

WEST NEWBURY PLANNING BOARD  
MINUTES OF MEETING  
June 21, 2016

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 June 21, 2016 in the Planning Board Office at the West Newbury Town Offices, 381 Main Street. Board Members Ann Bardeen, Richard Bridges, Raymond Cook, Brian Murphey and John Todd Sarkis were present. Planning Administrator Leah Zambarnardi and Associate Dennis Lucey were also present.

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

**Continued Public Hearing: Drakes Landing Definitive Subdivision Plan - 365 Main Street and 34 Meetinghouse Hill Road - Cottage Advisors, LLC (Applicant), William Daley (Owner), and Joseph B. & Beverly A. Murphy**

Lucey recused himself from the meeting.

Bridges opened the public hearing. He asked the developer if they had anything else to present. Mark Johnson, attorney for the applicant stated that they had no more information to present. Bridges referred to Meridian's final review email dated June 21, 2016, Item #1 under Zoning which states, " Item 1. ZBL 6.A.9. Lot frontage. We reiterate our comment about the feasibility of the proposal given the amount of proposed wetland filling and compliance with 310 CMR 10.00 Wetland Regulations. We do not disagree with Cammett Engineering's statement that an Order of Conditions "can" be granted by the Conservation Commission but it is also possible that it may not. The zoning calls for the Order of Conditions to actually be granted. A wetlands "crossing" of this magnitude is rare and the complexity of gaining an approval of such a crossing from the Commission is beyond our ability to predict, but suffice to say that the approval of an Order of Conditions is not a given. Ultimately, zoning compliance is a matter for the Building Inspector not necessarily the Planning Board but the Board can certainly weigh this into your decision to either approve with or without conditions or to deny. We defer to the Planning Board on this matter." Bridges noted that this project is looked at by other Boards who provide comments to the Planning Board to consider. He stated that they typically receive comments from the Conservation Commission when there is an impact to wetlands. He stated that the Conservation Commission has indicated this project would be considered a Limited Project under the Wetlands Protection Act with an Alternatives Analysis and mitigation with the Commission before the road would be approved. He stated that given this, it seems the Board has a few options, 1. Deny based on no Order of Conditions having been issued; 2. Continue the hearing until such time that the Order of Conditions is obtained; 3. Approve the filing conditioned upon an Order of Conditions being sought and obtained. Johnson stated he did not see anything in the Planning Board regulations requiring a delineation or an Order of Conditions. Further, the project could not be built without receiving all of the necessary permits. He stated that in terms of the statutory scheme, only the Board of Health has authority to approve or deny as a prerequisite to Planning Board action. Bardeen asked about the frontage and access to the project over the wetlands and noted that is within the Planning Board's jurisdiction. Bardeen stated that the frontage is not at issue, but whether there is adequate access to the frontage is a question that needs to be resolved. Bridges stated

West Newbury Planning Board, Minutes, June 21, 2016. Approved August 23, 2016.

that a valid order of conditions is sufficient to demonstrate to the Board that there is adequate access, which implies that a valid order of conditions be in place. Johnson stated that Section 6.A.9, seems to deal with frontage access to the lots.

Woody Cammett of Cammett Engineering stated that in terms of the Wetlands Statute, if the wetlands are on your property and you are crossing over a wetland it is a Limited Project. That is a process you have to go through via a Notice of Intent. He stated that has nothing to do with the subdivision. He stated that if there were wetlands that we were crossing that is not on the property, that is a different story, and would be considered a "Limited Access Project" where you explore the question of whether you can actually get to your lot. He stated that this wetland they are crossing is on their property and they were here several months ago to get a sense of the Board on whether to move the road further out of the wetlands so there would be less impact and they never got a decision one way or another on that. They therefore felt compelled to site the road in compliance with the regulations. He stated the alternative to that would be to move the road and he believes that the Conservation Commission and the majority of this Board would agree with that. Zambernardi stated that if they received approval of the 2-lot plan, before they would build they would go to the Conservation Commission to obtain and Order of Conditions. If the plan were altered through that process, they would have to come back to the Planning Board to modify the plan accordingly. Cammett stated he had seen this dealt with in the past by Planning Board's requiring an Order of Conditions from the Conservation Commission a condition of approval.

