

**West Newbury Planning Board  
Minutes  
Tuesday, September 3, 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 August 20, 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, and Tim Cronin were present. Associate Member Wendy Reed and Town Planner Leah Zambarnardi were also in attendance. Board Member Brian Murphey was not in attendance.

**Call to Order**

In the absence of Chairman Brian Murphey, Vice Chairman Cook called the meeting to order at 7:02 PM.

**Subdivision Approval Not Required Plan – 420 Middle Street and 430 Middle Street – Buia & Rogers**  
Bridges recused himself from the matter as he is an abutter to the project.

Cook stated that the Applicant would be given an opportunity to present the plan and then Board Members would ask questions and make comments. He noted that this application is not subject to a public hearing but that the public can make comments at the discretion of the Chair. He said the Board would take comments from the public time permitting.

Paul Crochiere, attorney representing the petitioners, presented the plan and noted that his clients seek to divide 420 Middle Street into two conforming buildable lots, which are shown on the plan as lots 27F and 27G. He stated that each lot meets the requirements for an Approval Not Required endorsement, specifically that the lots would have the required 200 feet of frontage on a public way. He stated that the lots meet the required width of 180-feet at the point of the front yard setback. He stated that this is accomplished by the addition of a triangular piece, Parcel "A", to the Buia parcel, lot "27G", which would be purchased from the abutting Rogers parcel. He stated that the lots each have more than the required 80,000 s.f. He stated that there is a requirement that a lot be no narrower than 40-feet in width at any point and that both lots comply. He stated that both lots meet the requirements for contiguous and buildable area. He submits that the plan therefore merits endorsement as an Approval Not Required Plan under Chapter 41, Section 81P.

Cook and Bardeen asked clarifying questions about the plan. Cook asked Zambarnardi to recap the situation with proposed Lots 27 F and 27 G, noting that the Board has seen this in the past. Zambarnardi explained that proposed lots 27F and 27G are currently one lot, shown as Lot 27E on the 2004 plan, and is known as 420 Middle Street. A special permit was previously issued to allow the creation of a reduced frontage lot at 416 Middle Street. She stated that there is a handwritten note on the 2004 plan and a condition of the 2004 special permit, both of which prohibit further subdivision of 420 Middle Street.

Crochiere stated that the term "Subdivision" as defined in MGL Ch 41, Section 81L specifically excludes ANR Lots. He acknowledged that the 2004 plan stated no further subdivision of Lot 27E. He stated that he reviewed the minutes from 2004 where the Board allowed one reduced frontage lot. He stated he understood that the Board imposed this condition against further subdivision because it did not want a lot of reduced frontage lots. He pointed to another condition of the special permit approval, which requires that the reduced frontage lot "shall not be further subdivided, or reduced in area, or changed in shape or size. He stated if that same condition applied to Lot 27 E, he would not be here tonight. He stated that there is a difference in that 27E only said "Subdivision" and that an ANR by definition is not a

subdivision. He stated that they are adding to the frontage, which was not the case in the earlier proposal that was denied by the Board, therefore this is not an apples to apples comparison.

Cronin asked a clarifying question about the triangular parcel. Crochiere responded. Bardeen stated that this plan makes proposed Lot 27C-1 non-complying in terms of frontage. Crochiere stated that the Rogers own the lot as well as the abutting lot, therefore the lots are merged. Zambernardi stated that there is a note on the plan stating that Lot 27C-1 is to become "Not a Buildable Lot" by itself, which fulfills the Board's requirements. Crochiere stated that when Lot 27C-1 is combined with the adjacent Rogers lot, the combined parcels become 1 buildable lot.

Zambernardi asked the Board to consider that the 2004 Special Permit was issued pursuant to the Zoning Bylaw and that it was not permitted using the Subdivision Control Law and the Board's Subdivision Rules and Regulations. She stated that one might make the case that the use of the term "subdivision" in 2004 is therefore not tied to the definition in the Boards Subdivision Rules and Regulations, because the special permit was granted by operation of the Zoning Bylaw.

