

### Development Agreement

This Agreement is entered into this the 14<sup>th</sup> day of November, 2023 by and between the City of Newburyport, 60 Pleasant St., Newburyport, MA by and through its Mayor (“City”) and Clipper City Development, LLC, a Massachusetts Limited Liability Company, 435 Main Street, Amesbury, MA 01913 (“Developer”).

*WHEREAS*, the Developer seeks to develop a certain parcel of property located in the HSR-A Zoning District (“HSR-A”) known as the “Mobile Gas Station” site (*107 State Street and 95 High Street, Assessors Map/Lot 33-43 and 33-42, respectively*) as more fully set forth on the plan attached hereto and which shall be referred to as the “Concept Plan” more specifically set forth on Exhibit A and consisting of 22,623 sq. ft. +/- (the “Premises”).

*WHEREAS*, the Developer has control of the Premises pursuant to a Purchase and Sale Agreement by and between the Premises Owner, Global Companies, LLC and the Developer which is dated May 18, 2023; and

*WHEREAS*, the Premises have been vacant for more than two years and is the site of a former gas station which use is no longer appropriate for the site and the existing zoning will not allow for an appropriate economically viable redevelopment of the Premises; and

*WHEREAS*, Developer and the City desire to facilitate viable adaptive reuse of said Premises for residential purposes, in a manner consistent with the development patterns in the general area and assure the redevelopment is done in a manner consistent with the architectural style and density of the surrounding historic area; and

*WHEREAS*, the City is desirous of the Developer undertaking the implementation of the Concept Plan and will assist and support the necessary zoning changes which will allow for the Concept Plan to be implemented.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below, the Parties agree as follows:

1. The Developer shall develop the Premises consistent with and in substantial conformance with the Concept Plan. It is fully understood and recognized by the City that the Concept Plan is merely a representation of the development generally and that details and final design have not yet occurred. Therefore, the City accepts and understands that the final design may result in minor changes to the actual exact location of the buildings and the detailed design of the structures. However, generally speaking the layout of the buildings on the lot, the location of units among buildings, the general parking layout, and the approximate height of the proposed buildings will all remain consistent with said Concept Plan. The exterior design of the proposed structures at 95-97 High Street shall be suggestive of the Victorian era architectural style, with cleanly appointed, not overly ornate features, not dissimilar to those found at the abutting property of 93 High Street. The exterior cladding shall be evocative of wood, and might have some masonry features. The window configurations/patterns will be

consistent with what might have been found in the Victorian era. The principal structure (3 units) will be 3 stories with a mansard style roof, with the third floor within the mansard roof. The height shall not exceed the 35 foot median roof height limit as permitted in the R3 zoning district. The secondary structure (1 Unit) may not be more than 2 ½ stories, and may have a roof style different from that of the principal structure. It is the design intention that the secondary structure have the appearance of a renovated carriage house that once belonged to the principal structure. Ground level outdoor recreational spaces for the individual units shall be generally located where shown on the conceptual site plan. The outdoor/recreational space for Unit 2, currently indicated as the middle unit of the principal structure on the conceptual site plan, shall be located at the second floor level opposite the high street side. Internal unit configurations may be further adjusted during final design and permitting, including the location for external points of ingress/egress to the individual units *(not including proposed garage doors which shall be located as shown)*.

2. The City will put forth the proposed zoning amendment attached hereto as Exhibit B without which the Concept Plan cannot be realized. The City will support the plan to facilitate redevelopment of the former gas station site consistent herewith, and as such make an effort to encourage an efficient hearing process between the City Council and Planning Board.
3. Once the City adopts the zoning, if it is adopted, the Developer will commence final design, and thereafter apply for all appropriate permits with the City in order to implement the Concept Plan. The proposed four-unit multifamily residential development will require, upon adoption of the zoning amendment contained in Exhibit B, a Special Permit for use from the Newburyport Zoning Board of Appeals (ZBA). As noted on the Concept Plan in Exhibit A, the proposed development and any plans submitted to the ZBA shall include only one driveway access off of State Street, at the southern end of the site, in order to provide a safe distance from the intersection with High Street. No driveway access or curb cut shall be permitted to the Premises off of the High Street frontage. All parking required for the four (4) dwelling units under Newburyport zoning shall be provided on-site (typical).
4. Any notice hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges paid, by overnight delivery service with receipt, or by hand delivery to the City of Newburyport and the Developer at the addresses set forth below:

City of Newburyport  
60 Pleasant Street  
Newburyport, MA 01721  
Attention: Mayor  
Attention: Director of Planning & Development

With a copy to:

Karis North  
Murphy, Hesse, Toomey & Lehane, LLP  
50 Braintree Hill Office Park, Suite 410,  
Braintree, MA 02184

To Developer  
Clipper City Development LLC  
435 Main Street  
Amesbury, MA 01950  
Attn: John Grossi

With a copy to:  
Lisa L. Mead  
Mead, Talerma & Costa, LLC  
30 Green Street  
Newburyport MA 01950

5. It is the expressed intention of the Developer that each and every term, condition and provision hereof be fully enforceable and binding on the Premises. Should, however, any one or more of the provisions contained herein for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.
6. This Agreement shall be governed and constructed in accordance with the laws of the Commonwealth of Massachusetts. Nothing in this Agreement shall affect the rights of the City of Newburyport, in the exercise of any of its powers under applicable law with respect to the proposed development of the Property, including, but not limited, to the powers of the Newburyport Planning Board, City Council and/or Zoning Board pursuant to the Zoning amendment process and/or the Special Permit Process. Nothing in this Agreement shall release the Developer from the obligation to satisfy all applicable provisions of law in the proposed development of the Property.
7. If Developer shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Developer (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Newburyport shall have the right to (i) terminate this Development Agreement; (ii) withhold any Approvals issued by Newburyport; or (iii) exercise any other remedy available at law or in equity, including

commencing an action for specific performance. Developer shall reimburse the City its reasonable legal fees and other expenses in seeking enforcement hereof.

8. In an effort to mitigate the existing and historic conditions of the intersection lighting system and walkways at the adjacent intersection, the Developer will pay to the City \$25,000 upon the issuance of the first certificate of occupancy, to be deposited in an account specifically to improve the intersection lighting and crosswalks at High and State Street. As indicated on the Concept Plan, the Developer shall install new sidewalks along both High and State Street frontages of the property including code complaint access ramps at the intersection. All such work shall be in accordance with relevant City ordinances, regulations and specifications issued by the Department of Public Services.
9. This Development Agreement shall be effective as of the date it shall be executed by both Developer and the City.
10. In the event the zoning is not approved on or before January 31, 2024, this agreement shall be null and void.
11. Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, the City and the Developer agree that such disputes shall be first subject to nonbinding mediation, for a period not longer than sixty (60) days.
12. This Development Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.
13. This Agreement may be signed in counterparts and when put together shall be deemed the entire Agreement between the parties.

IN WITNESS WHEREOF, this instrument is sealed and delivered as of the date first above written.

City of Newburyport



Its Mayor

Name (*print legibly*):

Sean R. Reardon

Developer

Clipper City Development LLC

DocuSigned by:  
  
