

**City of Newburyport  
Planning Board  
September 6, 2017**

The meeting was called to order at 7:02 PM.

**1. Roll Call**

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

In attendance for the Planning & Development Subcommittee and Committee of the Whole: Ed Cameron, Barry Connell, Greg Earls, Charles Tontar, and Sharif Zeid

Absent for the Planning & Development Subcommittee: Jared Eigerman

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

**2. Continuation of Joint Public Hearing with the City Council's Planning & Development Subcommittee and Committee of the Whole on Proposed Zoning Changes**

Councilor Cameron called the Planning & Development Subcommittee meeting to order.

***a) Amend Section V-D to allow Professional/Social Service/Office (#416) and Corporate Headquarters (#612) by right within the I-2***

Chairman McCarthy said the amendment for Agricultural/Conservation Zoning district dimensional changes passed the City Council's first reading.

Director Port showed an aerial map of the affected areas for this amendment and summarized the developer's proposal for in the Mersen building. Changing the table of uses from 'professional and corporate office use not permitted' to 'permitted' would allow more flexible use but it involved both sides of the street at this location. Chairman McCarthy suggested that other uses in the zoning table could be addressed now. Multi-family and parking garages were allowed with a special permit. Councilor Cameron said the Kane brother's original project was 60-80 housing units and a parking garage, but the applicant had backed off. Chairman McCarthy said the special permit would carry with the property if it sold again. Should multi-family dwellings and garages be allowed at this location? Director Port said the hearing should be re-advertised if what was approved was substantively different. Councilor Cameron was open to a discussion. Chairman McCarthy agreed to re-advertise for a broader discussion. Attorney Mead, on behalf of the client, said the originally proposed plan was taken off the table because it was too dense and would require a zoning change. Councilor Connell asked if the zoning consultant made any recommendation on the two I2 sites? Director Port said the options discussed mirrored the amendment under consideration tonight, as well as considerations for a garage, changing the Mersen side to include maritime zoning, and changing the parking lot side to a residential district. No conclusion was reached. Councilor Cameron asked when the comprehensive zoning rewrite would come before the City Council? Director Port said early to middle of next year. At present, he was understaffed. Office uses were favored but there was concern for what could

happen in the transitional period in light of concerns from the public about density. Councilor Connell said Windward Yacht Club, an intense water use, would be lost to development in the near future. Members did not see a need to disallow multi-family and garage uses because the board had some control with the special permitting process. Director Port asked if the parking lot should be rezoned residential for longer-term consistency with the neighborhood? The lot was a vital use for the building. Tearing down the building to build a boatyard did not make sense. He showed an image of the Towle property and other parcels on Merrimac that represented the other I2 district. Members proposed that garage and multi-family use should be by special permit approved only by the board instead of the ZBA. Director Port would re-advertise the amendment.

Public comment open.

Charlie Tontar, 29 Jefferson, Ward 4 Councilor, attended the Kane brothers meeting. It was unclear whether the proposal was for condos or apartments. Abutters voiced strong opposition and concerns for parking lot light pollution, drainage, and water problems that affected their neighborhood. The Kane brothers agreed a dense housing complex should not be built there, although some were interested when Kane offered to provide garaged spaces for the neighborhood and to make the waterfront accessible. The City's concern was for the highest and best use. Office and corporate headquarters would provide tax revenue without a strain on schools and services. Absent other public interest, he deferred to the abutters.

Director Port said his office recommended professional services and corporate office use for the facility. He understood wanting to know how the decision would affect the Towle property. The amendment change had no negative impact on the City. Chairman McCarthy asked about the allowed height for a multi-family use in the I2?

Attorney Lisa Mead, Mead, Talerma & Costa, LLC, 30 Green Street, said the request was to rezone in order to make full use of the building. The mayor and Councilor Tontar walked through the building that was no longer appropriate for industrial use. The zoning change would allow the owner to make use of the building. There was no present intent to build multi-family housing and a garage because they need to provide parking for the building. The Towle property operated under a special permit. The board controlled the use. It seemed odd to have I2 in the WMD district, but the City would not want to lose the tax base. Owners had a potential tenant but could not legally proceed until the zoning change passed. The residential application was withdrawn based on resident feedback.