Bridges asked the Board whether it would be inclined to issue a conditional approval or to continue the hearing until there is an Order of Conditions. Cammett stated they cannot file under the Conservation Commission until they have all other permits in place. Cook stated he is comfortable moving ahead on this plan with a conditional approval. Murphey concurred. Sarkis stated that the applicant doesn't feel the Board gave the applicant sufficient direction to site the road differently. Cammett affirmed. Cook stated that when the actual development plan is filed he hopes the plan would show less wetland disturbance. He stated that the Board would get to that point eventually with this definitive plan process if they ended up having more than a cursory review. Sarkis asked what the Board's action had been regarding the road location. Johnson stated they had originally asked for a vote on this, but they could not get a vote on that outside of the public hearing. He backtracked by stating they are doing this plan to freeze zoning. They therefore felt the need to submit a plan that complied with the regulations. Cook stated there was much discussion on this at the time and one of the questions was whether this would require a waiver or whether it is a finding that there is a compelling reason to site the road further away from the wetlands. Johnson stated that they would first ask the Board to find that there is a compelling reason. If the Board did not find that there is a compelling reason, then they would request a waiver. Cooks stated that when he looked at this, he thought there was a compelling reason and that a waiver request would not be in order. He stated that he recalled there were split opinions on this. Murphey stated there were differing opinions, but the real issue was that the Board was reluctant to vote on something that was not technically before them. Johnson stated the problem was that they needed to submit something for the zoning protection by a certain date. They felt they had to submit the waiver-free plan because they did not have an answer from the Board on the "compelling reason" question. Johnson stated they have spent a fair amount of money on engineering at this point. Sarkis questioned whether they could have done this in a way so they didn't have to spend the effort, time and money to prove this could be built. In this case the Board would not look wise having permitted something that has a better solution to it. Then the developer going to the

West Newbury Planning Board, Minutes, June 21, 2016. Approved August 23, 2016.

Conservation Commission and being told there that there is a better solution and another Board has the authority to permit that solution. He doesn't know that protection of the wetlands trumps the protection of abutters' views. Leaving naturally occurring wetlands as they are to the greatest extent seems to be the better solution. Cook stated the Board is limited to the plan before it. He stated that means a much more expensive project with more wetlands disturbance.

Bridges recapped that the Board seems to support a conditional approval. Sarkis reiterated that he would prefer the alternate alignment, but he can't say he would deny this.

Sarkis referred to Meridian's review noting the discussion over an Order of Conditions for the "waiver-free" layout and that it is not a given. Cammett points to those statements indicating they help prove the "compelling reason" argument. Sarkis noted that the total filling would be an acre of wetlands where the alternative would fill around 9,000 s.f. Some of the Board members concur that is compelling. Bardeen pointed out that wetlands are protected by the Wetlands Protection Act and there are other things that are considered only by the action of the Planning Board, such as abutter concerns. Discussion ensued about alternative alignments and the impact of denying such a plan whose purpose is just to freeze the zoning. Murphey stated that this plan would most likely never be approved and built. Sarkis stated the Board is compelled to review the plan on its merit and not on the purpose of filing the plan. Johnson reminded the Board that changes made as a result of the Conservation Commission's review would have to come back before the Board. Sarkis noted that is not a concern of this applicant, whether it is a conditional approval or an approval, because both would serve their intent of freezing the zoning. Johnson concurred. Sarkis stated that Board Members might prefer other alignments, but that is not sufficient reason to deny the plan before the Board. Sarkis agreed, so long as the plan complies with the regulations. He noted this would be regardless of the fact that the plan would most likely not pass muster with the Conservation Commission. Board Members concurred that the plan should be looked at on its own merits.

Bridges asked about the other points in Meridian's June 21<sup>st</sup> email.

He referred to Item #1 under Subdivision Rules and Regulations, which states, "Plan depicts 'Right of Way' not directly aligned with the proposed Drakes Landing and was specifically requested to be looked at by the Planning Board and we offered our opinion. Applicant did not request a waiver from this regulation. We defer to the Planning Board if the Board feels that a waiver is not necessary." Cammett stated that the Right of Way is really just a strip of land that goes with the Dunn property. He stated there is an encroachment upon it which causes an adverse possession issue. He pointed out that it has no roundings. He stated after this all what is left is a strip of land not a right of way. Cammett stated that he looked at that issue with the Town earlier and the Town abandoned any chance of using it for access at that point just because of the location. Cook stated there are types of potential access such as a trail. Sarkis stated that even if the new road were to be constructed, the real issue is a minor issue as they are only 15 to 20 feet off of each other and the development is only for 2 houses. Board Members concurred that for this plan, it is not an issue, therefore the waiver is granted.

Item 2. Section 4.4.4.5 Sight distance. Board Members concurred this matter was adequately addressed.

Item 3. Section 4.2.7.2 Vertical curves. Board Members concurred this matter was adequately addressed and no waiver is needed.

West Newbury Planning Board, Minutes, June 21, 2016. Approved August 23, 2016.