366287004626423

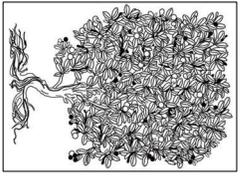
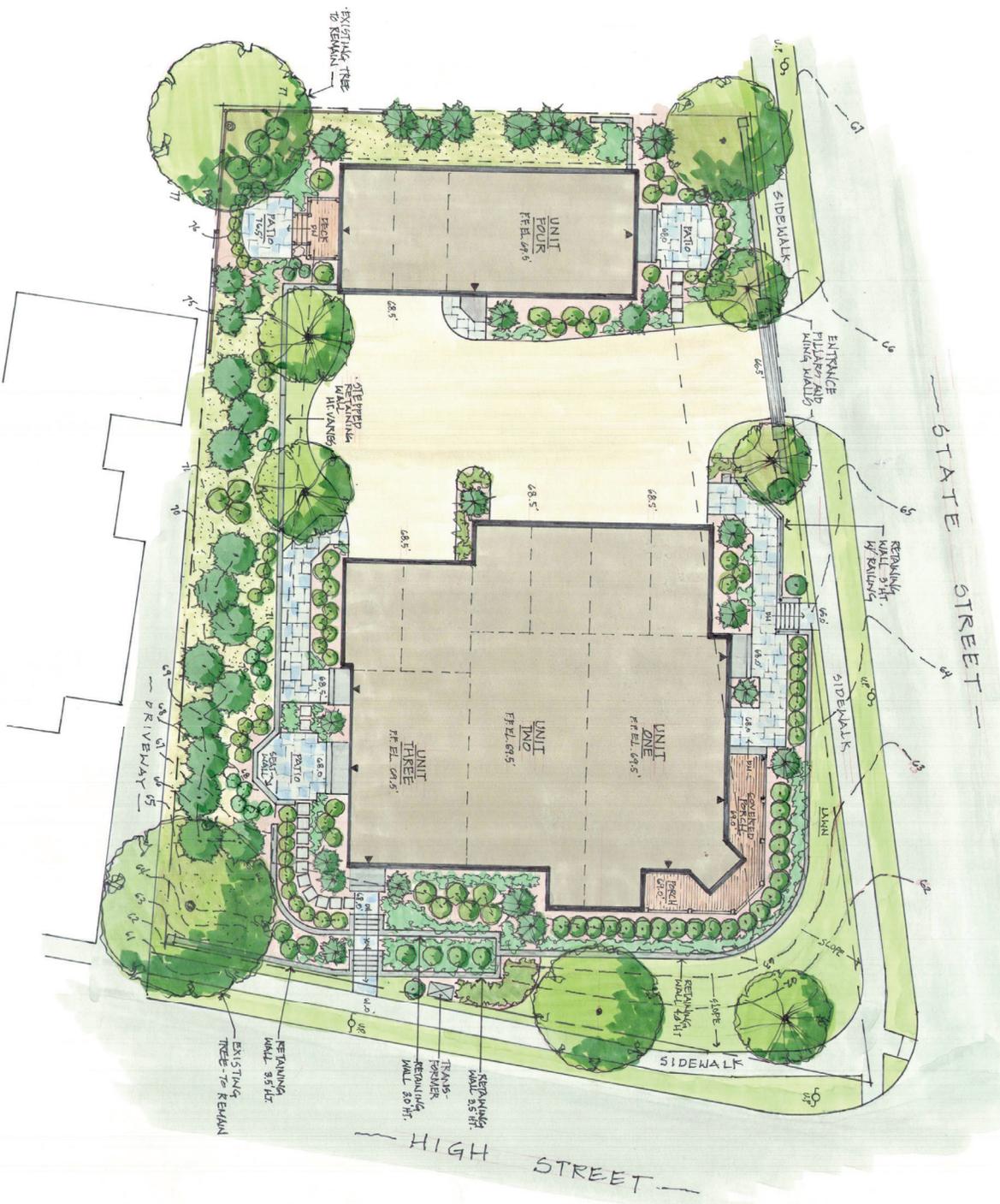
11/14/2023

Its Manager

Name (*print legibly*):

JOHN GROSSI

**EXHIBIT A**  
**PREMISES**  
**CONCEPT PLAN**



**LANDSCAPE ARCHITECTURE PLANNING AND DESIGN, LLC.**

Landscape Architecture  
Planning and Design  
284 AVY ROAD  
SOUTH HAVEN, MASS. 01888  
PHONE: (978) 468-1942  
FAX: (978) 468-1108  
http://www.landscape.com  
www.landscape.com



**CONCEPTUAL SITE PLAN**  
FOR  
**PROPOSED RESIDENCES**  
95-97 HIGH STREET  
NEWBURYPORT, MA  
01950

Red Scott Brown Architects  
Proposed Site Plan  
Option #87  
Dated October 9, 2023

This document, its ideas and designs are prepared by us as an independent professional service, and are not to be used, copied or imitated, for any purpose without the written authorization of the author, Red Scott Brown Architects, LLC.

