

**City of Newburyport
Planning Board
March 19, 2014
Minutes**

The meeting was called to order at 7:05 PM.

1. Roll Call

In attendance: Henry Coo, Paul Dahn, Sue Grolnic, Noah Luskin, Jim McCarthy, and Don Walters

Absent: Dan Bowie, Bonnie Sontag, and Cindy Zabriskie

Andrew Port, Director of Planning and Development, was also present.

2. General Business

The minutes of 1/15/2014 were approved. Henry Coo made a motion to approve the minutes, Paul Dahn seconded the motion, and six members voted in favor. One member abstained: Paul Dahn.

The minutes of 2/19/2014 were approved. Sue Grolnic made a motion to approve the minutes, Paul Dahn seconded the motion, and five members voted in favor. Two members abstained: Henry Coo and Jim McCarthy.

The minutes of 3/5/2014 were approved. Noah Luskin made a motion to approve the minutes, Paul Dahn seconded the motion, and six members voted in favor. One member abstained: Henry Coo.

3. Old Business

- a) *Joint Public Hearing with Planning & Development Committee of the Council
Continued from March 5, 2014*
 - i) *Downtown Overlay District (DOD)*
 - ii) *Demolition Control Overlay District (DCOD)*
 - iii) *Off-street Parking Regulations, Unmet Parking Need Credit (UPNC)*

Acting Chair McCarthy explained that new laws with planning and zoning start in City Council. Two public hearings helped craft ordinance modifications. City Council has closed their public hearing. The pace was quick for a change of law. The board hoped to make a recommendation to City Council after tonight's public hearing closed. Councilor Eigerman was present and the Planning Office issued a summary of the laws from the last iteration.

Director Port presented a flow chart of the permitting process. Issues raised previously were addressed in the revised version: procedural issues, feedback from the Historical Commission,

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what reports and data the board and the Planning Office would review, and expedited review for certain things like windows, doors and awnings.

Acting Chair McCarthy solicited feedback from the board on the following points:

- Whether one or two-family homes are taken out of the DOD
- Adding a process to remove or add structures to the National Register of Historic Places inventory
- Whether, if a structure was not captured by one of the ordinances, a demolition delay still applied
- Planning Office review of small things like façade for determining if the DCD was triggered
- Making sure roofs were considered when making substantial changes

Acting Chair McCarthy asked members for other points that would make a worthwhile recommendation to the City Council. Members commented. Was the City Council clear about the differences between what governed now and the new ordinances? Director Port said the Council understood the downtown was gaining design review. They were also aware of the importance of saving National Register and other historic properties from demolition.

The U.S. Secretary of the Interior Standards need discussing. When the board votes a certain way the first time it uses the Standards, subsequent applicants will expect similar rulings on their projects. Comments about applying the Standards differently were unavoidable.

A related, developing issue, was a request by the resident of an historic home in the flood plain on Water Street who said it was cheaper to raise up the home three feet than pay impending new insurance rates. Should the board give them some kind of relief? Director Port said a mechanism for preserving the feasibility of structures existed, but didn't know if this situation would be covered. A flood hazard area may be relevant to the discussion and worth considering.

Director Port said an additional provision in the ordinance addressed adding and delisting historic structures from the list of properties that trigger ordinance review. If a property was added, information was given to the federal government.

Was a homeowner responsible for applying for the historic designation? Director Port said the Historical Commission would do that for residents. He presumed most discussions would be to remove properties from the list. The Historical Commission would report removal requests back to the board and the Planning Office.

What about a homeowner with an application before the board who doesn't want to be added to the National Register, but the neighborhood wants the structure added to the list. Can neighbors go to the Historical Commission to apply for someone else's house to be added to the list? Can the applicant's house be designated historic after their application is approved? Director Port said the status of a structure would be grandfathered once an application was in process.

Acting Chair McCarthy explained that the board was using its collective application review experience to see how things would work out within the new ordinances. City Council made the

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laws, and whether for or against, the Council was the place to speak up. Councilor Eigerman was on hand to address clarifications.