Item 4 Section 4.2.8.2 leveling area. The Board agreed the issue is minor and that a revision of the labelling is required to depict compliance and no waiver is needed.

Item 5 Section 4.2.8.2 length of road. The Board concurred this matter was adequately addressed and no waiver is needed.

Item 6 Section 4.2.10.1. Cook stated that there is 2-feet of fill required above the seasonal high groundwater, 3-feet of cover over drainage pipes, thickness of the pipe and you are over 8-feet. The Board agreed that the response is sufficient therefore a waiver was granted. Cammett noted these regulations were written before the storm water regulations were written, and therein lies the conflict.

Item 7 Section 4.2.11.1. The Board found that the comment has been addressed. Bridges stated that he and Zambernardi had a discussion with the Water Department Director, Michael Gootee whose opinion is that no water connection is warranted through to Meetinghouse Hill Road for this 2-lot subdivision. The waiver was therefore approved.

Item 8 Section 4.4.11 distances to roadway and property lines. The infiltration basins directly abut the roadway and the bottom of the berm scales about 10' from the abutter's property line. MAI interprets "nearest edge" to be either the top of the berm or the bottom of the berm whichever is closer to the property line or the roadway layout. The regulation states "the nearest edge of the topography." We defer to the Board as to the interpretation of this section. Board Members viewed the relevant sections of the plan. Deni Hamel from Cammett Engineering stated he interpreted the basin to be the line going down into the basin, not the line going down towards the property line. He stated that there is 25-feet from the inside edge of the basin to the property line. He stated they do not have that measurement from the bottom of the fill. It is from the high point on the inside of the basin going down into the basin, which is in the basin, and the other part is just the berm to the basin. He reiterated his interpretation that it is 25-feet from the inside top of the basin to the property line. Cook stated he is inclined to agree with Meridian's interpretation. He noted that one complies, but the other is short by 2.5-feet or so from the top of the embankment. The Board had no issue, therefore the waiver was granted.

Item 9 Section 4.4.13. The Board concurred this item had been addressed and no waiver was necessary.

Bridges stated both "Other items" in the Meridian Email had been addressed.

Bridges asked if anyone had anything else to add.

Bridges made a motion to approve the Definitive Subdivision Plan entitled "Drakes Landing Definitive Subdivision 365 Main Street, West Newbury, MA, dated 4-21-16, drawn by Cammett Engineering" subject to the condition that a valid Order of Conditions be sought and obtained from the Conservations Commission and incorporating revisions, waivers and statements agreed to between Cammett Engineering and Meridian Engineering in the following correspondence: Letter dated June 15, 2016 from Meridian Associates to the Planning Board, Letter dated June 16, 2016 from Cammett Engineering to the Planning Board, email dated June

West Newbury Planning Board, Minutes, June 21, 2016. Approved August 23, 2016.

21, 2016 from Charlie Wear of Meridian Associates to Leah Zambenardi, Planning Administrator. Cook seconded the motion and it carried unanimously 5-0.

Cook then made a motion to close the public hearing. Bardeen seconded the motion and it carried unanimously 5-0.

Joan Flink of 368 Main Street asked about a traffic counter she observed on the pole by her house. She asked who is looking at this and whether a traffic light is being considered. Chip Hall of Cottage Advisors confirmed they are doing a traffic count. Cook clarified that this does not mean that a traffic light will be installed. Bridges stated that this is for a traffic study to help gauge the traffic impact of the new actual development on the existing roadway. Flink stated she is opposed to a light. Sarkis stated MassDOT will also review this because Main Street is a stated highway. She stated there is no way that the proposed roadway and the Mullen property right of way can be lined up. She is concerned over visibility however.

Lucey returned to the meeting.

### **Subdivision Approval Not Required Plans (SANR's)**

Zambenardi stated that no SANR's had been submitted for this meeting.

### **Discussion of Zoning Bylaw Amendments**

Bridges stated he would like to commit to 2 of the 4 Zoning Amendments on the agenda and see them through. The Board agreed to keep signs on the front burner. Cook asked about two family structures. The Board recapped recent discussions it had on the matter. Murphey recalled that Sarkis had mentioned considering two-families by right in the Residence C Zoning District.

Bardeen mentioned OSPD and Members agreed this was a larger project to tackle.

More discussion occurred on two families, including the need for clarifying definitions. Various regulations from other communities on In-law apartments were discussed. Cook suggested the Town allow 2-families by right, but to look at restricting 2-families in some residential zoning districts by special permit. The Board looked at the existing Bylaw and Zambenardi's report on Bylaws/Ordinances of other communities. Some discussion occurred on recent issues with an AirBNB rental on Norino Drive.