Date: 14 OCTOBER, 2023

#	Date	Revision

SHEET **L1**  
Scale: 1" = 10'-0"

**EXHIBIT B**  
**PROPOSED ZONING AMENDMENT**

ODNC164\_10\_30\_2023

**CITY OF NEWBURYPORT**



**IN CITY COUNCIL**

October 30, 2023

*(To Be Presented "As Amended" at 11/15/2023 Joint Public Hearing)*

**ORDERED:**

**A ZONING ORDINANCE AMENDMENT TO REZONE LAND AT THE INTERSECTION OF HIGH STREET AND STATE STREET, AND TO UPDATE THE DEFINITION OF MULTI-FAMILY RESIDENTIAL USE TO PERMIT REDUCED MASSING THROUGH THE USE OF MULTIPLE STRUCTURES**

Be it ordained by the City Council of the City of Newburyport as follows:

WHEREAS, the Newburyport City Council has previously initiated proceedings relative to continued "blight" on land which contains an abandoned gas station at the intersection of State Street and High Street; and

WHEREAS, the City wishes to facilitate a viable redevelopment project for this land which is both residential in nature, and more consistent with the surrounding intersection and neighborhood; and

WHEREAS, the definition of Multifamily use within the Newburyport Zoning Ordinance currently, and inadvertently, precludes the use of multiple structures in developments of three or more residential units, for the otherwise beneficial purposes of reducing apparent building volumes,

THEREFORE, LET IT BE ORDAINED THAT the definition for use number 103 within Section V-E of the Newburyport Zoning Ordinance (List of allowable uses) be amended and revised, pursuant to

Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~stricken through and bold~~ and additions double underlined and in bold as follows:

*Section V-E – List of allowable uses*

USE	NUM	
Multifamily	103	<p><u>One or more</u> <del>A</del> building(s) or structure(s) that <u>together</u> contain(s) three (3) or more dwelling units on the same lot, and <u>where at least one such building or structure contains three (3) or more units.</u></p> <p><del>w</del><u>Where there is more than one dwelling unit in a building, the units must be separated by</u> either common floor-ceiling assemblies between the dwelling units, or Common Wall Connectors as defined in section II-B, definitions.</p>

AND FURTHER, THAT the Zoning Map of said Zoning Ordinance entitled “Zoning Map of the City of Newburyport,” referenced in Section III-C (entitled Zoning Map) is hereby amended pursuant to Section III-D “Changes to Zoning Map” by changing the zoning designation of the following parcels of land, in their entirety, from HSR-A (High Street Residential A) to R-3 (Residential Three):

- 107 State Street (Assessors Map/Lot 33-43)
- 95 High Street (Assessors Map/Lot 33-42)

\_\_\_\_\_  
Councillor Jennie L. Donahue

\_\_\_\_\_  
Councillor Edward C. Cameron Jr.

\_\_\_\_\_  
Councillor Heather L. Shand

## Agreement

This Agreement is entered into this the <sup>6<sup>th</sup></sup> ~~January~~ <sup>February</sup> 2024 by and between the City of Newburyport, 60 Pleasant St., Newburyport, MA by and through its Mayor ("City") and Global Companies LLC a Delaware limited liability company authorized to do business in Massachusetts and having an office at 800 South Street, Suite 500, Waltham, MA 02453 ("Global").

*WHEREAS*, Global owns certain parcels of property located at 107 State Street and 95 High Street, Assessors Map/Lot 33-43 and 33-42, respectively (collectively, the "Subject Property"), which is the subject of a Development Agreement dated November 14, 2023 between a local developer, Clipper City Development LLC, and the City; and

*WHEREAS*, Global intends to sell the Subject Property to said local developer, pursuant to a Purchase and Sale Agreement by and between Global and John Grossi, the developer's Manager dated May 18, 2023; and

*WHEREAS*, Global is willing to impose a use restriction on the Subject Property in exchange for the City's adoption of the zoning amendment provided in Exhibit A hereto that restricts the development of the Subject Property to residential uses only as provided herein;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below, the Parties agree as follows:

1. Subject to the Newburyport City Council voting to adopt the zoning amendment currently pending before it and as provided in Exhibit A hereto, which will facilitate the residential redevelopment of the Subject Property, Global agrees to restrict the future development of the Subject Property to residential uses only by incorporating a restriction within the first deed for the Subject Property conveyed out to another party. This Agreement and this deed restriction shall be enforceable regardless of whether the applicable zoning on the Subject Property allows non-residential development. *[It should be noted that the January 31, 2024 deadline for Council action identified within the initially executed Development Agreement will be extended by City and Developer to allow for two (2) procedural Council votes on the pending zoning amendment in February 2024.]*