Jane Snow, 9 Coffin Street, abutter, had been told the parking lot would be taken out because it was built on wetlands, but it never was. Big trailers ran engines all night, lighting spilled throughout her yard, drainage swamped her backyard, and the owners could not be reached for problems, such as a blaring car horn from 6 - 11 PM. The lot had flooded many times. Coffin Street residents waited up to five minutes to exit onto Merrimac Street due to the pedestrian light. There would be problems with traffic if the lot were developed. It was not fair to residents leave current issues unresolved. Neighbors should be part of the discussion. Chairman McCarthy said drainage problems could be mitigated through engineering. Councilor Tontar asked if Ms. Snow wanted the issue re-advertised for a full discussion of uses? Ms. Snow said yes.

Rob Germinara, 2 Ashland Street, abutter, said in 1998 the City cleaned out the drainage pipe. He supported the professional office use. There were significant wetlands and lighting, drainage, and screening issues. He also wanted the topic re-advertised and the eligibility for garage and multi-family use removed.

Public comment closed.

Members wanted clarification on uses currently permitted in I2, as some could be mitigated by special permit. They agreed professional services use in the entire I2 was acceptable. The board would be able to provide simple improvements for the neighborhood if use were by special permit. Were there alternative higher and better uses? The site underperformed as manufacturing. Chairman McCarthy said there would still be site plan review. The parking needs were less for professional offices than for manufacturing. What if the building were repartitioned? Using the parking lot as is should be 'by right.' What about parking improvements? Director Port said there was no trigger for site improvements. Interior building configuration was not a problem. If the building changed, parking compensation would be required. Members said improvements could be requested with a special permit. What exactly could be reviewed in a special permit process for a company moving in? Director Port did not see any benefit to the special permit process here, except for multi-family use, for which the height limit was 35 feet. Chairman McCarthy said a special permit would not trigger a site plan review unless the building was reconfigured. Members asked if the owners could increase the height for the professional use? Director Port said the professional use height was 40 feet. Attorney Mead believed it was a pre-existing non-conforming structure. Any modification or change of use might have to go to the ZBA. Two members supported the amendment as written without a special permit. All understood the lack of maintenance and attention to the site and asked, what were the objections to multi-family use if problems with the site could be mitigated? A member wanted to retain multi-family use with special permit only by the board. An I2 area of residences to the right of the Towle site had the same rhythm as all houses along Merrimac Street portrayed. What impact would the zoning change to offices have for that area? Director Port said the lots were all undersized for offices. He would re-advertise for the garage and multi-family use by special permit. Chairman McCarthy preferred to remove multi-family and garage in a separate amendment. The zoning change would not ameliorate problems raised by residents.

Anne Gardner made a motion to recommend adoption of the amendment to Section V-D. 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.*

Councilor Tontar asked if the Planning Office had a letter in reference to the amendment from Councilor Eigerman? Director Port was not aware of any communication. Councilor Cameron said the public interest in zoning included quality of life for abutters. The only way to address

property tax complaints were commercial, professional, corporate, and industrial uses. He was no longer open to a discussion on garage and multi-family uses because he was unsure what residents would want regarding a comprehensive rezoning involving these parcels. He had heard only what residents did not want. Councilor Connell agreed corporate use was no more intrusive or intensive. Traffic would be similar. Regardless of back-ups, the crossing light was needed for pedestrian safety. An in depth discussion with neighbors could dramatically change the existing uses. He supported the amendment and a future discussion on other uses. Flooding should be brought to the attention of the Conservation Commission and the building department. Residents should definitely raise the issues on lighting, illegal use, and problem vehicles with the mayor's office for successful mitigation. Any new building occupant would want to respond to nuisance issues as good neighbors. He was in favor of the amendment.

Barry Connell made a motion to recommend the amendment to the full council. Ed Cameron seconded the motion and all members voted in favor.

**Motion Approved.**

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**3. General Business**

- a) The minutes of 8/16/17 were approved as amended. Bonnie Sontag made a motion to approve the minutes. James Brugger seconded the motion and eight members voted in favor. Don Walters abstained.

