

**WEST NEWBURY PLANNING BOARD
MINUTES OF MEETING
December 16, 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 December 16, 2014, in the Second Floor Hearing Room. Board members Ann Bardeen, Richard Bridges, Raymond Cook, Brian Murphey, Chairman, and John Todd Sarkis attended. Associate Member Dennis Lucey and Administrator Jean Nelson were also present.

The meeting was called to order at 7:05 PM.

The Cottages at River Hill-general discussion

Present for the discussion were Chip Hall, Owner, and Melissa Robbins, Attorney, Chris Lorrain, Engineer

Murphey said the biggest issue to discuss is the expansion, but we do not have the opinion of the Building Inspector yet. He asked the Board for comment. Members said they would like to wait. Cook said we have Meridian's opinion. Robbins said they have followed up with the Building Inspector also, and he has made an interpretation. She said they would like to wait until the next meeting. Nelson said Meridian was not solicited for an opinion.

Murphey asked about trash. Robbins said a snow fence was installed, but it was a detraction from the site so they will take it down. They are continuing to monitor the trash situation.

Bardeen asked about stabilization of the stockpiles. Hall said the sand is still being used for the trench. The loam pile is covered with weeds. They are hoping work behind the units will be done in the next couple of weeks. The tarps are ready to go.

Murphey asked about the cut on the south side. Hall said the slope will be put back. Hall said there is no intent for a wall and if they find that the slopes don't work, they will come back to the Board.

Regarding the hydrant installed on Whetstone Street: Robbins said it is on their property, and an easement will be granted to the Water Department. Hall said Jay Smith is OK with it in the buffer zone. The Fire Chief is OK with it, according to Nelson. Nelson referred to the excerpt from an as-built plan submitted by LandTech, and asked if a final with a title block and stamp will be submitted. Lorrain said that it will be on

the As-Built Plan, which is not ready yet. Nelson said she did not understand why the situation became so inflammatory and Gootee was suggesting that he hoped the Board would not make them dig the hydrant up. She said that had never been suggested.

Mail Stations: Lorrain distributed plans showing locations. The first phase would go on the right as you enter the project in the EUA of Lot 1. A picture of the mail station was shown. It is on a pedestal over a post in the ground. The other location is between Units 22 and 23 in the EUA.

Motion made by Cook, seconded by Murphey, that this is a Minor Modification and that the locations are approved.

Robbins brought up the stone wall issue again. Murphey said he thought we had solved that. She reviewed the condition which states "Plantings..." She said that the plantings details on the landscaping sheet show also the vinyl fence and edging for the mulch in the EUA. It is the entire detail within the EUA. So it was her opinion that anything in the EUA that was replacement of a wall or flowers, a tree, etc. would be within Hall's right to do so. The Board had said at the last meeting that they were not interested in seeing the vinyl fence replaced by a stone wall. Robbins said Hall would like the liberty to use different types of screening. The project will not have a cookie cutter appearance. She said she is looking for direction.

Bardeen said that Robbins has shown the opposite of her point. The plantings in particular were being called out, and this was gone over at the last meeting. She continued that there are renderings showing the fence, and she thought that was what she was going to see.

Bridges said the plantings are not synonymous with overall landscape details. He'd like to see a heads up if there is a change, and if there is a significant change or not. Robbins said that Chip would like to offer to have a stone wall in lieu of a fence. She asked about any other structures such as a fountain, installed in dirt, a statue, etc. Where is the line where she tells the Board?

Cook said a planting grows. The other things are hardscape items. They will find the Board cooperative. Hall said when the Board said plantings they went to L.2.1. which covered what Howard (Snyder) was showing. If he had known it was plants and not other hardscape features, he would have raised the issue at that point, and this is where the disconnect is. Cook looked at the plant legend on L.2.1, and Robbins pointed to other details on L.2.2.

