

**City of Newburyport  
Joint Public Hearing  
Planning Board and Planning & Development Subcommittee  
March 18, 2015  
Minutes**

The meeting was called to order at 7:07 PM.

**1. Roll Call**

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

Absent: Don Walters

In attendance for the Planning & Development Subcommittee: Councilor Ed Cameron, Councilor Barry Connell, and Councilor Jared Eigerman

Also present: Andrew Port, Director of Planning and Development

**2. Planning Board and Planning & Development Committee of the Council Joint Public Hearing on Proposed Zoning Amendment:**

- a) Amend the Zoning Map referenced in the Newburyport Zoning Ordinance pursuant to Section III-D "Changes to Zoning Map" such that a portion of the R3 Zone between Route 1 and State Street (including Highland Cemetery and properties North of Highland Cemetery up to Pond Street) is changed to an R2 Zone.*

Councilor Ed Cameron, Chair, City Council Planning & Development Subcommittee, called the subcommittee to order and acknowledged Councilor Cronin & Councilor Kinsey in the audience. Planning Board Chair Jim McCarthy introduced the board. Director Port displayed a map illustrating the geographic context of the proposed area for rezoning and described the attributes. Chairman McCarthy said the board would take into consideration the interests of the neighborhood as well as the needs of the entire city to make a balanced recommendation to the City Council. The City was in the midst of a zoning code overhaul and rewrite. He was interested in what the Master Plan supported for the Back Bay. He acknowledged the neighborhood interest in down zoning to eliminate by right multi-family development.

Planning Board comments: Members considered whether down zoning aligned with abutting streets to the east and north, pointing out differences in density and zoning. Down zoning would cause structures on a parcel to look differently from the appearance of the Back Bay today due to the unintended effects of building sizes on one lot. If the intent was to protect the neighborhood, why was the B3 section beside Dalton Street permitting fast food excluded? The district's cemetery needed protecting and it was excluded too. The proposal was not comprehensive.

Director Port said the Master Plan looked 10 years ahead and typically included zoning changes. The Master Plan did not address the Back Bay area.

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Councilor Cameron asked about the history of R3 zoning in the Back Bay. Going forward, he did not expect the CVS to be there 10 years from now. What would neighbors want there instead? Director Port said the R3 designation was longstanding. The City as a whole graduated from R3 to R1, radiating outward from downtown. He demonstrated R3 areas in the city on the map. Councilor Connell referenced the comprehensive zoning rewrite, the criticism of the last down zoning the Council approved, and criticism of the current proposal. If the comprehensive rewrite was going to change the zoning, was this a moot point? Director Port said the Back Bay was not a current issue in the rewrite, nor was there an emphasis on map boundary changes. Community Opportunities Group was considering the districts to correct ambiguities and other issues in the ordinance. A draft report would be issued next week. It identified stakeholder issues with a comprehensive list of issues to address. The closest point of zoning discussion had to do with non-conformances and permitting requirements in residential districts.

Public hearing opened.

Councilor Robert Cronin, Ward 3, said Back Bay residents petitioned him and Councilor Eigerman for down zoning from R3 to R2 the summer of 2014. The Dalton Street area was considered at that time; advocates chose not to include it. The cemetery was City-owned and therefore not part of the motion. The only criticism he had heard was from the developer and one resident who should have been included in the first down zoning proposal. The petition came out of committee with a positive recommendation to City Council and passed. Afterwards, additional residents, with the support of several Councilors, expressed a desire to be included in the down zoning. Those residents are here this evening. The amendment affects 13 homes, all single-family except one. The neighborhood currently reflects primarily R1 attributes but seeks R2 to conserve the value of the property. There has been mention of a pending 60-unit development on the so-called Hiller property off of Cottage Court and Hillside. Following that, apartments could be built at two-per-lot, congesting streets. 40R zoning as well as 40B permitting has been mentioned in conjunction with a 28.5% rental rate in Newburyport. The 40R proposal, representing an estimated 500 plus units near the MBTA and traffic circle, was purposefully laid out on the other side of Route 1, away from single-family homes. Please act in the affirmative tonight.