***b) Application Completeness Vote – Hines Way (2017-SPR-06)***

Chairman McCarthy said the project included site plan review, subdivision, V.I.C, and items granted by the ZBA. Attorney Mead said the site behind two duplexes off Parker Street was in B1 and B2. Two existing lots fronting Parker Street provided an easement. The ZBA granted a special permit for use and a variance for use. The applicant, who proposed a court, was open to a conversation on courts and lanes. Waivers for a full environmental and community impact report and a stamped landscape plan were requested from the submission. Everything else was submitted to CSI. The project complimented the commuter rail strip with a mix of smaller two- and three bedroom units. Chairman McCarthy suggested the need a full community impact review. Attorney Mead said there would be a discussion on sidewalks.

Andrew Shapiro made a motion to approval of the application completeness. James Brugger seconded the motion and all members voted in favor.

**Motion Approved.**

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**c) Approval Not Required – 151-155 State Street (2017-ANR-12)**

Attorney Mead described the lot line change behind the New England Wine and Spirits building by Panda Dry Cleaners. The ZBA variance decision for the small portion in the back, connecting with 2 Parker Street, prohibited any access from the lot portioned off from State Street. Director Port showed the parcel on the map, nestled between a wetland on the north and the auto body shop on the south. Attorney Mead said the lot line change created more buffer.

Don Walters made a motion to endorse the ANR. Mary Jo Verde seconded the motion and all members voted in favor.

**Motion Approved.**

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**d) Approval Not Required – 83 Merrimac Street and 90 Pleasant Street (2017-ANR-13)**

The ANR portioned off pieces of land, comprised of the torn down house and the Fitness Factory, into a 29,000 square foot lot for recording and transferring the land to NED.

Don Walters made a motion to endorse the ANR. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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**4. Public Hearings**

- a) Atria Management Company, LLC  
77R, 85, and 85R Storey Avenue  
Major Site Plan Review (2017-SPR-04)  
Continued from 8/16/17**

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Chairman McCarthy said the applicant was still exchanging engineering comments. Issues had not concluded. Director Port expected minor stormwater issues to be resolved by the next meeting. Attorney Roelofs requested a continuance to September 20.

Mary Jo Verde made a motion to continue the Major Site Plan Review to September 20. Joe Lamb seconded the motion and all members voted in favor.

**Motion Approved.**

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- b) Clipper City Car Wash**  
**74 Storey Avenue**  
**Major Site Plan Review (2017-SPR-03)**  
**Continued from 7/5/17**

Chairman McCarthy said the applicant requested to continue to September 20. The board preferred October 4.

Leah McGavern made a motion to continue the Major Site Plan Review to October 4. Mary Jo Verde seconded the motion and all members voted in favor.

**Motion Approved.**

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- c) Six Perkins Way Nominee Trust**  
**6 Perkins Way**  
**Major Site Plan Review (2017-SPR-02)**  
**Continued from 7/19/17**

Attorney Mead said the new industrial building had requested a continuance on July 19 because of engineering and Conservation Commission issues. She was now requesting a stamped landscape architect plan waiver. All landscaping created by the wetlands scientist was related to Conservation Commission requests. She met Mr. Miller at the site on August 19 and went over the landscaping plan. His comments had related to the land without a building and he saw no problems with the plan as presented. Bill Holt, engineer, WGH Land Surveyor and Sons, 85 West Main Street, Merrimac, completed the separate fire service line, hydrant, and separate domestic service line that the water department requested and added roof runoff infiltration as an alternative to infiltration basins. Soils were silty clay without much recharge required. Handicap

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parking was added to the plan. CSI said everything was adequate. Minor changes to be handled with CSI next week were item #4, spot grading in a couple of locations on handicap ramps to modify grading for draining, and items #6 and #13 that were are same comment about well run-off, which would be infiltrated in recharge chambers before going into the pond. Those were the final drainage changes. Members noted varied spaces for handicap parking were at a distance from the building entrance. Mr. Holt said handicapped parking was placed next to individual unit entrances. Attorney Mead asked if the building permit could be conditioned upon the changes in order to gain an approval tonight? The final close out letter could be issued by CSI. Director Port agreed. Attorney Mead said the Tree Commission and tree warden did not have jurisdiction on private property, but a cooperative consultation occurred.

Jeannette Isabella, 1 Lime Street, asked where the location of the building was? Attorney Mead said off Graf Road.

Don Walters made a motion to approve the Major Site Plan Review with the condition that changes were completed before the building permit was issued. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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**d) Gorman Homes LLC**  
**32 Union Street**  
**Definitive Subdivision (2017-DEF-03)**  
**Continued from 7/19/17**

Chairman McCarthy said the two-home subdivision requested to continue to September 20.

