



TOWN OF WARE

Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

Planning Board

Meeting Minutes from

Thursday, August 18, 2022

Board of Selectmen's Meeting Room, Town Hall

Planning Board Members in Attendance:

Rick Starodoj, Chairman
Ed Murphy, Vice-Chairman
Nancy Talbot, Clerk (Absent)
Kenneth Crosby
Elizabeth Hancock, Alternate

Ware Historical Commission in Attendance:

Lynn Caulfield Lak (Chair)
Wanda Mysona (Vice-Chair)
Alice Atkinson-Bonasio
Lorrie Willette
Claudia Kadra

Staff Members in Attendance:

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

Members of the Public in Attendance:

Alex Bergeron, Canadian Tree Experts
Bernard Bergeron, Canadian Tree Experts
Matt Darling, Palm Tree Capital

PLEDGE OF ALLEGIANCE

Chairman R. Starodoj called the meeting to order at 7:01pm and led the Pledge of Allegiance.

ADMINISTRATIVE

Approval of Minutes

Motion made by E. Murphy to approve of the minutes from Thursday, July 21st, 2022. Seconded by K. Crosby. There was no additional discussion.

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

All in favor. Approved 3/0/0.

N. Talbot was absent

Motion made by E. Murphy to approve of the minutes from Thursday, August 8th, 2022. Seconded by K. Crosby. There was no additional discussion.

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

All in favor. Approved 3/0/0.

SCHEDULED APPEARANCES

Discussion of ANR: 40 Pine LLC and Ware Freight Yards (not present)

R. Watchilla presented plans to the Planning Board which the proponents hope to alter the boundaries of their lots in order to obtain street access.

K. Crosby stated that in his experience once the boundaries of a lot are altered the grandfathering on that lot would be invalidated. He also said he felt the proponents should continue researching and said an ANR did not seem appropriate in this situation.

R. Starodoj inquired if the proponents needed to leave available frontage to each lot and split the 34' between each while leaving right-of-way there. R. Starodoj also stated that he felt there may be a caveat due to the historic status of the building as long as they didn't become more non-conforming. R. Starodoj suggested more research should be conducted

Motion made by E. Murphy to table the discussion until Thursday, September 1st, 2022. Seconded by K. Crosby. There was no additional discussion.

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

All in favor. Approved 3/0/0.

Proposed Scenic Bylaw Discussion with Historical Commission

The Historic Commission began by asking if any of the Planning Board members thought that any of the listed roads were controversial and should be removed from the list and conversely asked if the Planning Board felt there were any roads that should be added to the list.

The Historic Commission suggested that even though South Street passed through industrial areas, it does pass along some very attractive man made features (i.e. the waterfall) and does have unique scenic beauty.

The Historic Commission inquired when South Street changes to West Warren Road and it was determined that the road changes names after the rail road tracks (around parcel 22)

R. Starodoj stated he wasn't sure if it met the standards and that the list should be discussed at the public hearing.

R. Watchilla inquired if there were other roads on the list that the Historic Commission questioned and a member of the Historic Commission responded that they questioned Webster Road. E. Hancock asked for clarification on the name of the road and the Historic Commission responded that they meant Kelly Road.

E. Hancock stated that the sign on the road is gone but, there used to be one. Near the Kelly House is a stone wall overgrown with vegetation. Within that wall is a stone inscribed with the date the wall was constructed and it would be worth saving that wall

R. Watchilla sought clarification on which side of the road the stone wall was located on and asked if the Historic Commission felt the street should be added to the list. The Historic Commission responded saying that they did believe it should be added

R. Starodoj asked if the discussion of the list of roads was settled. Members of the Historic Commission stated there was a debate about South Street. R. Starodoj suggested it be left on the list and discussed at the public hearing.

The Historic commission inquired how wide the towns' right-of-way is on streets. R. Starodoj replied saying it varies by the layout and age of the road and that some roads did not split the difference evenly on each side.

