

**City of Newburyport
Planning Board Joint Public Hearing
December 3, 2014
Minutes**

The meeting was called to order at 7:09 PM.

1. Roll Call

In attendance for the Planning Board: Sue Grolnic, Doug Locy, Noah Luskin, Leah McGavern, Bonnie Sontag, and Don Walters

Absent: Henry Coe and Jim McCarthy

In attendance for the Planning & Development Subcommittee: Barry Connell and Jared Eigerman

Absent: Ed Cameron

Director of Planning and Development Andrew Port was also present.

2. Joint Public Hearing with Planning & Development Committee of the Council

- a) *Amend the Zoning Map referenced in the Newburyport Zoning Ordinance pursuant to Section 111-D "Changes to Zoning Map" such that the R3 Zone between Route 1, State Street and Pond Street is hereby changed to an R2 Zone, said area to include all such parcels of land so depicted on a map entitled "Back Bay Neighborhood Zoning Change – Proposed," prepared by the Office of Planning & Development and dated September 23rd, 2014.*

Acting Chair Bonnie Sontag read the notice. Director Port presented a zoning map of Newburyport highlighting the present R3 zoned district of Back Bay. He explained what it meant to become an R2 district compared with the higher density R3 district, emphasizing the undesirability of creating too many non-conformities by down zoning. A board member asked what would look different from other R2 districts in terms of the number of non-conformities? Director Port said the percentage would be typical. Councilor Eigerman explained that before the proposal tonight, there had been previous discussion by the ad hoc zoning overhaul group of down zoning Back Bay, but the area had yet to be defined. Councilor Eigerman favored the smaller definition of the area.

A parcel in the extreme southwest corner had an ANR plan. Director Port said the ANR application for 12 units on four lots sought special zoning relief, then the application was withdrawn. The parcel was grandfathered, protected under state law, freezing the existing zoning. Eight units could still be proposed.

A board member said the smaller area proposed for down zoning in the Back Bay was submitted by Councilor Cronin to City Council. Acting Chair Connell said the Council was not required to take up Councilor Cronin's recommendation, but that was unlikely. A board member said the

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discussion concerned two different outlines for proposed down zoning in the Back Bay. Councilor Eigerman said interested parties submitted the two different boundaries. Should the frontage along Route One be treated separately? He had been persuaded against the idea because Route One represented a hard boundary for the neighborhood. Acting Chair Connell said topographical issues made development complicated.

In context of the comprehensive zoning rewrite, a board member asked if there were reasons why the down zoning issue was submitted at this time? Councilor Eigerman was not sure, given the broad charge, when the zoning overhaul would finalize, but a petition was before them now. Acting Chair Connell said near this time last year we took up numerous zoning ordinance housekeeping changes. We should not feel constrained by that. A board member asked if there were more petitions expected? Councilor Eigerman doubted it; the ad hoc group had not considered down zoning anywhere else and Back Bay was the only instance where the group thought R3 zoning was inappropriate. A board member asked why the large area up to the left was not included?

Councilor Cronin said he received a neighborhood petition with 92 signatures precipitated by several proposed projects over the years. A general concern was large projects in inappropriate areas resulting from a tear down. A Back Bay resident, Andy Morris collected the signatures. The proposed down zoning area was limited to those who signed the petition and did not include streets where neighbors did not sign the petition. He believed the change was overdue and that the large area a board member asked about should be included, but the property owner had not signed the petition.

A board member asked what the timetable for the zoning rewrite was? Director Port thought by late spring 2015 something would be ready to go before City Council.

Public comment open.

Andy Morris, 23 Cherry Street, represented the smaller petitioner's map. He said the change was in the best interest of the neighborhood and the City, and represented responsible growth. Twenty-two percent of the lots were multifamily; 78% of proposed lots could still be developed as two-families; and 94 residents had signed showing their full support.

Steve Gravelle, 3 Hillside Avenue, a resident for 43 years, was under the impression that Hillside Avenue and Cottage Court were part of Back Bay. Those streets were left out intentionally; no one asked them to sign the petition. They would like to be considered part of the zoning change.

