

WEST NEWBURY PLANNING BOARD
Minutes of Meeting
July 24, 2012

Pursuant to a meeting notice posted by the Town Clerk and delivered to all Board members, a meeting of the West Newbury Planning Board was held on July 24, 2012 in the Planning Board Office. Board members Ann Bardeen, Richard Bridges, Raymond Cook, Brian Murphey, and John Todd Sarkis, Chair, attended. Associate Member Dennis Lucey and staff member Jean Nelson were also present.

The Meeting was called to order at 7:33 PM.

Paul Colby, Director, Byfield Water District, discussion of request to amend the West Newbury Groundwater Protection Overlay District (GPOD) Map to include Zone II of a Wellfield in Byfield

Paul Colby had been asked to attend a meeting to discuss the Byfield Water District's request. The impacted landowners had been notified of the meeting. Nobuhiro Tokoro of 229 Ash Street was present. Sarkis asked if any other landowners were coming and Tokoro replied that he had talked recently with Ludlow Berkeley of 224 Ash Street, who had said that he may attend.

Colby related that the Byfield Water District had to renew their Withdrawal Permit with DEP five years ago. At that time, DEP determined that the watershed area extends beyond the community boundaries. A large portion of Byfield's GPOD is in Georgetown and Groveland. DEP has the same requirements as in the West Newbury GPOD Bylaw for groundwater protection.

In 2000, the Water District received a grant from DEP to have the watershed calculated by a hydrologic study. The Zone II is defined as how far water will be drawn to a wellfield in a drought situation in 180 days. There is also a Zone III established, but DEP does not require this in the GPOD Overlay.

Cook asked if the watershed is based on topography. Colby replied that usually Zones II and III are the same but in this case, the Zone II is extensive. He said that the uses are not an issue here as they are in Newburyport, because the zoning district in West Newbury is residential only. He noted that Mr. Tokoro's water comes from Byfield.

Tokoro said that only his property is entirely within the proposed GPOD. He bought his property in 2000. He feels that imposing the GPOD will devalue his property. The former owner of the lot arranged for water from Byfield.

Colby said that 229 Ash Street is so far from the wellfield that the Byfield Water District would not object to uses in that area. Nelson noted that her interpretation is that the two restrictions on land in the GPOD are the stockpiling of manure, and limit on the amount of impervious area, found in Sections 10.F.3.i. and j. She said that she feels the Bylaw is in error, because it lists stockpiling as a prohibited use, but subsection i. lists conditions for manure, so it does not appear to be prohibited. There is a blank space in the text which she has researched back to inception of the Zoning Bylaw section, but cannot see where any text was removed.

Sarkis said that he does not see that property value is affected, but there is a perception that it may be affected.

Colby said that the requirement of DEP is that the Water District make a best effort to have the GPOD extend to land in neighboring towns. He said that he is director of the department in Newburyport also, and may be visiting the Planning Board representing Newburyport at a later date.

Sarkis said that he sees this as a reasonable request. He said that at times the needs of a few overpower the needs of many. Colby said that is hard to find a new water supply, and he can see the importance of wellfield protection.

Mr. Tokoro took the hydrological study booklet, thanked the Board, and left the room.

Murphey suggested that the Planning Board discuss this with the Water Department with reference to the Artichoke River protection. He said that Newburyport may have made a similar request in the past, and said that the Board should be aware of the details.

Nelson said that the request could have been made to the Board of Selectmen, who would have referred it to the Planning Board. She suggested that the decision could be left to the will of Town Meeting.

Continued Public Hearing to Consider an Application for a Special Permit for a Kennel/Dog Daycare Facility, Zoning Bylaw Section 5.A.3., and Site Plan Review, Section 8.B., 164 Indian Hill Street, Assessors' Map R-18, Lot 26, Elizabeth Wood and Carol Fisher, Owners and Applicants

At 8:25 PM Sarkis declared that the Continued Public Hearing is now open. He designated Associate Member B. Dennis Lucey III as voting member to act on the Application.

Elizabeth Wood presented a plan with revisions that had been recommended at the July 10, 2012, Public Hearing. Those items, as excerpted from the Minutes of the Public Hearing, are as follows:

- Improvements to the building, such as the new door to be added to the building, upgraded utilities, flooring, painting, etc. (Some of these items will be listed and not shown.)
- The secure transfer area, shown on the plan with dimensions.
- The fenced pen at the back of the building should be added. Nelson noted that the area sketched on the plan during the Hearing had been somewhat small, and that the proposed area could be shown in larger size for future expansion. Sarkis suggested that an envelope with fencing and the height of the fencing be shown.
- The relocation of the sign onto the private property
- A signature block, and revisions to make the Site Plan conform to Registry of Deeds requirements.

Wood reviewed the revised plan with the Board. She noted that a shrub barrier which was not requested by the Board has been added to the northern side of the pen, in order to shield it from abutters.

Murphey asked the following questions, which were answered by Wood:

What are the dimensions of the building? They are 15' x 70'.

How was the number of 20 dogs determined? This number was based on ASPCA Guildelines, based on square footage of the building. Not the same dogs will be there every day. Dogs will be grouped by small/large/temperament, and naptimes will be staggered.

Will playtime take place on the street, and will the dogs be taken out in the car? No. The building will have a new rubber floor, which is more conducive to play.

In the Minutes, a trial period of 10 dogs was discussed. Was it pursued?

Wood replied no, it was discussed, but 20 dogs are needed for the business plan to work.

Motion made by Sarkis, seconded by Cook, to close the Public Hearing. The vote in favor was unanimous, 5-0-1 (Murphey abstained.)

