

**West Newbury Planning Board Meeting
April 2, 2019**

Pursuant to a meeting notice posted by the Town Clerk that was delivered to all Board members, a meeting of the West Newbury Planning Board was held on April 2, 2019 at 7:00pm in the Planning Office at the West Newbury Town Offices, 381 Main Street. Board Members Ann Bardeen, Richard Bridges, Raymond Cook, Kim Monahan, Brian Murphey, and Associate Member Tim Cronin were present. Town Planner Leah Zambenardi was also in attendance.

Bardeen called the meeting to order just after 7:00 PM.

Monahan arrived at 7:10

Schedule Public Hearing Date: Modification of Definitive Plan – John McGrath – 22 Church Street (formerly 16 Church Street)

Zambenardi stated that the hearing has been scheduled for April 16 at 7:15 PM. The required public notice appeared in the newspaper on April 2, 2019.

Update from River Access Committee Regarding Acquisition of Land for Conservation Purposes on River Road

Robert Philips, 77 Coffin Street and Member of River Access Committee asked for Board support at Town Meeting to acquire approximately 31 acres on River Road for conservation purposes. He stated that Greenbelt would own the property and the Town would hold the conservation restriction on the land. He stated that Community Preservation Act funds are being sought at Town Meeting for the purchase. Phillips said that a small amount of off-street parking and access to the river would be provided. Phillips encouraged the Board to provide feedback to the River Access Committee.

Documents Reviewed: River Road Conservation Project brochure. An aerial photo of site with power lines and parcel boundaries noted. A written description of the property's current status, importance, and future plans.

Request for Modification to allow for an "add-on" space on the Unit "F" style unit – Drakes Landing Open Space Preservation Development – Cottage Advisors MA, LLC

Attorney Melisa Robbins, Deschenes & Farrell, P.C., and Chip Hall, Drakes Landing developer were present to request a modification to allow for an "add-on" space on the Unit F style unit. Robbins stated that they initially did not request add-on space for the F Style Units because they were being marketed as units offering first floor living. They did not think the market would require any second floor living area in these units. Robbins stated that during construction of Unit 19, the buyer asked if we could finish the area over the garage and in error we were told them yes we can. The interior space above the garage was finished in error. The plans provided tonight show an increase in the total sq. footage to 2,144 s.f., an additional 330 sq. ft. of living space added to the 2nd floor. She stated that a false dormer for the dead space over the garage was added to Unit 21 to visually match the new dormer on Unit 19, which was done in error. She stated they identified the error when the architect did as-builts and calculated the square footage of the units. She stated that is why they have filed for this modification. She stated she does not think this is an issue at all except that they are above the allowed square footage for the unit. She

stated that from the outside, the height and elevations do not change at all. The only change is that there are now dormers on above the garage on each unit. The number of bedrooms has not changed. There is in fact a covenant restricting the number of bedrooms for each unit and for the number of bedrooms in the whole development. This adds 310 square feet of optional add on space for the F-Style units. The sale of the unit has been put on hold until a modification has been approved by the Board.

Bardeen noted that the Board's Special Permit approval limits the unit's maximum square footage and that this unit exceeds that. She stated this in violation of the Board's approval, which is not trivial. Murphey concurred and questioned how such an error could occur in the field. Hall stated that the unit is substantially similar to one he is building in Newburyport, which did not have a size restriction. He stated there has been interest in an office space on the second floor above the garage. The buyer looked at both properties and asked for the additional space above the garage at the Drakes Landing property. Hall stated he did not remember the limitation on the F-Style Unit, as other units have an add-on option above the garage. He stated that no one caught it until they went to have the unit surveyed to register it as a condominium. When he found out about the error he filed for a modification. He stated this impacts Unit 19 only.

Bardeen questioned why the second dormer was added if the developer knew that the dormer on Unit 19 was built in error. Hall stated they did not know it was a mistake until the surveyor came in to measure. He stated that the architect suggested the dormer be added over the Unit 20 garage to make it look better from an aesthetic standpoint.

Bardeen stated that the Board spent much time on the issue of square footage and that the cost implications in related to the size was a deciding factor for the vote. She found this aggravating, not minor and she has not decided on what to do about this. Bridges commented that a "bonus" room is a bedroom in waiting. His view on some of the units was to get closer to a more moderately priced home. Increasing rooms and square footage moves away from that initial intent. He is not in favor and thinks it should be brought back to what was approved. Monahan noted that there would be no price increase with the Unit 21 as there is no increase in square footage. Bridges stated that someone might be inclined to finish Unit 21 in the future. Monahan stated that restrictions on the property would prohibit the space from becoming a bedroom. Robbins concurred and further explained the restrictions including the protection from the Board's decision, the Board of Health requirements and the condominium documents. Robbins noted that they are limited in the number of units where this could be an issue. Two of the units will be separated and one is already built without the add-on.

Monahan mentioned a similar situation in another community where a roof was built higher than allowed. The Town allowed the additional square footage in exchange for a payment from the developer. Hall stated that Unit 19 would be sold for \$275 per square foot, (2144 s.f.), \$589,600. Unit 21 would be sold for \$297 per square foot (1814 s.f.), \$539,900.

Cook asked for clarification on whether the request applies to this unit or all of the F-Units. Hall stated it would be whatever the Board wishes. Murphey and Bardeen were not in favor of granting the request for increased square footage. Monahan stated that no one will benefit from having to tear out the living space on the 2nd floor and the dormers. She suggested that the developer be allowed to keep the added space but that he provide compensation to the Town for affordable housing. Bardeen questioned whether this Board has authority to invoke such fines.