Public comment opened.

Tom Kolterjahn, 64 Federal Street, co-Chair of the Preservation Trust, said the current demolition delay included roofline changes. Roofs are a critical addition to the DCOD language. He encouraged every board member to become familiar with the Secretary of the Interior Standards and described them as a helpful tool to frame and streamline deliberations. He supported closing the public hearing and submitting a recommendation to the Council so the vote to protect our historic assets could proceed.

Linda Smiley, 7 Atwood Street, Chair, Historical Commission, questioned the interface of the Commission. What is the mechanism by which the Commission would review applications requiring their input? There wasn't a requirement for applicants to come before the Commission. Director Port said application documents would be submitted to the Historical Commission 21 days prior to the board review, but the applicant was not required to come before the Commission at a meeting because the public forum would be before the board. Ms. Smiley said she could read applications, but needed to talk with applicants to hear explanations about what they were trying to do. Without meeting an applicant to review a project, the Commission could not give opinions.

Director Port said the Special Permit Granting Authority (SPGA) would decide whether an applicant should go before the Historical Commission. Application details would also be presented at board meetings. Acting Chair McCarthy said the board regularly deferred to more knowledgeable expertise on historic architecture. Ms. Smiley said historic topics would come before the board with such frequency as to dominate the board's agenda. Not requiring the applicant to come before the Historical Commission is a glitch in the process. Acting Chair McCarthy said the board would lean heavily on the Commission's knowledge. Director Port said the Planning Office would notify applicants to discuss requests with the Historical Commission. The SPGA, if not satisfied, could also tell applicants to work things out with the Commission. The process might be more expeditious to require applicants to go before the Commission, but the proposed process worked also.

Ms. Smiley said the Secretary of the Interior Standards, like any code, was a starting point and very basic. Applicants would ask what a decision was based on and the board could name the Standards because they were accepted in every community. It was basic to put the Standards in the ordinance. The Historical Commission has spoken to an applicant who requested raising up an historic Water Street property three feet. A public hearing on the issue is scheduled for April 3. It would be disastrous if everyone in the flood plain raised up historic structures. She reached out to the Sea Level Rise group and put it out to the Mass Historical community to see if anyone else had asked about raising an historic home in a flood zone.

Margaret Welch, 82 Curzon Mill Road, serves on the Historical Commission and was on the LHD Study Committee. The ordinances related to demolition curb the Historical Commission, giving the Zoning and Planning Boards the power of determination. These boards are the wrong

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tools. This board's expertise is not historic architecture, yet the board with the expertise is diminished by a nonbinding review. The new City Council is open to new ideas, and has the power to change the ordinances. The possibility of architectural districts was never properly vetted during the LHD, and could still be a viable method. There are better ideas than zoning ordinances to protect our historic fabric sensibly.

Mary Eaton, 3 Foster Court, said balancing political realities and historic preservation was hard. She was glad the board would make a recommendation.

Doug Locy, 17 Alberta Avenue, encouraged the board to recommend the ordinances to City Council. The LHD would have been a better approach. How did the decision to give Special Permit Granting Authority to the Planning Board come about? Director Port said the goal was to simplify and streamline the permitting process based on feedback received all the time -- complaints and concerns about how long things take. The board, as the permit granting authority, typically doesn't deal with residential areas, but the Zoning Board of Appeals does. Applicants already have to see these boards for permits. With the LDH, there was a district commission, but using the existing permit granting authorities keeps the process streamlined.

Tracy Fortier, 19 Otis Place, urged the board to keep the Secretary of Interior Standards. She had applied them before and learned they allow considerable flexibility. It would be useful to meet with a couple of Historical Commission members to hear examples of their use. The four standards are: restoration, preservation, reconstruction, and most frequently, rehabilitation. The first standard of rehabilitation says a building should be used for its original purpose, and if not, a use not dramatically different from the original use is recommended. The Firehouse is a good example of the Standard's flexibility. Other good examples of Standard Nine from the last hearing: the library, Atkinson building, the rear of the Garrison Inn, the YWCA pool building and Tannery building #4. The board, in bringing its different backgrounds, experience, and expertise to interpret the Standards, keeps them alive and that's the point. The Standards are nationally acknowledged. She couldn't imagine what could be used if not these Standards.

