

**City of Newburyport
Planning Board
May 3, 2017**

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

1. Roll Call

In attendance for the Planning Board: James Brugger, Anne Gardner, Leah McGavern, Bonnie Sontag, Andrew Shapiro, and Mary Jo Verde

Absent: Joe Lamb, Jim McCarthy, and Don Walters

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

In attendance for the City Council: Robert Cronin, Charles Tontar, Greg Earls, and Sharif Zeid. Joe Devlin arrived at 8 pm.

Andrew Port, Director of Planning and Development, was also present, and Courtney Starling,

2. Joint Public Hearing with the City Council's Planning & Development Subcommittee and Committee of the Whole

a) Review Final Draft of Master Plan Update

Vice Chair Sontag officiated. Land use, one of 10 plan attributes, would be reviewed in relation to the rest of the plan and incorporate an overview of issues raised during the feedback period. Changes to the draft, in rough form, would be agreed upon.

Director Port presented plan highlights. The Newburyport Preservation Trust (NPT) and Councilor Jared Eigerman had submitted last minute comments. Infill language was an issue in the National Register area, the densest part of the City with the greatest concentration of historic buildings. A March 27 letter from the NPT requested language to discourage infill there. Language changes impacted not only developers, but many homeowners as well. Prohibiting or discouraging growth in the area would be a sweeping change for the City compared to previous master plans and also impact the rest of the current Master Plan. He acknowledged the negative ramifications of less compatible infill projects approved under the former building commissioner. New design standards and controls would be effective in creating future compatible infill. The plan's zoning amendments addressed affordable housing, housing stock diversity, and smaller units. The Planning Office did not see a conflict between historical preservation and accessory units used by non-family members; they were not mutually exclusive. Another NPT issue concerned proposals two- and multi-family residential development in R2 districts, where multi-family buildings would be 'by right' and not subject to a discretionary review process and design standards. Zoning enforcement was a key issue on which the City agreed. The new building commissioner was diligent about sending projects to the Planning Office for review and a zoning enforcement position was in place. Director Port's preference was not to address old issues in the Master Plan, despite past oversights. In the case of the 1690

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House, a couple of City entities fell down on the job and enforcement was lacking. The board had not required the Preservation Restriction to be in place before work began and the developer failed to adhere to Secretary of the Interior standards. Unlike today, back then it was not clear how those standards were to be applied. That situation should not happen again. In the case of the Kelly School, no work began until the Preservation Restriction was recorded in the Registry of Deeds. The question should be what level of infill to allow, and whether to allow non-family occupancy in accessory units. Design and massing controls would ensure compatible infill.

Vice Chair Sontag said the Master Plan was a long-range policy statement meant to retain what the community held dear in historic preservation. It was a guide. The rules and specificity would be in tools such as zoning. The zoning rewrite was on hold until the Master Plan was finished.

Public comment open.

Kevin Bannigan, 43 Middle Street, owner of four south end residential properties, asked if there was a vote tonight? Vice Chair Sontag said no, the goal was a list of proposed revisions. The vote would occur in two separate, future meetings where the board would approve the plan and City Council would adopt the plan. Mr. Bannigan's issue was that once the board issued a finding, the rest was up to building inspector, who worked for the mayor. The planning board had no control. With rampant and uncontrolled development, a premier builder in Newburyport with 46 lawsuits against him ignored the approved plan and tore down a three-family house without a demolition permit. The former building inspector lied about it. He was told it would cost \$10,000 for an injunction to stop it. The developer of the 1690 House offered a \$10-25,000 token fee. The Master Plan offered unlimited growth, with lot size and height modifications for additions. His concerns were proper supervision and the lack of severe penalties.

Bronson deStadler, 19 Walnut Street, was concerned about quality of life. Allowing R3 use along High Street and the north end meant homes with large back yards were vulnerable to multi-family development. The plan did not prohibit it. Increasing height beyond 35 feet was another concern, especially now that the ZBA approved a building that blocked the Rail Trail view. With no discussion about ZBA responsibility to quality of life, incidents would repeat.

Jeanette Isabella, 1 Lime Street, was disappointed by the ZBA's response to a developer who wanted to build a massive building in the Pop Crowley Way area. It was wrong for large buildings to block existing views. A promise had been made to educate ZBA members about what their job entailed; it should be done. When a developer talks about height, they give the mean height, not give the actual height. The right information was not presented, easily fooling the public. Quality of life, including congestion, was more important than development.