2. The agreed upon language of the restriction to be incorporated into the deed shall be as follows:

*Notwithstanding the zoning applicable to the subject property, such property shall be used only for residential uses, as defined within the City of Newburyport zoning ordinances, and no non-residential uses of the subject property shall be permitted or otherwise allowed. This restriction on use shall run with the land, and shall be binding upon all future owners, successors, and assigns.*

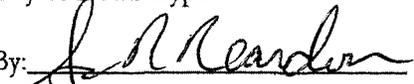
3. It is intended that this deed restriction shall be enforceable by the City, and evidence of this Agreement shall be sufficient evidence of the deed restriction in accordance with the above provisions, regardless of when the restriction is recorded.

4. If the Council does not vote to adopt the aforementioned zoning amendment by April 1, 2024 this Agreement shall terminate unless extended by the Parties in writing.

5. The parties hereby agree (a) to allow the exchange of counterpart signatures for the purposes of timely execution of this Agreement; and (b) that electronic copies of this Agreement and signatures thereon shall be treated as originals.

IN WITNESS WHEREOF, this instrument is sealed and delivered as of the date first above written.

City of Newburyport

By:   
Sean R. Reardon, Its Mayor

Global Companies LLC

By:   
Name: Sean P. O'Reilly  
Title: Chief Legal Officer

CITY OF NEWBURYPORT



IN CITY COUNCIL

October 30, 2023

*("As Amended" at the 11/15/2023 Joint Public Hearing)*

**ORDERED:**

**A ZONING ORDINANCE AMENDMENT TO REZONE LAND AT THE INTERSECTION OF HIGH STREET AND STATE STREET, AND TO UPDATE THE DEFINITION OF MULTI-FAMILY RESIDENTIAL USE TO PERMIT REDUCED MASSING THROUGH THE USE OF MULTIPLE STRUCTURES**

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**Section V-E – List of allowable uses**

USE	NUM	
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\_\_\_\_\_  
Councillor Jennie L. Donahue

\_\_\_\_\_  
Councillor Edward C. Cameron Jr.

\_\_\_\_\_  
Councillor Heather L. Shand

**Proposed Zoning Amendment to Rezone Land at the Intersection of High Street and State Street, and to Update the Definition of Multifamily Residential Use (ODNC00164)**  
**Planning Board Report and Recommendations**  
**December 6, 2023**

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In accordance with MGL c.40A s.5, the Planning Board submits to the City Council this report with recommendations concerning proposed Ordinance 164. The Planning Board discussed the proposed zoning ordinance amendment in a joint public hearing with the City Council’s Planning and Development Committee on November 15, 2023, and voted unanimously at that meeting to recommend approval with the amendments presented at the hearing. The Board adopted this report at its meeting on December 6, 2023.

The proposed ordinance will amend the zoning ordinance in two ways. First, it will change the zoning map by rezoning a parcel of land on the southeast corner of High Street and State Street from the High Street residential district A (HSR-A) to the R-3 multifamily district. Second, the ordinance (incorporating the revised language presented to the Planning Board) will change the definition of “multifamily” in Section V-E (List of allowable uses) to include uses with more than one building on the lot, provided that at least one of the buildings contains at least three dwelling units.

**Proposed Zoning Map Amendment: HSR-A to R-3**

The parcel<sup>1</sup> proposed for rezoning is currently zoned High Street Residential District A (HSR-A) and has been so zoned since the HSR-A district was created in 2017. Prior to 2017, this parcel and all the abutting and nearby parcels were zoned R-3.

The subject parcel is the westernmost parcel in the HSR-A district and is the only HSR-A parcel with frontage on two major streets. Apart from the parcel at 93 High Street, all the abutting parcels are zoned R-3, as are the great majority of the other parcels within 300 feet of the subject parcel. Notably, the parcels on the other three corners of the intersection of State and High Streets are all zoned R-3.