David Hall, Hall & Moskow Real Estate Development, 75 Water Street, said over the last 40 years the area was not always a single-family neighborhood. Most homes dated from 1980 and were acquired when the majority landholder had a messy junkyard that included many vehicles and hazardous waste. From 1947, Bruce Heller's packrat behavior offended every ordinance. His property was R3 from the beginning of zoning. The idea that Hall & Moskow's development would diminish the value of homes doesn't stand up to research of real estate within a kilometer of a hazardous waste site. A home listed in a neighborhood with hazardous waste must report the waste site. Simply cleaning up a site, as Hall & Moskow had done, increased values of adjacent real estate by 15-19%. Your homes are worth more than when we acquired the real estate for \$750,000 to \$1 million, which was a lot of money for a salvage yard. The property represented 56% of the area considered for a zoning change; the voice and role of Hall & Moskow was important. Originally, no one petitioned this neighborhood for down zoning. Last October, when the development plans were distributed, understandably, some neighbors were upset. Mr. Hall was willing to work cooperatively with neighbors. Hillside Center could not be smaller. R3 was

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important to allow three units in one structure because of a 70-foot difference in elevation, equivalent to a seven-story building, required stacking the living space. Consuming more land eliminated space for permaculture and agriculture efforts. Mr. Hall acknowledged the importance of responsible development in the city. The differences between R2 And R3 were the arteries they faced. The Hillside Center development faced Route 1. Housing placed along major arteries kept smaller streets and neighborhoods from being impacted. Down zoning to R2 would be the end of what he wanted to do in any vestige. It was the equivalent of dismantling the project through regulation. Currently, multi-family was not allowed without review by the ZBA. There were enormous hurdles to go through and significant opportunities for Mr. Hall to hear from neighbors and incorporate changes. Please do not change the zoning.

Steven Gravelle, resident of 3 Hillside Avenue for 44 years, said the Hiller property history was familiar. Bruce Hiller ran a contracting and landscaping business located between two dead-end streets with very few cars. He saved everything he saw. Over time, he developed dementia, living in a house that should have been condemned long before it was. Elderly Services from Lynn cleaned up the property, taking away the cars. Mr. Hall got a Mass Development low interest loan to clean up the coal ash and was now looking for a curb cut to Route 1. A 64-unit development with 2 cars per household on two dead end streets caused concern. The density of the project was bothersome. No alternatives had been suggested by Mr. Hall. Under R3, duplex homes on the lots would have about 40 cars, infringing less on the neighborhood. Upon hearing of the other Back Bay down zoning, he believed his neighborhood deserved the same thing.

Patty Dearman, 5B Hillside Avenue, said updating the Master Plan involved looking at each district to make sure the map reflected what was there. The first Back Bay down zoning was in keeping with what had been developed because the Back Bay never developed as R3. Zoning should be corrected to match the neighborhood and to make the whole Back Bay area consistent with what was on its streets and in its neighborhoods.

Chairman McCarthy said a zoning change was a law change. Zoning was not about where you have been, but about where you are going in the future. Under R2, neighbors could expect two lots to be combined for building larger two-family homes, as was occurring in other R2 districts. Two 2,500 square foot houses connected by a piece of wood could be built all through R2.

Kate Low, a 10 year resident of 14 Cottage Court, wanted R2 downzoning to maintain the mostly single-family homes in neighborhood.

Mark Dearman, 5 Hillside Avenue, said most of the rest of the Back Bay had already been voted to be down zoned. Going forward, he wanted his neighborhood to maintain the same density as the area that was already downzoned. He wanted development that fit the pattern of density.

Chris Jones, 49 Pond Street, said his main concern was traffic and the number of cars in and out of Cottage Court from the Hillside Center development.

Paul Benoit, a resident of 0 Hillside Avenue for 30 years, agreed with Mr. Gravelle. There was never a traffic issue with Mr. Heller's four trucks. The big concern in the neighborhood was density. R2 offered protection for reasonable development. The two-family scenario mentioned

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would not add the number of cars that Mr. Hall's project would add. The large parcel of land could hold a lot of units, but nothing similar to the density an R3 would allow.