Jane Snow, 9 Coffin Street, said development information given at public meetings often differed from what was built. The written plan information differed from the publicly approved plan. Where in the process did changes occur? When differences were discovered, it was always too late or too expensive to reverse things. What was an abutter's recourse? Quality of life was always affected. Enforcement was a critical issue. Boards needed better support of legal counsel, better enforcement, and a more accurate record of approved plans.

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Art Currier, 100 State Street, asked who the guardian of the Master Plan's framework was? Director Port said the Planning Office would report to the City Council on the annual progress of City departments toward plan goals. Progress was tied to budgets approved by the council. Mr. Currier asked if there were contingencies for enough support to make that happen? Director Port said that a good concern. More focus was needed on enforcement. The mayor wanted to move the part-time enforcement position to full time in September. The position would be in the field monitoring projects. The building commissioner did not have enough time to do that. Mr. Currier wanted the operationalizing of the master plan given all required support.

Rob Germinara, 2 Ashland Street, was supportive of tightened zoning.

Kathleen Schoonmaker, 6 Independent Street, was concerned about grandfathering in-law apartments and creating smaller units within a house because of the example of a smaller unit created in a Georgian house that resulted in the property selling as a two-family. A special permit and variances granted by the ZBA turned the home into two 2,000 square foot units simply because it was grandfathered and the developer claimed a hardship. The developer knew what he was buying, where was the hardship? The record said, "If a lot does not conform to current zoning the ZBA considers it a hardship." A decision like that incorporated into the Master Plan prevented the City from protecting its historic housing stock and its corridors.

Jennifer Sweet, 10 Chain Bridge Drive, said the point of one of the plan's core purposes was to maintain the distinct qualities of City neighborhoods. The plan's housing-related changes would make the entire City dense, like the downtown, as if the City were all one neighborhood. She opposed less restrictive zoning. If everyone did their job with the current zoning, problems would be fixed. Zoning changes would not make the ZBA do a better job.

Barbra Roach, 5 Boylston Street, Boston, wanted to ensure a historic Newburyport house she sold remained in its restored condition. Her only option was to deed it as a single-family house, which did not protect interior restorations. Did the ZBA look at deed restrictions when there was an application to develop the property? Vice Chair Sontag said yes.

John Kolterjahn, 64 Federal Street, co-chair of the NPT, was disappointed in the Master Plan. It encouraged development and further infill in historic neighborhoods and did nothing to encourage protection.

Pam Lee, 1 Boyd Drive, said the Evergreen development on the aquifer at the end of the Boyd Drive went directly against the Master Plan. One attorney representing 90% of the City's development projects carried more weight than residents' attorneys. She saw no accountability if the board would not listen to its own City counsel.

Mike Lambert, 8 Barker Street, said deed restrictions were good for only 30 years.

Stephanie Niketic, 93 High Street, said this was the first public hearing of the Master Plan in its full form and it was substantially changed since the draft stage hearings. Director Port said that was inaccurate. Ms. Niketic said the hearing was not about one section of the community, but about the entire community. The impact of the plan was prescriptive rather than a global, 10-year

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vision. Concerns with the issues under discussion would happen immediately if the plan was adopted. The plan promoted a taller, more crowded, and less economically diverse city while ignoring the City's quality of life and its continuous history of modest workforce housing.

Public comment closed.

Councilor Eigerman supported the policies of the NPT, who doggedly followed board decisions. There was testimony from all over the City for how development was unfolding. The building commissioner approved 1,000 permits a year. The ZBA did not have time to make sure that all their conditions were met. Full-time enforcement was required. The concern he heard was not only historic preservation. Basic lot splits and cramming McMansions onto lots was more than design review would address. Another tension were the aggressive housing actions in the plan. Not all new units would be for use by residents. Some were used for Airbnb - a problem for many summer destination cities. The additional cars and traffic needed more attention. Granting parking relief threw more parking to the street and the City could not fit more cars. He agreed there should not be more 'by right' two-family homes in R2. The City had the contract on the Kelly school, which was reviewed by City Council. All parties had an obligation to look at deed restrictions, but that was not happening. Abutters were on their own. The approval bodies, less so the Planning Board, leaned toward approving everything and that was wrong. City councilors were against the Master Plan because residents and developers alike could take advantage of one little apartment within a house. He would address seven specific actions later.