A. Marques said she possesses a list of each street and there is also a list of portions of streets that have differing widths. A. Marques continued by saying that if they happen to have surveyed plans they go by that first.

R. Starodoj stated it would be up to each resident along a proposed scenic byway to individually determine where their property line is. The resident would need to hire a surveyor to determine that.

K. Crosby said the deed would be specific and that there is no guarantee based on the dimensions of the road because when some roads were constructed they were built in a way that would avoid objects.

R. Starodoj continued saying it will be a large burden of proof on the resident who has the stone wall and wants to make an alteration because the town won't be able to afford to go out and determine where it is. R. Watchilla spoke saying that according to the bylaw it would be the Tree Wardens responsibility to enforce anything street/tree related. R. Starodoj replied saying if it has to do with where property lines are the town can't make that determination and he said he wasn't sure the town could force the property owner to either, adding that it seemed to be a gray area.

K. Crosby asked what the process would be for a resident to make an alteration to a stone wall. R. Watchilla responded saying they would need to fill out the application, pay the \$300.00 fee, and go before the Planning Board. To which K. Crosby surmised that the property owner would need a stamped and engineered plan.

R. Watchilla stated that he'd like to stress the point that the bylaw has nothing to do with hazardous trees or emergency tree maintenance. R. Watchilla then asked the Planning Board if a clause should be added to the bylaw saying residents will need to submit a site plan. R. Starodoj agreed saying there is no other way to determine it other than having a surveyor go there and added that fortunately with most current property transfers plans are done and decent deeds.

Historic Commission member added that people who travel through town and who purchase property in Ware appreciate that sort of thing and that beautification efforts increase property values. A worry they have is that people won't see it as a benefit to the town.

R. Starodoj said to propose it and let individuals ask questions at the Public Hearing.

E. Hancock added that she felt there was a lack of enforcement to the bylaw and obtained suggestions after researching other towns. E. Hancock suggested clarifying 'utilities' and adding it into the definitions and questioned if the wording in section 1.2 'Cutting and Removing of Trees' was sufficient

R. Watchilla said he had spoken with the DPW director (Geoffrey McAlmond) who was satisfied with the bylaw as written.

R. Watchilla clarified that needed tree trimming whether it was a branch that needed to be removed, a downed tree, or a fallen limb it would definitely be an exemption. R. Watchilla suggested adding it to the definition section 'Cutting and Removing of Trees' and also in the 'Repair, Maintenance, Reconstruction, or Paving' section as well as listing the definition separately.

R. Starodoj clarified that utility companies can do any tree work needed and their work would not be impeded upon by the scenic road bylaw. He also stated that the utility companies could do their work without needing approval from the board to do so.

K. Crosby asked who would be determining what constituted 'routine maintenance' to which R. Starodoj replied that it would include anything in the standard operating procedures.

E. Hancock suggested increasing the distance from 100' to 300' that required property owners to notify abutters about proposed action.

E. Hancock proposed including the fee under special permit 1A and have the property owner be responsible for paying advertising costs. R. Watchilla responded suggesting that the fee schedule didn't need updating and that the cost could be lowered and the property owner could still be made responsible for the advertising cost.

R. Starodoj suggested including it in the fee schedule so it could be more easily adjusted. R. Watchilla responded that the Planning Board could do that, however, by doing so the fee schedule would need to schedule another public hearing. R. Starodoj agreed saying the fee could be left in the Scenic Road Bylaw.

E.Hancock inquired about the addition of a rule in the bylaw that would subject the design of new roads constructed for subdivisions subject to the Planning Boards rules and regulations.

R.Watchilla added that only stone walls along public ways will be affected. If a stonewall was on private property it could be altered by the property owner's discretion.

R. Starodoj said that people have the right to develop their property and there would be no way to prevent them from building on or accessing their property.

The Historic Commission asked if stone walls were included on site plans. R.Watchilla answered saying that on surveyed plans they are often included. R. Starodoj stated that it depends and surveyors can be reluctant to include more information on plans than they need to. The Historic Commission then asked how the Planning Board would know when someone was putting in a subdivision in and there were stone walls if they were not a required element on the plans. R. Starodoj said that would need to be changed in the subdivision rules to take effect.

