



TOWN OF WARE

Planning & Community Development
126 Main Street, Ware, Massachusetts 01082
(413) 967-9648 ext. 120

PLANNING BOARD

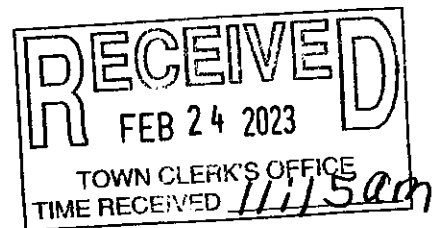
MEETING AGENDA

Location: Board of Selectmen's Meeting Room
Town Hall, 126 Main Street, Ware, MA 01082
Date & Time: Thursday, March 2nd, 2023 @ 7:00 PM
Digital Participation: Phone number: 929-205-6099
Meeting ID: 784 604 1861
Passcode: 01082

Instructions for call-in option: at or before 7pm call the phone number above and when prompted enter the Meeting ID number. The platform is Zoom Meetings. Join online: <https://zoom.us/join>

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- Pledge of Allegiance
 - Administrative
 - Approval of minutes from February 16th, 2023
 - Old Business
 - Review of newly proposed Subdivision Regulations
 - Sections 2.4.10 (Evidence of Performance and Release/Partial Release of Performance Guarantee) to Section 2.4.14 (Road Acceptance) [Pages 40-45]
 - New Business
 - Discussion with Health Department on Alternative Housing and the New Housing Code Update
 - Town Planner Update

The next Planning Board meeting will be held March 16th, 2023.





TOWN OF WARE

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t. 413.967.9648 ext. 120

Planning Board

Meeting Minutes from

Thursday, February 16, 2023

Selectboard Meeting Room

126 Main Street, Ware MA 01082

Planning Board Members in Attendance:

Rick Starodoj	Chair
Nancy Talbot	Vice Chair
Ken Crosby	
Ed Murphy	
Chris DiMarzio	
Elizabeth Hancock	Alternate

Staff Members in Attendance:

Rob Watchilla	PCD Department Director
Kristen Jacobsen	PCD Dept. Admin. Assistant
Anna Marques	Building Commissioner, Zoning Enforcement Officer
Stuart Beckley	Town Manager

Members of the Public in Attendance:

Karen Hubacz, Bond Construction	
Fred Smith	
Sadie Milner	

PLEDGE OF ALLEGIANCE

Chairman R. Starodoj called the meeting to order at 7:07pm and led the Pledge of Allegiance.

ADMINISTRATIVE

Approval of Minutes from February 2, 2023

Motion by N. Talbot to approve the February 2, 2023, meeting minutes as submitted. **Seconded** by E. Murphy.

Discussion: None

R. Starodoj		Aye
N. Talbot		Aye
E. Murphy		Aye

K. Crosby		Absent
C. DiMarzio		Aye
Four in favor. One Absent. Approved 4/0/1.		

New Business

Updates to State Housing Code

R. Watchilla and the board discussed the updated state housing code going into effect in April 2023.

A new type of housing "Alternative Housing" is added which gets approved by the Health Department and Board of Health and is exempt from electrical, plumbing, heating, and water.

C. DiMarzio inquired if the new housing code had anything to do with the federal plan to add 1.5 million more affordable housing units.

The board discussed the potential impact the new housing code could have on rural communities.

R. Watchilla and the board discussed whether there needed to be any additions to the towns zoning language for the new code.

C. DiMarzio discussed the sustainability aspects and that larger homes should have access to the same regulations.

R. Watchilla proposed inviting the Heath Director to the next Planning Board Meeting. N. Talbot proposed reaching out to legislative representatives. R. Stardej suggested making sure the Selectmen were aware.

K. Crosby arrived.

Public Hearing

R. Watchilla read the legal notice

7:05pm: SP-2023-01 (Frederick T. Smith III)

Applicant is requesting a one year extension on an existing earth removal special permit at Greenwich Road. Deeded in the Hampshire County Registry of Deeds, Book 10396, Page 108. Assessor's Parcel 35-0-12. Zoned: Rural Residential (RR).

