

**City of Newburyport
Planning Board
August 15, 2018**

The meeting was called to order at 7:03 PM.

1. Roll Call

In attendance for the Planning Board: James Brugger, Anne Gardner, Tania Hartford, Rishi Nandi, Andrew Shapiro, Bonnie Sontag, and Mary Jo Verde

Absent: Leah McGavern and Don Walters

Andrew Port, Director of Planning & Development, was also present.

2. General Business

- a) The minutes of 7/18/18 were approved as amended. James Brugger made a motion to approve the minutes. 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.

b) Request for Minor Modification – Evergreen Commons (2017- DEF-01 and 2017-SP-05)

Attorney Lisa Mead, Mead, Talerman, & Costa, LLC, 30 Green Street, said the owners of 3 Brown Avenue approached the applicant to offer a section of hill from their lot to use as fill. The matter was discussed with city engineer, Jon-Eric White. A Licensed Site Professional's (LSP) report shared with the City said the fill was clean. Steve Sawyer, Morin Cameron Group, 66 Elm Street, Danvers, had re-worked topography and said it was a fairly simple change. He showed an image of the intersection with Brown Avenue. Lot 25 had two walls and a berm on the property line, and a steep backyard. The modification removed the sharp crest and softened the grade to 2:1. The grading change did not change the stormwater, unless it reduced slightly, and eliminated the need for two walls where white pine and deciduous trees would be planted. Attorney Mead said Mr. White reviewed the plans, made three comments, and had since signed off. The owner of 3 Brown Avenue had worked through Mr. White for a stormwater permit. She pointed out the grade change on the plans. Mr. Sawyer said the road did not change. He also made sure the stormwater runoff did not change. The abutters, when presented with the plan, had no issues. Attorney Mead requested the change to be a minor modification. The board agreed. Members asked what would be done to stabilize soil and would they planting right away? Mr. Sawyer demonstrated a red line on the plan indicating the siltation barrier during the construction operation. Spreading and seeding would occur within three days allowing grass to reestablish immediately on the reduced slopes. Attorney Mead said the Evergreen development was well under construction and moving along quickly. Wetlands were finished and planted last week. The road was in. Chair Sontag asked if the developer owned 3

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Brown Avenue? Attorney Mead said no, it was privately owned. Chair Sontag asked if the owner's offer was made post-development? Attorney Mead said yes, after the permits were issued.

Anne Gardner made a motion to find the request for re-grading on 3 Brown Avenue, part of the larger Evergreen Commons subdivision, file numbers 2017-DEF-01 and 2017-SP-05, minor in nature. Leah McGavern seconded the motion and all members voted in favor.

Tania Hartford made a motion to approve the request for a minor modification for the re-grading of the lot at 3 Brown Avenue, part of the larger 'Evergreen Commons' subdivision, file numbers 2017-DEF-01 and 2017-SP-05, as discussed and conditioned. James Brugger seconded the motion and all members voted in favor.

Motions Approved.

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c) Request for minor modification – Hillside Center (2016-SPR-03 and 2016-SPR-04)

Director Port said the minor modifications included: 1) eliminating two greenhouses and enlarging the remaining greenhouse, 2) lowering the first floor elevation for most of Cottage Court to meet accessibility requirements, and 3) changing a portion of the paved area under the south solar canopy from asphalt to crushed stone to improve permeability. The city engineer had no issues.

Leah McGavern made a motion to find the request for the proposed changes to the Hillside Center site plan approvals, file numbers 2016-SPR-03 and 2016-SPR-04, minor in nature. Tania Hartford seconded the motion and all members voted in favor.

James Brugger made a motion to approve the request for minor modifications to the approved elevations and parking areas at Hillside Center, file numbers 2016-SPR-03 and 2016-SPR-04 as discussed. Andrew Shapiro seconded the motion and all members voted in favor.

Motions Approved.

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3. Public Hearings

- a) 101-102 State Street Condominium Trust
101-103 State Street
DOD Special Permit (2017-SP-10)
Continued from 5/16/18***

Chair Sontag said there had been no response from the applicant after two separate emails were sent reminding them of what needed to be done. The applicant could not pull a building permit without coming before the board. She recommended Director Port bring the applicant to the office to walk them through the process and get them before the board.

