

## Meeting Minutes

### Planning Board

Wednesday, May 26, 2021

Virtual Meeting via Zoom

**APPROVED**

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

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 May 26, 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. Concurrent Public Hearings – 15 Coleman Road (Map R02, Lots 12 & 13);  
Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager (continued from May 5, 2021)**
- 1. OSRD Special Permit Application**
  - 2. OSRD Definitive Subdivision Plan Application**

P. Paicos opened this session of the public hearing.

Tom Zahoruiko, Zendko LLC, Manager, updated the Board. He reported that since the last meeting, he had met with the Conservation Commission, which had no issues with the proposed work. He said they were at the point of closure and that he wanted to make sure that the plans were complete and coordinated.

He noted that one of the minor revisions they had made was to add parking spaces in the island of the cul-de-sac. He said they received feedback from the Fire Department that that was fine.

Phil Henry, Engineer, shared the updated plans on the screen. T. Zahoruiko pointed out the parking on the plan and said they had also reconsidered the location of the studio/workshop. He said there was enough room to put it on Lot 1 with the other buildings. He pointed out that they show heavy screening on Lot 7 about 90 feet back from Coleman Road. He expressed his concern with moving the studio building because of the shape that it is in, but they are willing to attempt to move it or rebuild it. He said they will do what they are asked to do with it.

T. Zahoruiko discussed the review comments from Joe Serwatka, the Board's Peer Review Engineer. He said most of the comments were very routine and administrative. One minor comment requires some changes relative to drainage.

P. Henry said that J. Serwatka asked for manhole risers. He explained that he thinks J. Serwatka is asking for a detail of what they are proposing and said they can do that.

T. Zahoruiko said there is one other outstanding issue, which is whether the road will be private or public and that the O & M Plan might need to be revised. He said he was hoping to close the OSRD public hearing and resolve any issues.

P. Paicos asked if the Board members had any questions. There were none.

P. Paicos then said that at the last meeting the Board had directed M. Taylor to draft an OSRD Special Permit Decision. He asked M. Taylor, before the Board reviewed the draft Decision, if they had received any new public comments or questions.

M. Taylor said they had not received any written comments, but noted that there were a couple of hands raised if P. Paicos would like to take those.

Ben Armstrong, 30 High Road, said there had been discussion at the last meeting about the existing house becoming affordable housing, and asked if that was still a possibility.

P. Paicos said they do not have a final answer from the Applicant.

B. Armstrong said he has a concern about that. He said this is an old home that needs considerable renovations. If you make it affordable, the person who buys it is going to be at their limit to purchase the house. He said you would be setting it up so that whoever buys this nice old home will have trouble maintaining it.

P. Paicos said that is a very good point and that the Board had discussed that as well.

T. Zahoruiko said he is not really amenable to making that an affordable unit. It really doesn't make sense mostly for those reasons. He said something that came to mind would be that he would be open to putting a deed restriction on the house and barn, that they remain there.

Linda Senecal, 25 Coleman Road, said that Dale and Gary McCausland would like her to present something that they have written because they are not able to be here tonight.

She read:

"We just want to voice our support for this builder and his proposed plans. We feel he is being genuine, and is making great effort to preserve the integrity of the open space. We are grateful he is willing to dedicate so much of the land to the public and offering to groom the beautiful walking trails, as well.

During the last meeting, it was proposed by the planning board, that the road into the development be a private road and a homeowners association would be responsible for the maintenance. My question is this, how does the public have the right to enter, and park, on a *private way*, to access those public trails???

Lastly, we hope there can be a meeting of the minds with this builder, and he is allowed to proceed with his requests. We fear that with too many recommended changes, by the board, to his original scope of the project, will possibly cause this builder to have a change of heart and sell the property. We feel we run the risk of another developer, as was interested earlier, to come in and propose a larger development. And, the neighborhood and the public, would be negatively impacted by potentially losing the benefit of the open space and walking trails.”

P. Paicos asked L. Murphy about the question of crossing private roadway to public land, that has been established, correct?

L. Murphy said yes, there are public ways and then there are private ways that are open to the public. The only real distinction is who has the maintenance obligation. He said there are protections for property owners that permit recreational uses on their property. The Board has done this before, it is not at all unusual. He said from his perspective, the Applicant is looking for dimensional waivers on the Road and it has been their policy with dimensional waivers to insist that the way remain private, because those waivers can make it difficult for DPW to maintain.

Meg Alfoni, 15 Sunset Drive, asked what the plans are for the existing house.