Don Walters made a motion to continue the Definitive Subdivision to September 20. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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**e) Berkeley Investments c/o Lisa Mead, Esq.**  
**260, 268-270, 275-276 Merrimac Street**  
**Special Permit Amendment (2007-SP-03d)**  
**Continued from 8/16/17**

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Attorney Mead said there were two issues before the board. In the first, the Towle Building requested additional fencing to help add privacy in a couple of areas along the site. She showed on the plan where little fence segments would be added. Erik Ekman, Berkeley Investments, 280 Congress Street, Boston, said it would be the same product used elsewhere on the site.

Leah McGavern made a motion to approve the request for minor modification. Anne Gardner seconded the motion and all members voted in favor.

**Motion Approved.**

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Attorney Mead said the second item was Condition 11, regarding prior to removal of certain items and a detailed list that would be created of items not being used. Already there had been agreement between the City and the applicant relative to how things would be removed, as well as the email exchange between the City, the applicant, and the Newburyport Preservation Trust. Mr. Ekman prepared the list of what happened with each item. Attorney Mead requested the board find the list submitted August 21 complied with Condition 11. She read details on the list and the communication between the parties.

Members said the list should instead be items to be preserved. Attorney Mead said no, the condition was a list of items the applicant would not utilize, as requested in a revision to the condition at the last meeting. Chairman McCarthy said the intent of the condition to provide the list of items not being utilized ahead of time was to give the City an opportunity to find a home for items it wanted preserved. Members reiterated the reason for listing items not used. Attorney Mead said the applicant created a list of items, based on what occurred after the fact. The list indicated where the items went. The Newburyport Preservation Trust (NPT) took items. Chairman McCarthy said the board had a letter from the NPT with a list of items. Had the Planning Office reconciled the two lists? Director Port said no, the letter from NPT came this evening. He gave a copy of the NPT letter to Attorney Mead.

Members said anyone looking at what happened on the site would have a baseline reference for what was not used. The applicant's list was information for the record. Attorney Mead clarified that the original intent of the condition was not that someone got to decide whether items remained or were removed, but to have a list of what the applicant was not using.

Public comment open.

Stephanie Niketic, 93 High Street, co-chair NPT, said the trust submitted to the board a letter with some attachments so that the public and the board would understand that the list originally required was for the City to decide what historic elements it wanted to salvage before anything was removed. That list was never produced. The applicant purports they did not have to save

anything, therefore it did not matter that they did not make a list ahead of time. The ‘after the fact’ list shows only what NPT salvaged. The applicant claimed that nothing else counted, with the exception of floorboards here and there. Mr. Kolterjahn’s letter said, “As the City’s salvage agent, I helped remove items and was led to believe that everything remaining would be retained. Afterwards, I went to help remove the staircase and complained about its removal and the missing list. Then I was then banned from the site. Afterwards, all remaining historical elements were removed and tossed in the dumpster. The building was completely gutted, every historic element was removed.” This fact was noted in Massachusetts Historical Commission’s July 26 letter. Historical items other than what NPT salvaged were removed. Mr. Berkley’s letter did not list items put in the dumpster and there was no inventory of those items. The applicant’s response to the board’s request was untruthful and not compliant with Condition 11.

Jeannette Isabella, 1 Lime Street, said it was another in the long list of historic buildings destroyed. The City needed to show developers in the pipeline that this cannot happen again.

Public comment closed.

Chairman McCarthy asked Director Port if there was any indication from the MHC that they were using the list of what was in the building to bring it back to what it was? Director Port said the MHC was focused on the exterior. Photographs of the original condition were more important than the list for the MHC to have an idea of what was important to restore. Chairman McCarthy said an authority was needed to say the list was satisfactorily complete. Members said the board lacked the necessary experience. What would a conclusion that the applicant was in violation mean and how would it be enforced? Director Port said it would be a difficult situation because there were already tenants. They could not cease and desist. A resolution would have to be negotiated with the board regarding not releasing the remaining units. The building commissioner could not resolve the matter outside this forum. Chairman McCarthy said the MHC need to weigh in on whether the completeness of the list mattered. What was the input of the NHC regarding the list? Director Port had not had a chance to contact Sarah White, NHC Chairman, yet. Photos were available as definitive evidence of what existed. He would ask Michael Stein for his perspective on what should be restored and how. Chairman McCarthy requested the Planning Office’s assistance creating a sufficient list. Members said the applicant’s list was not a record of what existed. That there was a violation was not debatable. The list lacked value if no one was keeping track when items went into the dumpster. Chairman McCarthy needed to know if the list was academic or linked to the PR. Members said if the interior could not be restored, the list did not matter. The MHC letter said they would not grant the PR partly because many interior elements were removed. Director Port said the MHC would grant the PR with a proper restoration plan. Members said any restoration would probably not include the staircase. Restoration was a benefit. It seemed to be the only solution.