Attorney Lisa Mead, representing a property owner, argued that her client's property was not part of Back Bay. Her client did not sign the petition to be rezoned. The board and subcommittee could not upsize the proposed zone without re-advertising. The R2 did not allow multi-family dwellings at all. Her client had filed the necessary ANR to protect a multi-family use for the area. She had reviewed a strategic land use document specifying City goals to increase housing variety and affordability. How did that fit in with the overall planning process? The parcels that faced Route One had a different feel than the rest of Back Bay. The down zoning would impact goals to achieve diverse and affordable housing. She knew the petition resulted from the

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application her client made; neighbors did not want the size of the project. The area should be looked at in the context of the City's greater goals.

Tim Loring, 26 Hill Street, said it was a quality of life issue and asked for consideration of the lifetime investments he and others had made in their homes and lives. They were not an isolated neighborhood, but part of a whole.

Lorraine Loring, 26 Hill Street, said the state took away her grandfather's property to create Route One was now. She did not want to see huge changes and was happy with the way the neighborhood was now. Her 96-year old mother was still in the same Back Bay house.

Tom Joy, 51 Pond Street, said the legal notice defined the area as bounded by Pond Street. He recommended Cottage Court, one of the oldest sections of Back Bay, be included. His house bordering Cottage Court was an original Back Bay house, but he was not approached to sign the petition. He didn't know there was a petition, but deserved the same protection. Director Port said the notice summarized the boundaries rather than described them in detail.

Paul Benoit, 45 Pond Street, believed his exclusion from, or lack of awareness of, the petition was due to his unfavorable view of the down zoning. Pond Street residents, in mostly single-family homes, wanted to participate in the petition to protect the quality of life in the neighborhood.

Dawn Vallejo, 27 Cherry Street, said, with respect to the need for housing diversity and affordability in the city, Back Bay was already extremely diverse. The narrow, hilly streets were not always plowed and the housing stressed the City's water and sewer services. Developers saw only the opportunity for investment and making money. She was in favor of the down zoning.

Mark Deyermond, 5 Hillside Avenue, supported the down zoning and asked what would it take to include Pond Street, Hillside Avenue, and Cottage Court? Acting Chair Sontag said a new petition, a re-announcement, and a new hearing.

Barbara Oswald, 158 State Street, said the small, dense neighborhood with tight, little streets was a Kelley School neighborhood, full of one- and two-family homes that kept the neighborhood safe. She was in favor of down zoning.

Councilor Cronin asked if it would make sense to stop the process, take a step back, and expand the petition to include Cottage Court and Hillside Avenue. He would re-post the hearing. Councilor Eigerman supported the current petition and was ready to go forward. He did not have a position on expanding the area, but would not be ready to go forward with Dalton Street added. His constituents on Hill Street were not in favor of the down zoning. Reaching out to other residents could be done later. Acting Chair Connell said Councilor Eigerman could sit down with the consultant who was examining the City's zoning. Councilor Eigerman said he was interested in providing relief to petitioners now because it could be a long time before anything else could be accomplished if they did not proceed with what they had consensus on now.

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David Hall, 43 Low Street, Newbury, owns the large parcel accessed from Cottage Street and Hillside Ave. not included in the down zoning proposal. He was at an unfortunate juxtaposition with a quiet neighborhood that perceived itself rightly as primarily single-family homes. He had borrowed a million dollars to clean up the contaminated site that was littered with vehicles and debris for many years to develop within the R3 zoning framework. He had undertaken a large and risky endeavor with the understanding that the zoning was R3. Route One was different than Hill Street. The block bound by Dalton Street, Greenleaf Street, Pond Street, and Hill Street had a density of 15 units per acre. His project was consistent with a portion of the Back Bay neighborhood. His position should be considered, particularly in that his property abutted a stretch of Route One that consisted of four high-speed highway lanes with guardrails. He felt that part of Route One was a remnant that should someday be re-envisioned and he hoped to play a role in making that happen.

Patty Deyermund, 5 Hillside Avenue, said Back Bay's quality of life reflected R2 zoning. She was not opposed to appropriate development and favored the down zoning.

