

Meeting Minutes

Planning Board

Wednesday, April 7, 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 7:00 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this April 7, 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. March 2021 Financial Report

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

B. Liaison Reports

L. Matthews reported on the Select Board. She noted that they had held the combined meeting with the Planning Board the previous night. She reported that the Select Board also met on April 6 with the Council on Aging (COA) for prospective plans for a new building for the COA. M. Taylor reported that at its March 30 meeting, the Select Board voted on the warrant for the Spring Town Meeting. Next week the Select Board will be holding a public hearing on the Liquor license for the 2 Old Point Sunset Club and they also have a Bed and Breakfast Special permit application for a property on Newburyport Turnpike. M. Taylor reported that the Zoning Board of Appeals Decision for the Village at Cricket Lane 40B had been filed with the Town Clerk, and the appeal period had begun. Notices have been sent out to all the abutters. P. Paicos reported that the Conservation Commission has scheduled a site walk for 15 Coleman and everything for 2 Old Point is on track. M. Taylor said she believes the only outstanding issues were the DEP comments, which were addressed and reviewed with the Board last time. M. Taylor said there was nothing to report from the Merrimack Valley Planning Commission.

C. Planning Directors Report

M. Taylor said that CPTC (Citizen Planners Training Collaborative) has some upcoming workshops, including one on 40B, and she will forward that information.

She said on the horizon there is a revised ANR plan that will probably come before the Board at the April 21 meeting. The Solar project on the Landfill has been dealing with DEP on the post closure permit and some other things. She said it seems that things are beginning to move forward, so that also remains on the Board's horizon. P. Paicos noted that M. Taylor and Town Counsel Brian Winner were incorporating amendments made at the meeting the previous night on the Golf Center Decision and M. Taylor confirmed that it should be ready for signature in a day or two.

L. Matthews asked if it would be possible for her to join the Conservation Commission's site walk for Coleman Road, since she was not able to attend the Planning Board walk. M. Taylor suggested she contact Bill Holt, Conservation Agent, about that. Tom Zahoruiko said that would be fine with him. L. Murphy said he would like to join as well if possible.

L. Matthews also asked about the status of the Borrego Solar Project on Main Street. M. Taylor said construction is essentially done and they are at the point of closing out the project. L. Matthews said that there doesn't really seem to be any impact. M. Taylor said she hasn't received any comments about impact either.

D. Continued Concurrent Public Hearings – 15 Coleman Road (Map R02, Lots 12 & 13); Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager (continued from March 3, 2021)

- 1. OSRD Special Permit Application**
- 2. OSRD Definitive Subdivision Plan Application**

P. Paicos opened the concurrent public hearings. He asked Tom Zahoruiko if he had any new information or responses to the peer review letter.

T. Zahoruiko said that since the last meeting they secured the soil data for the Yield Plan lots that were located in the rear of the property. He said they also revised the Yield Plan lot lines to accommodate those tests on their respective lots. He said hopefully that allows for agreement to be determined on the Yield Plan for five lots and on the OSRD density as well.

He said they had also received peer review comments and responded to those comprehensively on March 16, 2021. He said they have not received feedback regarding their responses yet. He said the comments from Fire were addressed. Responses to DPW comments are all pending determination of whether the road will be public or private. They spoke with Byfield Water to reconfirm what they had been told earlier regarding the sufficiency of water volume and pressure. Byfield Water confirmed what they said before, that volume and pressure would be sufficient. Even so, T. Zahoruiko has scheduled flow tests with them for April 14 or 15, 2021. The Historical Commission provided comments which are consistent with their plans. The Notice of Intent (NOI) hearing on this project had been opened by the Conservation Commission and a site walk was scheduled for tomorrow afternoon.

M. Taylor said she received a letter from J. Serwatka on Monday and apologized if she had not forwarded that on to the Applicant. She offered to go over his comments at the meeting and noted that Mr. Serwatka could only comment on what had been revised,

which was the Yield Plan. She suggested that the Board might like Phil Henry, Civil Design Group, to go through the changes that had been made. P. Paicos asked P. Henry to do that.