Murphey stated this is not a minor field change. He stated this is in direct contradiction to the special permit, on its face. Cook agreed this is not a minor change as it impacts the conditions of approval and the approved renderings. Cook stated that he would be inclined to allow the change for this one unit only.

Robbins stated that they did not try to hide this error and they came to the Board as soon as it was discovered. She sensed the Board does not find this is a minor modification. She asked Members for a sense of whether they would approve the substance of the change if they went through the process of requesting a major modification. Murphey suggested that penalties be imposed by the Town for the violation. He stated that he might be in favor of additional living space for 1 unit so long as the developer provided a contribution to affordable housing. Monahan concurred. Bridges stated he would not vote in favor of the change to the amount of living space. Bardeen stated she is torn because it would not be ideal to require that the work be reverted back to what was approved, however it was done in direct violation of the Board's approval.

Cook made a motion that this is a major modification. Bridges seconded the motion and it carried 5-0.

Bardeen asked for a straw poll from Members. Murphey would want to know what the Building Inspector thought in terms of penalties and fines. He stated that barring that he would be in favor of a modification for this one unit provided the developer make a contribution to the affordable housing fund. He stated this is more significant than a field change. Cook stated he would be interested if the developer would propose a contribution, whether it be to an affordable housing fund or something else that could be considered a benefit to the Town. Bridges stated he would not be in favor of the modification. Bardeen stated she is torn. On one hand she does not wish to see the work torn out. She stated that Murphey's and Cook's ideas are sensible but questioned where you draw the line. Cook stated he believes this was an unintentional error. Murphey noted a similar situation in Newburyport where the developer made a significant contribution to the Town. He stated that it is a major modification and the buyer needs to understand that. Zambenardi stated that the modification is to a special permit which requires a super majority vote of the Board.

Hall asked about a modification that would just involve addition of the dormers. He stated there is a closing on Unit 21 scheduled and he would like to know whether keeping that dormer would be considered a minor modification. Cook noted that the addition of the two dormers should be considered a separate matter from the added living space.

Cook moved to identify the addition of the dormers on units 19 and 21 as a minor modification, noting the presence of the dormers regardless of functionality, is a minor modification. Monahan seconded the motion. Discussion on the motion: Bridges stated his belief that he would be inclined to accept the dormers provided the rooms are not accessible. Murphey stated this is part and parcel to the major change. Monahan stated the presence it is more aesthetically pleasing. Bridges stated he believes addition of the dormers is a major modification but he would be inclined to accept the dormers if the rooms are not accessible. Robbins made a procedural point that they would like the Board to vote on Cook's motion so, in the event they choose not to seek a major modification, they would know whether they might have to remove the dormers and re-sheath the roof before the closing on Unit 21. Robbins stated they would drywall the stairs off so they would not be accessible to the living space. Murphey stated he would not approve a request for the addition of dormers as a minor change because he does not agree that they look better. The motion did not carry 2-3 (Monahan and Cook in favor; Bardeen, Bridges and Murphey in opposition).

Cook stated that procedurally the developer would either come forward with a major modification or that he would close off the living space and remove the dormers. After some discussion, the Board identified the May 7, 2019 Planning Board meeting as the first available date for a public hearing. Attorney Robbins stated her client will decide whether to apply for a major modifications in two areas: aesthetic and gross floor area.

Documents Reviewed: Deschenes and Farrell, P.C. Letter - Request for Modification, dated March 20, 2019 Photograph of Unit 19; architectural elevation plans and floor plans.

Continued Discussion of West Newbury's Participation in the Massachusetts EOEEA Municipal Vulnerability Preparedness (MVP) Program – Energy Advisory Committee

Liz Callahan, Energy Advisory Committee, provided information as the Board continued a discussion that had begun at the last meeting. Bardeen hoped to clarify the Board's position on participation, reiterating concerns including prioritization of projects for the Board and staff time. Cook noted that he had volunteered to participate on behalf of the Planning Board. Bardeen suggested a letter to the Energy Advisory Committee, noting the Board's generally positive consensus for this project and Cook's volunteer involvement.

Review of Planning Board Fees

Zambernardi said that changing fees requires a public hearing to modify the Board's Rules and Regulations, but not Town Meeting approval. The Board postponed this review until the scheduled June 18, 2019 Planning Board meeting.

General Business:

Updates – Drakes Landing

Zambernardi stated that no comments from the abutters had been received in the Planning Office. She stated that reports from Meridian have been favorable. The required construction hours sign is not yet in place.

Minutes Review and Acceptance– January 8, 2019; February 19, 2019; March 5, 2019

The Board reviewed the minutes and provided clarifications.

Bardeen moved to accept the minutes of January 8, 2019 as written. Bridges seconded the motion. The motion carried 5-0.

Bardeen moved to accept the minutes of February 19, 2019 as written. Bridges seconded. The motion carried 5-0.

Bardeen moved to accept the minutes of March 5, 2019 with two changes. Bridges seconded. The motion carried 5-0.

Vouchers: The Board signed vouchers for payments to Meridian Engineering.

Correspondence: There was no correspondence to review.

Administrative Details – Update on 3-18-19 and 4-1-19 Board of Selectmen discussions on Zoning Amendment Articles and Budget

Bardeen and Zambenardi attended the April 1, 2019 Board of Selectmen’s meeting. The Board of Selectmen did not approve the Planning Board’s request for a 6-hour per week administrative support person that had been included in the Town Manager’s budget. The Finance Committee could change this.

Bardeen reported the Board of Selectman voted 3-0 to not support the proposed solar bylaw. The Open Space bylaw was favorably received.

Adjournment

Bardeen moved to adjourn at 9:13 p.m. Cook second. The motion carried 5-0.

Respectfully submitted,

Kathryn C. Carr
Recording Secretary