

**City of Newburyport
Joint Public Hearing
Planning Board and Planning & Development Subcommittee
May 18, 2016**

The meeting was called to order at 7:00 PM.

1. Roll Call

In attendance for the Planning Board: James Brugger, Sue Grolnic, Jim McCarthy, Doug Locy, Leah McGavern, Andrew Shapiro, Bonnie Sontag

Don Walters arrived at 8:20 PM

Andrew Shapiro and Don Walters left at 8:30 PM

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

Planning & Development Director Andrew Port and City Councilor Larry Gunta were also present.

2. Planning Board and Planning & Development Committee of the City Council Joint Public Hearing on proposed zoning amendments:

- a) Amend the Newburyport Zoning Ordinance (NZO) Section X-H.6.I, (Variances), Section X-H.7.B, (Special permit conditions), Section XVH, a.6, (Development and performance standards), and Section XV-L.f. (Mandatory conditions) to require that:
(a) in all cases where a Variance is granted for a project with an estimated construction cost of no less than one-hundred thousand dollars (\$100,000), the board shall require the applicant to pay for the cost of reconstructing, repairing or replacing City-owned sidewalks and street trees adjoining the project site or provide an equivalent payment in-lieu to the City in consultation with the Department of Public Services and Tree Warden, respectively;
(b) in all cases where a Special Permit is granted for a project with an estimated construction cost of no less than one-hundred thousand dollars (\$100,000), the Special Permit Granting Authority shall require the applicant to pay for the cost of reconstructing, repairing or replacing City-owned sidewalks and street trees adjoining the project site or provide an equivalent payment in-lieu to the City in consultation with the Department of Public Services and Tree Warden, respectively;
(c) in all cases where Site Plan Approval is granted for a project with an estimated construction cost of no less than one-hundred thousand dollars (\$100,000), the board shall require the applicant to pay for the cost of reconstructing, repairing or replacing City-owned sidewalks and street trees adjoining the project site or provide an equivalent payment in-lieu to the City in consultation with the Department of Public Services and Tree Warden, respectively;
(c) no building permit shall be issued unless the Department of Public Services and Tree Warden (respectively) certify to the Planning Board that proposed work involving*

City-owned sidewalks and trees has been reviewed and approved and will be constructed accordingly.

Continued from 5/4/16

Councilor Eigerman outlined issues raised by the Planning Office that he addressed in a new draft, which eliminated the \$100,000 monetary trigger, the reference to DPS jurisdiction, and the payment in lieu. The John Bromfield Fund was not included. There was no applicability where relief was given and for by right projects. New thresholds included a 25% increase in residential density, a 1,000 square foot increase, or a substantial rehabilitation. Councilor Eigerman researched application data from March and April 2016. Only seven would have been captured in April and fewer in March. The philosophical issue was whether the City should require sidewalks in this manner. The language specified that a qualifying application should always be reviewed to consider whether compliance was required or relief given.

Councilors Eigerman and Cameron referenced Jerry Mullins' letter. Councilor Cameron did not want to hinder homeowners from making reasonable improvements. He said developers had deeper pockets. Was there a ballpark figure for repairing 100 feet of sidewalk? Would DPS help homeowners with sidewalk excavation? Councilor Eigerman said clarifying phrases he added were 'where appropriate,' for homes with no sidewalks, and 'in accordance with our existing code' for compliance. Councilor Connell said the recently adopted sidewalk standards would not provide enough data to examine. Revised triggers set a high standard; relatively few projects would qualify. He supported it. How would the 25% increase apply to a one-unit rehab in a four-unit condo? 1,000 feet was generous; would 500 feet be better? Chairman McCarthy said the average lot was 1,500 square feet. Resetting a curb would be a substantial differentiator. Councilor Eigerman said DPS was the only authority for altering curbs. Singularly large projects would be 1,000 square feet. A board member supported the by right exclusion. Were benchmarks in other cities and towns explored? Councilor Eigerman was not aware of any examples to cite. The administrative aspect did not seem simple. Was the building commissioner comfortable? The public would need information on the new approach. Councilor Cameron read Building Commissioner Binette's response, in which the main concern was whether an unfair burden was placed upon a homeowner's new kitchen or garage or preparations to sell. Chairman McCarthy said a typical two-car garage would not meet the threshold but a three-car garage would.

Councilor Cameron noted some grammatical issues for the 'triggers' language. Planning Board members said language would be clearer and less likely to be manipulated without the words 'substantial rehabilitation.' The board found difficulties when considering value and putting a monetary figure on rehabilitation. Councilor Eigerman gave an example of a substantial rehabilitation that would require a sidewalk. Chairman McCarthy asked about substantial rehabilitations that did not add a unit or any square feet? Would a trigger of gutting 50% of the square feet be appropriate? Condos might face issues. Members said the density example created more wear and tear. Where was value involved? Councilor Eigerman said there was nowhere to put a car in the south end; a substantial renovation was likely to make room for additional cars. A member offered a comparison of two differing rehab projects to illustrate differences in 'substantial renovation' applicability. Councilor Eigerman said the term 'substantial rehabilitation' in the Boston code triggered their development impact fee. Chairman McCarthy

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asked if the redraft meant to capture a project adding one square foot to a house undergoing a full rehab? Members thought 'substantial renovation' was irrelevant.

