

MERRIMAC PLANNING BOARD, APRIL 2, 2019 REV 2 A

APPROVED MINUTES

CALL: Chairperson Sandra Venner called the meeting to order at 7:02 PM

ATTENDANCE: The Chair and Members Dennis Brodie, Keith Pollman and Arthur Amirault attending. Vice Chair Karol Flannery absent.

APPROVAL OF MINUTES:

1. **Motion:** To approve the minutes of March 5, 2019 with the amendment to **Project Updates Number 4 Sentence 2** to read "The decision has the OPM for Merrimac providing overall oversight, rather than Horsley Witten, as is the usual procedure" **Vote 3 Yes / 0 No Motion approved.**

OLD BUSINESS:

1. **Abby Road, Tripartite Agreement:** Attorney Paul Gagliardi and Applicant were in attendance. The details of the Tripartite Agreement have been worked out to the satisfaction of the Building Commissioner and Town Counsel has approved the document. Attorney Gagliardi noted that several additions had been made to the original from Town Counsel, including the addition of the address of the bank, the addition of a completion date of 12/31 2020 and mortgage holders. This agreement in the amount of \$250,000.00 (Two hundred fifty thousand) secures the completion of the Abby Road Open Space Residential Development located at 23-32 Bear Hill Road. The agreement will release all Lots within the development, for sale, with the exclusion of Lot 11 which will be held for the Conservation Commission, to be released at a later date. **Motion:** To approve the Tripartite agreement between the Merrimac Planning Board, (acting for the Town of Merrimac), the owner Merrimac Ruby Tuesday, LLC and Enterprise Bank, Lowell, MA. **Vote: 3 YES / 0 NO/ 1 ABSTAIN. Motion approved.**

Motion: To approve the release of remaining lots with the exception of Lot 11 which will continue to be held for the Conservation Commission. **Vote: 3 YES/0 No / 1 Abstain Motion approved.**

PUBLIC Hearings

PUBLIC HEARING: #1 Zoning By-law Amendments Article 15 & and 17 (Petitioners Planning &

Building)The Chair opened the first Public Hearing at 7:19 PM to deal with a proposal to amend the Merrimac Zoning By-law Article 15, OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD) & Article 17 ACCESSORY DWELLING UNITS. She explained the procedure for the hearing process. She explained the reason for the changes to the OSRD, involves section 15.11 Dimensional Standards for these types of developments, which did not spell out the setback standards. This type of development allows for smaller lot sizes, in exchange for deeded open space which cannot be developed. It has come to the attention of the board that in one development in particular, the lot area for resident's use was very small and allowed little room if the owner wished to place an accessory use on the property such as a swimming pool. This amendment would allow for accessory uses by establishing setbacks and minimum lot area etc. to solve the problem. **Motion:** To recommend the passage of Article 15 at the Annual Town Meeting. **Vote 4 YES / 0 NO Motion approved.**

Article 17 Accessory Dwelling Units, was sponsored by Building Commissioner Robert Sinibaldi, the intent of the by-law when written, was to have the homes retain the appearance of a single family dwelling, however, unclear wording within the Article has resulted in applications coming before the

Zoning Board Appeals which clearly do not reflect the intent of the by-law. Examples were given. These accessory units, "in-law apartments" allowable in certain districts with a Special Permit from the ZBA, have become very popular, producing some plans that go way beyond the intent. Examples were given showing plans involving units being connected by long breezeways or attached to a garage with garages of their own attached to that apartment attached to a garage with a garage of its own attached to that apartment; basically giving the appearance of a duplex unit. Clearly the need has arisen to spell out the intent. While the article was submitted by the Commissioner, it has the backing of the Planning Board and ZBA. **MOTION:** To recommend passage of Article 17 to the Annual Town Meeting: **Vote 4 YES / 0 No Motion approved. Public Hearing closed at 7:30 PM.**

Public Hearing #2 : Zoning By-law Amendment, Article 3 and Article 11(Petitioner unknown, citizen petition submitted to Selectmen for inclusion on Annual Town Meeting, forwarded to the board for Public Hearing)The Chair opened the hearing at 7:30 PM The proposal requests amending **ARTICLE 3 BASIC REQUIREMENTS IN ALL DISTRICTS and ARTICLE 11 OFFICE LIGHT INDUSTRIAL DISTRICT.** The change to Article 3 removes section 3.1.1 which prohibits non-medical marijuana in all districts. The change to Article 11.4.14 to allow Retail Marijuana uses (NOTE: incorrectly labeled 11.4.5 on the petition.) Following the usual procedure of the board, the Chair called for a presentation in support of the amendment and discovered no one was in attendance representing the sponsoring group, while it is not required to attend the hearing, it was surprising that no one was available to speak in support of the proposal or answer questions. Since the hearing had been posted, advertised according to law and also appeared on the town website and the board's website page; it was decided to continue on with the hearing. Those in attendance, all in opposition to the amendment were welcomed to speak. Several had questions that the board was unable to answer, and indeed the board had questions for the sponsoring group. Earl Baumgardner spoke in opposition, questioning how a zoning change could alter a ballot vote by the citizens could be over ridden. The town amended the zoning by-law to ban nonmedical marijuana in all districts (Article 3) by passage of the required 2/3 vote at the Special Town Meeting in October 2016 which was returned approved by the Attorney General. This action was followed by a ballot question to enact a Town wide ordinance at a special; election on June 26, 2017 passing by a fair majority at an election that had the largest voter turnout, for a town only election in many years. He stated that he had contacted the Office of the Secretary State and the Office of the Attorney General for guidance. Both informed Mr. Baumgardner that they did not have an answer to his question. Many in the room also felt very strongly that passage of this proposal at Town Meeting did not have the right to invalidate their votes. Much of this appears to be new ground, and procedures have not been put forth by the state and/or Cannabis Commission as yet. While it was noted, by Mr. Baumgardner under 94 G that a Town Meeting vote for a zoning change would allow retail marijuana, if a town had not specifically voted for or against that use; Merrimac has voted against any non-medical use of the drug, twice as advised by Town Counsel which could alter the situation. It would appear that this is new ground and a procedure has not yet been formulated for a case like Merrimac. So the question arises that if the town voted to only allow medical marijuana (Article 11), how could just a zoning change negate an approved Town Ordinance, and allow the retail sale along with any and all marijuana retail allowed under the state law. Several residents were opposed for other reasons but all in attendance agreed that overturning an election should not be possible in any case. Whether in favor or not of retail marijuana the idea of invalidating a Town Meeting Vote and a vote of the voters, for this reason alone was enough for Mr. Baumgardner to respectfully requested that the board vote to oppose passage of