F. Smith spoke discussing his request. N. Talbot asked if anything in the application was different. F. Smith had a request involving one of the monitoring wells which was supposed to

be drilled. Originally, they were supposed to remove 470,000 cubic yards which was scaled back to 70,000 cubic yards. F. Smith stated the test pits which were dug have remained dry and for right now the only material being removed is from the ridge and they wouldn't be cutting into the earth.

Motion: C. DiMarzio to extend SP-2023-01 for one year. **Seconded** E. Murphy. **Discussion: None**

R. Starodoj	Aye
N. Talbot	Aye
E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
All in favor. Approved 5/0/0.	

SP-2022-10 (Bond Construction Corporation) [CONTINUED]

Applicant is requesting a Special Permit to remove earth materials at 219 Babcock Tavern Road. Deeded in the Hampshire County Registry of Deeds, Book 12833, Page 207, and Book 07177, Page 314. Assessor's Parcel 4-0-14 & 4-14-2. Zoned: Rural Residential (RR).

Public hearing portion of this Special Permit is closed. The Board will address conditions and make their decision.

E. Hancock recused herself.

The board discussed the conditions for the Special Permit.

Monday – Friday 7am-4pm
Saturdays maintenance only. Hours 8am-2pm
No operations on federal holidays

The board discussed the findings.

Special Permit Findings:

- After the public hearing duly noticed and held, the Ware Planning Board found, as required by MGL Chapter 40 A., Sec. 9, that the proposal is consistent with the terms of section 7.2.4 of the Ware, Massachusetts, Zoning Bylaws. These findings are based on the application documents presented.
- The proposal is in harmony with the general purpose and intent of this Bylaw and it will not be detrimental to the health, safety or welfare of the neighborhood or the Town.
- The proposal is compatible with existing uses and development patterns in the neighborhood and will be harmonious with the visual character of the neighborhood in which it is proposed.
- The proposal will not create a nuisance to the neighborhood due to impacts such as noise, dust, vibration, or lights.

- The proposal will not create undue traffic congestion nor unduly impair pedestrian safety, and provides safe vehicular and pedestrian circulation within the site.
- The proposal ensures adequate space onsite for loading and unloading of goods, products, materials, and equipment incidental to the normal operation of the establishment or use.
- The proposal will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the proposed use or any existing use will be unduly subjected to hazards affecting health, safety, or the general welfare.
- The proposal minimizes environmental impacts including erosion, siltation, changes to ground and/or surface water levels (quantity), or changes to ground or surface water quality.

Based on these findings, the Ware Planning Board, acting as Special Permit Granting pursuant to Section 7.2 of the Ware Zoning Bylaws, voted 5/0/0 to grant the Special Permit for the earth removal operation at 219 & 240 Babcock Tavern Road, as previously described, with the following conditions:

- The Special Permit (SP-2022-10) shall take effect on the first date after the expiration of the 20 day appeal period, and shall expire one year after such date. Thereafter, the applicant must file a yearly extension with the Planning Board prior to the expiration of this Special Permit;
- Hours of Operation shall fall between 7 AM to 4 PM, Monday through Friday, and 8 AM to 2 PM on Saturdays solely for maintenance, with observance of all eight (8) Federal Holidays;
- No processing of earthen materials (soil, loam, peat, sand, gravel, and/or stone) shall occur on site, with the exception of screening loam;
- A fifty (50) foot natural buffer shall be allowed to grow between the southernly portion of the earth removal site and the property line of 254 Babcock Tavern Road, Ware, MA (property now or formerly owned by James D. and Elizabeth M. Hancock). This natural buffer is to not be disturbed with the exception of emergency situations or if a legitimate explanation is given to the Planning Board;
- The fifty (50) foot natural buffer shall be permanently marked (throughout the duration of the earth removal operation) along the southernly portion of the earth removal site and the northern most boundary of the fifty (50) natural buffer with fence posts (spaced out every 50 feet). The sole purpose of the fence posts are to delineate the fifty (50) foot buffer between the property line of 254 Babcock Tavern Road and the Fence Posts themselves;
- No fuel shall be stored on site;
- The specifications of the plans dated October 7, 2022 and revised on February 2, 2023, drawn by Donald J. Frydryk, P.E., shall be adhered to. Any deviation from this plan must be approved by the Planning Board;
- Any boulders shall be removed from the site or buried underground;
- Tree stumps shall be removed from the site or ground up on site. In-active earth removal areas where tree stumps are removed shall be mitigated in order to be properly stabilized;
- Areas no longer active in earth removal operations shall be restored to their natural condition with proper loaming, seeding, and planting of proper vegetation;
- Updated volume calculations shall be given to the Planning Board at the same time the applicant requests an extension of this Special Permit (SP-2022-10);
- Updated topography maps shall be given to the Planning Board after every 25,000 cubic yards of earthen material removed (as indicated in the volume calculations), or at the discretion of the Planning Board;