Tom Zahoruiko said that this house has some really nice features. He said he is primarily a new home builder. He said he is prepared to renovate it, but he would rather someone who has a passion for it and intends to live there do it themselves. He said that would his preference, to sell it to that person, but if they don’t find that person then they would undertake the renovations themselves.

M. Alfoni asked if he would consider partnering with someone like Habitat for Humanity to rehab it for affordable housing.

T. Zahoruiko said he is familiar with Habitat. It changes the economic complexion quite a bit for him. He said he thinks he had been upfront about what they are trying to do, the things they are able to do in terms of community benefit. He said they have tried their best, they have preserved a large amount of property. He said he can’t do everything, he is trying to do everything that he can reasonably do. He said he doesn’t think it is something that would work in the Habitat program.

Dan Emerson, 22 Forest Street, said that he appreciates the response on affordable housing, and all that the developer has done. He said he just wants to put on record another person supporting affordable housing, he said this comment is more for the Board.

P. Paicos thanked him for his comment and said that it is definitely something that is important to this Board and is on their radar.

Chris Armstrong, 1 Coleman Road, said he is on the farm that abuts T. Zahoruiko’s property. He asked about septic systems for the new homes and the existing septic system.

T. Zahoruiko said the intent is that it be a common system. The best soils are in that spot and it really provides the least impactful way of dealing with septic. It will be a completely new system.

C. Armstrong asked if this has gone through the Board of Health.

T. Zahoruiko said that they will have to go through the BOH and the system has to be designed to their standards and proven.

G. Morse said that he would like to see the question of the private status of the roadway addressed. He said he would also like the question of moving the studio/shed to be resolved.

L. Matthews asked if the access to the development will be all one way in and one way out when you enter the cul-de-sac.

T. Zahoruiko said that the cul-de-sac is designed to standards, there is plenty of room for two way traffic.

L. Matthews asked if they could save the studio/shed, whether it would go to the left of the house.

T. Zahoruiko said yes. It would just be the main body of the studio, not the more recent additions, so the footprint would be smaller than the footprint on the landscape plan.

P. Paicos then said he would like to review the draft Decision and suggested going through it section by section as before.

M. Taylor shared the draft on the screen.

P. Paicos noted one modification in the project description, which is the question of the relocation of the existing shed/workshop, to document in detail. He said it is proposed to be moved onto Lot 1 and then it would be deeded with Lot 1.

T. Zahoruiko confirmed.

P. Paicos asked if the intent is that if it cannot be moved, it will be reconstructed.

T. Zahoruiko said yes.

L. Murphy said this language should also appear in the conditions of approval.

P. Paicos referenced the modifications to dates of materials and information that have been submitted, including the recent letter from the Fire Chief.

L. Murphy read through the Findings and Determinations.

L. Murphy commented on Finding # 3 and noted that it might be appropriate to add language about the studio here. He suggested they talk to Town Counsel.

P. Paicos polled the Board to make sure everyone was comfortable so far with the Decision. All were comfortable.

L. Murphy moved on to the Conditions of Approval.

On Condition # 5 referencing the Open Space, M. Taylor suggested that they modify and refer to the options in the By-Law, since this has not been determined yet. She said it might be something to edit in consultation with Town Counsel.

P. Paicos asked the Board members if they were comfortable with this and were comfortable with the two bonus units.

L. Murphy, G. Morse, and L. Matthews all said yes. W. Knight said yes and asked about the flow test results, he did not remember hearing about them.

P. Paicos said he thought they had had that discussion two or three meetings ago.

T. Zahoruiko said yes, and they have filed the report and there is plenty of capacity in the system.

M. Stohn said yes to the two bonus lots.

P. Paicos said he wanted to confirm that they are comfortable with the parking in the cul-de-sac. All Board members were comfortable.

P. Paicos said he wanted to confirm that they had a decision that the studio/shed will be relocated to Lot 1 and that they are all in agreement. All the members were comfortable. G. Morse commented that the language needs to be amended to say it will only be relocated to Lot 1, currently it is written so there are other possibilities.

P. Paicos said they haven't touched upon the fact that the Witch Stone appears to be right on the boundary between the right of way and the property. He asked the Applicant what he would propose to the Board for this.

T. Zahoruiko said he is not sure how the Board would like to deal with it. He said he doesn't want to move it. He said he would be amenable to a planting 10 feet either side of it to keep people away from it.