Attorney Mead said context and history were important. The letter in hand from the MHC offered a PR on the exterior. In correspondence between the City and the MHC, the MHC said they would not hold a PR on the interior but they wanted complete documentation on the interior of the building. The NPT did not exist at this time. Mr. Kolterjahn took many pictures, which were used to make the applicant’s list. A PR on the interior was never the intent. The NHC wanted to include some interior elements on the PR. The MHC agreed, but their primary concern

was the exterior and overall relationship to the Towle facility. The MHC PR now required an approved restoration plan for the exterior. The list, a condition of the board's permit, and the photos were important together. A restoration plan was submitted to the MHC, the NHC, and the Planning Office. The NHC approved the substance of the PR now before MHC, along with the restoration plan. The applicant had worked to satisfy the MHC and, despite allegations, was not hiding anything. She had provided emails that demonstrated a lot of communication during the demolition phase of the project. It was important to read the correspondence from the MHC and NHC relative to the interior, from the beginning.

Members said the unmet permit condition was separate from everything else. Interior elements were where the condition went askew. Amends would need to be made if the board determined the applicant to be in violation. The board had not seen the restoration plan. It did not include the removed paneling. Chairman McCarthy said the list had value to the City when the condition was written. That value had to be determined. Members wanted a solution and enforcement. Attorney Mead said a list was required, but preservation of items in the building was not. Removal was not prohibited. Both the NHC and the MHC PRs would include some internal elements, such as the brick arches, the foundation, the beams, and others.

Members said the NHC changed direction by including some interior elements. Attorney Mead said the MHC was allowing it also. Chairman McCarthy said the value of the violation was unclear. Items that would and would not be kept were not called out in the condition. Members said partial mitigation would be NHC PRs on some interior features, unrelated to satisfying the MHC. The NHC might find value in restoring specific interior items. The NPT said good restoration contractors existed for the work. The value of items not salvaged should be considered. The 1690 House was a precious building of historic significance. Work should have been done carefully because everything mattered. It was negligent to toss anything in the dumpster. Permit conditions were not respected. The list was meant to keep track of historic items whose value should be determined based on photographs. Future PR conditions should be clearer up front for interior elements. The building's rear slider was completely out of place. Attorney Mead said the slider was part of the original elevations approved in 2007. The issue before the MHC right now was construction of some slider elements. There was no request to change the elevations when the applicant was before the board with modifications in 2015. Chairman McCarthy asked to see the restoration plan. Attorney Mead said the Planning office had everything and she was waiting to hear from the MHC.

James Brugger made a motion to continue the resolution on Condition 11 to October 4. Joe Lamb seconded and all members voted in favor.

### **Motion Approved.**

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### **5. Planning Office/Subcommittees/Discussion**

**a) Informal Discussion – 92R Merrimac Street (2017-SPR-05)**

Chairman McCarthy said the MINCO project was moved for medical reasons. Members said the minimum area requirement under Waterfront West zoning was four contiguous acres, whereas the proposal was 20,000 square feet. Director Port said the ZBA denied the variance. Chairman McCarthy had sent a message to Ed Ramsdell that the board would send the ZBA a recommendation. Director Port said MINCO was not proceeding with the application at this point. Chairman McCarthy said there were other aspects that were inconsistent. MINCO should ask for variances within the existing zoning.

**b) Other updates**

Waterfront West, the garage, and zoning amendments were discussed.

Mary Jo Verde made a motion to approve the NED subcommittee joint public meeting minutes of 5/4/17. Andrew Shapiro seconded the motion and all members voted in favor.

**Motion Approved.**

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**6. Adjournment**

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

The meeting adjourned at 10:27 PM.

Respectfully submitted -- Linda Guthrie