Debbie Gravelle, 3 Hillside Avenue, asked how long the process would be to extend the Back Bay boundary? Director Port said, at a minimum, typically two months before action by the City Council, but lengthy debate could make it longer. Councilor Eigerman thought it would not reach the City Council until March because of the holidays. Acting Chair Sontag said the present hearing would continue to the next meeting. Ms. Gravelle asked if development would proceed in the R3 zone in the meantime?

Mr. Joy asked if it would be quicker to table the proposal, put in the changes, and start over than to start a new petition? His concern was being split off from the strength in numbers of the whole Back Bay voice. Councilor Eigerman said the practical matter of the holidays did not make either option quicker and a petition was not required. Acting Chair Sontag said there would be no less consideration for a smaller number of residents representing an issue. Councilor Eigerman said there was no dispute that Back Bay extended up to CVS. And Mr. Hall had raised a good point about the density of Dalton Street.

Mr. Benoit asked if Cottage Court and Hillside Avenue could be included tonight? Councilor Eigerman said that change would need to be re-advertised and re-noticed to be considered.

Councilor Bruce Vogel reinforced that a show of numbers from the neighborhood was not a consideration on the issue and encouraged the board and subcommittee to move forward with the proposed plan and to include additional interested streets at a later date. Councilor Eigerman said action taken tonight would not guarantee the issue would make it out of committee tonight. We could wait until next year to add another ordinance to it, while moving forward on the rest.

Public comment closed.

Board member comments: Several areas in the city needed zoning addressed; was there a pressing need in Back Bay? The petition did not rule out future consideration of abutter's issues; it made sense to move forward with the proposal. Despite a preponderance of single-family houses, Back Bay had been R3 for a long time. A case could be made that R3 zoning was not

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negatively affecting the quality of life. Why did the petitioner go only to certain people? Why omit other areas? Down zoning set a precedent. A responsible action would address other sections of town with similar issues. Low rates concern people. Multiple members concurred that down zoning was appropriate for the area, but deciding boundaries was difficult. A different feel existed on different streets, in particular, Route One. The larger boundaries elicited mixed reactions.

Acting Chair Sontag supported the petitioner's proposal and observed that with down-zoning, more properties would become non-conforming. Owning a non-conforming parcel was not inherently a bad thing, but would result in homeowners needing to obtain higher levels of permitting should they want to construct additions on their homes. Additions to pre-existing multi-family structures would require owners to apply for and obtain a variance which is more onerous than obtaining a special permit. The permit and variance process can be time consuming and costly. Another member stated that zoning was meant to address the future as well as the present. She did not want residents to believe multi-family homes would negatively affected the quality of life, nor did she understand why sections of Route One were included when it was not petitioned and when those sections were clearly different from other parts of the proposed area. In the future, those sections of Route One could serve a better use than one- or two-family homes.

Acting Chair Connell agreed that down zoning had advantages and disadvantages. The change may not offer the dramatic relief petitioners envisioned. Boundaries should include the upper left parcel for a contiguous neighborhood. The medical building and courthouse should be excluded. He would not vote against the proposal if the 'boundary reducing' exclusions were not made.

Councilor Eigerman said the City was not an undifferentiated whole; topographically, Back Bay was different from the rest of the City. He'd observed the angst in the neighborhood, but down-zoning would still have allowed the controversial Cherry Street project to be approved. The proposed boundaries were a reasonable way to balance the interests of the City. The medical building did not need to be excised, but if it were, he would still be in favor of the proposal. Some homes on Cherry Street were due to be redeveloped. Neighbors were saying a two-family was a reasonable compromise, but not a multi-family. The debate for Mr. Hall's project would come forward soon. He expressed concern that tonight's discussion could loose the thread of what was trying to get approved because Mr. Hall's proposal was unusual. He wanted to get the down-zoning, as it stood, done without including discussion of the Cherry Street building and Attorney Mead's client's property. He disagreed with waiting until the zoning rewrite was completed.