Beverly Gravelle, a resident of 3 Hillside Avenue for 44 years, said R2 would provide reasonable development, a protection they did not have now.

Don Little, 6 Cottage Court, was confident there was no open space in the cemetery to be developed. The Phase 2 for Back Bay down zoning was occurring because Phase 1 was a different neighborhood. The cemetery separated them from the B3 zone.

Judy Tymon, a resident of 39 Lime Street for 27 years, said the rental percentage mentioned by Councilor Cronin came from the Housing Production Plan. The loss of over 300 rental units in the last 10 years had exacerbated the problem of increasing demand for rentals. Her neighborhood was dense between Federal Street and Marlborough Street. Without any changes to zoning approved by the ZBA, development there included a 3-4,000 square foot two-family home on Temple Street that did not fit the character of the neighborhood. Zoning would not freeze time, or help keep what you have, or prevent what you did not want. The ZBA allowed latitude with developers. All along Federal and Marlborough Streets were 3-4000 square foot homes with more than two cars. She recognized Mr. Hall's project as smart, sustainable development that should be embraced.

Rosie Preston, a resident of 14 Cottage Court for 10 years, said Mr. Hall's plan would be great in a different area because of the number of cars. Too many people and cars in a small space were not safe or good for the neighborhood. Consider the narrow, poorly plowed roads in winter.

Public hearing closed.

Chairman McCarthy said the board could agree that R2 down zoning was a good idea, make no comment, or disagree. There were higher-level trade offs for the City. Housing was needed. Were there other places in the City to satisfy that objective?

Member comments. Down zoning should stand on its own merits, without consideration of the Hillside Center development. How many of about 20 lots in the area conformed to the down zoning? Chairman McCarthy said there were differences in lot size and setback between the R2 and R3, but the single biggest difference was that R3 required a special permit for a multi-family, but in R2 multi-family was prohibited. The other differences were small. Members asked if there was a by right build-out analysis of the area. Director Port said about 10 lots could hold a total of 20 homes by special permit within the R2 designation. He pointed out examples of non-conforming lots and said maybe 60% were non-conforming. Non-conforming lots required more people to appeal to boards when they wanted to make a change on their property. Members said it was inappropriate to use zoning to fight a development. Multi-family zoned areas support the goals of the Housing Production Plan and the Master Plan. Not all the potential 500+ units in the 40R would be rental. The board could not know what would develop over the next 20 years. Change would happen whether the neighborhood was R3 or R2. Just because the board had recommended down zoning for one area did not mean it would recommend it for another section. The board had the entire City to consider.

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Chairman McCarthy considered the housing needs of the City. There were pitfalls to piece meal zoning like this. If everyone in the City wanted to be down zoned, the City would lose the housing stock opportunity it needed, but that was not happening.

Public comment closed.

Member comments. Was it possible to down zone around the one undeveloped section and would that allow a 40B? Director Port said that was spot zoning and explained that 40B developers had a lot of leeway and could develop there. He gave an example of 40B development as the housing project on Storey Avenue behind the bank. Members might have acted differently if the board had looked at Back Bay down zoning more comprehensively rather than piece meal.

Councilor Eigerman said he had wanted to address the down zoning of Back Bay parcels separately. The zoning consultant was working with a budget of \$60,000, and could not look at zoning other than its language. The City was creating the 40R proposal in-house; the consultant had no role in that because of the budget. He remembered the evolution of the Master Plan differently, that down zoning was suggested for one area only -- the Back Bay -- with the old part of the City's R3 in mind (circa 1930). The Back Bay was anomalous. Unlike the old parts of the City, it consisted of micro neighborhoods because of topography, even though it was all called the Back Bay. It was no accident that the original down zoning proposal did not include Cottage Court and Hillside Avenue, or Dalton and Fulton Streets, because of the nature of the micro neighborhoods. In the December meeting, Councilor Cronin suggested delaying to enlarge the district. Councilor Eigerman supported down zoning of the smaller area because Route One was a hard boundary. Corridors helped create planning units, although they were not used for the 40R. However, the problem was a grandfathered project on Route 1 in the downzoned area. Mr. Hall could not get an ANR plan because a title issue prevented him from getting a map. Tonight's proposal would be a death sentence for Mr. Hall's project. The investment-backed expectation created a bad situation. If not for Mr. Hall's project, Councilor Eigerman would vote in favor of down zoning because the R2 did no great harm. In some states it was illegal to down zone to thwart a project. We have heard from Judy Tymon about what the ZBA has done. Our ordinances have weird anomalies, such as not allowing a two-family by right because there is no design review. No other city or town did that. Newburyport ordinances had holes that needed to be addressed, but this proposal was consonant with the Master Plan. He could not support the down zoning because of the situation with Mr. Hall. There would be a lot more review coming up for the project and a long way to go to approve his project.