P. Henry said that what they do with projects of this size, especially when they are before multiple departments and Boards, is acknowledge items that are being requested or required to be changed and they commit to making those changes. If a plan change rises to the level that they need to submit it during the approval process, like changes to the Yield Plan, they do so, but otherwise they will make note of minor issues, such as a change in the type of pipe used, and incorporate those changes into a final plan for final review prior to approval.

P. Henry then shared his screen and showed the Yield Plan. He said J. Serwatka was requesting additional data to confirm that Lots 3 and 4 could support septic systems. P. Henry noted that this is just for the Yield plan. He said J. Serwatka witnessed the test pits for Lots 1, 2 and 5 over the summer. He said the test pits on Lots 3 and 4 were historical test pits done back in 2016 and had been witnessed by Deb Rogers. He said they were able to retrieve that data just last month so they have plotted that data on the Yield Plan. He said they adjusted the lot line between 3 and 4, leaving the frontage the same – they just realigned the lot line so that the lots could support two independent septic systems. He said they were hoping to get feedback on this because the project can't progress without getting agreement that this site can support five lots. Then it will be possible to talk about how many more lots the OSRD could support.

P. Henry said this was the only change they submitted for review. All of the other comments from J. Serwatka were either acknowledgement of P. Henry's response or items that they committed to change, but they were very minor in nature.

P. Paicos asked M. Taylor to hit the highlights from J. Serwatka's most recent letter.

M. Taylor said that J. Serwatka's first comment was about the scale of the Yield Plan. P. Henry said a 40 scale portion of the Yield Plan has been provided as Sheet 4.1 with test pit data shown. The second comment refers to the test pit data for Lots 3 and 4 that P. Henry was just talking about. He noted that soil and perc test data from 2016 have been provided for Lots 3 and 4. M. Taylor said there was a comment about septic area rectangles. P. Henry responded that they were not required as part of the Yield Plan submission requirements. M. Taylor said a lot of the other comments have to do with revisions that will be noted or incorporated into the final plan. She then noted that there is a request for a waiver from the requirement to depict trees over six inches in diameter. J. Serwatka commented that the Board may want existing large trees around the existing house, barn and along Coleman Road to be depicted at a minimum. Based on the current grading concept, it does not appear that any large trees are to remain. J. Serwatka said that the Board may want to review the response relative to removal and replacement of trees.

The next comment was about LID (Low Impact Development) versus the drainage system proposed. P. Henry's response was that LID was considered for the site and included a detailed discussion of why it was ruled out in favor of the closed drainage system shown on the plans.

Another comment had to do with the parking for public access – J. Serwatka noted that the response simply states that access and parking will be determined pursuant to the determination of public versus private way.

J. Serwatka had previously commented on a note calling for selective clearing of trees on Unit #2, which seemed to be inconsistent with the demolition plan, which appears to give the contractor permission to clear cut the project site. In his comment letter, J. Serwatka noted that the engineer's response states that this provides "flexibility" to the contractor and is consistent with the spirit of the OSRD bylaw.

With respect to retaining walls, P. Henry's response states that final plans will depict a post and rail fence on walls four feet and taller. J. Serwatka suggested that the Board may want the fence shown on top of the entire wall, not just sections over four feet in height.

Regarding the landscaping plan J. Serwatka had noted that no shrubs, perennials, etc. are shown. P. Henry's response was that there does not appear to be a requirement to indicate shrubs, perennials, etc. on individual house lots. Perhaps that is an item to be discussed.

J. Serwatka had asked whether each house would have a sprinkler system for landscaping. P. Henry's response states that individual irrigation systems are not typically installed by the developer. J. Serwatka says his experience is that some developers will install individual irrigation systems, especially on the fronts of lots.

There was a comment that the O and M plan appears to indicate that this will be a privately maintained project, likely with a HOA. J. Serwatka had suggested that the Board may want to make that a condition of any approvals. P. Henry's response states that the roadway is proposed to be a public right of way, and the issue of utilities, stormwater, BMPs, and septic systems would have to be addressed.

Regarding snow storage, P. Henry's response was that no snow storage was believed to be required, so that may need to be addressed further.