Councilor Cronin said infill, in a different context than historic preservation, was when the ZBA provided parking relief on smaller streets, such as Boardman, Strong, and Olive. Constantly ignored was the situation created by a new curb cut or doublewide driveway that got an infill car off the street but took away one or two parking spaces from the rest of a neighborhood that had no driveways. One development caused the loss of three spaces on a street that could not afford to lose one space. The ramification of the Pop Crowley Way project would affect an entire neighborhood if the street became one way with restricted parking. The traffic pattern change would include private property. The ZBA found it impossible to say no. Impacts like this come under interdepartmental review in other communities. That mechanism was not used with any regularity here and should be. More expertise was needed from water, sewer as relates to drainage, trash pick up, and traffic patterns. Traffic particularly needed to be examined holistically when the City was approving plans. On an average day in the summer, traffic in Ward 3 was past Kent Street. The ZBA approved hardship cases, and one case blocked the view of a \$1 million Rail Trail. The City should not increase building height. Infill should be addressed from a parking and congestion perspective with respect to quality of life.

Councilor Zeid said the common thread for infill was that problems grew with an increase in units. Parking, traffic, water, sewer, and schools were detrimentally affected by infill. Was the community unhappy with how more units were added or that more units were added? Did we want to change how it was done or whether it was done? The conflict was between differing goals in the Master plan. More affordable housing on page 13 was answered by more infill. He could not imagine another ward taking on what was occurring Ward 1, a primarily R3 district. Down zoning, not up zoning, needed more consideration. At issue were how many remaining

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single-family homes should become two-family, and how many three-family homes the City wanted to become multi-family. That was the most controversial part of the plan.

Councilor Tontar agreed. The 2013 housing study said a lack of affordable housing would prevent economic growth. The Master Plan mis-specified infill as a solution for an extreme housing need. Accessory apartments would not meet that need. He could not support a plan that promoted infill housing. Developers were taking advantage of the current situation to create bigger houses that threatened neighborhood character.

Councilor Earls said affordable housing and accessory apartments were a good goal, but it would back fire here. He wanted accessory apartments regulated as long-term leases instead of Airbnbs.

Councilor Devlin said small developers needed three units to make a project worth the risk and would not buy a property if they could only get two units. The City needed zoning enforcement and could afford it, clear and revised zoning ordinances that he had not seen yet, and boards and commissions should be able to pull in legal counsel.

Councilor Cameron said a bigger picture definition of infill was not only units, but also a bigger footprint on the same amount of land. Egregious examples of infill were a recent building on Woodland Street and 77 Lime Street. Comments about the ZBA doing its job and enforcement were good but did not address the heart of the matter. He was in favor of discouraging bad infill. Adding units had an impact on price. He was sympathetic to accessory units, especially for a returning student. Accessory units would be for single people, not families with kids. He supported Councilor Earls's statement about Airbnb. A LHD would have addressed the issues raised by Ms. De Stadler regarding High Street and big back yards. He had concerns about height. The strange way of measuring height occurred in his neighborhood. Fixing that would be a step in the right direction. Freezing things to stop development would conflict with affordable housing goals. Schools had capacity now and for the future.

Councilor Connell said the Tree Commission input had not been incorporated. Their comments on quality of life issues, shade and cooling, windbreaks, and traffic calming were well founded. Trees also added value to property, exemplified by comparing Bromfield and Marlborough Streets, with their comparable housing and amenities, but different housing prices that reflected the impact of a tree-lined street. The water resources section did not speak to the future. Stronger, more protective language for water resources would have prevented the situation with Evergreen. The section on resiliency needed more specificity and prescriptiveness. There was enough data from the team to better set the stage for vulnerable resources such as the wastewater treatment plant that could be destroyed by a 6-foot storm surge. Economic development and vitality depended on a diverse economic base, such as the industrial park with 2,000 employees, that was also highly vulnerable to storm surge.

Member comments: The math on the affordable housing provisions is a 10% goal, with a 25% build rate, which meant adding 1,500 units. Meeting that goal conflicted with concerns about density. The zoning map showed some open spaces; those in R1 were zoned for development right now. A delay in rewriting the zoning could cost the City an opportunity to keep open space open. Supported were a requiring an applicant to divulge deed restrictions, thinking about how

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the ZBA interrelated to the Planning Board to support plan goals, and looking ahead to preserve water and the open space. Any projects under design review were already approved. A concern was voiced about the impact of large-scale projects on infrastructure and City services. Diversity/affordability versus overbuilding/too much density and changing neighborhood character was an important issue, but there was value in providing an affordable housing stock. Finding the right balance was important. The 40R was a step in the right direction. An aging population would find it hard to stay here. Councilor Connell said the City lost 300 rental units, including affordable ones, between 2000-2010. A continuing loss of rental units changed the demographics more dramatically. Members said the City would be in a vulnerable position by tilting too much toward home ownership, given the disproportionate foreclosure rate. One plan goal addressed not losing affordable units that did not sell within a certain time frame.