Cook stated that his interpretation and recollection is that the lot was not intended to be divided any further, that one may not divide the lot any further, with "subdivide" being in verb form. Bardeen stated that the definition of a subdivision under the Subdivision Control Law is a separate being from the term "subdivision" on the plan. Crochiere stated that the definition in the statute also uses the verb form. She stated her recollection that the intent was that the lot not be further divided any more. She added that the Buia's sued the Board over this and it was dismissed in summary judgement. She stated it is clear that the lot can't be divided any more.

Upon Bardeen's request, Zambernardi shared information regarding the case Hamilton v. Beverly. She stated that the Beverly Planning Board issued a Subdivision approval which had a condition prohibiting the future subdivision of the parcels within it. Later on someone approached the Board to divide one of the lots within the subdivision by ANR. Upon appeal the court ruled that the condition limiting further subdivision is still in effect if and until such time that the Planning Board modifies it.

Cook noted that while the meeting was not a public hearing, the public can speak at the discretion of the Chairman. Cook stated he would allow public comment. The following members of the public spoke in opposition to the proposed change.

Peter Philips, 418 Middle Street, abutter to 420 and 416 Middle Street. When he purchased his property he relied on the fact that there would be no further subdivision due to the plan from 2004.

John Chiungos, 417 Middle Street stated the public should be able to rely on the language on the plan that there shall be no further subdivision, which is unambiguous. He stated that what is proposed is further subdivision.

Sherrie Gad, 415 Middle Street reminded the Board about the intent behind the original plan and her opposition to the additional lot.

Carol Chiungos, 417 Middle Street stated she is against this. She stated that this question has been requested several times; it has been denied; it has been appealed and then denied. Now to take this very small triangle is a tortured way of finally getting what you want. She stated it is a deliberate runaround on what the plan says.

Matthew Gagnon, 406 Middle Street stated that this plan has already been negotiated once, agreed to by the Board. The Board reached a decision with a caveat that the land not be further subdivided. He stated

that the owner has come back repeatedly asking to change that. He stated the original compromise should stand.

John Connors, 442 Middle St. stated he had lived there since 1972 and he is saddened by the amount of building in the area and that he would like Board to do what it can to keep the structure of the area.

Linda Connors, 442 Middle Street stated it's a beautiful area with the rural character.

Cook returned to the Board for further discussion. He stated there is an option of postponing the decision but that he doesn't see a reason to do that. He stated he is not inclined to agree with the applicant. He thinks it is clear that the intention of the Planning Board at the time of the original decision was that the lot not be further divided and that the language reflects that intention. He stated that it does not solely refer to a subdivision that wouldn't be an ANR. He referred to the Rogers parcel and stated that he is also not comfortable with making a conforming lot nonconforming even though it is a subordinate issue.

Cook moved to endorse the plan as not requiring approval under the Subdivision Control Law. Bardeen seconded the motion. The motion failed 0-3-1. (no one in favor)(Cook, Cronin and Bardeen in opposition)(Bridges in recusal).

*Documents Reviewed: ANR Plan for 420 and 430 Middle Street, Certificate of Vote: 418 Middle Street Approval of Reduced Frontage Special Permit with Conditions, March 30 2004, Site Plan for 418 Middle Street, revised through 4-21-04.*

Bridges returned to his seat as a Board Member.

#### **Sullivan's Court Extension – Walker Development**

David Kelly, Planning Board consulting engineer, had issued an inspection report dated 8/26/19 and relayed the information to the Board. Zambenardi had provided Kelly with the schedule of work items accepted to set the bond amount. Developer Neve responded to the outstanding items identified in the report. He had met with the neighbors.

Neve sought to alter the location, the width, and materials of the required bridges. Neve was reminded that the trails, wooden boardwalk and bridges, as permitted, must be 4 feet to be ADA-compliant. The Board concurred with the Conservation Commission on the trail location.

Regarding the discussion of bench placement begun at a previous meeting, Cook asked Neve to work with the Conservation Commission, as the proposed location was not in compliance with the law.