- A performance bond shall be furnished by the applicant starting in the amount of \$50,000. Such bond shall be renewed and adjusted annually to account for inflation and consumer price index (CPI), or at an amount determined by the Planning Board. The applicant shall provide an active copy of such bond at the same time the applicant requests an extension of this Special Permit (SP-2022-10);
- No buildings shall be allowed on site throughout the duration of the earth removal operation;
- The existing entrance for trucks and larger vehicles shall continue to be the only ingress/egress point used throughout the duration of the earth removal operation;
- The Applicant shall comply with all laws, regulations and requirements of the Town of Ware, Commonwealth of Massachusetts, and the United States of America, the strictest of which shall prevail.

Motion: C. DiMarzio to approve SP-2022-10 (Bond Construction Corporation) with the conditions as discussed **Seconded** N. Talbot. **Discussion: None**

R. Starodoj	Aye
N. Talbot	Aye
E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
All in favor. Approved 5/0/0.	

Old Business

Motion made by N.Talbot to table discussion of Subdivision Regulations until March 2, 2023. **Seconded** E. Murphy. **Discussion:** None

R. Starodoj	Aye
N. Talbot	Aye
E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
Four in favor. One Absent. Approved 5/0/0.	

Motion made by E. Murphy to **ADJOURN at 8:13pm. Seconded** by N.Talbot. **Discussion:** none

R. Starodoj	Aye
N. Talbot	Aye
E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
Four in favor. One Absent. Approved 5/0/0.	

NEXT PLANNING BOARD MEETING DATE:

Thursday, March 2, 2023 at 7:00pm.

Minutes from Thursday, February 16, 2023.

Respectfully submitted by,

Kristen Jacobsen
Administrative Assistant
Planning & Community Development

Minutes Approved on: _____
Starodoj _____
Murphy _____
Talbot _____
Crosby _____
DiMarzio _____

rules and regulations not be completed within the allotted time period as specified and such increase would take into consideration increased construction costs.

- Such a covenant shall be inscribed on the Definitive Plan or in a separate document referred to on the Plan, and delivered to the Planning Board. The Planning Board shall turn over the covenant to the Town Counsel who shall review its contents **prior to approval.**

3. All requests for a partial release of the performance guarantee must be accompanied by:

- i. A revised Construction Cost Estimate (see Section 2.4.8.1.i) for all of the work remaining to be completed in accordance with the approved plans.
- ii. A certification from the project's engineer that all work and systems have been completed in accordance with the approved plans and are functioning as designed and intended.
- iii. Proof that all fees to cover inspections for the release of the performance guarantee have been paid in full by the applicant.
- iv. ~~"As-Built" plans for that portion of the roadway for which a partial release is being requested.~~

b) **Procedures for full/final release.**

The developer may, upon completion and installation of required improvements in a subdivision, the completion of record plans and street acceptance plans, as specified in these rules and regulations, and the completion of a one-year labor and materials warranty period make formal application, in writing either by hand delivery or certified mail, to the Planning Board for full release of any outstanding performance guarantee.

1. Before the Planning Board releases the full interest of the Town in said performance guarantee, the Planning Board shall:
 - i. Receive a certification from the project's engineer that all work and systems have been completed in accordance with

the approved plans and are functioning as designed and intended.

The sanitary sewer and public water systems must be pressure tested and videotaped and comply with the municipality's standards. Documentation of such testing and videotaping must be submitted.

In no instance shall bonding or covenants be released for the final road course and sidewalks until said work has withstood one full winter season. Partial or final release for this work may be requested of the Planning Board no sooner than April 1st of the calendar year subsequent to completion of way and walks.