Jerry Mullins, 7 Parsons Street, said one great fear was that decisions would be based on highly personal and subjective standards. In this case, using a baseline of nationally recognized standards would be the board's foundation and strength. There were several standards, but the 10 standards of the rehabilitation process were like Commandments, solid and not an opinion.

Mary Haslinger, 299 High Street, said there would be several approval efforts occurring simultaneously. While this board reviewed an application, if needed, the Historical Commission would simultaneously chime in. Apparently this board doesn't want a sequence, where the applicant goes to the Historical Commission before they come to the board. Acting Chair McCarthy said the board leaves the flexibility to the applicant for how they want to go through the process. Every project is different. The board doesn't want to force anyone in any direction. When the board feels it's getting away from its expertise, it always asks for the opinions of other boards. Ms. Haslinger was frustrated at the perceived absence of an orderly process. Acting Chair McCarthy said applications arrive in many forms, often informally to start. Ms. Haslinger challenged that as an issue. Acting Chair McCarthy said there was always a struggle between an efficient process and one that was flexible. Ms. Haslinger encouraged the board to recommend in

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favor of the two ordinances. She had a personal connection with what happened to the downtown. She knew how difficult it was to bring it all back. There had to be some protection for all that was done to save Market Square from whatever Mr. Karp might do.

Betsy Ware, 84 Federal Street, a land conservationist in Winchester, asked the board not to recommend the ordinances; they were the wrong tools. She supported architectural neighborhood districts, similar to Wellesley, MA. The board's mandate was wrong for historic architecture applications. The Historical Commission should be the permitting authority. She submitted current and 1980's survey forms to contrast the current poor condition. Councilor Eigerman said there wouldn't be consistency from different consultants at \$250 per survey form. The city should do it. Ms. Ware said a third of Federal Street had survey forms, now the city would request forms from people who didn't own historic structures. Director Port said the ordinances were written to update the forms, as a baseline. The Historical Commission could provide additional information, but there was no mandate to update the forms.

Mr. Mullins said an historic listing was based on inventory lists, not on survey forms. These are samples of particularly noted historic houses in the city. One house is contributing, one house is conditional, and then there's intrusion. That's what the Standard is for, including whether a house is under the 75-year limit. Each list had a definition, and the Standards were the determining factor to rely on, not survey forms.

Stephanie Niketic, 93 High Street, said additional language allowed a real estate appraiser to provide input to the board for determining whether an historic structure still had value. If the board also had rehabilitation costs, wasn't a missing component replacement costs? Acting Chair McCarthy said the board would be asking for a lot of documents to make determinations like that, which the board has done before. Expert opinions were needed when the board was outside its comfort zone. Director Port said it could be mandated at the discretion of the board.

Councilor Jared Eigerman, 83 High Street, said the city tried for an LHD and it didn't happen. Whether called an LHD or an architectural district, it was a neighborhood design. City Council was aware that preservation districts were a better way. Zoning ordinances were a viable method, and although incredibly maverick, the Council was trying to create a special situation for Newburyport. The survey forms were not relevant. A building listed as historic in 1984, was historic; if it wasn't listed in 1984, it wasn't historic. The ordinances struck a balance between a streamlined process and proper information. The Planning Board has discomfort with historic preservation, the Zoning Board feels same way, but it was still more normal to review applications through the process an applicant already had to go through. An applicant will want to meet with the Historical Commission to be efficient. A zoning approach, instead of chapter 40C, takes historic preservation out of its silo. With so many historic buildings in one city, the process had to be streamlined. Raising up a building would be an alteration under the law, therefore exempted. Moving a downtown building would be an alteration, not a demolition, and therefore would have a difficult time. The process from a developer's view is already long. The pre-application at the Historical Commission was 21 days, the Planning Board had 65 days for a hearing and 90 days for the SPGA to approve or not decide. If you're replacing siding, it's not considered demolition of a wall. The Planning Office will keep the list of historic buildings. Director Port made a good suggestion for adding to the list and removing a building. A member