M. Taylor said those are all the substantive comments.

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

L. Murphy said J. Serwatka commented that he received the information on the 2016 percs for lots 3 and 4, but he doesn't comment whether or not it is sufficient. Has the Board of Health (BOH) weighed in on it?

M. Taylor said they have not weighed in on it. The information on the drawing was provided by the BOH and her recollection was that there were percs in that area that could support septic systems. M. Taylor said she will ask the BOH for confirmation. She asked P. Henry if he would be able to describe the perc data in greater detail to confirm the suitability.

P. Henry said, without having seen J. Serwatka's comment, that if J. Serwatka had an issue with the data, he would have acknowledged and recognized. He said there were varying perc rates and soil types, but all seemed to be sufficient to support a septic system on both of those lots.

L. Murphy said that is fine – he thinks they just need to make that clear in the record.

L. Murphy then said, focusing on the Yield Plan, that at one point J. Serwatka had a concern that a Common Driveway Special Permit might be required to access Lots 3 and 4. L. Murphy said he does not know where his concern was coming from because there seems to be sufficient frontage. He asked if anybody could help him understand what his concern was.

T. Zahoruiko said that the existing wetland crossing is about 20 feet wide and noted that he is not a fan of common driveways. He said that the crossing could be widened by four feet, which would accommodate two parallel driveways that wouldn't require a Common Driveway Special Permit. He said it is all conceptual, but it would be a minimal wetland alteration of about 150 s.f. – it would be a very minor thing to do, if in fact it were to be done.

L. Murphy asked for confirmation that the use of parallel driveways would not conflict with their subdivision regulations. M. Taylor said not currently. L. Murphy then confirmed that J. Serwatka simply noted their response about the parallel driveways and made no further negative comment.

L. Matthews asked if putting a fence around the whole construction site is normal procedure. P. Henry said yes, they believe so, it is for safety precaution.

P. Paicos noted that T. Zahoruiko said the flow tests would be taking place on the 14th and 15th and asked if they were going to be testing the hydrant right in front of the property. T. Zahoruiko said yes, and potentially the one further down the street. They are coordinating that with the routine flushing of those hydrants. P. Paicos said he would be curious to see what it would look like if they did both hydrants at the same time. T. Zahoruiko said he is leaving up to the folks who do the testing and the Byfield Water District, and said he would think that they would do something like that if they thought it was prudent.

P. Paicos said from what he remembers from their conversations and from the site walks that the majority of the larger trees were going to remain, except for a diseased one by the street. T. Zahoruiko said three out of the four trees remaining near the street are clearly compromised and should be replaced, because they are just going to end up on top of something or someone. He said there is a large butternut tree by the barn that will have to have at least one large limb removed and he doesn't want to promise that they will keep it, because he is not sure if they will damage the root system when they put in the septic system. He said the majority of the site does have to be cleared. He said this is one of those typical tradeoffs – they are trying to preserve and protect 27 or so acres and they will have to take more than they might typically take in order to preserve the larger portion. He said there is a maple near the house that can probably be preserved. He said

he wouldn't mind taking a walk with people and discussing what can be done with respect to the plan and the amount of infrastructure that needs to go in.

P. Paicos said that at the Conservation Commission meeting T. Zahoruiko had started talking about parking with regards to the open space. He said he did not hear that in his comments today and asked if that is still on the table. T. Zahoruiko said he thinks his comments on this have been consistent. He said he thinks that question gets answered subsequent to the private or public road determination. He said he understands the desire to keep it a private road, but crossing a private road to get to a public space creates liability questions and other complications that need to be discussed. He said the cul-de-sac is quite large, there is plenty of room in the center to have some parking spaces there.

P. Paicos asked if any written comments had been received. M. Taylor said they had received a letter from the Historical Commission, dated March 12, 2021, and an email from Derek Estella, dated March 3, 2021.

P. Paicos opened the hearing up to public comments and questions.

Bill Manthorne, 79 Elm Street, said he is an abutter on the back side. He asked if the trails are going to be left natural as they are. He said his preference would be for them to be left natural. He asked if there will be a total of six or seven homes, including the existing house. He also asked if the public would be allowed to go on the site walk. He said it would be his personal preference for there not to be any parking spaces and that the open space just be used by people within walking distance because one of the trails goes right behind his back yard.