- ii. That the streets and drainage system have functioned as designed and intended and been in use for through one full winter.
- iii. Obtain in writing from the Director of Public Works, or from a registered professional engineer chosen by the Planning Board (and paid for by the applicant), a certificate of statement that all work and systems required by these rules and regulations has been constructed in conformance with the approved construction plans. In the case where roadways will remain under private ownership, the above-mentioned certificate or statement shall be supplied by the project's registered professional engineer.
- iv. Receive from the applicant written evidence from the electric, telephone, gas and cable TV companies and all other public and private utilities stating that their respective underground systems have been installed and are functioning to their satisfaction.
- v. Receive from the applicant written evidence from a Registered Land Surveyor that all permanent bounds and monuments on all street lines and on the lot or lots within the subdivision are in place and are accurately located in accordance with the approved Definitive Plan.
- vi. Find that all fees to cover inspections for the release of the performance guarantee have been paid in full by the applicant.

- vii. Obtain from the applicant a set of record "as-built" construction plans. Approval of said plans by the Planning Board shall take place after review of the former by the Director of Public Works.
 - viii. Receive from the applicant street acceptance plan or plans and necessary documents. Said plans and documents, after approval by the Planning Board and the Director of Public Works, shall be presented by the Planning Board to the Town Meeting for a formal street acceptance in accordance with the Town Street Acceptance Policy.
 - ix. Copies of all of the recorded lot deeds showing that the applicant has retained their rights to the subdivision road(s) right-of-way, or Certification from developer's lawyer that all deeds to lots contained phrasing which retained his rights to the right-of-way(s).
 - x. All "as-built" Definitive Subdivision Plan information pertaining to the creation of the lots (including annotation of frontage, dimensions, acreage, etc.) shall also be submitted in a digital format acceptable to the Town using drawing interchange files (AutoCAD compatible files). Horizontal and vertical control shall have at least two (2) points tied (in feet) into the most recent Massachusetts State Plane Coordinate System using municipal GIS monuments stationed throughout the Town. Horizontal control shall have a closure of 1:12,000 or better. Vertical control must be of second order D Class 2 accuracy or better and be tied to USGS datum. All records of control shall be delivered to and reviewed by the Town.
 - xi. All "as-built" Definitive Subdivision Plan, Record and Street Acceptance Plan information shall also be submitted in pdf and AutoCAD compatible format or in another digital format acceptable to the Town.
2. If the Planning Board determines that all improvements as shown on the endorsed definitive plan and all required plans and legal documents have been completed satisfactorily, it shall release all the interest of the Town in such performance guarantee and return the bond to the person who furnished the same, or release the covenant, by appropriate instrument, duly acknowledged, which may be recorded.

3. If the Planning Board determines after inspection that said construction or installation has not been completed, or wherein said construction or installation fails to comply with these rules and regulations, the Planning Board shall send by registered mail to the applicant and to the Town Clerk the details wherein said construction or installation fails to comply with its rules.
4. The applicant shall have 30 days after receipt of such notice to correct all problems mentioned in the above. Failure of the applicant to finish all the necessary work within said 30 days shall cause the Planning Board to draw upon the bond or deposit of money as mentioned below.
5. Any such bond may be enforced and any such deposit may be applied by the Planning Board for the benefit of the Town of Ware, as provided in MGL c. 41, § 81, upon failure of the performance for which any bond or deposit was given to the extent of the reasonable cost to the Town of completing such construction and installation.

2.4.11 Recording of plan

The developer shall, within 10 days after the definitive plan has been endorsed, record said plan, required forms and, whenever applicable, the Planning Board's order of conditions, public easements (plans and documents), restrictive covenants, master deeds, etc., at the Hampshire County Registry of Deeds, and in the case of registered land with the Recorder of the Land Court. Within seven (7) days of said recording the applicant shall provide the Board with a copy of the Registry's receipt of said recording including the book, page number, and date of recording. The cost of said recording shall be borne by the developer.

2.4.12 Rescinding Approval of the Plan

Failure of the applicant to record the Definitive Plan at the Hampshire Country Registry of Deeds within six (6) months of its endorsement or to comply with the construction schedule of the performance agreement shall constitute sufficient cause for the Board to rescind such approval, in accordance with the requirements of section 81-W of Chapter 41 of the General Laws as amended.

Commented [WR9]: Going back to the earlier question, is there better language to use here than "rescinding approval of the plan"?