Robbins asked what the process is. She said changes will not be dramatic. She asked if details can be applied for at the Building Permit phase. Bardeen said if items are different from what is shown on the plan, they should come back to the Board. Robbins asked about an example of a stone walkway. Cook agreed with Bardeen. He said they will find the Board amenable. They can come before the Board, or send an email, outlining what they wish to do. Murphey added that the plans are done and filed, and he agrees that walls are not plantings. He agreed with Cook, and he is concerned about giving too much leeway.

Bardeen that they should build what they have on the plan. Nelson said that notes (requesting approval of changes) must be received by the Board the Thursday before a meeting, so there is time to place it on the Agenda and for the Board to review it.

Cook said he does not want to micro manage the project but we went thru a whole public hearing process. He said there is no way in hell that a stone wall is a planting. Hall argued that this was not understood during the decision writing process.

Sarkis said there is not a coverall condition that everything must go exactly according to the plan. If the Board wants to go through all the details, he suggested "nothing that is outside of what is approved is allowed." on future decisions. He said this is a small wall and not a structure. But he thinks it violates the spirit of the agreement because there were many renderings reviewed showing something very different prior to approval.

7:15 PM

Continued Public Hearing to reconsider a vote taken on November 3, 2014 for the Cottages at River Hill. At that meeting the Planning Board voted to deny an Application for Modification to a Special Permit for up to eight two-car garages at the Cottages at River Hill (Follinsbee Lane, Assessors Map U-1, Lot 19, formerly Sullivans Court) by a vote of three in favor and two opposed. A Special Permit requires a 4/5 vote.

The Owner and Applicant, Cottage Advisors LLC, 487 Groton Road, Westford, MA 01886, has requested a reconsideration of the vote.

The Town of West Newbury Town Counsel has opined that reconsideration may take place since the Certificate of Vote for the November 3, 2014 decision has not yet been filed with the Town Clerk.

Murphey opened the Continued Public Hearing for reconsideration of a previous vote for eight two-car garages at 7:15 PM. He read the points that Town Counsel had provided:

1. A request for reconsideration of the vote be received in writing from the applicant.
2. In the request, there must be an acknowledgment that the statutory time period for the filing of a decision is waived (the request and waiver must be filed with the Town Clerk).
3. There must be an acknowledgment that the applicant will be responsible for the cost of noticing a hearing on the request.
4. Notice should be send in accordance with the statutory procedures.
5. At the meeting, the Chairman should recognize that the request has been made, and that he would entertain a motion for reconsideration.
6. The motion for reconsideration should be made by one of the two voters in opposition, the second to the motion can be made by any member.
7. The motion would pass with a simple majority, every vote is new, persons who voted for the decision may vote in opposition to the reconsideration.
8. Just because a member moves and votes for the reconsideration, does not mean that person now has to vote in the affirmative. A person may move and vote in favor of reconsideration in order to give the applicant an opportunity to state his case, but may oppose the modification in the end.
9. If the motion for reconsideration is granted, every member's vote is new. Persons who voted in the affirmative may now vote in the negative and persons who voted to disapprove may now vote to approve. The applicant will need four affirmative votes.

Murphey asked the Applicant to state their request briefly, then he would see how the Board feels about moving to entertain a motion for reconsideration. Robbins asked that the Board reconsider whether or not this was major or minor and reexamine that vote. She said they had an opinion from outside counsel to give the opinion to determine if this was under the Board's purview as a Minor Modification but she had just received it today and had not had time to submit it to Town Counsel for review for this Board meeting. This was new information and she would give the Board the opportunity to table the discussion tonight to give Town Counsel time to review it. She requested that the Board take a reconsideration as to whether or not this is a Major or Minor Modification.

Murphey said that he is not inclined to do that. He felt there was a fairly definitive finding that this was a Major Modification. There was ample discussion of this, and he would not be in favor of entertaining reconsideration of that.