The Historic Commission asked to receive a copy of the application so they would be aware if any permits were being pulled and could review the site and offer their opinion

E.Hancock suggested the addition of a bond which would be posted to cover the cost of the required road right-of-way and such bonding should be specified in the board's decision.

E.Hancock also proposed that the bond should include the restoration of stone walls and replanting of trees.

R. Starodoj questioned who the enforcement agent would be. E.Hancock suggested adding the building inspector. R.Watchilla stated that according to state law the only entities allowed to enforce this bylaw would be the Planning Board and the Tree Warden which raised the question of who would issue citations.

R. Starodoj asked where this bylaw would end up. R.Watchilla answered that it would be its own standalone bylaw and R. Starodoj surmised that the selectmen would need to assign the enforcement agent.

E.Hancock mentioned the language in section 5.1 (Enforcement) could read 'The Planning Board, Tree Warden, Building Inspector, or other designated by the town manager'

R. Starodoj stated that it needed to be one entity who would enforce the scenic road bylaw and added that it was not the Planning Boards responsibility to determine who the enforcement agent would be since it is not in the zoning bylaws.

R. Starodoj said more research should be performed regarding who the enforcement agent would be but, he said it would be ok to mention it

E.Hancock suggested the fine of up to \$300.00 could under M.G.L. Chapter 40, Section 15C be a fined for each day that the violation continues. E.Hancock suggested the one time fine of \$300.00 would not be enough of a deterrent and also suggested exploring the option of lowering the fine to \$100.00 per day.

E.Hancock suggested adding 'The Planning Board may adopt additional regulations for carrying out provisions of this bylaw' as a way to ensure the possibility of adding amendments in the

future. The addition of ‘If anything is invalid of any section or provision of this bylaw shall not invalidate any other section or provision thereof. Nor shall it invalidate any permit, approval, or decision that previously has been issued. E.Hancock read a portion of language which was adopted by another town which stated that the Planning Board may hold or revoke any current or pending permit on the property associated with said violation. R. Starodoj cautioned against this saying there are a lot of things that can’t be tied together you can’t revoke or deny a building permit.

E.Hancock advised revising the last section and changing the abutter notification distance from 100’ to 300’. R. Starodoj stated he felt it wasn’t necessary to notify abutters and that it should be filed with the Town Clerk and at the Registry of Deeds. Watchilla advised asking the Town Council where it should be filed other than with the Town Clerk.

Motion made by E. Murphy to schedule Public Hearing for the proposed Scenic Road Bylaw Thursday, September 15th, 2022. Seconded by K. Crosby. There was no additional discussion.

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

**All in favor. Approved 3/0/0.
Members of the Historic Commission Departed**

OLD BUSINESS

Proposed Zoning Changes Discussion

R.Watchilla presented the addition of the proposed Rural Business Overlay District (RRB) from the Ware Zoning Bylaws. Mentions the purpose of the Rural Business Overlay District is to preserve the scenic rural character along the route 9 corridor while allowing for commercial development for parcels 5 acres and larger, that is in keeping with adjoining uses and in harmony with the natural environment. This district allows for potential economic development along the corridor. The allowed uses for the RRB would be:

- Business, Finance
- Other Professional Offices
- Office or clinic for health services
- Laboratory, Research Facility
- Auto Service
- Self-service Storage Facility
- Light Industry (see section 2.2 Definitions)
- Tank Farm

R. Starodoj stated he felt all of the special permit criteria was covered and issued a reminder that there isn't a town sewer in that area. A business such a laboratory or light industrial would need to have tight tanks and the only thing that could be released into a septic tank would be from a bathroom/restroom or from a sink. One cannot discharge industrial water to a septic they would need some sort of disposal system.