The subject parcel differs in its existing use and character from all abutting and proximate parcels, which are a mix of single-family and multifamily residences. In contrast, the subject parcel contains an abandoned automobile service station which is out of context with the surrounding neighborhood. Furthermore, because the parcel is well under the minimum lot area for the HSR-A district, any reuse of the parcel would require multiple dimensional variances from the zoning ordinance. Given the small size and substantial non-conformances for this parcel under the present HSR-A zoning, this parcel is unlike the larger estate-size parcels the City was seeking to preserve in character when the High Street zoning districts were adopted with larger dimensional requirements than would be appropriate or feasible for the subject parcel. In fact, the

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<sup>1</sup> The land to be rezoned includes two tax parcels: 33-43 (107 State St.) and 33-42 (95 High St.). However, these two parcels have long been used as a unit: the former service station building is on lot 33-42 while lot 33-43 contained the fuel pumps and driveways. Furthermore, neither parcel complies with the minimum lot area requirement of the HSR-A district, and lot 33-42 does not comply with the minimum street frontage requirement. The two lots are thus effectively merged, and this report therefore uses the singular word “parcel” to refer to the two tax parcels as a single entity.

size and proportions of the subject parcel are more consistent with those found on the other three corners of the adjacent intersection, which are all zoned R3 (as the subject parcel was just a few years ago).

### *“Spot Zoning”*

It has been suggested in public comment that the proposed rezoning of this parcel to accommodate a future multifamily residential use would constitute improper “spot zoning” because it would give a special benefit to the landowner that is not available to similar properties. However, the spot zoning characterization does not apply in this case for several reasons:

- First, the characterization of a zoning map change as “spot zoning” is questionable when the rezoning is to an existing adjacent zoning district.<sup>2</sup> As previously noted, the proposed ordinance would bring the subject parcel into the same zoning district as the majority of abutting and nearby parcels and thus make it more, rather than less, consistent with the overall zoning pattern of this part of the City.
- Second, while rezoning the parcel to R-3 will allow a prospective owner to develop the parcel for a use not currently allowed, the rezoning has been proposed in order to advance a significant objective of the City, i.e., to remove a blighted use of the property and replace it with a residential use that will enhance the neighborhood.
- Third, the proposed rezoning will support the purposes of the zoning ordinance, including “to conserve the value of property, with due consideration for the character of the zones and their peculiar suitability for particular uses” (Zoning Ordinance, Sec. I-C.2).

Based on these considerations, the Planning Board does not believe that the proposed rezoning of the subject parcel from the HSR-A district to the adjoining R-3 district would constitute impermissible spot zoning.

### *Scale and Impacts of the Proposed Redevelopment*

Concerns were raised in public comment about several aspects of the redevelopment concept plan which is incorporated in the development agreement that has been executed by the City and the prospective buyer of the property. Those concerns include building height and massing, setbacks from High Street, increases in the grade of the site, and traffic safety. However, the Board’s responsibility in this instance is to determine whether it believes that the proposed rezoning is appropriate, and not to opine on any specific development plan for the subject site.

Concerns about the proposed site development should be addressed by the Zoning Board of Appeals in its review of a special permit application to be filed after the property is rezoned. The site plan and architectural elevations proposed at that time should be compliant with applicable dimensional requirements and otherwise address the Board’s concerns prior to approval. It should be noted that the Development Agreement includes several design parameters in narrative

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<sup>2</sup> “Spot zoning has also been found to be less likely at the borders of districts. W.R. Grace & Co.- Conn., 56 Mass. App. Ct. at 571, citing *Coleman v. Bd. of Selectmen of Andover*, 351 Mass. 546 , 549 (1967).” *Franson v. City of Woburn*, MISC 15-000384 (Mass. Land Ct. Sept. 14, 2016).

format which further define the permissible scope of development and effectively limit the potential for incompatible architectural design at this prominent location along High Street.

#### *Potential for Nonresidential Use*

The Development Agreement that has been executed by the City and the current prospective developer specifies a four-unit multifamily residential development of the site. Based on the time and resources already spent by the developer in negotiating the purchase of the property and preparing the concept plans, it is highly likely that this site development concept will be implemented following approval of the rezoning. The Planning Board believes that rezoning the parcel to the R-3 district will result in a multifamily residential use of the property that is consistent with the Development Agreement.