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of the public can't apply for his neighbor's house to be designated historic. The advisory reports show that the board has the ability to turn to experts. Demolition of a building on the National Register is meant to be difficult; that's a fact. We have almost 2,500 buildings in the historic category. The board can't compel an owner to take a loss in determining whether there is no use or value remaining. Our process asks for more evidence than other communities do, and incorporates more due process than Boston has, no special permit is needed for something mundane. The map is hard to read, but it's not a violation of the uniformity requirement to exclude one and two-family homes, it's just a matter of legibility. Downtown, there would be no demolition delay at all, ever. Not only is demolition regulated, alterations are too, so rooflines would be captured there. A change in the roof would still be covered by the demolition delay.

Acting Chair McCarthy reminded the public there was still another chance to comment before City Council.

Public comment closed.

Acting Chair McCarthy said Director Port offered to write a recommendation letter for the board. It would be a public document, but would not be crafted in the meeting. Was the board ready to send it forward?

One member was not in support of either district. A member said it seemed as if all applications would go to the Historical Commission. What prohibited the Commission from inviting applicants to meet with them? Director Port said nothing did. The Commission had 21 days plus the 2-3 week process for the public notice before the board met. Board member said, as it stands, the decision to talk to an applicant lies with the Historical Commission. The Standards are easy to read. The board should go forward, but needed a meeting to collectively understand the Standards better. Director Port said the Planning Office would bring Zoning and Planning Boards together with the Historical Commission for collective training and to flush out details. A member was ready to vote to make a recommendation to City Council with the cautionary note that board recommendations were, over the last 3-4 times they'd made them, rejected by the Council. If an applicant met with the Historical Commission to clarify things for the board, that would balance the board review with the time the process takes. Director Port said the board never took 90 days to decide, but time frames could be shortened if more balance was wanted. Another member favored making a recommendation.

Ms. Ware said there was nothing in the law that prevented the Historical Commission and Planning Board to have a joint meeting, cutting 21 days from the initial process. Acting Chair McCarthy said every applicant who was seriously ready to build would go to the Planning Office to ask how to make the process shorter. The dates were a back-end stopgap. Director Port couldn't imagine a situation taking longer than the time frame allotted. A member said structures subjected to the ordinances would have a shorter time frame than currently for demolition. Acting Chair McCarthy said if a house was on the list, the net effect was that the board could say no, and that was where all the advisory reports would come into play. Refusing demolition was something the board couldn't do now. Currently any house can be torn down after a year. The relevant part of zoning would be with the example of a very small, non-conforming lot an applicant wanted to build on.

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Sue Grolnic made a motion to send a recommendation to City Council in favor of the DOD and the DCOD with conditions the board would add. Henry Coe seconded and six members voted in favor. One member dissented: Paul Dahn.

Motion Approved

Director Port said there would be a text exemption instead of a map exemption for clarity. Outside counsel was needed for 40A uniform standards.

Acting Chair McCarthy put forth the points for modification, beginning with a proposal to modify the definition of demolition to include roofs. All were in favor except one member. The language for adding and removing structures from the inventory list was a process external to the board. Director Port and the board were comfortable with the language. Councilor Eigerman elaborated that the Historical Commission could take a structure off the list but could not put a structure on the list because that process occurred in Washington, DC and had nothing to do with Newburyport. A listing could not be compelled. All were in favor except one member.

Acting Chair McCarthy said the demolition delay captured structures not currently covered by the new ordinance. If a property was not considered to be contributory but was older than 75-100 years, was there a desire to have it trigger the demolition delay ordinance, as a matter of policy? Director Port could include language to that effect. A member said this was a loophole; was there one or 100 structures involved? Another member concurred that it mattered how many structures fell into the gap and couldn't vote without knowing. The Planning Office had not provided a comment on that issue, but based on what Director Port saw, he would err on the side of excluding the ordinance within the district to make it clear, with less risk of confusion. The board wanted to keep it simple.