Rishi Nandi made a motion to continue the DOD-Special permit application for 101-103 State Street, file number 2017-SP-10 to September 19, 2018. Tania Hartford seconded the motion and seven members voted in favor. Mary Jo Verde abstained.

Motion Approved.

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- b) Port City Realty, LLC
75 Parker Street
Site Plan Review (2018-SPR-03)
Continued from 7/18/18***

Richard Barthelmes, Cornerstone, 9F Presidential Way, Woburn, said there had been questions on soil and permeability. CSI had no further comments and was satisfied. Chair Sontag asked about the sidewalk issue. Mr. Barthelmes said the sidewalk was left off and the wider opening was accepted in the last board discussion. The finding that sidewalks were not required was because it was not new construction and there were no City plans for sidewalks. There was consideration that this was more of a truck traffic area than a pedestrian area, although the City did want to address pedestrian measures at some point. He would both save trees and add new trees. Chair Sontag said the third condition went away because of the sidewalk.

Anne Gardner made a motion to approve the application for Major Site Plan Review for 75 Parker Street, file number 2018-SPR-03, as discussed and conditioned. Leah McGavern seconded the motion and five members voted in favor. Rishi Nandi and Andrew Shapiro abstained.

Public comment open.

Public comment closed.

Motion Approved.

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- c) Stephen J. McConnell, Trustee, 13 North Adams, LLC c/o William H. Sheehan III, Esq.
1 and 3 Donahue Court
Definitive Subdivision Modification (2015-DEF-01a)
Special Permit Amendment (2015-SP-02a)
Continued from 7/18/18**

Attorney Bill Sheehan, MHD&S, 8 Essex Center Drive, Peabody, said a meeting was held with neighbors on June 21, 2018. A large crowd showed up resulting in a revised site and landscape plan. The basketball court and retaining wall as proposed were eliminated, the detention basin had no changes other raising the pond an inch or two, and the driveway had a paved area of 1,450 square feet with no turnout area. The house Mr. McConnell had hoped to build would not fit on this lot. Attorney Sheehan wanted approval for a proposed building and garage envelope without any architectural detail because the lot would be sold. There were no elevations for the same reason as in 2015. The garage footprint was 864 square feet. The living area of the house was 4,500 square feet and in keeping with the four single-family homes closest to the house. The house's footprint was 3,400 square feet. The landscaping plan was a combination of pines and sunset maples instead of a row of arborvitae. The deciduous trees would have a 3-4 inch caliper and the eastern white pine would be at least six feet tall with a survival rate of two years. Contoured topography would be restored as close to the original as could be determined and a swale added on the south side. The Eramos were concerned about their driveway turnout damage. He proposed building a 40 feet long buried retaining wall to provide extra support for their driveway turnout area. Attorney Mead had said the retaining wall was not described. The concrete block wall would be buried three feet. Attorney Mead had asked for another six deciduous trees. He left that to the board. She had also asked that the cease and desist order not be lifted until all work was done. The applicant accepted all of her conditions except for seeding the site. The new owner would do that after building the house.

CSI reviewed stormwater calculations and requested details on detention basin construction. That detail was on the filed April site plan and would be sent to them. CSI was also concerned with how close to the top of the pond the peak water elevation was for the 100-year storm. It was about an inch and a half different from the 2015 plan. He would make the adjustment. Director Port raised the issue of whether architectural plans should be approved. Attorney Sheehan hoped that would not be necessary to avoid having the buyer come back before the board. Mr. Beaulieu's front lot had been involved due to detention basin changes. Attorney Sheehan had an approval letter from Mr. Beaulieu about raising the basin an inch or two and wanted to release him from further involvement.

Members asked if there was a quick assessment of how the current proposal compared to the 2015 plans? Director Port said the house was acceptably downsized, trees and a retaining wall would re-establish the previous barrier, and members should consider additional trees. Attorney Mead, representing the abutters, said this was not the same size house that was approved in 2015, but that was not an issue for the abutters. The retaining wall was an issue because it was situated on the

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property line and could not be constructed without first approaching the Eramos. There was no profile or indication of material, means, or methods for the wall. She recommended submitting plans. The size of deciduous trees to be planted should be at least three-to-four inches in caliper and the pines at least six feet tall. Adding another half dozen trees would be closer to the previous condition. Security for an 80% survival rate over two years should be required. The lot should be seeded except where the footprint of the house was located. Re-grading required bringing soils back in. The cease and desist order should not be lifted until the repairs are in place.