P. Paicos asked M. Taylor for her thoughts.

M. Taylor said that are there provisions that should be in the decision on preserving and maintaining it, but asked, since it is right on the boundary, whose responsibility is it?

L. Murphy said that is the big question he has. When Lot 7 is sold, does the Witch Stone go with the Lot or is it on Town property within the right of way?

T. Zahoruiko said that is an interesting question, maybe a question for Town Counsel. He said the other alternative would be to put it at the pedestrian access to the open space. It would be safer there and would definitely get more appreciated there.

L. Murphy said then it could be incorporated into the Open Space documents.

G. Morse agreed.

L. Matthews asked if the Stone remained with Lot 7, would there be a covenant.

M. Taylor said it is recognized as a historically significant spot in Town. She said she would be reluctant to do anything with it without getting input from the Historical Commission. There have been other suggestions, such as moving it to the Governor's Academy, since it was originally there.

T. Zahoruiko said he would be amenable to a condition that they would collaboratively make a decision on this later so as to not hold up the process.

W. Knight said he is not crazy about moving it. If something happened to it, that would be detrimental too. He said it hasn't been hit where it is. If we can determine who has rights to it, he would be for leaving it right where it is.

P. Paicos said he thinks they need to have a conversation with Town Counsel and the Historical Commission.

P. Paicos asked if there were any other conditions that the Board members wanted to add. There were none.

Ben Armstrong, 30 High Road, asked who will be the steward of the open space. He asked if there has been a response from Greenbelt.

M. Taylor said she did reach out to Greenbelt and she had had a site walk today with them. She said she will work with Town Counsel on the condition for this so that it complies with the By-Law. That would need to be resolved before the first occupancy permit.

T. Zahoruiko said he has no issues with the conditions as they are.

L. Matthews asked if the Open Space could be donated to the Town and as stewards of the land, could the Town rent it out for recreational use or farming.

P. Paicos said it is a wooded lot and he thinks the intention is to keep it that way. He asked M. Taylor to address this.

M. Taylor said there are several options: It could be conveyed to a nonprofit or to the Town, or it could be held by the Homeowners Association with a conservation restriction held by the Town's Conservation Commission. She said in terms of leasing it, the recreational use statute says that a property owner who allows the public to use land for

recreational purposes is not liable for personal injury or property damage as long as no fee is charged for the use of the land.

Lucy Armstrong, 31 North Street, Georgetown, said she is the daughter of Chris and Liz Armstrong, at 1 Coleman Road. She wanted to mention the uses that are approved, there is one that has not been mentioned, which is a private owner of the open space for agricultural, horticultural, or forestry uses.

P. Paicos said he thought the conditions need to be ironed out, the draft Decision needs to be reviewed with Town Counsel and the hearing should be continued.

**Motion:** A motion was made by G. Morse and seconded by L. Murphy to continue the Concurrent 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 June 2, 2021 at 7:15 p.m. A roll call vote was taken. P. Paicos, yes, L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

T. Zahoruiko asked if they could begin drafting a Decision for the Definitive Subdivision Plan.

P. Paicos said they are still waiting for comments from Joe Serwatka, Peer Review Engineer, on the revised plan before that Decision can be written.

M. Taylor said they received the comments today. She said if the Board would like her to start drafting a Decision for the June 16th meeting, she could do that.

**Motion:** A motion was made by L. Murphy and seconded by L. Matthews to direct M. Taylor to draft a Decision for 15 Coleman Road (Map R02, Lots 12 & 13); Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager, OSRD Definitive Subdivision Plan Application. A roll call vote was taken. P. Paicos, yes, L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

**B. 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)**

P. Paicos opened this session of the public hearing. He said for the record G. Morse was not present for the May 5, 2021 session of the public hearing. He has watched the video and provided the necessary certification to the Planning Director.

Douglas Deschenes, representing Gadsden Lane LLC, said Adam True, Manager, and Scott Cameron, Cameron Morin Group, were with him. He said that they had submitted a revised plan that addressed a few minor issues.

S. Cameron gave an overview of the revisions. He noted that there was a discrepancy in the land area that was corrected and that the Plans had been revised to reflect the peer review comments.

P. Paicos asked the Board members if they had any new questions or concerns. There were none.

He asked if there were any public comments.

M. Taylor said they had not received any written comments and there were no raised hands indicating someone wanted to speak.

P. Paicos then moved on to reviewing the draft Decision. In the project description there was an amendment to the area of the property that was within the ACEC (Area of Critical Environmental Concern).

There was one modification to the list of submitted materials – a date was corrected.