However, concerns were expressed during public comment that the parcel could be developed for nonresidential uses given that the R-3 zoning district does permit – by discretionary special permit – uses like retail trade and retail services. In order to provide further assurance as to the future use of the property, Planning Director Port has reached out to both Global and the prospective buyer to request that a private covenant be recorded to prohibit nonresidential uses of this property in the future. While perhaps duplicative in the larger context here, this “belt and suspenders” approach may provide further confidence that only residential use of the parcel could even be proposed to the ZBA following passage of the subject R-3 zoning map change.

#### *Planning Board Recommendation*

Based on its review of the proposed ordinance, the presentation at the public hearing, and public comments, the Planning Board concurs with the proposed rezoning of the parcel to the R-3 district and recommends that the City Council approve this aspect of Ordinance 164.

#### **Proposed Amendment to Definition of “Multifamily”**

The current definition of “multifamily” in Section V-E of the zoning ordinance describes both a use (a lot containing three or more residential units) and a building type (a building containing three or more units). The proposed ordinance would amend the definition to provide more flexibility as to building type, allowing the multifamily *use* to include multiple buildings if it also contains at least one multifamily *building*.

This proposed change to the description of multifamily use was brought forward in conjunction with the zoning map change as a result of the analysis by the Planning Office of potential redevelopment plans for the parcel to be rezoned. Given the economic need to create at least four dwelling units on the site, it was determined that a plan that involved two structures – a main house and a secondary dwelling similar to a carriage house – would be more consistent with the character of most properties along the High Street corridor than a single structure with a larger footprint and mass. It is worth noting here that multifamily use is permitted only by special permit in all zoning districts (excluding the 40R Smart Growth District) thereby ensuring that discretionary plan review remains an effective tool should there be projects or sites elsewhere in the City where a single structure is still preferable.

In the case of the property that is proposed to be rezoned to the multifamily district, this definitional change would accommodate the development of a three-unit building and a second one-unit building, thereby reducing the total visual “massing” compared to providing four dwelling units in a single larger building.

#### *Relationship to Section VI-C*

Prior to and during the public hearing, the question was raised as to how the proposed definitional change related to the provision in Section VI-C of the ordinance, and specifically whether the proposed change would “override” Section VI-C. This section of the ordinance prohibits more than one residential building on a lot except where the Planning Board grants a special permit to permit two single-family dwellings on a lot.

As amended in April 2021, Section VI-C has two primary components:

- “(1) Except as otherwise permitted in this section VI-C or elsewhere in this zoning ordinance, only one (1) building containing residential dwelling units shall be erected, placed or converted to use as such on any lot.
- (2) In a zoning district where a two-family dwelling is allowed by right or by special permit, the planning board may grant a special permit to allow two (2) single-family dwellings on a lot ....”

[emphasis added]

Section VI-C(1) thus contemplates allowing multiple residential buildings on a single lot in particular circumstances. One of the options to do so is set forth in Section VI-C(2), which authorizes the Planning Board to grant a special permit to allow two single-family dwellings on a lot under specific site conditions and subject to specific dimensional and other standards. Another option that allows multiple residential buildings on a lot is in Section XIV of the Ordinance (Open Space Residential Development), which authorizes the Planning Board to grant a special permit for development of a larger parcel that promotes compact and efficient site development and preserves contiguous open space.

The proposed change in the definition of “multifamily” would add yet another option, giving the Zoning Board of Appeals the authority to allow, at its discretion, more than one building as part of its granting of a special permit for multifamily use. It should be noted that other than in the Smart Growth Overlay District, the zoning ordinance only allows multifamily use by special permit. Therefore, every application for multiple residential buildings on a lot entails a review and discretionary special permit by either the Planning Board or the ZBA.

#### *Site Plan Review*

Newburyport’s zoning ordinance provides for site plan review by the Planning Board for any development that contains five or more dwelling units. The definition of “multifamily” includes uses and buildings with three or more dwelling units. Thus, some uses allowed in the R-3 multifamily district – those with three or four dwelling units – are allowed by special permit from the Zoning Board of Appeals without site plan review by the Planning Board. Some

comments received with respect to the proposed rezoning have questioned whether the ZBA can adequately evaluate such special permit applications.

The Planning Board does not share this concern, for two reasons. First, the number of parcels in the R-3 district that are large enough to support two residential buildings is very limited, and the number of parcels in Business districts that have enough area and would only develop three or four dwelling units is also small. Second, the ZBA always has the authority to require an applicant for a special permit to pay for the costs of a peer review of the application.