Public comment open.

John Neale, 39 Toppans Lane, shared concerns about the retaining wall, whose length was equal to the parking area on the other side of the lot line. Only careful construction could ensure dirt would not spill out from underneath the wall in a heavy rain.

Public comment closed.

Chair Sontag said the 2015 application was approved except for the remediation. Members said the original plan did not have a retaining wall. Contouring should be an exact replica of the original. Attorney Mead said a wall was needed now. A cut-through made in the drive took part of the soil and the drive away. The gap needed filling. The contours would come back. Attorney Sheehan said the retaining walls that were going to hold up Mr. McConnell's property were gone. This wall was different and would not be seen.

Members wanted the depth of the wall to ensure it would not heave over time. Chair Sontag needed a detailed plan including profile, depth, location, means, and materials. The wall should be within the confines of the property. Attorney Sheehan said he would provide that. Director Port said the applicant needed an approval for the wall's position in case it was too close and the neighbor's permission was necessary. The issues were at the lot line. Members said the wall had to abut the driveway in order to shore up the drive. Director Port said his office had a direct exchange with the applicant on grading and vegetation along that side of the lot. He expected a plan showing planting locations and lot contouring. The Eramos could then determine whether the job was satisfactory. Grading was not supposed to change the stormwater. Peer review might not be needed. Members supported more trees, seeding, and wanted the pros and cons of security. Director Port said security was reasonable in this case. Trees did not always survive. Continuing the cease and desist was also reasonable. Seeding could exclude certain areas and would eliminate erosion concerns while the property was on the market. Chair Sontag said abutters requested 34 trees. The board agreed.

Members asked the size of the house plan. Director Port said there was a slight variation to the 2015 plan's site layout. The applicant had requested specific conditions for the maximum size of the structure. Chair Sontag asked why not stick with the original application for site layout, siting, and footprint and add the additional conditions? The board had a High Street application to reference from Director Port, where the applicant was asked to come back to the board to share the architectural details. That could be done here. The modified piece of the 2015 plan would be called the 'remediation.' The rest would stay in place. Attorney Sheehan said the 2015 site plan allowed for only 2,400 square feet of living space, which was incompatible with the neighborhood. The proposed was a compatible house not too small for the neighborhood. Members had no reason to

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believe they would not have approved a larger house in 2015 if abutters had no issues. If the applicant and abutters had come to an agreement on the house instead, it would have been larger than the 2015 plans. Chair Sontag said she had heard the Eramos say they weren't worried about the house. Members said the neighborhood had changed in a few years' time, in terms of building and garage envelopes and total living areas. Director Port agreed the proposed would not be disproportionate. CSI had reviewed the most recent plan but needed to look at the basin design. Chair Sontag said there would be a little more impervious surface. Members agreed on the plans as discussed. Would security carry over in two years to the new owner? Director Port said the applicant would put money in security for the City until the issues resolved. The money would be returned or used as leverage for remediation. Passing that obligation to the new owner could be negotiated in the sale. Chair Sontag said the Tree Commission should provide input. Director Port said DPS should provide input also. There would be no concerns about whether a house was built right away once restoration was complete. Chair Sontag said the board expected a plan from the applicant in order to vote at the next meeting. Attorney Sheehan agreed. CSI had only to review the catch basin.

Anne Gardner made a motion to continue the application for modification of the approved special permit and subdivision for 26 Toppans Lane, aka Donahue Court, file numbers 2015-SP-02 and 2015-DEF-01, to September 5, 2018. Andrew Shapiro seconded the motion and seven members voted in favor. Rishi Nandi abstained.

Motion Approved.

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d) River Run Gardens, LLC c/o Edward X. DeSousa
18 Henry Graf Jr. Road, Units 24 & 25
Special Permit (2018-SP-08)
Continued from 7/18/18

Ed DeSousa, Sr. said he had provided detailed plans from an architect to Director Port. All ordinance conditions were met. Director Port said the plan showed the two units, how the total square footage was allocated, and details on the odor control filtration system. Chair Sontag said the plan clarified there were four parking spaces for employees. Would everything come through the one door? Mr. DeSousa said the bays and a rear door were in the back for deliveries, which would be about 25% of the current deliveries. The front door was a secured entrance.