T. Zahoruiko said his preference would be to keep the trails in their natural condition as well. He said the number of lots is something they are trying to get resolution on. He said the proposal is for seven total lots which will include a lot with the existing house and barn remaining as you see them. He said in terms of the site walk, he is welcome to join. He said in terms of the parking that is that ongoing discussion.

Tom Cook, 1 Longbrook Road, asked if the Board has given any consideration to doing a traffic study on Coleman Road. He said there was a lot of discussion about the traffic on Coleman Road.

P. Paicos said that on the Board's end they have requested information from Newbury PD and are waiting on that and that they are going to reach out to Rowley PD as well to see what is going on with their end.

T. Zahoruiko said he understands the concerns, but is not sure what a traffic study will tell them. He said it will tell us that there are cars there and that there are cars going faster than they are supposed to be going. He said we already know that. He said doesn't know how knowing the precise number of cars will affect too much, because what they are planning on adding to the traffic is really the question. He said what they are planning on adding to it is relatively minimal under any analysis. He said he understands that the visibility from Longbrook is challenging; however, the visibility on their side of the road is really good, it is more than sufficient. He said he understands the concern, but he

doesn't think a traffic study will tell them much – what he is really concerned about is how they are contributing to it.

P. Henry added that they located the driveway where it is for a number of reasons. They positioned it directly across from Longbrook so that people leaving this subdivision will be able to see people coming down Longbrook. He noted that their side of the road is on the outside of the curve and there are sufficient sight lines – exiting vehicles will have a significant view.

Mark Cutter, 23 Coleman Road, said he had asked a few questions last time. He had commented about the traffic, which he thinks Tom addressed. He said he had concerns about coming out of the new roadway, but he drove it and the angle is okay and you can see all the traffic, and he has no further concerns. He said the other thing that he had concerns about was the water, but they seem to be addressing that and there will be a letter to put on record that they will not be affected and that there will not be a drop in pressure. He said he feels good about this project.

L. Murphy said it is important to remember that in terms of ownership of the way, it is not this Board that ultimately makes that determination, it is the Select Board that lays it out and Town Meeting that ultimately has to vote on whether or not to accept the way as a public way. However, the Planning Board can certainly make a recommendation. He said the point he is trying to make is, either way there has to be some accommodation for public parking, because the public has to have access. He said, in reference to the nature trails, that it ultimately is going to be tied to a discussion of who is going to own that space. He said there are four ownership choices under the Bylaw – one is a nonprofit, another is the Town, third is the homeowners association, and fourth is a private owner for agricultural, horticultural, or forestry uses. He said they need to have a discussion about how that open space is going to be held.

L. Murphy said his gut reaction is that a traffic study is not going to give them much information they don't already have. He said they will keep an open mind on that until they hear from the Police Department.

W. Knight said as far as the open space and the trail system are concerned, if they are going to be accessible to the public, the public needs a place to park. Parking on Coleman Road is not an option.

M. Stohn commented that she agrees that she doesn't think there is a need for a traffic study.

P. Paicos asked the Board if this is an acceptable Yield Plan.

L. Murphy said he doesn't see why it isn't a viable Yield plan. The Applicant put on record that they do have sufficient percs.

G. Morse said he thinks it is acceptable.

L. Matthews, W. Knight, and M. Stohn all agreed it is acceptable. P. Paicos was in agreement as well.

P. Paicos asked the Board if the open space as proposed meets their By-Law requirements.

M. Taylor refreshed the Board and public on the requirements. She said there is a requirement that 50% of the upland shown on the development plan shall be open space. It will be subject to a permanent conservation or agricultural preservation agreement. The open space shall be contiguous, defined as being connected. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, agriculture, horticulture, together with suitable access for such purposes. Wastewater and Stormwater subsurface systems serving the OSRD may be located in the open space, but surface systems such as retention and detention ponds shall not qualify.