R. Starodoj, R. Watchilla, and K. Crosby discussed the lack of public sewer and R. Starodoj stated that any of the above uses should be under Special Permit with a Site Plan Review in order to maintain controls on the area.

R. Starodoj recommended increasing the setback from the property line from 100' to 200' and suggested checking with the fire department.

A. Bergeron mentioned that the propane dispensary on Osterman's has much less of a setback from their office. R. Starodoj stated that the business was put in many years ago. A. Bergeron stated he felt that 200' around the property line was a substantial distance especially if it were to be 200' from another building especially if the building is associated with the business.

B. Bergeron stated he felt the distance was excessive. R. Starodoj clarified that distance was intended to be between the nearest residence and not a building associated the business.

R. Watchilla proposed altering the wording to 200' from the nearest residential structure. R. Starodoj said he found that to be reasonable.

A. Bergeron questioned if the 200' distance from the property line would still be applicable. R. Starodoj stated that if you are 200' from the property line you are more than 200' from a residential structure.

A. Bergeron questioned if it applied to property lines bordering undeveloped woodland areas. R. Starodoj answered that it would. R. Starodoj answered that someone could build something there. However, if someone decided to build closer after the tank or business is constructed, they are doing so with knowledge of existence the tank/business.

R. Starodoj stated there is also a 200' setback for solar. A Bergeron questioned if that was also from the property line. R. Starodoj confirmed it was.

B. Bergeron stated there was an estate lot that borders his property which couldn't be built upon. R. Starodoj clarified that as long as there was the appropriate amount of frontage a subdivision could be put in.

K. Crosby stated that the change in the district was not solely for the benefit of B. Bergeron's business. E. Murphy confirmed that this would be for the entire district.

R. Starodoj mentioned that the Bergeron's purchased the sawmill in 1984 and the zoning went into effect in 1987, yet the larger parcel of land (with the solar field) was purchased in 2001. B. Bergeron stated that he leased the parcel when he purchased the original property. R. Starodoj clarified saying Mr. Bergeron didn't own the property and that parcel was RR2 in 1987 and there was never any guarantee in that area of business development.

R. Watchilla added that lumber yards are allowed under Special Permit in that area and in this case it's preexisting.

B. Bergeron added that he had a monthly lease with an option to buy and the property was being used. He also stated he would have been unable to run his business without that lease in place.

R. Starodoj said he didn't find the 200' set back of the tanks from the nearest property line to be unreasonable and felt they had plenty of room to get something in there.

B. Bergeron asked what the state law was in this situation. R. Starodoj answered that it was 50'. Mr. Bergeron said that the district should follow state law. R. Starodoj disagreed and said he believed it should be increased. B. Bergeron stated that he respectfully disagreed and that it should stay in step with state laws.

E. Murphy added that state laws are just a minimum and each town has the right to write how they want.

K. Crosby said they didn't wish to do anything that would devalue other properties.

A. Bergeron said the 200' set back would place the tanks near the center of their property unless it was altered to be 200' from the nearest residential not from the entire property line. R. Starodoj said he thought they would be leasing the parcel and not selling it. B. Bergeron stated it would start that way

A. Bergeron proposed changing it to 200' from a residential structure instead of it being 200' from the property line which would alleviate the concern of anyone who abuts.

R. Starodoj stated that if they were to chop parcels out of that land they would have to put a subdivision street on the property.

The Planning Board spoke of different measurements from the property line that may be appropriate. The measurements ranged from 100' to 150' feet from the property line

R. Watchilla mentioned that E. Murphy had raised a good point when he spoke of modifying the setbacks to 250' residences and 100' from property lines and asked how it would affect other parcels.

K. Crosby said he would entertain 150' feet from the property line which would be nearly 200' from an abutting residential structure.

E. Murphy stated that they didn't wish to limit current property owners based on what could go in.

R. Starodoj clarified saying this was for tanks and not for other buildings which would follow normal setbacks.

A. Bergeron asked if the distances counted for buildings on the property like offices. R. Starodoj stated that internal buildings could go with a 50' distance.

