

**WEST NEWBURY PLANNING BOARD  
MINUTES OF MEETING  
FEBRUARY 25, 2014**

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 February 25, 2014 in the Planning Board Office. Board members Ann Bardeen, Chair, Richard Bridges, Raymond Cook, Brian Murphey, and John Todd Sarkis attended. Administrator Jean Nelson was also present.

The Meeting was called to order at 7:00 PM.

The Board reviewed a memo from Town Counsel Michael McCarron with a response to questions Nelson had posed regarding language for draft Conditions for the Follinsbee Lane project.

Minutes, November 19, 2013

**Motion** made by Bardeen, seconded by Bridges, to approve the Minutes as written. The vote in favor was unanimous.

Due to a scheduling conflict, there will not be full attendance at the meeting on March 18, 2014. The Board decided to instead meet on March 11<sup>th</sup>.

**Continued Public Hearing to consider an application for a Special Permit for Open Space Preservation Development (Zoning Bylaw §6.B.) and for Site Plan Review (Zoning Bylaw §8.B.) for thirty units of single-family residential housing and related infrastructure at 18 Sullivan's Court, Cottage Advisors LLC.**

Bardeen opened the Public Hearing at 7:30 PM. Present for the Applicant were Chip Hall, Applicant, Melissa Robbins, Attorney, Chris Lorrain, Engineer, Nick Cracknell, Consultant and Howard Snyder, Landscape Architect.

Bardeen noted that Lucey is not present tonight, and may need to invoke the Mullen Rule Law.

Meridian has sent their latest comments, comments from the Board of Health have been received, and Nelson has a list of comments, which had been distributed. Bardeen said most on that list are not substantive.

The list was reviewed.

Whetstone Street: Work there is under the jurisdiction of the Board of Selectmen. Nelson related that Gary Bill had been to the site with the Applicant, and they have agreed to do all requests on his prior memo. She asked what revisions would be made

to the plan. Lorrain said it amounts to a Cape Cod berm along the side of the street, which they have already agreed to do. If not on the plan, it will be added. There is a catch basin on the left side, prior to the intersection with the new road. When repaving, the rim of the catch basin will be spun around. An offset cone will be placed around the catch basin. It should be spun as close as it can be to the edge of pavement. Lorrain said that it does not require revisions to the plan, and he had sent a letter to Bill agreeing to the work. Bill said it would be addressed while the work is being done, once they open the catch basin and see inside. This work on the catch basin will be handled by a note on the drawings.

The basin on the right side of the street is outside of the existing paved area. Sarkis asked if the basin is in good shape, and Lorrain replied that the cover was frozen so they could not open it. He said that Bill said the Town is responsible for the basin if it needs repair.

Nelson summarized items on the list.

Temporary turn-around: Is that to be shown on the Plan, or in the Conditions. Cook said a decision can be made during construction. Nelson suggested that it be addressed in the Conditions to document it.

She noted that some of the EUAs were incorrect on the Plan, and Waterman had sent correct numbers. A message had been received today with corrections from Waterman to the Open Space Matrix. She asked how these math errors have happened. Lorrain replied that they working with new software. A technician did not realize that 10 square feet total had been added to the EUAs using the new software. When Nelson had brought this to the attention of LandTech, they had found the error. She said it is very frustrating dealing with these changes and errors, and it does not make her feel good about the plan details.

Driveways: Nelson was concerned that owners would be paving their own driveways, as it might interfere with the gutter line. This had been discussed at the last meeting. Robbins said the Applicant will be paving the individual driveways as units are completed, and not done as part of the roadway work. That is not what was said at the prior meeting. The Applicant will, in fact, be paving all driveways.

Walk-outs and bulkheads: Robbins said that units that are not deed restricted can have finished basements. Nelson noted that units on the downhill side may be walkouts. Others will have a bulkhead. Robbins said basements are shown on the plans, but review showed that they are not. Bardeen reviewed the Architectural Plans and noted that walkouts vs. bulkheads are not shown, and we do not have rear elevations. Once again, some lines on the plans submitted to the Board were too faint to read. Sarkis said that the lines should probably be fixed if the plan is to be recorded. Lorrain said

this is due to plotters and printer settings. Colored drawings can be submitted to the Board, but then can't be recorded in color.

Bardeen asked where bulkheads are shown on the civil plans. Lorrain said they come out off the backs of the even numbered units. Walkouts are associated with the units that may have a deck. Lorrain said the bulkheads are not shown on the civil drawings. The back yards of the even numbered units were scaled by Lorrain to verify the setback. He said that Lot 18 will have a Unit E on slab.

Robbins said that Hall is offering a basement option. Only Unit E on that side will be on slab, and have a patio. Sarkis said a bulkhead has a foundation, so it must meet the 20' setback from the Open Space. On Unit 4, Lorrain had to figure out where the bulkhead might be, due to unit style and constraints. It would probably have to be on the side in order to meet the setback.

Sarkis asked Lorrain to look at all of the units and setbacks to make sure they can comply with the setback requirement. Lorrain said the bulkhead can be moved around and Sarkis said that we do not want to see them in the front of the unit.