Councilor Connell agreed with Councilor Eigerman. Were Mr. Hall's proposal not on the horizon the decision would be straightforward. Cottage Court and Hillside Avenue would be in a consonant zone with what the City rezoned recently. People were probably grateful the site was cleaned and could now look at their property in a different light. We thank him for doing that, but he doesn't get a free pass for using the property he has cleaned up. He did not see the development as a detriment to the neighborhood and did not want to support down zoning to stop a development. The possibility of carving out Cottage Court and Hillside Avenue for down zoning while allowing the remainder to be R3 should be considered.

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Councilor Cameron said the situation was reminiscent of recent rezoning on upper Storey Avenue. The common denominator was traffic. If Mr. Hall's development went through, it would be a change in land use with a traffic impact. He was not in favor of down zoning. Everyone had cited the original down zoning as the reason for tonight's proposal. Did that mean the City would hear from other neighborhoods wanting the same down zoning? Generally, Councilor Cameron favored multi-unit zoning. Twenty years ago the City had a 38% rental rate but lost over 300 units in the last 10 years. The 40R was not a done deal; there would be another hearing. He could be more amenable if 40R had already passed. He was unconcerned with the Hillside Center development project because Mr. Hall could elect to do a 40B where the City would have no control. But Mr. Hall would not have cleaned up the area knowing unfavorable zoning for his project was coming.

Councilor Cronin said there would be a meeting with the mayor on April 2 if the writing were already on the wall. He would get feedback from residents who wanted to go to the meeting.

Chairman McCarthy preferred not to make a decision if there was going to be more information.

Member comments. Did a typical multi-family project in R3 go through the Planning board and the ZBA? Director Port said only if the project were over 5 units.

Leah McGavern made a motion to not recommend the down zoning. Sue Grolnic seconded and five members voted in favor. Jim McCarthy was the dissenting vote.

**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 Cameron said the subcommittee could recommend, not recommend, or keep the proposal in committee. In terms of the ZBA's control over Mr. Hall's development, if R3 remained, what controls did the ZBA have? Director Port said the Planning Board had site plan approval. The ZBA would issue discretionary special permits based on various factors of the project, such as density and character with respect to the neighborhood.

Councilor Connell said the traffic impact was an uncertainty. Where in the process was traffic addressed? Director Port said both boards would address traffic, taking evidence from the applicant in the form of a traffic analysis. The applicant paid into a fund for the City to have a peer review of the traffic analysis. The ZBA would probably want a similar process.

Councilor Eigerman said if Councilor Cronin was meeting with neighbors on April 2, the subcommittee should hold the vote because the issue rose to the level that other City Councilors would be engaged. Councilor Connell would support a portion of the area to be down zoned, leaving the rest untouched. Mr. Hall's project was beneficial, but traffic would need to be

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addressed. The committee was better informed of its options, but going forward it had become a political process and he preferred to continue the hearing.

Councilor Eigerman made a motion to continue the Back Bay zoning amendment to April 8. Councilor Connell seconded and all voted in favor.

**Motion Approved.**

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**3. General Business**

- a) The minutes of 3/4/2015 were approved as amended. Doug Locy made a motion to approve the minutes. Noah Luskin seconded the motion and all members voted in favor.

**4. Old Business**

- a) *New England Development  
83 Merrimac Street and 90 Pleasant Street  
Definitive Subdivision  
2014-DEF-02  
Continued from 1/21/15*

There was a request to continue. Members asked if the filing guaranteed grandfathering? Director Port said temporarily. The Planning Office was responsible for slowing the project because of work on the parking garage. It was to the City's benefit to continue the motion.