Board members asked who would perform sidewalk work? Councilor Eigerman said generally a private contractor. A member asked if there was a question of fairness when there were no standards for the cost of a sidewalk? Applicants would accomplish the same amount of work at different costs. Would some cases be a repair only? Councilor Eigerman said DPS decided whether to repair or replace. A member asked that consideration be given to the prevalence of non-conforming pre-existing structures. Would one unit in a four-unit condo replace a quarter of the sidewalk? Councilor Eigerman asked, if an applicant added 1,000 square feet to one unit, wasn't it fair to ask for the sidewalk? A board member asked if 65 feet of brick was required on a blacktop sidewalk? Was the amendment the right way to get sidewalks? Councilor Eigerman said brick was required only in the historic district; other standards were up to DPS. A member gave another substantial rehab example to further illustrate applicability differences. Chairman McCarthy said 1,000 feet was liberal; 500 square feet worked well in another regulation. Members wanted statistics on the average square feet added to a single residence.

Public comment open.

Tom Kolterjahn, 24 Federal Street, co-president of the Newburyport Preservation Trust, said the trust was strongly in favor. The triggers would not catch the average homeowner.

Rob Germinara, 2 Ashland Street, wanted the discussion continued and the amendment given more teeth if necessary. He gave three examples on Ashland Street where contractors came in and cashed out without upgrading sidewalks. The City lost 17% of its trees when 72 were cut down last year. The \$120,000 John Bromfield Fund would not go far. The amendment should capture at least some of those projects.

Stephanie Niketic, 73 High Street, said home additions before the ZBA would not be captured most of the time. An internal rehab did not require zoning relief. She supported capturing some of the for profit development.

Jeannette Isabella, 1 Lime Street, was in support.

Lisa Mead, attorney, 13 Purchase Street, was concerned about adding costs for first time homebuyers who were fixing up a home for their family. Empirical evidence was important to show who would be impacted.

Don Little, 6 Cottage Court, was in support for preserving the walkability of the City.

Public comment closed.

Chairman McCarthy said the substantial rehab trigger created an issue of capturing people who should not be burdened. The Tremont Street rehab sold for \$1 million and the sidewalk was not fixed. The one-family structure added a unit in back and would be captured here. In the future, if the front house underwent a complete rehab, it would a misfortune not to capture it. Councilor

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Eigerman said asking for a contribution to the community-wide benefit of good streets and trees should not be seen as unfair. The research back through building department permit records he did had not captured one remodel. Chairman McCarthy asked how the value of a rehab was calculated? Members said applicants provided costs but the cost was not always representative of the money spent. The ordinance seemed ungainly to administer. It had to be connected to asking for a variance. Chairman McCarthy asked about roofline changes? Members mentioned demolition delay. The cost of going before the ZBA or Planning Board was already a substantial burden. One member favored of the ordinance as redrafted.

Councilor Cameron was in support. He said more due diligence was needed before the Council's first reading. Anyone looking for zoning relief was already doing more work and spending more money than most homeowners improving their property. The amendment would chip away at the problem. Councilor Connell said the trigger questions had been reasonably addressed. His 1770s house was rehabilitated with sweat equity over time and never came before a board for permission. He would look at some historical examples and was comfortable with the redraft. Three planning board members were okay with 'substantial rehab,' one was not comfortable, and one was unsure.

James Brugger made a motion to recommend, with a revision of the 'substantial rehab' trigger, the Newburyport Zoning Ordinance (NZO) Section X-H.6.I, Section X-H.7.B, Section XVH, a.6, and Section XV-L.f. Leah McGavern seconded and four members voted in favor. Sue Grolnic, Bonnie Sontag, and Andrew Shapiro voted against.

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 Barry Connell made a motion to recommend the Newburyport Zoning Ordinance (NZO) Section X-H.6.I, Section X-H.7.B, Section XVH, a.6, and Section XV-L.f. as submitted. Councilor Jared Eigerman seconded and all members approved.

Motion Approved.

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Councilor Barry Connell made a motion to adjourn the Planning & Development Subcommittee. Councilor Jared Eigerman seconded and all members voted in favor.

