

**City of Newburyport
Planning Board
June 21, 2017**

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

1. Roll Call

In attendance for the Planning Board: James Brugger, Anne Gardner, Joe Lamb, Bonnie Sontag, Andrew Shapiro, Mary Jo Verde, and Don Walters.

Absent: Jim McCarthy and Leah McGavern

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

2. Joint Public Hearing with the Historical Commission

- a) *City Of Newburyport
83 Merrimac Street and 90 Pleasant Street
Major Site Plan Review (2017-SPR-01)
DOD Special Permit (2017-SP-03)
Special Permit for Use (2017-SP-04)
Continued from 6/5/17*

Vice Chair Sontag officiated. A continuance to July 5 was requested to allow for plan revisions.

Joe Lamb made a motion to continue the Site Plan Review, DOD Special Permit, and Special Permit for Use. Andrew Shapiro 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.

3. General Business

- a) The minutes of 6/5/17 were approved. Mary Jo Verde made a motion to approve the minutes. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

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b) Request for Minor Modification – 1 Market Square (2017-SP-02)

The applicant requested a continuance due to ongoing work with the Newburyport Historical Commission (NHC).

James Brugger made a motion to continue the minor modification to July 19. Joe Lamb seconded the motion and all members voted in favor.

Motion Approved.

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c) 19-21 Cushing Avenue – Approval Not Required (2017-ANR-07)

Attorney Lisa Mead, Mead, Costa, & Talerman, LLC, 30 Green Street, said a variance was received last week for the existing structure. Frontage, lot area, and access met requirements.

Anne Gardner made a motion to approve the ANR. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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4. Public Hearings

***a) David Hamel and Karen Damon c/o Mark Griffin, Esq.
496 Merrimac Street
Special Permit Amendment (2016-SP-07a)
Continued from 6/7/17***

Andrew Shapiro read the notice. Attorney Mark Griffin, Finneran & Nicholson, PC, 30 Green Street, requested a preservation restriction (PR) revision. A preservation consultant hired by the applicant said the house was unlikely to receive a Massachusetts Historical Commission (MHC) PR due to high National Register standards that would be applied to a structure located outside the National Register area that had been altered over time and did not meet the standards. The PR amendment was filed in anticipation of a denial because under Special Condition 10, an MHC

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denial voided the original permit granted on January 10. He requested a Newburyport Historical Commission (NHC) 30-year PR instead.

Eric Drake, historic preservation consultant, 1209 Lake Shore Drive, Escanaba, MI, had prepared the MHC inventory form and said an MHC denial would not mean the building was not historic. The vast majority of buildings in the National Register district would not qualify if they were located out of the district. More losses would begin on that stretch of Merrimac Street if this house were lost. Attorney Griffin said the property had been in the Hamel family since 1958. Form B was submitted to the MHC. VI-C criteria specified a long term PR, not a perpetual PR. A perpetually renewed 30-year PR met the criteria.

Member comments: Was a PR request submitted to the NHC? Attorney Griffin said the NHC sent correspondence to the board insisting on an MHC PR until there was a denial. Members said the City would have to keep track of an NHC PR renewal every 30 years. Did the City currently kept track of PR renewals? Director Port said his office had been responsible for PR renewals for a couple of years. The PR would need to be flagged in advance of its renewal date but he did not know how PR renewals would be tracked that far into the future. The PR would also be recorded on the deed and filed at the registry. Members said recognition that a tracking system was needed was sufficient. Members had concerns with other issues, such as alterations, the addition, and the chronology of owners. A VI-C contribution should be significant. A lesser contribution would set a bad precedent. Any older house could ask for a Section VI-C. The NHC comments indicated a willingness to hold the PR and their criteria was laid out. If the board accepted an NHC PR, they would specify a list of repairs made to the house, but the board could not approve an amendment that had not been advised by the NHC.

Director Port said the NHC needed to itemize what preservation work would and would not be allowed. The PR needed to be recorded before any work began on the structure in case some work was contrary to PR language. Members said the NHC conditions were not in the original perpetual PR. Items seemed more restoration oriented than preservation minded. The board requested a complete set of advisories before making a decision. The board would decide which conditions to include in the PR. Otherwise, if the applicant wanted to do something not in the PR, they could. Two members were not in favor because the VI-C benefit was not significant. Attorney Griffin said everyone had toured the property and the applicant was already found to have met the public benefit criteria. An inability to meet MHC standards did not mean the property did not confer a public benefit. It had been a year. The NHC submitted their letter of interest. The MHC communicated that the property was worthy of a 30-year PR. The PR details could wait because the gate-keeping function in Condition 10 would prevent releasing the occupancy permit. What else was expected for a public benefit?

Members would consider alternatives regarding the benefit.

Public comment open.