R. Watchilla stated it would need to be inspected by the fire department.

K. Crosby raised the point that there would need to be room to get around the tanks and the trucks would need space and it would encroach on the 150' distance from the property line that he mentioned.

A. Bergeron sought clarification on E. Murphy's suggestion. If the setback was to be 250' from the nearest structure and not from the entire property line.

K.Crosby stated he thought they should use the property line for measuring the distance. E.Murphy agreed saying the 250' was only from the residential structure itself.

R. Starodoj replied saying if you had 100' from the property line it would resolve itself. K.Crosby stated that there was potential that future houses might not be.

R. Starodoj continued saying that they are protecting what's there and what might be there in the future. However if the tanks are built and someone decides to move closer than the 250' then that would be well known by the new neighbors.

A.Bergeron stated he felt 100' from the property line would be reasonable.

E.Murphy clarified the distances he felt were appropriate which would be 100' from the property like but 250' from residential structures. A.Bergeron countered by saying what if it were to be 200' from the nearest residential structure and 100' from the property line.

S. Beckley suggested it should be residential property lots.

R. Starodoj stated if it were distances between businesses it would be acceptable to be closer.

K.Crosby stated he felt it should be 150' from residential property lots. A.Bergeron proposed splitting the distance making it 125' and said they were negotiating.

K.Crosby disagreed saying that this was not solely for their business it was for the entire district.

R.Watchilla asked how the board felt about the other uses. R. Starodoj suggested that language prohibiting salvage yards and junk yards.

A.Bergeron asked what the determination was. R. Watchilla responded that it would be 250' from residential structures and 125' from the property line.

E. Murphy sought clarification on the number of tanks to be built and asked if it was to be 2. A.Bergeron said 2 is what was proposed.

R. Starodoj cautioned saying if the conversation became too detailed it would look like spot zoning.

E. Hancock asked how many properties in the proposed district were 5 acres or more. R.Watchilla spoke saying he could do the calculations on that.

R. Starodoj proposed extending the district down to the bait shop owned by Chet Lemon.

E. Hancock questioned if there were to be limits on the tank sizes allowed in the district. R. Watchilla responded saying that he had researched it and there weren't any state laws determining the sized of tanks allowed.

K. Crosby stated that since they were to be allowed under Special Permit they would be able to review the site and deny them if they needed to.

E. Hancock questioned if there should be a section added to the zoning bylaws. R. Starodoj stated that should be avoided and is what the Special Permit process is for. R.Watchilla added that the reason there was a 10,000 gallon minimum was to not prohibit people from having personal propane tanks.

E. Hancock added that the data she had reviewed said the tanks were safe and accidents were very rare with the main cause of accidents due human intrusion.

R. Watchilla suggested to the board that should they want this to move forward that they recommend it to go to the Select Board and schedule a public hearing.

Motion made by E. Murphy to send to Select Board. Seconded by K. Crosby. There was no additional discussion.

R. Starodoj Aye

E. Murphy Aye

N. Talbot

K. Crosby Aye

All in favor. Approved 3/0/0.

Proposed Zoning Boundary Change: 256 West Street, Ware MA

R. Watchilla displayed the map of the proposed zone to be changed. The change would redraw the district boundary allowing the proponent an additional 5.5 acres of land to open the proposed use. R. Watchilla stated that the argument could be made that it would fit with the existing use table. Sales of agricultural or horticultural products and associated supplies, partly or wholly outdoors, not associated with an agricultural use. And according to the use table this type of use is allowed by right in the RB district. It would not constitute as spot zoning because it's a preexisting district and is an adjustment of that boundary line within the property.

K. Crosby inquired about the petition by neighbors to deny the change in district boundary. R. Watchilla stated he does not have a copy of the petition as he was not given the opportunity to make a copy of it. He attempted to contact the petitioner but they did not return his call, but he would try to contact them again to see if they can attend the public hearing.

E. Murphy stated the board isn't deciding on the use, that they are deciding on the zoning change. R. Watchilla responded saying that he wanted to make the board aware of what is allowed by right in that area.