Landscape Plans: Title Block is incorrect. It should be corrected.

Nelson asked if the Applicant has issues with the Meridian report. Robbins said the only question is the wall behind Unit 18, where Meridian suggested it could be tapered down. The plan was reviewed. Lorrain said the wall does not taper, but the grade comes up on the two ends.

Sarkis asked if the pocket park is now squared away. The response was yes. The walkways will be pervious pavers only, which is an update from the previous meeting. That detail will change on the landscape plans.

Bardeen turned to the draft Conditions.

Further Subdivision or Land Division:

Nelson had added the EUAs in square feet and acres to the Decision. Bardeen asked why the acre column is there, and why it was needed on the plan. Robbins said that it is used by attorneys. It was decided the acre column could be deleted. Nelson will add a reference to the sheet number.

Robbins asked if the EUAs could be varied at the time of sale by 50 square feet or so. She said if unit style, driveway entrance, etc., is changed, the EUA may be changed. The EUA lines are interior lines. Bardeen said that she does not object to this, but does not want to see errors that result in taking land from the conservation land.

Nelson asked if the Board is concerned with EUAs. She asked if they could be eliminated. They were proposed by the Applicant. She said that if there is no EUA, then a minimum side setback between buildings would be necessary.

The distance between several units was scaled, and determined to be at least 20 feet. Sarkis said he sees some garages against the EUA line on the plan. Nelson said that the plans indicate EUAs with metes and bounds, and if this is recorded, then it should be adhered to. Sarkis suggested that instead of EUAs, a building envelope could be shown for each unit, and the setbacks could be conditioned. Nobody saw a downside to this. Robbins suggested that the use areas should take place with the Phases I, II, and III shown on the Production Plan Sheet, and within those phases the number of units as indicated. Lorrain noted that a Waiver has been granted for setbacks at 3 locations. Nelson noted that many plan sheets will need to be revised to delete the EUA lines. Sarkis suggested a dashed line for the setback from the side and CR land. Unit numbers should remain.

The Plans will be revised to reflect this discussion. C21 is the sheet showing the EUAs.

Protected Open Space: Language was reviewed and revisions made. A note regarding the percentage of disturbance on Sheet C5 should be moved to the Yield Plan. It is confusing. A Conservation Restriction must be recorded prior to issuing an Occupancy Permit for the 25<sup>th</sup> unit. All stockpiling and work must be completed in the Open Space prior to recording the CR.

Unit Restrictions: Sarkis asked that Conditions of Approval be separated from narrative and gave an example. Cook interpreted that anything with a may or a shall would be a condition. Sarkis said that he would go through the document and give Nelson the points in tracking. This format was discussed so it would be understood by everyone. Sarkis said that density, drainage, etc. should be identified as reasons for conditions, and Nelson said that it is found in the draft.

Language was revised to make clear that a garage may not be converted to living space. The language suggested by the Applicant for upward expansion and limiting the enlargement of the footprint was accepted by the Board. The definition of Floor Area from the Zoning Bylaw is not suitable so the title will be Gross Finished Floor Area. The definition of Gross Finished Floor Area was revised to exclude garages, unfinished basement and attic spaces, porches, decks.

Density Bonus for Cottage Style Units: Two of the units, 6 and 18, have been identified as restricted for the Density Bonus, and these are affordable units. Hall said he needs flexibility for the other two units. Robbins suggested that the two units can be conditioned to be designated prior to issuance of the first Occupancy Permit in the third phase set, i.e. the 19<sup>th</sup> unit. There will be two restricted units in Phase II.

Nelson said she feels it is a mistake for the Board to allow units to be designated at a later date. She continued this is a substantial density bonus, which should be documented clearly on all documents. She has seen easements or restrictions dropped from deed to deed. Bardeen suggested that at the point of release the Board see the deed. Nelson said it must be documented in the Conditions and in the Restrictive Covenant.

Robbins suggested that prior to issuing a Building Permit for any unit in the third Phase, the Applicant return to the Board with proof of deed restrictions. Nelson said this should be based on Occupancy Permit, not Building Permit. Cook said he feels that the protections as outlined will work. Robbins said that there is no guarantee that a Deed Restriction will be placed on a deed, and Nelson agreed but said that permanent documentation should be made.

Sarkis said this becomes difficult when a new buyer is looking to close and move in right away, and an Occupancy Permit is held up. Nelson said that the Board must stick to its own Conditions, even if difficult.

It was determined that units designated with a patio only may create a deck instead of a patio. Such decks may not be enclosed. Robbins suggested that conversion from deck to porch should take place post occupancy.

Affordable Housing: Robbins suggested that the last sentence of the paragraph, which was specifics of DHCD requirements, be deleted. There was agreement.

Sarkis returned to deleting of EUAs, and said that the unit numbers should still remain. Lorrain said he would not be deleting the unit numbers.

Robbins asked if the Planning Board wants to see the marketing and lottery plan prior to submitting to DHCD, and the response was no.