P. Paicos asked if the first threshold is 50% of upland and the second is contiguous. M. Taylor said yes.

P. Paicos asked what the upland open space number is. P. Henry said 20.7 acres is the upland open space, which is 65% of the entire tract.

P. Paicos asked where they were with the contiguous component. P. Henry said they think it is contiguous.

P. Paicos asked if everyone was comfortable that they meet the open space requirements. All Board members said that they were.

P. Paicos said they are 15% above the threshold, he said he is not sure if this is the time to start the discussion about the bonus lots that are being requested.

M. Taylor said the applicant has requested two bonus lots and noted that the OSRD By-Law does provide provision for increases in permissible density. It states for each additional 10% over and above the required 50% a bonus of one lot or 5% of the basic maximum number, whichever is greater, may be awarded.

P. Paicos asked P. Henry to show the proposal for the OSRD plan on his screen.

P. Henry said in his comments to J. Serwatka, he took the liberty of outlining the OSRD By-Law and how they comply with it.

M. Taylor read the purposes of the OSRD By-Law:

The Primary Purposes for the Open Space Residential Development (OSRD) By-Law are the following:

- 01) To allow for greater flexibility and creativity in the design of residential developments;
- 02) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, water

bodies and wetlands, and historical and archaeological resources in a manner that is consistent with Newbury's open space plan;

- 03) 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;
- 04) To minimize the total amount of disturbance on the site;
- 05) To further the goals and policies of the open space plan;
- 06) To facilitate the construction and maintenance of housing, streets, utilities, and the provision of public services in a more economical and efficient manner.

The Secondary Purposes for OSRD are the following:

- 01) To preserve and enhance the community character;
- 02) To protect the value of real property;
- 03) To provide for a diversified housing stock;
- 04) To provide affordable housing to persons of low and moderate income;
- 05) To provide open space lands managed for passive recreation which are accessible to the public.

P. Paicos asked P. Henry if he had an aerial photo of the property to see what it looks like with the plans overlaid on it.

P. Henry pulled up a plan that he had prepared that showed that.

P. Paicos said we are trying to keep in context with the environment that exists now. He said there is farmland to the west, wooded area to the north, homes with acreage to the east, and a residential subdivision to the south across Coleman Road. P. Paicos asked if the existing house has been recognized as historically significant. T. Zahoruiko said it has not, but it was built in 1787.

P. Paicos then outlined his thoughts. He said you have this beautiful farmhouse and a beautiful country setting on one side of the road and you have a beautiful stone wall with the historic Witchstone in it. Referring to Lot 7 he asked T. Zahoruiko if there was a way to keep the nature of what is there now there and eliminate Lot 7 as a house lot while still achieving what he needs to achieve. P. Paicos asked if any thought had gone into that.

T. Zahoruiko said one of the main reasons for trying to preserve the workshop and place it on lot 7 was precisely to do that, to keep that aggregation of buildings still appearing to be together. He said the economics are very delicate. He said they could do a nice job of screening the new house from Coleman Road.

P. Paicos brought up the secondary purpose of the OSRD – 04) To provide affordable housing to persons of low and moderate income. He said he is thinking of the existing barn. He said he thinks they touched on this informally in a discussion. He said it is a structure that is there, the shed could stay where it is, you could have the open field appearance behind the Witchstone and Lot 6 wouldn't be as noticeable because you have this almost pasture appearance. He wondered if there was some way that the existing barn could be used for housing and said he doesn't know if that would be something worth discussing.

T. Zahoruiko asked if P. Paicos was asking about the possibility of the barn becoming an affordable unit, either rental or ownership, and asked what his thought process was. P. Paicos said he is open for discussion and he would love to create some affordable housing some way in this Town. He said that it seems to him that T. Zahoruiko is someone who is willing to think outside the box. He said he was wondering if this would allow that to happen while maintaining the visual appearance of the property and also achieve what they need to.

T. Zahoruiko said again that the finances of these things are delicate, it is very difficult to concede a home, but maybe to think about additional dwelling units, which are nice to provide something you can't provide otherwise. He said he thinks in this zone two families are allowed.

P. Paicos said it is just something to think about.

M. Stohn asked if T. Zahoruiko thought that the bones of the building would be able to withstand that sort of rehab. T. Zahoruiko said that he is not sure.