P. Paicos said they had already discussed the waivers and the Board was comfortable with them.

L. Murphy then went through the Decision and Conditions of Approval.

M. Taylor said, in reference to C. 1., that the most recent plan showed a vegetated filter strip going down Lot 2. There was some discussion of whether an easement would be the appropriate mechanism for that, or whether some language should be included that would put a restriction on the lot to make sure that the homeowner didn't put something in the way of that flow. M. Taylor said she thought Attorney Deschenes had a suggestion on how to deal with this.

D. Deschenes said he thinks they could show the area to be maintained on a plan and then as part of the Homeowners Restrictive Covenants, they can expressly provide that the owners of lots 2 and 3 cannot in any way disturb the area.

P. Paicos asked who would enforce that.

D. Deschenes said the homeowners should understand that a violation could result in an occupancy permit being suspended or pulled. He said the other thing they could do would be to place a notice in both the purchase and sales agreements and in the deeds for Lots 2 and 3. He said that would be the best way to put the owners on notice.

He said, in terms of enforcement, the other members of the homeowners trust are usually a very good self-regulating body, especially if they know that if those areas are disturbed, the entire subdivision would be in danger.

S. Cameron pointed out that if anyone does go into this area, it is within the 100 ft wetland buffer zone. The Conservation Commission has a well-tested enforcement mechanism for anything that is done without authorization. He said that is perpetual and something they can go in anytime and enforce.



P. Paicos asked the Board members for their thoughts.

L. Murphy said he thinks there are solutions here, but they probably don't need to have every detail in this document. He said one way to handle it would be to give the HOA an easement over the area so they could go in and do the work. He said he thinks this is something that can be worked out over time with Town Counsel.

G. Morse and L. Matthews agreed.

L. Matthews asked if they expected the Conservation Commission to police this parcel.

S. Cameron said that they are relying on the forest floor to do the work for them – that is only because they don't want to go in to clear the trees. He said the way that the vegetated filter strip works in the Stormwater management handbook, it doesn't actually have to be a forest floor, it can be a lawn. He said he thinks the intent of that is fairly robust – they just don't want to see any pools or anything that is going to change that.

W. Knight said he had no concerns.

L. Murphy continued going through the Decision and Conditions.

In reference to condition G, L. Murphy asked if there is intent to blast.

D. Deschenes said it has always been their intent to use hydraulic hammers and similar equipment, but there is always the possibility that blasting would make removing a large piece of ledge more efficient and cuts down on noise. He asked if the Board has a standard blasting protocol condition in the event that it is in the best interest to blast.

P. Paicos said yes, if the Board is ok with that, they would need to come up with some language for that. He said M. Taylor can work with Town Counsel on that.

M. Taylor said they have some language that they have used on other projects. She said she can run that by Town Counsel. She said it is really subject to permit from the Fire Department and they will require all the state procedures to be followed.

L. Murphy continued to go through the Conditions.

When L. Murphy was finished, M. Taylor discussed including language that this document does not constitute approval from any other Board.

P. Paicos asked the Board if there were any other questions or comments. There were none.

S. Cameron said in reference to condition L, which talks about post construction plans, it is written in a way that requires the Developer to get a stamp from a professional engineer and a professional land engineer. He would be paying a professional twice to do the same work.

M. Taylor said she would double check what is in the subdivision rules and regs.

P. Paicos said that is what they will do. He said if the Board is in agreement, he would like to continue this until June 2, 2021 at 7:15 p.m.

D. Deschenes said that his client is running up against a time constraint with the purchase and sales agreement. He asked if there is any way the Board would consider closing the public hearing and voting on the Decision subject to the revisions and the review by Town Counsel.

P. Paicos said he doesn't think they are comfortable with that. If there was anything significant that needed to be changed, they would have a problem if they closed the hearing tonight.

M. Taylor said that June 2 should provide enough time and the applicant has granted an extension to June 7, 2021 to file the Decision with the Town Clerk. The intention is to have it finalized and signed by that time.

Motion: A motion was made by L. Murphy and seconded by L. Matthews 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 June 2, 2021 at 7:15 p.m. A roll call vote was taken. P. Paicos, yes, L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

A motion was made by G. Morse and seconded by L. W. Knight to adjourn the Planning Board meeting at 9:03 p.m. A roll call vote was taken. P. Paicos, yes; L. Murphy, yes; L. Matthews, yes; W. Knight, yes.

Respectfully Submitted,

Emily Noble  
Planning Board Administrator