Easement for Water Line: Robbins said there is now a change. The Sullivans will grant Cottage Advisors the right to convey the easement to the Town. There will not now be two parallel documents. When she receives the draft from Sullivan attorney, she will send it to Town Counsel for review and approval. The draft Condition language written by Nelson will be revised following review of the draft easement from the Sullivans.

Nelson said that there are other water design sheets with the Water Department that are not part of this plan set. They are subject to review and approval by the Water Commissioners. Town Meeting does not need to accept the easements, the Commissioners have the authority to do that.

Robbins questioned recording the easements with the Plan and said that if the Board is requiring the plan to be recorded in 21 days, that would not be enough time. Usually

they are recorded prior to issuing of the first Building Permit. Nelson said she has seen many easements recorded with the plans. Sarkis agreed. Neither he nor Nelson are aware of a requirement to record the Decision and plans in 21 days. Nelson said the reason conditions require recording of a Definitive Subdivision Plan is for assessing the lots as soon as possible.

The front page should contain a note to the Registry of Deeds: to see Easements, Restrictive Covenants, etc. recorded herewith.

Other Easements: Robbins had indicated previously that the Town would have an access for emergency access. Robbins said it could be in the Restrictive Covenant language.

Improvements to Whetstone Street: Sheet C17 sheet will be updated to add the berm, and a notation as to flipping of the catch basin on the left. A general construction sequence will be added to the conditions. The water line on Whetstone Street must be installed for the Occupancy Permit of the fifth unit, so it has adequate pressure. Lorrain said that the work on Whetstone Street will be completed by the end of Phase 1.

Although Town Counsel has previously told Nelson that the Performance Guarantee with the Planning Board should include completion of Whetstone Street improvements, he has not changed his mind and said this will be handled by the Board of Selectmen.

Construction: Sarkis suggested that a Construction Schedule be added as a requirement for review with the Board prior to a scheduled Pre-Application Conference.

Robbins asked if the Hours of Construction included a painter or other contractor. Nelson said this paragraph is for infrastructure only, and was not dictating house construction. Murphey said that the Noise Bylaw would be triggered by excessive construction noise. He asked if the Board has had this restriction in the past, and Nelson replied that this came from the Ocean Meadow decision, and it is a standard condition in Decisions she has seen.

The Heading will be changed to Construction of Infrastructure.

Temporary Turn-Around: Sarkis will draft language. Various options were discussed.

Sarkis asked where stumps will go. There may be a note on the plans addressing this. Nelson thought she had asked Lorrain to have the note read that stumps will be removed from the site. Lorrain said that the Conservation Commission had asked that debris be moved off site.

Condominiums Documents: Nelson asked Robbins why this section was necessary. Robbins replied that an Association will be forever there to maintain it.

As-Built Plan: The water section includes the requirement for an As-Built Plan. Sarkis said some confirmation is needed showing that the paved surfaces are as allotted for that. Lorrain said that they must show driveways and edge of pavement on a phasing plan for each sale. Nelson noted that this would be for infrastructure, not for units. Sarkis said some control would be needed for locating foundations.

The Board requested that a copy of the Water and Wastewater Plan As-Built be submitted to the Board also, and when complete, the Final As-Built Phasing Plan. Nelson asked what should be shown on this Board's plan, because the Water and Board of Health Departments require As-Built anyway. Sarkis said he would like to see the edge of pavement, Bardeen suggested the Final As-Built Phasing Plan.

Sarkis said that at times, he has been asked to go back and re-topo a site when finished. He asked the Board if they are looking for this, and the response was no.

Stormwater Management: Robbins said that various language has been provided. She prefers her language, which she wrote specifically for this plan.

Nelson suggested that for the next meeting, the Board read through the Stormwater Management suggestions.

**Motion** made by Bardeen, seconded by Bridges, to continue the Public Hearing to March 4, 2014, at 7:30 PM.

Robbins said that the Applicant is under pressure from the owners to get an idea when the project will be done. The Board's decision is holding up a decision from the Conservation Commission. She asked if the Board would be inclined to vote next week, if the plans are not final. Sarkis said this document could come after, but he is not inclined to approve something subject to resubmittal. Once changes have been made, a decision can be made. Robbins said that submittal will require another review, then it will be another month of review. Nelson reminded those present that the agreement had been made to wait until the septic system was completed, and all revisions as a result of that had been made. Sarkis said that they cannot close the Public Hearing until the plans have been resubmitted. She said she felt a conditional approval can be made based on revisions to be made to the plan, and Sarkis said he does not like that.

Nelson also noted that the Conservation Commission is not waiting for the Board's vote, they are waiting for the final plans.

The Board decided that they cannot take a vote tonight, and the Applicant left the room.

Nelson left the room at approximately 10:25 PM.

Other Business:

Bardeen and Murphey related their meeting with the Personnel Committee.

Motion to adjourn, 10:35 PM.

Submitted by,

Jean Nelson  
Planning Board Administrator

These Minutes were approved by the Planning Board on March 11, 2014.