Tom Kolterjahn, 64 Federal Street, co-chair of the Newburyport Preservation Trust, supported a 30-year PR. The modest house was historic and affordable, and repeatedly just the type lost to

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demolition or giganticized. Without the PR, the City stood a chance of losing this house too. If it were located in the National Register district, it would be considered contributory.

Stephanie Niketic, 93 High Street, said a great many homes outside the district were historic. The house could be demolished if not protected. If the City believed there was no public benefit to historic streetscapes and modest houses outside the district, there would be no way to save them. In 10 years they would all be gone. The NHC, at their first hearing, said the house was valuable to the City because of the streetscape.

Public comment closed.

Member comments: Were there alternatives to amending Condition 10 from an MHC perpetual PR to an NHC 30-year PR as the public benefit? A member was in favor of the 30-year PR as the public benefit. Another member considered the value of the house to the community unequal to the \$350,000 value of the new lot. An incremental contribution was needed, for which there were precedents such as funding affordable housing. A VI-C approval was special, not by right. The MHC had issues with the building. The board wanted to hear the merits of the building from the NHC. A 30-year PR could be acceptable, depending on NHC's conditions. Serious concerns would arise if the NHC favored restoration instead of preservation. Another member considered the structure's proximity to the road, history, and scale worth preserving. Preservation/restoration steps could be taken right away, separate from the PR, depending on the NHC's conditions. The applicant was asked to get clear criteria from the NHC.

Attorney Griffin said during the last permit hearing, the details of the PR were not ironed out before the permit was granted. Mr. Drake said the letter from MHC was not a rejection letter. He would not recommend a 30-year PR if he did not believe the house merited one. Attorney Griffin said the restoration plan was nixed. He referenced a statement by Michael Steinitz, Deputy State Historic Preservation Officer, MHC, who said the house contributed to the streetscape. That was not a blanket rejection. The board was not required to follow identical applications of Section VI-C with each applicant. The applicant intentionally conferred with every board and department to get an okay. The request for an amendment to Condition 10 was not meant to trigger reviewing the project's benefit again. Mr. Drake said nothing prevented the board from appropriating whatever language was deemed necessary for preservation and restoration elements in the condition. Restoring the house to its original intent would be easy to accomplish with its modest proportions. The board requested a detailed advisory from the NHC PR and a list of proposed restorations prior to July 19.

Mary Jo Verde made a motion to continue the Special Permit Amendment to July 19. Joe Lamb seconded the motion and six members voted in favor. Don Walters abstained. One member was not 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) New England Development
83 Merrimac Street and 90 Pleasant Street
Definitive Subdivision (2014-DEF-02)
Continued from 5/17/17

Attorney Tim Sullivan, Goulston & Storrs, 400 Atlantic Avenue, Boston, said the continuances allowed plans for the parking garage to evolve. He asked to continue to July 5, when the agreement would be signed, and afterwards, another continuance to the fall.

Public comment open.

Public comment closed.

Joe Lamb made a motion to continue the Definitive Subdivision to July 5. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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c) One Boston Way, LLC
1 Boston Way
Smart Growth Plan Amendment (2016-SGD-01a)

Andrew Shapiro read the notice. Lou Minicucci, One Boston Way, LLC, said the 84-unit development was approved in May. An abutter's appeal with objections to the size and design elements was dropped. Another abutter's lawsuit, related to a gray area in a restrictive covenant recorded 20 years prior on the entire subdivision, was prosecuted. Primary issues were a five-story building surrounded by one-story buildings and the close proximity to Parker Street. After 13 months, a compromise was reached that satisfied the abutter. The building was moved back from Parker Street and reduced to 76 units in four stories with the exact same design.

Greg Smith, architect, GSD Associates, 146 Maine Street, North Andover, highlighted changes that were limited to height and setback. Removing the second floor brick section reduced building height from 60 to 52 feet, leaving the same proportions as the five-floor plan. Moving the building 15-20 feet back from Parker Street relocated a rain garden but kept as much landscaping as before the shift back. There were some improvements along the MBTA area. The mix of unit types changed from three to 16 studio units, from 33 to 19 one-bedroom units, and from four to six live/work units. Parking spaces decreased but the parking ratio increased. A small portion of a retaining wall was removed at the request of National Grid.

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Members asked who would rent the studios? Mr. Minicucci said Newburyport household formation was comprised of young single professionals with good jobs who were price conscious, people marrying later in life, divorced individuals, single elderly, and young marrieds with no kids, with more emphasis on dogs. Preliminary rent on one- and two-bedroom units was \$1,850 and \$2,300 respectively, plus utilities. Individual units and the entire building were energy efficient. 22,000 square feet of commercial space was recast as work/live space on the first floor. The first floor common area was enlarged and reoriented to serve as a collaborative space for residents of 500 square foot studios who would spend time there. The space included coffee machines. There was a first floor lobby and a second floor gym.