2.4.13 Preconstruction Conference

Prior to commencement of construction, the developer and the contractor must meet with the Director of Public Works and other relevant Town officials (preferably at a single meeting) to review the subdivision permit and conditions. The applicant must provide evidence that all required documents have been recorded and all required fees paid. Subsequent to said recording and prior to any building permit being issued, the project applicant shall file within seven calendar days one print of the definitive plan with the Building Inspector. Further, in accordance with the statute, where approval with covenant is noted thereon, the Inspector shall issue no permit for the construction of a building on any lot within the subdivision, except upon receipt from the Planning Board of a copy of the certificate of performance releasing the lot in question.

2.4.14 Road Acceptance

Commented [WR10]: See earlier question regarding generic transfer of title deed for private roadways.

When a road or way in a subdivision has been completed in a manner fulfilling the requirements of the Planning Board, the Applicant may request the Planning Board or their designee to inspect the road or way in order to give a recommendation to Town Meeting, on whether the road or way should be accepted.

Process for road acceptance can be found in the Town of Ware Road Acceptance Policy.

The Planning Board shall require the following information before making a recommendation to the Town Meeting:

- a) Two (2) copies of a plan of the road or way "as built," at a scale of one inch equals forty (1"= 40') feet to the inch at size 24" x 36". Said plan to show a center line profile (4 feet per inch on the vertical scale and 40 feet per inch on a horizontal scale) taken at fifty (50) foot intervals along the road or way as it has been completed. All utilities, public and private, above and below grade shall be shown on the plan as they exist. Said plan shall also be submitted in an electronic format acceptable to the Planning Board.
- b) Two (2) copies of the description by metes and bounds of each road and easement considered for acceptance by the Town. After acceptance by the Town Meeting of a road or way in an approved subdivision, the "as built" plan referred to above, the vote of the Town Meeting and the description of

the road or way shall be recorded with the Hampshire County Registry of Deeds by the Town Clerk.

- c) A release of liens under oath from all contractors and subcontractors approved for work on the road or way, attesting to the fact that all payments due them for labor and materials have been received, and that payments for all materials have been rendered.
- d) A plan for maintenance of the subdivision right-of-ways, easements, roads, and sidewalks for the time after acceptance by the Town and continuing for 20 years. The maintenance plan should include provision for the maintenance of road pavement, sidewalks, soil settling problems, street sweeping, snowplowing, maintaining vegetative stabilization of all rights-of way and easements, erosion controls, Fall leaf cleanup, catch basin and drainage system cleaning and maintenance, all stormwater management systems, and other provisions as determined to be necessary by the Board.
- e) A Roadway Conveyance Plan showing the overall boundary of the proposed roadway to be conveyed to the Town. This plan must include the bearing and distance descriptions of the roadway right-of-way.
- f) A Roadway Conveyance Instrument prepared by an attorney and in a form suitable for execution by the Board of Selectmen after acceptance of the roadway at Town Meeting. This instrument must include a legal description of the right-of-way and include reference to any easement documents.
- g) An Easement Conveyance Plan showing overall boundary of any proposed easements to be conveyed to the Town. This plan must include the bearing and distance description of the easement tied to the roadway right-of-way.
- h) An Easement Conveyance Instrument prepared by an attorney and in a form suitable for execution by the Board of Selectmen after acceptance of the easement at Town Meeting. This instrument must include a legal description of the easement as well as a description of the Town's rights within the easement

Town Planner Update: March 2nd, 2023

- **The Open Space and Recreation Plan Sub-Committee had its first meeting this past Monday (February 27, 2023)**
 - This committee is anticipated to meet three more times before the OSRP is completed.
 - The meeting was productive and the group discussed background information from the 2016 plan and what to expect over the next couple of months.
- **The Selectboard voted last Tuesday (Feb 21, 2023) to approve the FY22 & FY23 CDBG Application for the Town's of Ware and Hardwick**
 - This application will fund an infrastructure project in Hardwick
 - Housing rehab units and aging in place projects
 - Social Service Programs
 - Literacy Project
 - Senior Center Lunch and Lock Box Programs
 - Senior Outreach Program (QV CDC)
 - Buy Ware Now FTHB Program
 - Ware Domestic Violence Taskforce