Public comment open.

Robert May, Airpark Industrial Condominium managing trustee, 18 Graf Road, Unit 1, said the site plan had hand written detail without showing a floor plan, the cover photo was not where the business would be located, there was no traffic analysis, the odor control documents were marketing brochures without a stamped set of plans for the filtration system, and an approval would cancel the insurance. The board should consider that the association's common walls, roof, and parking were collectively owned. All tenants paid for upkeep and insurance. Not all unit owners were supportive.

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David McEvoy, CFO, Opportunity Works, read a letter of opposition citing the location as 500 feet from his facility where educational activities occurred for people with IQs similar to K-12 students.

Public comment closed.

Ed DeSousa, Jr. said the law stated that an educational facility had to serve K-12 students. Opportunity Works was not an accredited Massachusetts school.

Member comments: Plan details were to be kept on file for the Planning Department. Director Port said the facility was already built. Alterations were for the interior space only. With no retail or business sales customers coming and going, there were no traffic issues. The proposed was consistent with the ordinance because existing conditions were not altered. There were no changes to the site. Water, sewer, and electricity were confirmed as adequate. Members said traffic would have minimal impact. Director Port said there would most likely be a reduction in traffic compared to the present use. Members asked if the recently approved cultivation facility was closer to Opportunity Works than this one? Mr. DeSousa, Jr. said yes. Members asked if it was up to the board to decide whether Opportunity Works was an educational facility? Director Port said the proposed was 575 feet from the Opportunity Works property. If they had been within 500 feet, the issue would be debated. Chair Sontag reviewed the conditions. Members thought that the 100,000 square foot maximum was the controlling factor. The applicant would have to come before the board again for further expansion. Director Port said it was not written to prohibit expansion, but to bring them back before the board if they wanted to expand into the remaining eligible 2,000 square feet. If approved, the applicant would be the last cultivator allowed. Chair Sontag said the City Council made a point of including the number and the board should leave it in.

Andrew Shapiro made a motion to approve the application for a Special Permit for 18 Graf Road, Units 24 & 25, file number 2018-SP-08, as discussed and conditioned.
Rishi Nandi seconded the motion and all members voted in favor.

Motion Approved.

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- e) **Tim Cocteau**
266 Merrimac Street
Site Plan Review (2018-SPR-05)

Tim Cocteau said Merri-Mar Yacht Basin, Inc. was a second-generation run business that proposed building out three feet from the lot line. He showed images of today's tired-looking one-story building and the proposed two-story house-style building for more office and retail space. Two street entrances would be closed. Lighting would be on the sign, the pole, and a pole down by the water. Two lights would be added to the building. He showed elevations and the first and second

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floor plans that included a handicap ramp and deck. The 87 parking spaces serviced boat repair, retail, and boat owning customers. Some landscaping would be improved, including where two entrances would be removed. The applicant had a federal permit for stormwater. Runoff was directed to a catch basin that treated the water. Removing two entrances reduced the impervious surface by 500 square feet. Silt socks and woodchips in two locations would help control erosion.

Chair Sontag asked about sidewalks and curbing. Mr. Cocteau said there were no new sidewalks. The existing sidewalk would be rebuilt in some areas. A waiver request would expand the current entrance from 24 to 28 feet wide for boat trailers. The existing sign on the building would remain. There were no new signs. Chair Sontag said DPS had reviewed the stormwater and it was in compliance. The zoning administrator had reviewed the plan. The four conditions were new sidewalks, consult with the DPS, who would review the grading and sign off on the plans, DPS would monitor conditions at the time of executions, and to reuse existing curbstone and lighting.

Public comment open.

Public comment closed.

James Brugger made a motion to approve the application for Major Site Plan Review for 366 Merrimac Street, file number 2018-SPR-05 as discussed and conditioned. Mary Jo Verde seconded the motion and all members voted in favor.

Motion Approved.

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**f) Redco Construction c/o Lisa Mead, Esq.
132 High Street
Special Permit for Non-Conformities (2018-SP-10)**

Attorney Lisa Mead said the existing Italianate Queen Anne mixed-use structure was non-conforming for lot area, frontage, and setback. The commercial lease would be abandoned to renovate and add in a way that did not change or add to any non-conformity. The lot coverage increase was still within the allowable coverage. Changes to some rear window openings from two rear additions could be seen slightly from the street. The Newburyport Historical Commission (NHC) reviewed and approved the changes. They requested all windows be two-over-two. A couple of windows were too small and the NHC was okay with that.