Director Port said mixed-use space was important for creating a neighborhood. Otherwise, the residents were in a silo. Commercial space was not marketable today because the area was not built out. Live/work units were flexible and could be modified to commercial space in the future. Members said residential space would never convert to commercial use. Director Port said the live/work units were rentals and not for sale, giving the units more flexibility. Mixed-use space was better supported with more residents in the long term. Members did not want to abandon the idea of mixed-use space right away, but there was no proof of commercial viability and a need to get people there first. Mixed-use parking was discussed. Would a three-bedroom apartment have outdoor access? Mr. Minicucci said yes, onto patios. Members said the new setback was an issue. Sacrificing both mixed-use, the street edge, and lowering the density were disappointing moves away from the 40R ordinance. Director Port said the abutter was willing to fight for the private restriction. This plan was the best compromise. The other parcel was part of the lawsuit as well. The covenant expired in two years but waiting would miss the market opportunity.

Mr. Minicucci said the MBTA gave him only one more year to build. They needed their money. The 50-foot swath of National Grid's easement across the site made it difficult to adjust grades because of their poles. Members said improving the MBTA property in front of the building was the open issue. Director Port displayed an image of the property and said it was important to modify landscaping in order to emphasize the connected spaces. The walkway could use benches or sculpture. The MBTA had not addressed the property improvement yet. There were concerns about the MBTA's approval process. The more complicated the design, the more difficult the approval. The board generally liked the updated plan.

Director Port demonstrated on the plan where the original approval required a bike path over to Route 1. The Community Preservation Committee recommended funding a bike path crossing at Route 1. There was an issue of consistency of materials on each project, with MINCO doing one piece and the City doing Route 1. Karen Pollastrino, MINCO planning and permitting, cited a letter from City Engineer Jon Eric White saying the City would use cement concrete, not asphalt, and he hoped the bike path would also be concrete. He did not think a 10-foot sidewalk was necessary if a bike lane could be put in the street. Director Port said the walkway was a multi-purpose path where people could easily pass each other because it would be part of the bike trail. He preferred to keep the 10-foot width. Eventually, Parker Street could be striped for the path to continue. He would put wording for the approval together.

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Public comment open.

Jeannette Isabella, 1 Lime Street, asked about parking, three bedroom units, and children.

Public comment closed.

Anne Gardner made a motion to approve the Smart Growth Plan Amendments with the proviso that updated plans be submitted to the office and approved before the building permit was issued. James Brugger seconded the motion and all members voted in favor.

Motions Approved.

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**d) *Berkeley Investments c/o Lisa Mead, Esq.
260, 268-270, 275-276 Merrimac Street
Special Permit Amendment (2007-SP-03d)***

Andrew Shapiro read the notice. Attorney Lisa Mead requested minor modifications to the special permit. Chapter 91 signage and park bathrooms were completed. All documents were executed and recorded. The first request was a modification to Condition 8 in order to release five Certificates of Occupancy (COs). Unit 2 in building #1 was under agreement to close in June; the 1690 House was under agreement to close in June; unit 14 was also supposed to close in June. There was active interest in two other units. Two units were affordable. The remaining units represented significant security. Fully assessed property taxes of \$45,000 had been paid. There was a compelling reason for some income.

The second request was a modification to Condition 11, allowing submission of the email chain and letters showing that applicants fulfilled the intent of the permit. The applicant did not create a formal list of elements that would not be used in the 1690 House, but did create a list of items they intended to re-use. Email exchanges went back and forth from October 20, 2015 to February 21, 2016, demonstrating a working relationship with Sarah White, Chair, NHC. There was a June 26, 2016 communication with Tom Kolterjahn. All parties knew what was going in and out of the 1690 House. She did not think a modification was needed, but requested one to put the list in the positive instead of the negative. Director Port did not take issue with the request.

A member read the initial decision's terms of approval that included a perpetual PR on the 1690 House. Director Port did not recommend occupancy before the PR was resolved because it set a bad precedent. Too much time had passed since the original approval and the applicant had several years to work on a PR that should be recorded prior to issuance of occupancy permits. The Planning Office did not want to delay the affordable units and those COs were underway. Attorney Mead said occupancy permits were per unit. There was no disincentive not to pursue the PR and everything else on the list was done.