Neve will file a Notice of Intent with the Conservation Commission; once done, an As Built Plan and Acceptance Plan will be issued. The responsibility for property grading was discussed. The Board made clear it was Neve's, not the homeowners' responsibility under the subdivision approval. Zambenardi suggested that the Board extend the project permit through the end of October/early November, if Neve filed with the Conservation Commission by September 13, 2019.

Cook moved to extend the construction completion date to November 30, 2019. Cronin seconded and the motion carried 5-0.

#### **Drakes Landing**

David Kelly provided an update on Drakes Landing. Neighbors' earlier concerns, including drainage and dust, have been resolved. All affordable housing units have been purchased. Zambarnardi stated that Cottage Advisors will soon return to the Planning Board regarding release of units in Phase 2.

*Documents Reviewed:*

*Meridian Inspection Report-Walker Development; Email dated August 10, 2019 from Tom Neve to Wendy Reed for the Conservation Commission, cc: Leah Zambarnardi, Town Planner, regarding trail to River Meadow, Photographs of Drake's Landing*

**Public Hearing on Planning Board Fees**

Ann Bardeen, Clerk, read the legal notice from the West Newbury Planning Board.

The West Newbury Planning Board will hold a Public Hearing on Tuesday, September 3, 2019, beginning at 7:15 p.m. in the Planning Office, Town Office Building, 381 Main Street, West Newbury MA, in accordance with M.G.L. Ch. 40A, Section 9 and M.G.L. Ch. 41, Section 81Q to consider amendments to the fee schedules contained within the West Newbury Planning Board Regulations Governing The Conduct of Planning Board Functions, Meetings and Hearings, Special Permits, Site Plan Review, Scenic Road Application Guidelines and the Town of West Newbury Planning Board Rules and Regulations Governing the Subdivision of Land. The proposals may be viewed at the Planning Board Office during regular business hours. Any person interested or wishing to be heard on the proposal should appear at the time and place designated above.

Cook moved to open the public hearing at 8:54 PM. Cronin seconded and the motion carried 4-0.

No members of the public were in attendance.

At 8:56, Cook moved to close the public hearing on fees. Cronin seconded and the motion carried 4-0.

Bardeen noted that the Board had discussed the fee schedule at the August 6, 2019 meeting. At that time the Board added a note on fee waivers.

Cook moved to adopt the fee schedule as proposed. Cronin seconded the motion and the motion carried 4-0.

Zambarnardi will incorporate changes into the documents, file them with the Town Clerk, and file them with the Southern Essex Registry of Deeds. The fees become effective for future plans once they are filed with the Town Clerk.

*Documents Reviewed: Planning Board Fee Recommendations, August 6, 2019; West Newbury Planning Board August 6, 2019 Proposed Amendments to Fee Schedules*

**Zoning Definitions for Town Meeting**

Zambarnardi updated the Board regarding the matter. She stated that the document presented tonight will be the basis for an article for November's Town Meeting. A public hearing will be held in October. Board members reviewed the document and suggested clarifications were made.

*Documents Reviewed: Proposed Amendments to the West Newbury Zoning Bylaw*

**Vouchers**

Vouchers were signed for payments to the Recording Secretary and for the Annual membership dues of the Mass. Assoc. of Planning Directors.

**Correspondence**

Hearing notices from area towns.

Announcement: Newburyport joint City Council and Planning Board meeting, Sept. 19. 2019.

Announcement: Community Access Training: Mass Office on Disabilities.

**Administrative Details**

Zambernardi updated the Board that the new Administrative Assistant Jodi Bertrand is trying to work one hour each week in the Planning Office to start her training. She noted that the new computers are not yet set up.

**Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of a Meeting**

Cronin noted Town Counsel's possible conflict of interest in representing the Planning Board's position on the Public Safety Building sign. Zambernardi said that the Town Manager would ask the Selectmen about this.

Zambernardi noted her schedule during the school year will be 8:30-2:45; Wednesday hours will be offset by evening meetings.

**Adjournment**

Cook made a motion to adjourn. Bridges seconded the motion and it carried 4-0.

Respectfully submitted,  
Kathryn C. Carr, Recording Secretary