Eileen Graf, architect, 2 Liberty Street, said infilling the finger-like structures in the rear made the structure more consistent. The roof would be raised a bit along the sunroom side, raising the rooms' ceilings a hair in order to align with the rest of the roofline. Rear balconies similar to the building on the right would be added. The top, third-floor roof deck could not be seen from High Street or Green Street making its exposure minimal. Multiple window configurations, including six-over-six

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and six-over-one, would become consistent with two-over-twos using Marvin Historical sashes and retaining original casings. New window elements would have similar detailing. She pointed out on the front and side elevations to show windows that would not be two-over-two. The existing single-door garage in the rear would get two doors and could be glimpsed from the street.

Attorney Mead said the house had a significant fire in 1980. Repairs did not match the historic integrity whereas the proposed alterations were compatible, including trim, molding, gutters, and sheathing doors. Rear additions would not impair the High Street view, as supported by photos in the application. Two commercial uses were eliminated. The current multi-family use would be maintained. Six residential units and 10 bedrooms would increase to 12 bedrooms.

Chair Sontag asked about repairs to the sidewalk? Patrick Reddy, Redco Construction, PO Box 5023, Salisbury, said any needed sidewalk repairs would be made when a waterline going in through the driveway was done, but the sidewalk was in good shape currently. Members said the proposed alterations were an improvement.

Public comment open.

Annette Bavaro, 8 Court Street, was in support but concerned her property would be damaged when the garage, which was less than three feet from her property line, was renovated. Winter snow was plowed against her house and had rotted the sill. The road was narrow and cars coming around the corner sometimes hit her fence. She wanted a barrier to protect her property, keep the entire parking lot of snow from going against her house and to keep cars from hitting the fence. Attorney Mead would add a note not to pile snow in the documents. Chair Sontag said that matter was unrelated to the application and suggested that the two condo associations have a conversation.

Tom Dimartino, 134 High Street, was in support but concerned about the construction process, damage, safety, and noise because his bedroom was less than five feet from the building, they shared a common lot in the rear, and he worked from home. He asked about power generators, jackhammers, excavation, travel lanes closing, honoring easements, dust and debris coming in his windows, easement debris damaging tires, blocking the easement, and hours of operation. Would there be a pre-assessment on his property? Who should he contact during construction with concerns? If the noise made it unbearable to work and live, what was his recourse? Attorney Mead said City requirements for hours of construction were 7:30 AM – 5:00 PM, plus Saturdays. No one was allowed to block the easement. Mr. Reddy said there would be excavation. He would not know if a jackhammer was needed until construction was underway. No one had blocked the easement the month he had been there completing most of the demolition. His workers were tidy. The construction would take six to eight months, but there would not be banging every day. Mr. Dimartino said the noise was unbearable while workers were throwing bricks into the dumpster.

Lee Taylor, 8 Park Street, was supportive and asked where the 12 parking spots for six condos would come from? Mr. Reddy said there were two in the garage and seven in the lot.

Public comment closed.

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Members suggested the applicant share contact information with neighbors who seemed supportive of the project. Mr. Dimartino asked about a pre-assessment for his property. Attorney Mead said pre-assessment was required only when there was blasting. She suggested he take a picture of his walls. Mr. Reddy could let him know when he would use the jackhammer.

Leah McGavern made a motion to approve the Downtown Overlay District Special Permit for 132 High Street, file number 2018-SP-09, as discussed and conditioned. Anne Gardner seconded the motion and all members voted in favor.

Mary Jo Verde made a motion to approve the Special Permit for Non-Conformities for 132 High Street, file number 2018-SP-10 as discussed and conditioned presented. Rishi Nandi seconded the motion and all members voted in favor.

Motions Approved.

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5. Planning Office/Subcommittees/Discussion

a) Community Preservation Committee Representative

The position would be left empty until all members were present.

b) Other Updates

Agenda items for September 5th and 19th, the Colby Farm zoning hearing, and Waterfront West design meetings were discussed.

6. Adjournment

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

The meeting adjourned at 9:49 PM.

Respectfully submitted -- Linda Guthrie