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Member comments: The considerable anger throughout the City about the 1690 House had created some desire of wanting to hurt the developer, but who would the board be hurting? There was sufficient equity and property taxes were paid. A member agreed. Another member, not inclined to support the request, said the applicants chose the order for completing the conditions and did things that made it difficult or impossible to get a PR. One member was undecided. Members were disappointed about the lack of a PR. The City's interests were not met. There had been considerable publicity, most of it negative. The board owed it to the City to be firm, but the affordable housing was special enough to be released due to their extreme need. Attorney Mead said the security was meant for making sure things were completed and not as something punitive. There was no reasonable basis and there were no violations, just a difference of opinion. A member asked why the PR process was started so late? Attorney Mead described contacting the NHC two times a month.

Public comment open.

Jon Growitz, 149 Merrimac Street, represented the buyers of the 1690 House who currently had no home. The developer was trying to rectify the situation, despite mistakes made. He asked the board not to forget about the people who were negatively affected.

Tom Kolterjahn, 64 Federal Street, Co-chair, Newburyport Preservation Trust, said the applicant failed to adhere to Condition 11 completely, even after items were removed. During the time gap in email communication, between February 21 and June 26, 2016, the interior was gutted. In March, when he helped remove paneling and moulding, he was led to believe everything else would be used. The contractor then asked for help removing the staircase. When he complained about the staircase removal and the lack of a list, the applicant banned him from the site. Fireplace mantles, paneling, and moulding were tossed in a dumpster. Exterior elements were removed and tossed in a dumpster. At no time was it made clear that the entire building would be gutted rather than historically restored. The City would not have approved those actions if the applicant's plans had been known in advance. The applicant did not act in good faith at all times. He was opposed to releasing any occupancy permits.

Bronson Stadler, 19 Walnut Street, supported the interests of the City. The developer's actions were egregious and constituted extreme disregard. The City should exert its rights to withhold occupancy permits until the conditions were fully met.

Stephanie Niketic, 93 High Street, said the only reason the applicant had not been found in violation was the lack of a decision of the PR and Condition 11. The PR paperwork could have been submitted on December 5, 2007 when the Special Permit was given. The big developer had ample resources, but waited until they gutted the building. The PR was misstated in their paperwork. The NHC did not want to convey benefits based on what was done to the building. It was an act of bad faith to put units on the market that were not available.

Public comment closed.

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Erik Ekman, Berkeley Investments, 280 Congress Street, Boston, representing First Republic Corporation of America, said they never intended to avoid their responsibility for the PR and the conditions. The inherited plans showed gutting and renovating the 1690 House. That was the basis for moving forward. A number of things would have gone differently if the condition had said the PR must be filed before the Certificates of Occupancy (COs) could be issued.

Attorney Mead referenced multiple 2007 correspondences from the city solicitor saying the PR did not apply to the interior of the house. On that basis, the developer went forward. There was a list of what would be saved and used. She cited from the email correspondence. The applicant followed the permit that was given.

Member comments: Decision requirements were not a penalty. It was incumbent upon anyone taking over the development to understand what the decision required. The developer had not followed through on what should have been done. Some members were willing to accept the email communication for what was removed. One member said the PR was needed first. Did the board see an opportunity to go part of the way by releasing occupancy permits on some units? Another member was not in favor. Could the list be recreated? The board held some responsibility for how the decision was written and for not staying closer to the process to follow up on things. Some members accepted releasing the units that were under agreement and the affordable units. Interpretive signage was ready to go to the NHC. The board was firm the request could not be repeated if approved. No additional COs would be issued.

Andrew Shapiro made a motion to approve the modification for Condition 8 to include only granting certificates of occupancy for two affordable units and the three units that were under agreement for sale, as shown of the plan submitted. Anne Gardner seconded the motion and six members voted in favor. Two members were not in favor.

Motion Failed.

Andrew Shapiro made a motion to approve modifications for Condition 11 as submitted, i.e., allow the submittal of a series of emails discussing the various items to be salvaged or not from the 1690 House, rather than a formal itemized list. Bonnie Sontag seconded the motion and five members voted in favor. Two members were not in favor.

Motion Failed.

A member wanted proof that the applicant would adhere to the MHC advisory.

James Brugger made a motion to reconsider the failed motions. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

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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.

Andrew Shapiro made a motion to approve a further modified Condition 8 to include only the affordable units, the three market rate units under agreement as shown on the plan submitted, with a condition: subject to the applicant performing all actions mandated by the MHC for the PR on the 1690 House. Mary Jo Verde seconded the motion and six members voted in favor. One member was not in favor.

Motion Approved.

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Attorney Mead would provide the documentation needed to create the list for condition 11.

Anne Gardner made a motion to continue discussion of the modification relative to Condition 11 to August 16, at which time the applicant will submit an itemized list. Don Walters seconded the motion and all members voted in favor.

Motion Approved.

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6. Adjournment

Anne Gardner made a motion to adjourn. Mary Jo Verde seconded the motion and all members voted in favor.

The meeting adjourned at 10:58 PM.

Respectfully submitted -- Linda Guthrie