3. General Business

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- a) The minutes of 4/20/16 were approved as amended. Doug Locy made a motion to approve the minutes. Bonnie Sontag seconded the motion and seven members voted in favor.
- b) The minutes of 5/4/16 were approved as amended. James Brugger made a motion to approve the minutes. Doug Locy seconded the motion and seven members voted in favor.
- c) ***One Boston Way, LLC***
1 Boston Way
Smart Growth Plan Approval (2016-SGD-01)
Continued from 4/20/16

Chairman McCarthy said MINCO had been responsive and reasonable to work with throughout, and that the process was good.

Public comment open.

Public comment closed.

Chairman McCarthy summarized key provisions of the 11-page decision. The project's 84-unit plan sets were all listed. Waiver language showed the intent to cover all waivers that should have been granted but may not have come to light. Minor modifications should return to the board without a public hearing. The board had asked for a complete construction meeting to review the plan sets with the team. The exterior should be what was shown. Additional minor signage would go back to the Planning Office. There were pedestrian and bike improvements adjacent to the site. Upland parcels on the Boston Way property would have a development restriction. The land would act as a circuit breaker for river overflows and were the first parcels in the City preserved for resilience. Boston Way would be paved. Pedestrian trails were allowed. Tenants would acknowledge they lived near a farm and an industrial park. Director Port said the rental rates were drafted for DHCD review. Chairman McCarthy asked for the draft to be sent to the board.

Member comments: Should there be a time limit to record the decision? Would affordability documents or anything else be recorded later? Director Port said yes. A request to record was embedded in the procedure.

Bonnie Sontag made a motion to approve the Smart Growth Plan. Don Walters seconded the motion and five members voted in favor. Leah McGavern, Doug Locy and Jim McCarthy abstained.

Motion Approved.

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4. Old Business

- a) *Hillside Living, LLC c/o Lisa Mead, Esq.
Hillside Avenue and Cottage Court
Section VI.C Special Permit (2016-SP-01)
Major Site Plan Review (2016-SPR-03)
Continued from 4/20/16*
- b) *Hillside Living, LLC c/o Lisa Mead, Esq.
12-14 Cottage Court
Major Site Plan Review (2016-SPR-04)
Continued from 4/20/16*
- c) *Hillside Living, LLC c/o Lisa Mead, Esq.
18 Cottage Court
Major Site Plan Review (2016-SPR-05)
Continued from 4/20/16*

Doug Locy made a motion to continue to June 15th. Bonnie Sontag 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. General Business (continued)

- d) *Jonathan Woodman
178 Low Street
Site Plan Review Pre-application*

Chairman McCarthy said the tennis courts want to expand. He had advised the applicant to stay within the scope of the building style and emphasized that only a completed application could initiate the project review. The applicant inquired about splitting off property with an ANR. Director Port said the applicant needed to show the value of the split off property for financing purposes; no development was planned at present. Chairman McCarthy pointed out a need for landscaping. Members asked if the applicant was aware of the two-meeting process? Director Port would assist where needed.

- e) *Peter Harriss
17 Henry Graf Jr. Road*

Request for Minor Modification (2011-SPR-02)

Director Port showed the lighting plan. The applicant wanted to remove one fixture from the access drive and five fixtures encircling the building to reduce glare. Director Port showed a photograph of the building. The request met all lighting standards for safety. The Planning Office recommended approval.

Sue Grolnic made a motion to approve the Minor Modification. Leah McGavern seconded the motion 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.

6. Old Business (continued)

***f) UFP Technologies
100 Hale Street
Major Site Plan Review (2016-SPR-06)
Continued from 4/20/16***

Lisa Mead, attorney, BBMT, 30 Green Street, had received the final letter from CSI. Everything was satisfied except for a few minor technical issues that could be conditions; those had been incorporated on the plans. The layout had no changes. The Conservation Commission had not closed the hearing but voted to approve the variance and the plan, shown as is. There was no final decision because a written decision had not been prepared in advance. All Conservation Commission requests had been fulfilled; no further changes would be requested. Director Port said, based on the response from CSI, the Planning Office was comfortable with board approval tonight. Scott Cameron, engineer, The Morin-Cameron Group, Inc., 447 Boston Street, Topsfield, distributed the revised plans. Chairman McCarthy said the Planning Office had suggested the board condition that CSI verify that the last response received from Mr. Cameron was acceptable and that Director Port would sign off. Attorney Mead said the two waivers were a full environmental report and a full traffic report.

Public comment open.

Public comment closed.

Member comments: Should approval be contingent on the Conservation Commission decision? No, a clause in the boilerplate covered that if anything changed. Attorney Mead said the board could not condition a decision with another board's decision.

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Doug Locy made a motion to approve the Major Site Plan Review with the two waivers and the condition. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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7. Planning Office/Subcommittees/Discussion

a) Updates

The MINCO, Tropic Star, and New England Development projects were discussed.

8. Adjournment

Bonnie Sontag made a motion to adjourn. James Brugger seconded the motion and all members voted in favor.

The meeting adjourned at 9:11 PM.

Respectfully submitted -- Linda Guthrie