P. Paicos then suggested they discuss the bonus lots.

L. Murphy asked if they have enough open space to qualify for two bonus lots. M. Taylor said that is the question. P. Paicos said it supports one for sure. L. Murphy said we need to get up to 70% for two.

T. Zahoruiko said that the way it is written, it references the open space not the upland open space, but he realizes there is discretion here.

P. Paicos asked M. Taylor if that is her interpretation. She said no, but that can be discussed.

L. Murphy asked where that calculation is. T. Zahoruiko said there is 65% upland open space and 86% total open space.

T. Zahoruiko asked if M. Taylor could read the part of the Bylaw regarding open space.

M. Taylor read, "For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of one additional unit or five percent (5%) of the Basic Maximum Number, whichever is greater, may be awarded."

M. Taylor said that 50% is based on the definition of open space, which is referring to the upland.

P. Paicos said that they need to clarify the definition to make sure the threshold is met, because if it is not met and they elect to grant the bonus, then they are going to find themselves in a little bit of a bind.

L. Murphy agreed and said they may want to get an opinion from Town Counsel on this. He said they are setting an important precedent here.

T. Zahoruiko said they didn't push on these things, for instance the historical preservation element – obviously they are preserving that house and barn, he said that also gives them another unit. They didn't think that they had to push that and let everyone know that they could have more units that way. That is something they are doing and intending to do – regardless of the interpretation of the By-Law, they can certainly justify a bonus unit for consideration based on the preservation of the house and barn.

M. Taylor said that would have to go through process with Mass Historic and be subject to a historic preservation restriction. She said the other option is providing an affordable unit.

G. Morse said he thinks they ought to have an opinion from Town Counsel in writing.

L. Matthews asked if they could have the Historical Commission look into that to help with applying to Mass Historical to speed things up. P. Paicos said that would be up to T. Zahoruiko. T. Zahoruiko said that is just not a reasonable thing for them to do with the timing. He said maybe they can reduce things down a bit and find another 5%, if that is the Board's interpretation of the By-Law.

P. Paicos said the Board will get an opinion from Town Counsel. He said he wants to make sure they are following the guidelines correctly.

W. Knight said that he agrees. M. Stohn said she agrees as well.

M. Taylor said she agrees they need to consult with Town Counsel on this. She said the other potential for a bonus unit is to make one of the units an affordable unit. She said contextually, the Colby Lane subdivision, in terms of keeping the street frontage or view did something along the lines of an open space parcel that was right up at the front of the lot. This goes back to what P. Paicos was suggesting earlier, which is to keep the front more open.

T. Zahoruiko asked if we have any idea of how long the opinion from Town Counsel will take. M. Taylor said she wouldn't think it would take too long.

P. Paicos asked M. Taylor if they could have that conversation take place, let the Board and T. Zahoruiko know what the answer is, and have a strategic meeting with T. Zahoruiko, if necessary, and then come back to the Board with a roadmap.

M. Taylor asked if this would authorize her to ask Town Counsel the question and then have a discussion with T. Zahoruiko and P. Henry. P. Paicos said yes.

T. Zahoruiko asked if it would be reasonable for them to be back before the Board in two weeks.

P. Paicos said that is probably going to be difficult, given the Board's schedule.

After some discussion the Board decided to continue the hearing to April 21, 2021 at 6:45 p.m., before the other hearings already scheduled for that night.

Motion: A motion was made by L. Matthews and seconded by L. Murphy 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 April 21, 2021 at 6:45 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.

E. 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 March 3, 2021)

P. Paicos opened the public hearing. He asked the Applicant or engineer to go through the responses to the first peer review letter and any revised plans that were submitted to the Board.

Doug Deschenes said that he was at the meeting representing Gadsden Lane, LLC, and that both Adam True, Manager, and Scott Cameron, Engineer, were on the line as well. He said he wanted to address the items the Board had requested they look into at the last meeting. In response to a question asked about the status of the pre-existing non-conforming structure at 217 High Road, he said he had written a letter to the Building Inspector in November asking whether or not this subdivision would require a variance or other permit to allow that garage to remain. The Building Commissioner at that time stated that because all they were doing was adding land to the existing lot to make it conforming, they didn't need to seek a variance. D. Deschenes said because of the question that was raised, he reached out again to the Building Commissioner, who confirmed his previous determination. D. Deschenes said he would forward the Building Commissioner's email to the Board.