Doug Locy made a motion to continue the Definitive Subdivision to May 20<sup>th</sup>. Leah McGavern seconded and all members voted in favor.

**Motion Approved.**

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**5. New Business**

- a) *Tropic Star Development  
81-85 Storey Avenue  
Minor Modification for phased construction*

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Jeffrey Roelofs, attorney, 30 Green Street, wanted to deviate from getting everything done before the client could occupy the project. Phasing in two parts allowed one area to be demolished and rebuilt. As they got closer to completing the new Shell Station, before tearing down the old one to get construction of the pharmacy under way, the Shell Station could be operating.

Members were interested in the curb cuts. Attorney Roelofs proposed to occupy the Shell Station after the old curb cuts were gone and the new ones were in use. Members asked if it was absolutely necessary to open the Low Street curb cut while the site was still under construction? Attorney Roelofs said Mass DOT wanted another exit because there were concerns about all traffic going onto Storey Avenue. Both exits were two-way. The project would be occupied before all the traffic improvements were completed. The developer's goal was to have the Shell Station operating by the end of summer 2015.

Director Port said, on the whole, he was comfortable with phasing. If it were allowed, the City would be rid of all the awkward curb cuts that cause traffic problems at the corner. Mass DOT would not let the developer occupy and use the new curb cuts unless the traffic was safe. DOT also would determine which traffic improvements had to be done before occupancy. A member asked how moving curb cuts further down the road changed traffic issues?

Chairman McCarthy asked if anyone was concerned about the proposal as a minor modification? The board, in relinquishing some leverage, needed the pharmacy to achieve a level of completion before the board would agree to occupancy. Attorney Roelofs suggested occupancy be awarded based on a review. The Planning Office and Building Department would perform the review.

Attorney Roelofs said from April – June, the residences would be torn down, site and utility work would begin, the tanks installed, and the building pad built. Building the Shell Station would start in June, and finish and be ready to occupy by the end of August. The pharmacy site, delayed until utility work was done, would be completely graded by late fall and occupied by January 2016. Managing the timing of the traffic improvements was of great concern. The larger traffic improvements would happen in late fall. Director Port asked if Mass DOT would make them hold off? Members discussed the summer traffic situation.

Bonnie Sontag made a motion to approve phased construction by allowing the applicant to obtain a partial signoff for the completion of required site work and an Occupancy Permit for the relocated gas station prior to completion of work for the remaining pharmacy area provided that all areas outside of the shaded portion of this plan are first completed, with vehicular access to both Storey Avenue and Low Street (as indicated on the plan), subject to field inspection and approval of this work, and the sufficiency of temporary or permanent off-site traffic improvements as proposed by the applicant by the Director of Planning & Development prior to issuance of said Occupancy Permit. A final site plan signoff and Occupancy Permit for the proposed pharmacy shall be withheld until completion of the remainder of required site work. Doug Locy seconded and all members voted in favor.

**Motion Approved.**

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Attorney Roelofs said Councilor Cronin, representing the Traffic Safety Advisory Committee, attended the Mass DOT meeting and stated the committee did not like the left hand turns. Mass DOT would make their decision independently.

**6. Planning Office/Subcommittees/Discussion**

***a) 40R***

The amended 40R documents would be turned to the state in Wednesday, March 25. The pump station design was underway.

***b) Updates***

Two new board members would be voted on at the next City Council meeting. The Towle project was rebounding with a development consultant, an architect, and landscape architect. Director Port scheduled the Zoning Overhaul presentation for April 2 at 7 pm.

Downzoning: P&D met and all 3 members recommended against the zoning change in Back Bay and the benefits of the project were of more value than the down zoning. I expect the council to take that up the 27<sup>th</sup>.

Revised plans for the Mr. India building will be distributed. DOT will has problems accessing from the route 1 down ramp. They don't have vehicular access to the site.

**7. Adjournment**

Sue Grolnic made a motion to adjourn. Doug Locy seconded and all members voted in favor.

The meeting adjourned at 9:38 PM.

Respectfully submitted -- Linda Guthrie