Robbins gave an overview. There have been a couple of modifications approved. Unit D went from 1747 square feet to 1725 square feet, which was considered Minor. The other change was in Unit E to enclose the front porch which increased area by 30 square .feet. This request tonight will not increase Gross Finished Floor Area. She felt it will simply allow another garage bay which is not a prohibition on the permit or in the Zoning Bylaw. According to Robbins, this will increase the garage area by 65 square .feet, which will never become livable area. Along the street view it is an addition of 2.75 feet. She continued that they are really only adding a second door on the front of the units.

She said that the change will allow some cars to get off of the street which she feels will be positive because it will allow some cars to get off the street, She said this has been a concern of the Board.

Robbins said the increased impervious area was reviewed by Chris Lorrain and Meridian who found there was no net change in the drainage.

She gave the opinion that there has been no abutter opposition, and the Application is in line with the Findings.

She felt the change will not be a detriment to the community. There is no stated prohibition to this.

Robbins said that traffic had been mentioned as an issue. Their traffic consultant from Vanasse and Associates stated in a letter that there was no potential for increased traffic. Two car garages would allow increased parking area off the street. The road width and sidewalk will stay the same, according to Robbins.

She said that the Modification will allow the developer to keep selling units, which is important for the developer and also for the Town because you want this project to succeed. She said that the Board was not pleased 6-7 months ago when she had appeared requesting modifications so soon. Hall has been trying to market the units for some time. She said there is a market looking for these decreased size style units in West Newbury with two car garages.

She read that this allows for a less cookie-cutter appearance. The Board allowed for different layouts and could also allow the garages variations without detracting from the architectural renderings, in her opinion.

She said she feels the request can be allowed without any variance from the Zoning Bylaw, or change in conditions to the Special Permit findings. She thinks it is a very small change that is positive.

Murphey asked for a motion. Neither Bardeen nor Bridges made a motion. Bridges said he thought the traffic analysis was flawed, and was not of value. There have been allowances made to increase the size of the units upward. More people will bring more cars.

Robbins and Hall said this is what people are looking for. They want a second garage. They have two-car families.

Murphey asked again for a motion and none was made.

Motion made by Murphey, seconded by Bridges, to close the Public Hearing. The vote in favor was unanimous.

Minutes

Minutes of September 2, 2014: **Motion** made by Cook, seconded by Bardeen, to approve the Minutes as written. The vote in favor was 5-0.

Minutes of September 16, 2014: Were reviewed and edited.

Motion made by Cook, seconded by Bridges, to approve the Minutes as edited. The vote in favor was 5-0.

Minutes of October 21, 2015: Were reviewed and edited.

Motion made by Cook, seconded by Bridges, to approve the Minutes as edited. The vote in favor was 5-0.

Continued Public Hearing to consider an Application for a Special Permit for a "drive-in bank", (Zoning Bylaw §5.B.2.c.) and Site Plan Review (§8.B.), at 279-283 Main Street. Owner and Applicant is Haverhill Bank, 180 Merrimack Street, Haverhill, MA 01830. Premises are identified as Assessors Map U-1, Lot 52, in the Business District.

Murphey opened the Public Hearing. Since the revisions to the plan had been delayed due to Bob Masys' accident, the report from Meridian Associates had not been completed. Tom Mortimer had requested that the Public Hearing be continued. Nobody from the Bank was present.

Motion made by Murphey to continue the Public Hearing to January 6, 2015. Bridges seconded. The vote in favor was 5-0.

Continued Public Hearing to consider Applications for Definitive Subdivision Plan (M.G.L. Chapter 44 §81T-81GG) and Special Permits for

..a Common Driveway Special Permit to serve three lots, Section 7.D., and
..Reduced Frontage Lot Special Permit for three lots, Section 6.A.1.

for "Estate Homes at Rivers Edge", land located off Sullivans Court, Assessors Map R-11, Lot 18.

Present were Jay Soucey, Jenna LaSala, Cindy Sherburne, John McGrath, Howard Hill, Brian Richard, Tom Horgan, Steve Greason, Patricia Reeser, Don Bourquard, among others.

Murphey opened the continued Public Hearing at 9 PM.