He said another thing they discussed at the previous meeting was the questions and concerns raised by one of their abutters Maryanne Sheehan. He said he provided a written response to what he hoped were all of the questions that she had submitted, as well as questions she asked at the meeting. He said that A. True had reached out and arranged to meet with M. Sheehan and they talked through her concerns. He believes she received the answers to her questions. A. True has agreed and is committed to provide some plantings for M. Sheehan on her property so she will be able to have a thicker buffer between her property and the development. A. True and Ms. Sheehan are going to work together to come to an agreement on the location and quantity of the plantings. He thinks they had a productive discussion and he hopes that M. Sheehan is comfortable. He said if she has additional concerns they will continue to work with her.

S. Cameron, Morin-Cameron Group, Engineer, gave the Board an update on the response to the Peer Review letter. He said that they had received comments from Joe Serwatka, the Board's Peer Review Engineer, and several departments right before the last meeting. He said they submitted a letter to the Board on March 29, 2021 with all of their responses. He said they also submitted some supplemental stormwater calculations, which includes the things Mr. Serwatka asked them to clarify. He said earlier today they

received the response back from J. Serwatka. He said it looks like that they are down to a couple of items regarding stormwater that need to be resolved and they have suggestions on how to address these. He said M. Taylor invited them to have a follow up meeting with J. Serwatka, which he would like to take her up on.

P. Paicos thanked him and D. Deschenes. He asked if the workaround he is talking about is the DEP regulation regarding drainage to Land Subject to Coastal Storm Flowage (LSCSF) that Bill Holt, Conservation Commissioner, is concerned with. S. Cameron said yes. He said the comment at hand is relating to the mitigation component of the stormwater design. He said when he says mitigation he means the pre-condition versus the developed condition flow of runoff from the property. He said what they are required to do in most cases is make sure they are not going to increase the rate of runoff from the property. He said the regulations clearly say that if you are draining to a coastal resource area, the requirement for mitigation can't be waived. He said what they are trying to figure out some interpretation of what it means to discharge to the coastal resource. On this application they are designing to a certain point on the property, the entire property drains to that point and that falls within the coastal resource, so he feels they meet the spirit and intent. He said actually the limit of work is 100 feet away from the coastal resource so they are not draining directly to it, the runoff is travelling over 100 feet of land. He said his point is it is all going to the same point anyways and you are not trespassing on other people's property. He said as a work around in lieu of clearing another half-acre of forest to build a detention pond to effectively do nothing, he said they could try to trench a swale down close to it and put a level spreader right at the flood zone line. He said he thinks they can do it in a way that won't require any additional tree clearing. He said this is something that he hasn't talked to J. Serwatka or B. Holt about yet. He said he is hoping this is a reasonable work around to preserve the spirit of the project.

A. True reiterated that P. Binette said in his letter that they would not be creating any new non-conformities, so they would not require a variance. Referring to the discussion regarding stormwater runoff, he said he hoped the Board would see the same benefit that he does in not disturbing the land by trenching all the way down to the coastal resource, but he said if it is necessary, they will do it.

P. Paicos said he thinks there should be some more discussions with B. Holt and J. Serwatka to get a clear understanding of what needs to take place.

L. Murphy said if he is reading the comments correctly, it seems you are still at odds with J. Serwatka regarding the roadway and whether it should be crowned or super-elevated. He asked if they could talk about that. He said there is also a March 3rd letter from the Health Agent about some issues with the soil evaluations.

S. Cameron said that he didn't see that he and J. Serwatka were at odds, but that J. Serwatka notes that at one portion of the road the electrical conduit might be running under the swale. He said neither he nor J. Serwatka is working with the design from National Grid on how they are going to lay these conduits – NGrid won't do the design until the permit is in hand. He showed the Board what he envisions that the electric company will do and said he can clarify that with J. Serwatka.