A member read a section of the ordinance on applying Standards: "shall consider" and "need not adhere," meant the board was not required to use them. All agreed.

One and two-family homes in the residential downtown district already have many exemptions, should the board also give them preferential treatment by excluding them from the DOD? Director Port said if they were to be exempt, that would be reflected in the text only, not on the map. A member confirmed with Director Port there were about a dozen structures involved and asked what the rationale was? Councilor Eigerman responded there were lower standards for making changes in one and two-family homes, and that they were generally less regulated than other buildings. If the city did not exclude them, it would create an undue burden for a non-commercial property. In a residential district, one and two-family homes were regulated only for demolition. The member countered that if the vast majority of buildings were historically significant, the board could prevent them from demolition but not from installing a glass front? Councilor Eigerman said all residents were affected by what happened downtown. While the history of downtown and public money factored into those residences, the member was correct that they were a fraction of what created our historic nature. Those buildings were more important in their compactness the way the ordinance was written, than the neighborhoods as a whole. Acting Chair McCarthy asked if there were more modifications? All agreed one and two-

family buildings would be exempt from the DOD. Director Port asked if a text or map-based exemption was preferred? Acting Chair McCarthy said a text exemption was fine.

A member asked for an explanation in the jogs on the DCOD map. Director Port said the line represented National Register district boundaries. The goal was to capture primarily the downtown area. There was an exclusion of National Register areas where other overlays already existed, such as the Towle and Federal Street overlays that already dealt with the issues, but they could be amended in the future.

4. New Business

a) *Charles Lagasse, Jr.*
2 Piper's Quarry
Modification of a Definitive Subdivision

Acting Chair McCarthy read the public notice. The board was trying to correct a technical error caused when Bill Flaherty did not properly notify the public that a subdivision approved in the 1980s would be subdivided. The board was not trying to remove the condition, but modify it. Director Port said in winter the roadway must be plowed to a 20-foot width or a sprinkler system installed in the new home. A member asked the size of other lots and Mr. Lagasse responded between one and one and a half acres. Acting Chair McCarthy said the modification would fix a technicality by modifying a technicality and it was important to get it correct. Director Port said the Planning Office preferred the roadway be plowed to 20 feet wide to the sprinkler requirement. A member said that would protect houses not sprinklered. Ed Dixon, Regional Office Manager, DGT Survey Group North Shore, 18 Center Street, Newburyport, said he would need approval from the city to build on the other lots anyway. A member asked the reason for limiting the subdivision to five lots in the first place? Mr. Lagasse said he bought 20 acres. Acting Chair McCarthy said there were so many waivers the number of lots was a negotiating point. The member asked if the subdivision came before the board today, what would stand out? Would it support six lots? Director Port said the project would require a fully constructed roadway. The member asked what prevented the board from requiring a proper road now? Director Port said the Planning Office had no objections to the additional lot on the private drive.

Henry Coo approved the modification of the definitive subdivision with the condition that a 20-foot road width was maintained in winter. Paul Dahn seconded and all 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.

b) Leonidas Theodorou
190 State Street
Application Completeness Vote

Acting Chair McCarthy wanted to see the applicant's sign plan and lighting fixtures when available, otherwise the application was good.

Paul Dahn made a motion to approve the application completeness. Henry coo seconded and all voted in favor.

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.

4. Other Business

Informal Discussion – 2 Storey Avenue

Representatives for Famous Pizza requested a delay for their presentation/discussion until the next meeting on April 2nd. Mr. Douglas apologized for the late notice.

5. Adjournment

Henry Coo made a motion to adjourn. Jim McCarthy seconded and all members voted in favor.

The meeting adjourned at 8:25 PM.

Respectfully submitted -- Linda Guthrie, Note Taker