Chapter 61A and that the process to remove it from the Chapterland program will need to be followed. She noted also that the Applicant was requesting a number of waivers and said that, since the Board will need to determine that the requested waivers are in the public interest in order to approve them, it would be helpful to have a summary of how the Applicant sees the waivers benefitting the project and benefitting the public. Finally, she said that she looked forward to seeing some sort of environmental analysis.

R. McManus noted that the Board had questions about the Yield Plan. First, the wetlands shown on the Yield Plan were not in agreement with the wetland delineation shown on the Definitive Subdivision Plan. Specifically, the wetland shown on Lots 8 and 9 on the Yield Plan is not shown crossing the entire width of the parcel as it does on the Definitive Plan. The Board is concerned that this wetland in fact creates an area of noncontiguous upland at the back (western) portion of the parcel, which could impact the open space calculation. R. McManus said the Board also has questions about whether the soils can support the 14 lots that are shown on the Yield Plan. She said that Lots 1-8 seem to be possible, pending confirmation based on additional soil testing, but that the Board is having trouble seeing Lots 9-14 as viable. Again, additional soil testing is needed. She questioned how the open space was being calculated, given the wetlands and retention ponds, which are not supposed to be included in the designated open space. B. Luster responded that the calculation works out to be three to one, unused space to used space.

M. Taylor asked what their intentions were for the exposed historic barn foundation on the site. B. Luster said they were "kicking that around" – they would like to memorialize it in some way, but don't want to have an open hole. They are trying to come up with a way to tell the story, safely and without liability.

G. Morse asked if the Applicant had submitted a purchase and sale agreement yet. M. Taylor said she had not received anything to date. The only thing that she had received was a Letter of Authorization from the Executor of the estate giving Charing Cross the authority to submit the OSRD Special Permit Application.

G. Morse said that this was another problem – the Letter of Authorization was signed by only one of the co-executors of the estate, but should be signed by both co-executors if there are two. He said that the Board needed a determination on that.

Hearing no other comments or questions from the Board members, R. McManus opened the hearing up to comments and questions from the public.

Craig Loth, 144 Orchard Street, asked if the two stakes along Orchard Street between the Bulgaris house and the white house defined the access to the property. He noted that it seems to be a very narrow right of way into a subdivision and was not wide enough for a fire truck to get through. B. Luster said that he was not sure where the stakes were that Mr. Loth was referencing, but affirmed that their right of way is between those two houses and is 50 feet wide.

C. Loth then asked the Board if 50 feet meets the requirements of the Town. M. Taylor said that 50 feet has typically been the requirement, recently the bylaws have been changes to favor country drainage and swales on both sides, so the requirement is up to 53 feet, but 50 feet is very typical.

C. Loth asked if they need to have it curve out at Orchard Street so that you can get fire trucks in there.

M. Taylor said that that is one of the waivers they are requesting.

Channing Howard, 61 Central Street, asked if they could go through a short list of the waivers they are asking for. One is the width of the pavement if the entrance is less than what is normal.

M. Taylor said it is not the width of the pavement it is the width of the right of way, which is three feet less than what we require now, but this lot was created well before that.

C. Howard asked whether the length of the road would be a waiver as well.

M. Taylor said that the regulations allow for a 500 foot cul-de-sac maximum and they are asking for the allowance of a 920 foot cul-de-sac. There are also some others that they haven't discussed, such as there are no side walks shown on the plan, so if they do not plan to have any that would be a waiver. They did request a waiver on a list of legal documents. It is a work in progress still.

R. McManus said that this is a two step process. This is the special permit for the concept and if they get the permit, then they will have to submit a definitive subdivision plan with a lot more detail and engineering.

C. Howard asked about the alternative entrance off of Pearson Drive, if they had provided proof that they can use the property.

R. McManus said they have provided an option agreement.

M. Taylor said it is part of the application on file.

Peter Mack, 168 Orchard Street, returned to the stakes, Jerome Strazzulla at 172 Orchard Street had his property surveyed last year and his corner is marked. There are two new stakes, one on the corner of P. Mack's lot, it is approximately 28 feet wide. Is that where the intended road bed will go?

B. Luster said that he does not know the stakes that he is referring to. He said that he did not think that they had put any stakes out there.

P. Mack asked about the proposed septic system. He knows that 10 feet off the property line is the allowed distance and that is fine. On the plan it said that it is a 5 foot off grade raised set up with a four-foot fence. So that would be a total of nine feet tall, is that correct? The other thing is that P. Mack's reserve area for his particular system is 10 feet

off the back side of his property. Will there be any affect on his system due to the proximity of their proposed system?

Ann Quill, 4 Great Meadow Road, asked about what they found on their site walk.

R. McManus said that they found a lot of mud, it is surrounded by other residential properties and they are quite visible walking around the parameter. There were significant wetlands.

P. Paicos said that it was good to get a feel for the size of the area and try to identify the boundaries for the wetlands. Also, to appreciate if a road were to go in and if there was a connecting road where that would be.

Brian Mills, 35 Pearson Drive, said the road, if it were to connect to Pearson Drive, would be right next to his house. How likely is it that the road is going to go through there?

R. McManus said that it is a proposal, it is that or the Open Space Residential Development (OSRD).

B. Mills asked what the rules and regulations would be for putting a road in there and if a traffic study would be done.

R. McManus said that if that is the way the project goes then a traffic study would be requested. It is not clear that that would be a chosen alternative.