S. Cameron then addressed the Board of Health concern about the septic system locations. He said when they initially drew up the plan, they hadn't fully engineered the septic design, so he just drew some boxes that represented the footprint of the septic systems. He said the Health Agent's comment was that the systems needed to be closer to the test holes. S. Cameron showed the septic systems on the plans and where the test pits were. L. Murphy asked if these were placed in response to the Health Agent's comment. S. Cameron said yes.

M. Taylor noted that they had received an updated letter from the Fire Chief saying that the plans are acceptable to the fire department as is. Since there is no public water supply in this area, residential sprinklers will be required for each building.

P. Paicos asked if there were any members of the public who would like to ask any questions or make any comments. There were none.

P. Paicos asked about the next steps. L. Murphy said they need to have the meeting with J. Serwatka to work out the stormwater issues.

G. Morse said he would like A. True's commitment to putting in screening for the neighbor put in writing and delivered to the Board to be made part of the record.

W. Knight asked for clarification on whether this is a four lot or six lot subdivision. M. Taylor said that DEP has ruled that they consider it a six lot subdivision and so does B. Holt.

P. Paicos asked M. Taylor where they stand with waivers. M. Taylor said the Board will need to go through the waiver requests.

S. Cameron said that all of these waiver requests are the same from the Preliminary plan waivers; the only one they added was the dead end road length to get around a tree.

S. Cameron said the first waiver request is for a reduction of the right of way width from 53 to 40 feet. This reduces the footprint of the roadway and gives them more flexibility with the placement of the road. He said initially their request was for a 34 foot wide right of way and through the Preliminary Plan process working with the Board they increased the ROW width to 40 feet.

P. Paicos asked for comments on this first waiver. M. Taylor confirmed that this is something that they had discussed at the Preliminary Plan stage – the initial 34 feet was a little too narrow, but 40 feet is something that the Board has allowed in the past.

P. Paicos asked the Board members if they comfortable with the first waiver. All members said that they were.

S. Cameron said that the second waiver is for the layout of the road. He said they are requesting a 140 foot sideline diameter in the cul-de-sac where 165 feet is required. They are also requesting a 122 foot outside roadway diameter, where 140 feet is required. They are requesting a pavement width of 22 feet where 25 feet is required. He said they

provided the fire truck turning analysis to demonstrate that they could move a fire truck around this cul-de-sac.

M. Taylor said the biggest consideration for these waivers would be Fire and the Chief has indicated that they are ok with it.

All Board members said they were fine with these dimensional waivers.

S. Cameron said that waiver three was added in the definitive phase. He said they would like to extend the road length from 500 to 535 feet. He said that 35 feet allows them to get around some trees and preserve existing features – it was a consequence of designing the road to the land.

M. Taylor said she had no concerns. All the Board members also said they were ok with this waiver.

S. Cameron the fourth waiver is for the typical roadway cross section. He said this gets into the super-elevation, the crowning, and a grassed swale on one side, and elimination of the sidewalk. He said he doesn't think a driver is going to notice the super-elevation when driving on this roadway.

M. Taylor asked if there was any waiver in the slope. S. Cameron said no they are providing the required cross slope.

All Board members said they were comfortable with this waiver.

The Board then looked at dates for continuance of the hearing. M. Taylor said that they need to be mindful of the schedule – since the Applicant had submitted a Preliminary Plan for the Subdivision, the Board has 90 days from when Definitive Plan Application was filed in which to take action, which she believes takes them to May 3, 2021.

P. Paicos asked if there would be any flexibility to get that timeframe extended. M. Taylor said the Applicant would have to grant an extension. A. True said he would be willing to do that.

D. Deschenes suggested that they extend the timeframe for action to the Board's first meeting in June so that they will have two meetings after the continuance to get things wrapped up.

Motion: A motion was made by L. Murphy and seconded by W. Knight to continue the 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) to May 5, 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.

A motion was made by G. Morse and seconded by L. Matthews to adjourn the Planning Board meeting at 9:15 p.m. A roll call vote was taken L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

Respectfully Submitted,

Emily Noble
Planning Board Administrator