R. Starodoj stated he feels it's a proposal and can move forward to a public hearing although he felt it may have a lot of vocal opposition but it's up to the proponent to sell it to the voters.

M. Darling asked if the redraw was for the purposes of his proposed development or if it was being don't to make more sense of the zone. M. Darling noted how this particular lot had been singled out and the RB zone was limited to the first 200' of the property.

R. Starodoj stated that the proposed development is driving the change.

M. Darling inquired how he should present the change and if the town would be promoting it as a change to make the district more attractive. R. Starodoj stated the argument could be made that squaring it off makes it more attractive to development and its in keeping with the other lots around it.

K. Crosby asked about the houses nearby. R. Starodoj reminded the board that the first lot on the road was one of the only Special Permits the board had turned down. The individual there proposed storing box trucks there and it was denied due to the neighborhood there.

E. Hancock inquired about the status of the property and who owns the lot. M. Darling stated he has an agreement to purchase it and therefore he has full control of the property.

M. Darling said he will be sure to be at the meeting to present his proposal and said he'd be sure to include that the use is allowed by right in the RB zone there just isn't enough RB zone on the lot.

E. Murphy asked if it was by right or by Special Permit. R. Watchilla responded said by right pending a site plan review.

R. Watchilla asked in terms of determining if it fits within that specific use who the determining individual would be. R. Starodoj mentioned that A. Marques would be the individual to determine that.

R. Starodoj spoke of the Walmart/Lowes development and the parking issues involved there. M. Darling stated that Tractor Supply was a low traffic generator.

M. Darling stated that the lower section of the property listed as RB on the map was mainly wetlands undevelopable.

R. Starodoj said to see if people would agree with the rezoning and moving the district line

Motion made by E. Murphy to send to Select Board. Seconded by K. Crosby. There was no additional discussion.

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

All in favor. Approved 3/0/0.

Urban Fill

R. Watchilla presented zoning language having to do with Urban Fill with the intent of determining if the Planning Board would like to adopt the language into the zoning bylaw.

R. Starodoj asked if it meant that any fill from before 1983 was exempt. R. Watchilla said he believed so although there were restrictions on that and is regulated by state law.

R. Watchilla added a prohibited use of Contaminated Sediments and Contaminated Soils as Fill Material To fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property. He also looked at other overlay districts for Aquifer protection and all the Aquifer zones and added the language to those sections.

R. Watchilla asked if the definitions should be discussed at the Public Hearing and whether or not to include Historic Fill. It was determined to leave it for now. R. Starodoj stated that the historic fill tended to have the highest regulations, even though it is exempt since it was prior to the regulations being in place unless it violates the clauses.

Motion made by E. Murphy to send to Select Board. Seconded by K. Crosby. There was no additional discussion.

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

All in favor. Approved 3/0/0.

TOWN PLANNER UPDATE

Introduction of New PCD Admin Assistant: Kristen Jacobsen

The Façade Improvement Program Application window is open

Applications are due to the Pioneer Valley Planning Commission by October 1.

They can be found on the Town of Ware Planning & Community Development webpage under “Planning & Community Development News”.

The Planning Board is still accepting applications for the vacant seat

The term would expire in April of 2023, during the annual Town Elections.

Those interested should reach out to the Planning & Community Development Department.

ADJOURN

Motion made by E. Murphy to adjourn the meeting at 9:09pm. Seconded by K.Crosby No additional discussion.

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

All in favor. Approved 3/0/0.

NEXT PLANNING BOARD MEETING DATE:

Thursday, September 1st, at 7:00pm.

Minutes from Thursday, August 18th, 2022.

Respectfully submitted by,

Kristen Jacobsen
Administrative Assistant
Planning & Community Development

Minutes Approved on:	9/1/22
Starodoj	<u>RWS</u>
Murphy	<u>[Signature]</u>
Talbot	<u>Nancy Talbot</u>
Crosby	<u>_____</u>