B. Luster said that their preferred alternative is the OSRD plan.

B. Mills asked why the Board is considering a waiver for a 950 foot cul-de-sac from the 500 foot maximum allowed and why a through road would benefit anyone.

L. Murphy commented that the yield plan is what they say they can do without waivers as a matter of right under the subdivision bylaws. The Board is struggling with whether or not we are comfortable with those 14 lots on that yield plan because of the soils and other things. Once you have established the number of lots you can get out of the yield plan that dictates what you can do in the OSRD special permit. The idea of the OSRD is to encourage the use of open space and it helps the developer because they have less infrastructure to build. The lots on the OSRD are going to be a lot smaller.

B. Mills said that the OSRD plan has specific sized lots and in the yield plan those lots expand.

L. Murphy said yes, but if the Board approves the OSRD the yield plan goes away and there will be no road going by B. Mills' property.

B. Mills asked if everything has been perked.

B. Luster said no only through the center of the property.

B. Mills said that after rain there is three or four feet of standing water. The septic systems will be over taxed. If there was a through road he would be worried about his grandchildren playing.

Channing Howard, 61 Central Street, it would be evident on the yield plan you would also need waivers because you would have a road coming through from Orchard Street. The perc tests, were they witnessed and approved by the town.

M. Taylor said she has talked with Deb Rogers, Newbury Health Agent, who said the tests were witnessed and have different results depending on the area.

C. Howard said that that is disturbed earth and that you can't perc something that has already been dug up, that is what happened with the fire station in Byfield.

R. McManus commented that in terms of the soils and septic systems that is Title V and that is beyond what this Board can weigh in on. This Board is concerned about it, but we don't approve septic systems. We understand your concern and it is our concern.

C. Howard asked if the open space would be lock up forever, nothing could ever be done there?

M. Taylor said yes, that land would be in conservation.

Valerie Clark, 173 Orchard Street, commented that they just bought their property that is directly across from the right of way to the development and they are concerned that there will be headlights coming towards their house all the time. If they had known that would be going in, they might have made a different choice. She is Concerned about traffic and also wildlife being pushed out.

R. McManus discussed continuing the public hearing. She informed the applicant that she will be out of state next month, but could participate remotely. The only stipulation would be that all materials would have to be submitted seven days before the meeting.

Motion: a motion was made by P. Paicos and seconded by L. Murphy to continue the public hearing for the OSRD Special Permit Application at 170 Orchard Street Map R23 Lot 43A to February 20, 2019 at 7:10 p.m. A roll call vote was taken. G. Morse, aye; K. Grubbs, aye; L. Murphy, aye; P. Paicos, aye; R. McManus, aye.

D. Woody Cammett, Cammett Engineering – Follow up discussion re. use of shared septic system for proposed Open Space Residential Development (OSRD) at 15/17 Coleman Road

Woody Cammett, Cammett Engineering, and Mark Woodbury, a Trustee of the property, came before the Board to discuss the use of a shared septic system. W. Cammett said that the Town of Newbury's regulations are an older set of regulations that were established before the DEP established the allowance of central systems for single family homes in condominiums. The key is they have 30 to 35 acre property, with a farmhouse and a barn in the front and the back abuts the Governor's Academy. When looking at the viability of the Woodbury estate and doing soil tests, they decided to test

for areas that could support a shared septic system. They found two very good areas for shared systems. They were approved by the Board of Health, but there is a conflict with zoning regulations and subdivision regulations. W. Cammett is helping the trust market the property they are not interested in developing it themselves. It is a gorgeous piece of property on the Rowley line. Town water is available. W. Cammett said that they consider themselves land planners more than engineers.

R. McManus said the first thing that pops up considering the soils and the wetlands is the number of lots, the Board doesn't have any other way to come at this. The open space is supposed to be contiguous upland.

W. Cammett said that there is a woods road that goes through the wetlands.

P. Paicos asked what would happen if the culvert under the road was removed.

W. Cammett said that it would act like a dam and would last maybe six years.

R. McManus asked how many lots they would be able to get they had to perc them all.

W. Cammett said probably 10-12.

R. McManus said that they should start there.

L. Murphy said even if you go conventional sub division you are still going to have to used some shared systems, is that correct? Either way you would need a waiver of the regulations.

W. Cammett said yes.

L. Murphy asked if it would have to be condominium ownership.

W. Cammett said that is how the system is maintained if it is under common ownership and a housing association, then the housing association would maintain it.

The Board had some discussion about the waivers that they would need to accomplish this. R. McManus said that a yield plan would be a good starting place for the Board to consider this.

L. Murphy said to get back to the original question, that if the Board of Health approved the shared system then the Planning Board with in reason would have no reason to not consider the proposal.

E. Update on Potential Zoning and General By-Law Amendments for April 2019 ATM

The Board had some discussion about the Housing Production Plan, initiated by a question from an audience member, Evelyn Noyes.

L. Murphy reviewed some changes to the marijuana bylaw amendment that he would suggest. He also expressed concerns about removing the buffer in residential areas, mainly because of the response that they will get at town meeting.

R. McManus suggested using setbacks instead of buffers.

The Board discussed which amendments are ready for Town Meeting. The Marijuana bylaw amendment is still up in the air, the wireless is ready, and the OSRD still needs a bit of research.

A motion was made by P. Paicos and seconded by L. Murphy to adjourn the meeting. A roll call vote was taken: R. McManus, aye; P. Paicos, aye; G. Morse, aye; L. Murphy, aye; Kristen Grubbs, aye. The meeting was adjourned at 8:36 p.m.

Respectfully Submitted,

Emily Noble
Planning Board Administrator