*Planning Board Recommendation*

The Planning Board recommends that the City Council approve the proposed amendment of the definition of “multifamily” as amended in the presentation to the Planning Board:

“One or more building(s) or structure(s) that together contain(s) three (3) or more dwelling units on the same lot, and where at least one such building or structure contains three (3) or more units.

Where there is more than one dwelling unit in a building, the units must be separated by either common floor-ceiling assemblies between the dwelling units, or Common Wall Connectors as defined in section II-B, definitions.”

Respectfully submitted,

Newburyport Planning Board  
Rick Taintor, Chair



**CITY OF NEWBURYPORT**  
**OFFICE OF PLANNING AND DEVELOPMENT**  
60 PLEASANT STREET • P.O. BOX 550  
NEWBURYPORT, MA 01950  
(978) 465-4400

**MEMORANDUM**

**TO: Members of Planning Board and City Council (P&D/COTW)**

**FROM: Andrew R. Port, Director of Planning & Development**

**CC: Sean R. Reardon, MAYOR**

**RE: Update Regarding ODNC164\_10\_30\_2023  
Zoning Amendment Global R3 Multi-Family (COTW)**

**DATE: February 6, 2024**

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The purpose of this memorandum is to provide a brief update regarding the above zoning amendment, which was held in committee and carried over from the prior Council session.

As you may recall, the Planning Board and City Council Planning & Development (P&D) Committee held a required Joint Public Hearing on the proposed zoning amendment on November 15, 2023. At that time, a new “as amended” version was presented and became the working version of this amendment. This version is posted to the P&D Committee webpage accordingly, and is attached here for your convenience. The Planning Board closed its portion of the joint public hearing and subsequently issued an advisory report on December 6, 2023. Although forwarded to the Council on December 7, 2023 this report was not entered as a late file for the December 12, 2023 regular Council agenda (*last meeting of the calendar year*) and carried over to this session along with the amendment. As such, I have attached hereto a copy of the Planning Board’s report and recommendation for your convenience, along with a copy of the “as amended” version currently in committee.

The P&D Committee kept this proposed zoning amendment in committee since late last year, pending a commitment from Global that any future uses of the property would be restricted to residential use only (*contingent of course upon the Council’s commensurate adoption of the proposed zoning amendment making such residential development feasible*). While a Development Agreement is already in place with the local buyer/developer regarding scale and composition of the proposed residential development (*even prior to ZBA permitting*), abutters expressed concern that reverting this land back to the previous R3 zoning designation would also allow a path to commercial uses of the property. While it is in my view highly unlikely that the ZBA would be in a position to grant such a discretionary Special Permit for commercial use at this location, it was agreed that we would seek a “belt and suspenders” approach to ensuring the best possible outcome for this gas station redevelopment. After roughly two months of exchanges with attorneys on both sides, we have obtained the attached written agreement from Global to ensure a deed restriction prohibiting non-residential uses pending Council adoption of the zoning amendment. Once the zoning amendment is adopted, Global would place the subject permanent restriction into the first conveyance/deed out to the new buyer, thereby closing the loop (*while protecting the interests of both Global and the City, respectively*). Following adoption of the zoning amendment, and closing of their private Purchase and Sale (P&S) Agreement, proposed plans (*e.g. building elevations*) can be

reviewed in greater detail by the Zoning Board of Appeals during permitting, with such plans to be consistent with terms contained within the Development Agreement (*e.g. maximum number of units, overall site layout, maximum building height, architectural style, etc.*)

I believe that this agreement and update addresses the outstanding concern and request from both Councilors and abutters. Unless the Council has additional concerns regarding the proposed zoning amendment, or implications for redevelopment of this site, I recommend that the Committee now advance the “as amended” version of the zoning amendment for two readings/votes by the full Council. For procedural purposes, I presume that this memorandum, and materials attached hereto, can be included within the 2/12/24 regular meeting packet/agenda, at which time they could be either referred to committee (P&D) or simply received and filed (R&F) given that corresponding action may be taken by the Council that night on the related matter (*ODNC164\_10\_30\_2023*). In either case I defer to the Council’s preferences.