Bridges stated the Board should think about what it wants to submit for Fall Town meeting and noted the date is quickly approaching. Bridges stated that regulating duplexes has the potential to be misunderstood at Town meeting, so the Board would need to have its position very well thought out. He stated that would be the case with OSPD amendments and with Inclusionary Housing as well. Cook stated that the Board should first see if there is a problem with how they are now regulated. He stated the problem he sees is ambiguity. Bardeen stated the Board has several issues that should be looked at such as how they should be attached. Sarkis contemplated and posed the question that if in the near future the regulation was to be changed, would homebuilders still move forward with building two families. Bridges stated he thinks there is a likelihood. He stated there are people that can't afford to build or buy a house in West Newbury, but that they would be interested in a condominium unit in a duplex. Cook asked if developers would build two families by right. Bardeen stated she thinks it is extremely

West Newbury Planning Board, Minutes, June 21, 2016. Approved August 23, 2016.

likely given the increase in housing demand. Bridges stated there is an understanding that 2 families are good and desired, but a special permit would give the Town some control. Murphey stated perhaps design review would be the mechanism. He stated a special permit would allow for getting input from the neighbors. Zambenardi suggested this sounds like site plan review. Cook stated that guidelines would be nice to have, but they need to be flexible. Murphey stated we cannot solve the affordability issue, but fostering some of the smaller units, which would be in the \$450,000 range, would make units somewhat more affordable than they are now. Cook stated that he does not think a special permit is overly onerous. Cook stated his argument would be that the Town would have input on how West Newbury develops. He stated that the special permit would not be a barrier, but a way to have input on the process. Cook brought up the idea of allowing 2 separate houses on 1 lot. Zambenardi interjected about special permits, noting that uses are allowed under special permit when there is a special circumstance involved and there is an analysis of the impact to the Town and neighborhood to determine the impact. She stated it sounds as though the Board wants to allow them, but it also wants to influence how they look and how they are sited on a lot, to address potential negative impacts. She stated this sounds more like a by-right site plan review than a special permit process. Bardeen contemplated that it would be a site plan review with no special permit. Murphey and Sarkis both stated that site plan review has no teeth. Zambenardi agreed, but noted that it gives the Planning Board influence over a project and that a developer would have to go through the public hearing process to get an approval. Cook stated he has an interest in encouraging a diversity of housing in West Newbury and that duplexes would be encouraged through a special permit process. He stated that the problem he has with duplexes by right is that they're attached by a breezeway and still considered a duplex. He stated that perhaps the Board allows some configurations by right, but refines the definitions. Other configurations could be allowed through the special permit process. Sarkis stated another approach would be to have specific setbacks for 2-family structures. Cook stated that if the Board adopts design standards, the Board should be open to the idea of something else by special permit that can deviate from what we define. Bardeen stated we should look at what Zambenardi prepared and look at what might work here. She stated that might be a better approach than starting from the ground up. Cook noted there is a vulnerability in the Bylaw as it is and the Board should be proactive.

Cook stated that the Board should consider submitting the Sign Bylaw Amendment for the fall and duplexes shortly after. Bridges stated that signs would be considered at the next meeting. Cook stated he would do his sign study of dimensions in time for the next meeting.

#### General Business:

- 365 Main – No updates were provided.
- Haverhill Bank – Cook noted they are working on their stone wall. The Board expressed their concerns about the radius on the driveway for the drive through. Murphey asked Zambenardi to find out about the sidewalk improvements between the Food Mart and Haverhill Bank with the State's Route 113 paving/sidewalk reconstruction project.
- Cottages – No updates were provided.
- Sullivans Court Extension – Zambenardi noted that dust control has been an issue with the dry weather.

Vouchers: Zambenardi provided a voucher for WB Mason for office supplies. She also provided a timesheet.

West Newbury Planning Board, Minutes, June 21, 2016. Approved August 23, 2016.

Minutes: Cook made a motion to approve the minutes of March 15, 2016. Bardeen seconded the motion and it carried 3-2-0 (Sarkis and Cook in abstention).

Cook made a motion to approve the May 10, 2016 minutes with some corrections. Murphey seconded the motion and it carried 4-1-0 (Bardeen in abstention).

Correspondence: Zambenardi alerted the Board to 2 public hearings in Newbury.

Administrative matters: Zambenardi stated she is attending MVPC's Regional Planning Day with Secretary Ash as the keynote speaker on Thursday. She stated that she would be also be attending MAPD's lunch and learn on teardowns on Friday. Members discussed vacation plans for the summer.

The meeting was adjourned at 9:15 p.m.

Submitted by,

Leah J. Zambenardi, AICP  
Planning Administrator