this amendment. The following motion was made by Member Pollman with a second by Member Brodie. **Motion:** The board recommend a no vote to amend Article 3 & Article 11 of the Zoning By-law as requested by the Citizen petition. **VOTE 4 yes / 0 NO MOTION APPROVED.** The Public Hearing was closed at 7:50 PM.

OLD BUSINESS CONTINUED:

1. PROJECT UPDATES

A. BeWell Organic: The board briefly discussed a correspondence from Police Chief Shears citing a lack of communication between Be Well and the Police & Fire Depts. (See email received from Chief Shears. These problems centered around the slow response to concerns of these departments regarding operation and security procedures. Commissioner Sinibaldi reported that good progress was being made between the parties at this time. The board decided to allow this work to continue, however if issues were not resolved to the satisfaction of Chief Shears & Chief Fisher then the board would request attendance of the applicant at the next board meeting on May 7, 2019.

B. Police Station: It was reported that the ZBA has approved the variances requested by the committee for the construction of the new station. Correspondence has also been received from the engineer detailing reductions in the plan approved at the SPR, these reductions were a result of the bidding process. Due to the figures received by the Building Committee, they have removed certain items from the plan, including the construction of the car port, the outside storage building, the extra access road and landscaping shown on the original plan. They also wish to refashion the stormwater and drainage infrastructure, the plan is reduced, showing a smaller footprint which allows for these changes to be considered construction changes and does not mean that the SPR must be re-opened. Both the Building Commissioner and Janet Bernardo, Horsley Witten, however strongly recommend that the Committee go forward with the stormwater, drainage and foundations; by leaving these items on it will ensure that when future funds become available, the plans will have been completed and permanent. This would be important, as regulations could become stricter, but if the stormwater & drainage were in place they would be permanent. The cost to wait could be considerably more. One member of the board questioned why local contractors were not involved and bidding. Commissioner Sinibaldi explained that small local contractors did not to follow the prevailing wage rules due to the paperwork and red tape involved. Having bids come in higher than expected was not new and may not be the Committee's fault. Many items change and the experts hired to help in this process are not always correct. The board urged the Commissioner to speak to the Committee and present the arguments to go forward with the infrastructure if at all possible in the best interest of the town and to keep the board up to date regarding the discussions.

C. Regency Village Residential & Office Park. Commissioner Sinibaldi reported that occupancy of Building #1 is expected by August 1, 2019. The office park is moving along; Stormwater & drainage is in and inspected and the foundation for the management building should begin within the next week.

D. POPLAR HILL The board discussed condition #27 the installation of a plaque noting the historical importance of Mary & Martha, two very large Poplar Trees that aided navigation along the Merrimack River in colonial times which were located on the site. The Chair presented the following as a draft of the wording for the plaque for the board to consider "Near this spot stood two Poplar trees called Mary & Margaret. They served as navigation markers for traffic on the Merrimack River. In memory of Robert Atwood, Merrimac Historical Commission & Merrimac Planning Board."

Commissioner Sinibaldi suggested that Members look at the plaque dedicated to Lou Nucci by the Conservation Commission, placed at the intersection of Highland Rd & Winter Street, near the water trough, as a model for our plaque. He described the memorial, and felt it was well worth consideration. He agreed that the placement of the plaque at the resident's access point to the open space was a good fit and two granite bound markers were located on either side of the pathway.

CORRESPONDENCE:

1. WARRANTS:

A. Motion: To approve a biweekly payroll warrant in the amount of \$296.85 for Administrative Assistant Pat True. **Vote: 4 Yes / 0 No Motion approved.**

2. APPEALS BOARD: FIVE PETITIONS VIEWED BY THE BOARD (all on file at the Planning Office) no action needed by the board ONE DECISION: New Police Station. See above.

3. COMMUNICATIONS, NOTICES & ANNOUNCEMENTS:

A. Surrounding Towns: One Map change, town of Amesbury, no board action needed.

B. Next Meeting Date: May 7, 2019 at 7:00 PM will resume the recessed Special Permit for multi-family housing 3A Central Street to be opened at 7:15 PM

ADJOURNMENT: 8:33PM