Thomas Neve introduced himself. He said he is working with the Conservation Commission, and the work is in progress. He handed out a plan showing the 16 foot wide cul de sac, which has the former layout ghosted. A one-way sign is proposed. Cook said that Gary Bill prefers a hammerhead, but that circulation is better with a circle. Board members agreed that the cul de sac was more suitable.

Neve said that on his plan there are two ANR lots. He said at the end of the day he will be proposing a four lot subdivision with two ANR lots. Murphey, Cook and Sarkis explained that an ANR lot has frontage on approved right of way, that endorsing an ANR Plan does not mean it is buildable, and that it creates a parcel not a building lot. Sarkis said the two lots have sufficient frontage on Sullivans Court and sufficient area. A house, driveway, and septic system could be constructed there.

Howard Hill asked if because the drainage is under the auspices of the Planning Board even though the Conservation Commission has jurisdiction also, he said drainage from Lot 5 would go into the water garden of Lot 4. Doesn't the fact that drainage is attached in some form or another on another parcel matter, he asked. Sarkis said it seems that the Conditions will apply to just four lots. Neve said the drainage study was everything within the watershed, and they are in the bottom of the watershed. The stormwater management criteria are embedded in the subdivision plan. There is always linkage to the drainage. The Con Comm will issue an order of Conditions. Neve said that they are not taking out any responsibility or planning of the development.

Hill said these lots are entwined. Cook said if the lots split of, all the water on the four lots that remain has to work, including water from lots 5 and 6. Hill said dividing off the two lots negates some of the power of the Board. Sarkis said that could be true, but we don't have a choice in the matter If the lot has sufficient area and frontage. Sarkis asked why this was not done in this case. He asked if only the four lots were being considered to make this look better to Meridian. Neve said at the end of the day, he is

as honest as they come. He said the right thing was to file this subdivision, but that he needed to say that at some point an ANR plan should be filed. He said the stormwater plan becomes a part of their decision. He said the two plans will go together. He will ask that the ANR and subdivision plans be signed at the same time.

Back to the Special Permit, Cook said that the Reduced Frontage lots are the remaining lots and he is wondering if the Board will be inclined to issue a Special Permit on those lots. Neve responded that Lots 1, 4, and 3 will be the Reduced Frontage lots. The criteria were reviewed at the last meeting.

Sarkis suggested that we discuss the drainage calcs with Meridian as a four lot subdivision only. It is incumbent for the Board to verify what Neve has said. Cook said he suspects that the calcs will be the same. Sarkis asked if they are reviewing it as a six lot or a four lot subdivision. Sarkis asked if they are using the same data as a six lot subdivision, and can't consider what happens on those two lots. Neve said he thinks the Board can consider what happens on those two lots because they are part of the watershed. Bardeen said they are already taking a hit for every parcel around in their stormwater calcs, and ownership does not matter. Sarkis said empirically speaking you are not supposed to have more water coming off of your property. If that rule applies to a definitive and not an ANR then you might have a lot more water coming off than now, but add two lots lightly developed and average the whole thing out, and he is not sure how it works and not claiming to know how it works. Neve said let me write the letter and it will be reviewed. Neve said he can't annex any part of the property for a benefit. He cannot segment, and he wants Meridian to review.

Brian Richard said the abutters have hired a consultant and he would like the Board to review the letter from Tom Hughes. Murphey said he has looked at the letter. Sarkis said the letter was absent on this point. Cook had reviewed it as well. Neve said at the end of the day the proper way to administer is to sign two plans. He is not springing anything on the Board, but the process is still the same.

Sarkis said the hearing tonight is for a six lot subdivision. Neve said at end of day the Board should sign under 81P. Bardeen said we have done this in the past and it should not be a problem.