Councilor Zeid said infill did not result in affordable housing. Members said controlling the size of a unit would control price. Councilor Cameron said homeowners who added 1,000 feet in the rear sucked up the supply. The City needed to be proactive. He supported Smart Growth because density can be good, such as a mix of housing on Storey Avenue.

Vice Chair Sontag said the Master Plan should set a direction and stop where other plans kicked in at the prescription level. A Master Plan should use words such as examine, study, and explore, then lead into the other processes that followed. She did not want a Master Plan that specified height to 35 feet, but rather 'the height of buildings in certain districts should be reviewed.' The feedback had a lot of overlap. Would the Planning Office staff take another cut at the plan?

Councilor Eigerman said his comments were specific actions. Some zoning issues were an emergency. The City Council would not adopt the plan unless it was rewritten. He suggested cutting the work plan and eliminating all the actions to make the plan easier to revise. A member asked whether he wanted to have a work plan or not? Councilor Eigerman said he respected that other processes would kick in as the work plan facet.

Zoning consultant Courtney Starling, Community Opportunities Group, Inc., 129 Kingston Street, Boston, said the work plan was the work of a large group with on every goal and strategy. She would not cut it entirely. A reasonable middle ground would make it part of the review process. It was not essential to the Master Plan because it was a guide for short-term implementation. Councilor Eigerman said all his comments were on housing whose goals were a page and a half, but the work plan was seven pages. Vice Chair Sontag said the board would use the Master Plan to guide decisions on applicant projects. She wanted broad action steps. Councilor Eigerman said if the Master Plan was the goal, the next level could be objectives instead of the multiple actions that support the objectives, as it was now. He proposed the Planning Office staff eliminate all actions and work with the objectives. Councilor Connell agreed, but preferred to sit on it for a week. Councilor Cameron proposed a working group of two councilors and two board members to walk through the issues raised tonight. Vice Chair Sontag agreed. Councilor Zeid asked how the council was expected reach consensus on infill with fundamental differences unresolved? Vice Chair Sontag said staff would revise sections of the text. The review would continue at a public hearing. Director Port would undertake revisions on the infill language, address parking and congestion, and shrink the work plan by limiting

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specificity, and post it for review on June 1. It would be mistake to scrap the Master Plan process because a policy level statement was needed.

Ed Cameron made a motion to continue the Master Plan Update for the subcommittee to June 7th. Barry Connell seconded the motion and all members voted in favor.

Leah McGavern made a motion to continue the Master Plan Update to June 7th. Andrew Shapiro 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.

3. General Business

- a) The minutes of 4/5/17 were approved. Anne Gardner made a motion to approve the minutes. Andrew Shapiro seconded the motion and all members voted in favor.
- b) Bonnie Sontag moved to amend the minutes of 3/1/17. Mary Jo Verde seconded the motion and eight members voted in favor. Anne Gardner 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.

c) *Approval Not Required - 75-77 Storey Avenue t (2017-ANR-06)*

These parcels are associated with the CVS. One would be the parking lot and CVS. Three parcels in the rear would comprise the open space and are labeled non-buildable because they need further permitting and relief. The applicant would deed one piece to Atria to build a wing that was not be buildable 'by right.' Another parcel would be combined with the medical building for parking that already occurs there.

Andrew Shapiro made a motion to endorse the ANR. Anne Gardner seconded the motion and all members voted in favor.

Motion Approved.

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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.

d) Application Completeness Vote – 83 Merrimac Street and 90 Pleasant Street (2017-SPR-01)

This was for the parking garage Site Plan Review.

James Brugger made a motion to approve Application Completeness. Leah McGavern seconded the motion and all members voted in favor.

Motions 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.

4. Planning Office/Subcommittees/Discussion

a) Correspondence:

- ***Notice of First Refusal Option for 181 Low Street and 9 Crow Lane***

Director Port said unless the Open Space Committee, the Community Preservation Committee, or other entity decided to bond money for the purchase, he did not see an opening to purchase although, but the CPC had already set aside \$100,000 to buy Lot 1, in the back. The City Council was revisiting the Evergreen decision tomorrow night.

8. Adjournment

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

The meeting adjourned at 9:50 PM.

Respectfully submitted -- Linda Guthrie