The Board reviewed the Findings of Section 8.A.2.f. of the Zoning Bylaw: (indented lines are brief discussion items.)

1. The specific site is an appropriate location for the use.
The site and existing building have been used for housing animals in the past.

2. The use developed will not adversely affect the neighborhood.
The Board finds that this is unlikely due to the location of the concrete building and the topography.
3. There will not be an undue nuisance or serious hazard to vehicles or pedestrians, and adequate and appropriate facilities have been provided to ensure the proper operation of the proposal.
The turn-around for vehicles will be provided on the property. Additional parking spaces are proposed on the Site Plan. There will be a secure gated area for the transfer of dogs.
4. The proposed use is in harmony with the general purpose of the West Newbury Zoning Bylaw dated May, 2010.
The proposed use is similar to a home occupation which is provided for in the Bylaw, the location has been used for housing of animals in the past, and West Newbury is an animal-oriented community.
5. The requested use will not overload any public water, drainage, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety or the general welfare.
The Board feels that this condition is not applicable.

Bridges noted that in the Narrative, the use of the word "primarily" is somewhat loose. Wood explained that there may be situations where an owner is late picking up a dog due to circumstances beyond control.

The Board discussed Conditions to the Special Permit as follows:

- the days and hours of operation as Monday through Friday from 7 AM to 6 PM, with an understanding that there may be hours outside of these hours due to circumstances that arise,
- an understanding that regular customers may occasionally stay overnight, including on a weekend
- the maximum number of dogs to be allowed twenty
- proper removal of waste,
- and completion of certain site and building elements prior to opening of the facility.

All of the above Conditions were stated as intentions of the Applicants in the Application and accompanying documents.

Motion made by Sarkis, seconded by Cook, to approve the Application for Special Permit under Section 5.A.3. for a Dog Day Care/Kennel Facility at 164

Indian Hill Street, subject to the Conditions as generally described at this meeting. Discussion followed that the draft Certificate of Vote with Conditions will be reviewed at the next meeting. The vote in favor was 5-0-1 (Murphey abstained.)

Site Plan Review: Motion made by Cook, seconded by Sarkis to approve the Waivers from Section 8.B.4. as requested, from the requirements of Site Plan Review, as follows: Requirements of subsections c., e. (traffic impact plan), g., i., j., k., l., n., o., and p., and a Waiver of the Planning Board Rules and Regulations, Site Plan Review Fee, Section VI., reducing the Fee from \$500. to \$250.

Motion made by Sarkis, seconded by Bardeen, to approve the Request for Waivers as listed. The vote in favor was 5-0-1 (Murphey abstained.)

Motion made by Sarkis, seconded by Bardeen, to make a positive recommendation to the Building Inspector for the Site Plan Review, Section 8.B., with Conditions as noted. The vote in favor was 5-0-1 (Murphey abstained.)

It was decided that the Board will review the Conditions of Approval at the meeting of August 7, 2012, at 7:30 PM. The Applicants were urged to attend.

Certificate of Performance for Definitive Plan Approval With Covenants, Book 13079, Page 16, dated April 28, 1995, needed for Title Insurance, 5 Captain Pierce Drive, "Release from Covenant"

Nelson related that a Title Examiner had contacted her because he needed a release from Condition #1 of the Definitive Plan approval With Covenants recorded in Book 13079, Page 16. She found that a Release had been endorsed by the Board on September 4, 1996, but a copy of the recorded document cannot be found. She had prepared a copy of the same Release with the added line "This Release from Covenant confirms a Release from Covenant dated September 4, 1996, which was endorsed but not recorded."

Motion made by Cook, seconded by Murphey, to endorse the Release from Covenant. The vote in favor was 5-0. The Release was endorsed with the exception of Sarkis, who will come in to have his signature notarized.

Discussion of next steps for Site Plan Review Bylaw

Nelson was asked to prepare a schedule for review of various sections of the draft Bylaw and Regulations.

Discussion of new state model of OSPD Zoning Bylaw

Nelson related briefly that the new model establishes a by-right process for OSPD, with a Special Permit required if density bonuses are sought. The by-right

calculation uses a formula, which may yield more lots than the existing yield plan process. There is more detailed description of processes such as Homeowners Associations, administrative details, etc. Bardeen noted that the comment is made that the draft does not take subsurface disposal of wastewater into account.

Cook suggested that there may be a way to simplify the yield plan analysis to determine the number of units to be created, and to avoid doubling of number of units for calculations and density bonuses.

The suggestion was made that the Board look at approved clusters and see how they have worked. Murphey said that it seems to have worked in his neighborhood. The quality of the Open Space was discussed.

Update on Inclusionary Housing Bylaw

Nelson had reached out for names of consultants, and added some to the list of potential consultants to whom an RFP for review of the draft would be sent.

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The Minutes were reviewed and edited.

Motion made by Cook, seconded by Sarkis, to approve the Minutes as edited. The vote in favor was 4-0-1 (Murphey abstained.)

Vouchers were signed.

New Business:

A realtor from New Hampshire has placed calls to Nelson and Clohecy to discuss the use of 5 Kimball Road as a school.

Deb Hamilton had discussed with Nelson a restriction on subdividing the lots on Archelaus Hill Road. A review of the private recorded Covenants indicates a restriction for 20 years, then for two 10 year extensions, which will expire in 2017. Sarkis said that the lots have failed perc tests in the past.

Murphey related that an at-large member of MVPC, who lives on Bridge Street, asked him if the width of the roadway could be made narrower for traffic calming. Murphey said that is the jurisdiction of the Board of Selectmen.

Motion to adjourn, 10:30 PM.

Jean Nelson
Planning Board Administrator

These Minutes were approved by the Planning Board on August 7, 2012.