Back to the Reduced Frontage lots: Cook referred to the Reduced Frontage lots in 6.A.1. Neve read frontages at 100' each on the plan. Two lots are together. Lot 2 has 155' of frontage. Murphey said he is inclined to grant the Special Permit, as is Cook. Nelson noted the Board makes Findings. Sarkis said one Reduced Frontage lot is on a section of ROW that is not finished. The Board has authority to approve subdivision of the lot in this fashion. This is a stretch from a regular lot. The Board should think

about it. Neve said the first plan showed that frontage. Bardeen noted that access would be in the detention area. Neve said he can bend it around that. Cook said he feels the Reduced Frontage permit meets the Findings, although we are not voting tonight.

Neve said Common Driveway plan has not changed from the original. Consensus of the Board is to put the cul de sac in, rather than a hammerhead. It is only common to a point, then it is a driveway to Lot 3. Cook said he is not a fan of common driveways but in this case, drives in parallel look like an interstate. The common driveway is better in this situation. Murphey pointed out spaghetti driveways in Boxford, which were not what we want here.

Steve Greason asked if there is a maximum distance for a common driveway. The reply from Board members was no. Cook said the longest is ½ mile long to Cena's.

Neve said regarding the request for Waiver for length of a dead end street, he feels there is a legal right to cross to make a connection to River Meadow. If we don't connect, we'll be creating a cul de sac at the end of a dead end road. Murphey said that land is under the control of the Board of Selectmen.

Bardeen said on this side of that property line the connection it is up for grabs. She noted if that it were developed, then Lot 1 would have frontage on the roadway. If he were building on that line, what would frontage for the lots be? They would still need the curve of the cul de sac for frontage. Neve said on the original plan there was a road going through with 11 lots. Bardeen was trying to demonstrate that the dead end road is a notion--there are ways of not having a dead end road. Neve said he has shown it can be done conventionally.

Cook said he lives at the entrance to a dead end road. He does not know how many are in West Newbury. He feels if a judge was asked, he would direct the Town to make the connection. The owner has a right to develop and if not granting a waiver, then make the connection or you'd be taking away property rights. That is why he is inclined to grant a waiver. Conceivably someone could double the number of lots there. If we want to keep character and keep neighborhoods separate, then we have to grant the Waiver.

Murphey said he is in favor of granting a Waiver. The Board looked very hard at the options here.

Sarkis said he is not opposed to waivers or the common driveway. Bridges said the concepts strike the best balance.

Neve said he hopes to get the buildings out of the riverfront area on Lots 5 and 6. This will minimize the impact. He is still determining high tide line and taking the confluence into consideration. He worked with DEP on this and will micro topo the area to 100th of a foot. The plans will be back by the end of the month for review.

Trail access: Neve suggested that the catwalk is still shown on the plans and a walkway down to river as an overlook with a bench. He said if it is a crazy idea, tell him not to do it and he'll take off the plans. Murphey said he'd like to see it. Bardeen said the suggested trail is along the common driveway to three houses. How about using the driveway to Lot 6 which splits off, would be far from houses, and might be an interesting place? It would be more wild and isolated. Neve said the infiltration pond might be used. The top of the pond may be a place to walk. Cook said walking to the abutting subdivision already exists on a trail. It makes sense for a trail as a passive use. Bardeen said it is incumbent upon the town to use these connections. Sarkis said house sites have been set back from roadways and seems to cause more of a problem than a benefit. It would be a nuisance to have easement running through the property. If Sullivans Court were closer to river, it would make a lot more sense. It is likely not to be used ever. He feels the negative outweighs the benefit.

Neve said he is willing to consider what makes sense. He said it will probably be less used on the single driveway. Various options were discussed. Sarkis said if Whetstone Street could be connected to the river, then to River Meadow, that might be of some value. He asked for a reality check. Cook said this might be of value to birders. Murphey said the matter is not closed.

Steve Greason said that another Cena type of trail is bad for trail users. He suggested that Lot 6 could be made all open space and the public portion would be along Brian's (Richards) house. That lot is more private and more scenic. Neve said he originally had 4 riverfront lots, and they are valuable. Greason asked if the lot has value, and Neve said it is unlikely that he will be deleting a lot along the river. Greason asked the value of Lot 6. Neve said that a lot along the river is in the \$500,000 range. Greason said the trail connecting to River Meadow is a no-brainer. Neve said he has to go to the Board of Selectmen for construction rights.