Planning Board members commented. The zoning rewrite could determine that Back Bay should be something else. Zoning approved tonight would not be ironclad. Acting Chair Sontag agreed that anything could change again. Members knew it would take at least a year to get the zoning overhaul reconstructed and through City Council. Whatever the state of Back Bay zoning when citywide rezoning began, it would not be locked in concrete. Director Port described and differentiated the difference between zoning changes and the master plan, which did not involve drastic changes in boundaries. Some members agreed with carving out Route One parcels and also noted the difference in character along State Street. Director Port said the larger map was

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created to help Councilor Cronin understand the entire Back Bay area. The smaller area was attached to the petition. Councilor Eigerman believed State Street was different from Back Bay, in general.

A member recommended approving the boundaries as they appeared in the original petition proposed. Some members recommended the medical building and/or the ANR properties be removed. Acting Chair Sontag said the ANR'd four parcels were still part of the neighborhood and affected the feel of the neighborhood because anything built on them would not face one direction on the map. If there was extreme density there, it would affect the neighborhood because of the way the neighbors feel about it, and it should be developed with that in mind. Each parcel could still have two units. A member addressed the impact of Route One, trying to envision it as other than a highway. The Cherry Street medical building acted as a buffer to Route One for the neighborhood. Acting Chair Sontag had no problem removing the medical building from the proposal. Members said the boundary rationale was people who had signed the petition. Topographically, the medical building was part of the neighborhood. If the undeveloped parcels were part of the neighborhood, they deserved the kind of protection that required development in keeping with the neighborhood. State Street was already built. If the parcel not built was taken out, it remained R3 and could be built as 12 units. That would look significantly different when viewed from within the neighborhood, therefore it should stay in the proposal.

Noah Luskin recommended approval of the R2 zoning with the Cherry Street medical building removed. Sue Grolnic seconded and five members voted in favor. Don Walters abstained.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

Councilor Eigerman said the petition was important, but not explanatory nor the end of the issue. The blocks closer to CVS were different. The Cherry St. medical building did not conform to R2 or R3. His proposal was a recommendation to the full Council as shown in yellow on the map with no exceptions. Acting Chair Connell did not believe that would change anything. Whether we excise the medical building or not is moot. Likewise, the parcel represented by Attorney Mead has had its interests protected. He agreed that the strong residential character had been well represented by the neighbors.

Barry Connell made a motion to accept the recommendation of the Planning Board and include the Cherry Street medical building parcel in the amendment. Jared Eigerman seconded.

Motion Approved.

Public Hearing closed at 9:12 pm.

3. General Business

- a) The minutes of 11/19/2014 were approved as amended. Noah Luskin made a motion to approve the minutes. Don Walters seconded the motion and all members voted in favor.

3. New Business

- a) *City of Newburyport Department of Public Services
16A Perry Way
Major Site Plan Review
2014-SPR-05*

Director Port said a request for continuance came an hour before the meeting, despite the expectation that stormwater issues would be resolved by tonight. The board should open the hearing tonight to identify issues to be addressed other than stormwater, so that all issues could be reviewed in one meeting.

Acting Chair Sontag read the announcement. One comment from the Planning Office was the flat roof. Snow and ice accumulation could deteriorate the roof. Members said the DPS needed to convince the board a flat roof would work. A member said a site plan review does not address structural issues. Director Port said there was debate about how extensively the board could dictate elements of the structure. The Conservation Commission had asked for a green roof. The building was relatively small, but the City did not have a good record of maintaining its buildings. A gabled roof would help with maintenance. He had asked the applicant for feedback on the roof for discussion at the next meeting. A member asked if there was a soils report?

Doug Locy made a motion to continue the Major Site Plan Review to December 17th. Leah McGavern seconded and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

5. Planning Office/Subcommittees/Discussion

- a) *Updates*

A draft of the 40R district proposed zoning amendment would be sent to the board by next week. Language would be fine-tuned once comments were received. Councilor Eigerman would be the likely sponsor.

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6. Adjournment

Doug Locy made a motion to adjourn. Bonnie Sontag seconded and all members voted in favor.

The meeting adjourned at 9:26 PM.

Respectfully submitted -- Linda Guthrie