Cindy Sherburne asked if the driveway for Lot 6 would be adjusted so that lights won't shine into her living room. Neve said yes. He said he has adjusted the driveway so it comes in at an angle, and the curb cut will be moved. He said it is a conditional item that he is happy to live with.

Tom Horgan, 33 River Meadow Place, asked about access for fire trucks onto Sullivans Court, and telephone pole there? Murphey said he would write a letter to Chief Holmes

and parking on Whetstone Street is an enforcement matter. With the pole on the corner, it would be hard to get a ladder truck there. Horgan said it is the Board's job to make the corner safer, and the Board should make Neve move the pole. He said he went on the website and read the boards' Mission Statement. He said this project does not avoid sprawl, or preserve the rural character, or other mission items. Cook said the "Town" has not been interested in preserving open space in recent years.

Horgan said the Mission Statement includes supporting a range of housing options for people of varying age and income. He said that average home price is \$587,000. Affordable at the Cottages is \$389,000. He asked how this helps anything. Murphey said we do not have the ability to engineer social change, and the property owner has rights. It is the Board's job to find a balance.

Horgan said he does not like what is happening around town. He does not like that waivers and special permits are being granted on a prime piece of property. Cook said he thinks of alternatives. He said if anything goes to litigation, that is not in the best interest of the town either. You want to avoid court battles.

Horgan said the residents are relying on the Board to work with the regulations, and if they don't like them, why don't they change them? Cook said we change the bylaws all the time. Horgan said he wished the Board had not told Neve that they could approve the plan, and now the Board felt sorry for him. Lucey said the decision time for the Town to acquire the property has passed. Bridges said that the Board is trying to make the communications better in the right of first refusal process. Cook said right now there is not a procedure in town. Horgan asked how a full time employee does not know 61A, and wonders why he did not catch the error in the required time period.

Cheryl Grant, 19 River Meadow Drive, asked about the impact of parking on either side to access the catwalk. Cars park at the edge of the driveways now, and they can't see. She said it is an invitation to teenagers to come and drive down there. Greason said just don't put parking, and cars won't park there. He said the trail will be used by local people. It will not be a destination trail.

Steve Galligan, 18 River Meadow Drive, asked Cook about his comment. There are 25 homes there now, and with Waterside Lane and Twig Rush, how would that be the right move to make the connection? Cook said the 800' dead end maximum in Subdivision Regulations is to encourage connections, and the Board thinks it is beneficial to make connections. Galligan said this connection would be a disaster. The land is owned by the Town and the plan was long term to make the connection.

Lucey said he has seen roads connected and there is a gate, with the Fire Department having a key. Traffic is still stopped, but the road is there.

Neve said that nobody is intending to do any of this. Cook said 17 households are paying for a review, and they have power. Patricia Reeser asked if anyone has heard from Counsel regarding the Right of First Refusal, and the response was no. She supported trail access over the single driveway, and asked for access along the river. Neve said the land subject to the Rivers Act is very difficult to alter. A perpendicular trail is more doable than a parallel trail. He said there is brush there, and it can't be cut along the first 50 feet from the river. Neve said Dr. Hill would have to grant an easement to get there too, and Hill said you aren't going through my lot. Neve said you can't physically walk there now, and can't clear it. There was discussion of what can and what can't be done. Reeser asked for a town right of way along the waterfront. She said the Ocean Meadow trails go very close to houses.

Motion made by Murphey, seconded by Bridges, to continue the Public Hearing to January 20, 2015, at 7:30 PM. The vote in favor was unanimous.

Right of First Refusal

Cook will make a revision to address a comment from Michael McCarron, and it was decided to submit the document to the Board of Selectmen without the input from Vanessa Johnson.

Motion to adjourn, 10:45 PM.

Submitted by,

Jean Nelson

Planning Board Administrator

These Minutes were approved by the Planning Board on April 21, 2015.