

**City of Newburyport  
Planning Board  
September 19, 2018**

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

**1. Roll Call**

Attendance: James Brugger, Anne Gardner, Tania Hartford, Leah McGavern, Andrew Shapiro, Bonnie Sontag, Mary Jo Verde, and Don Walters

Absent: Rishi Nandi

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

**2. General Business**

- a) The minutes of 8/15/18 were approved. Leah McGavern made a motion to approve the minutes. Andrew Shapiro seconded the motion and all members voted in favor. Don Walters and Mary Jo Verde abstained.
- b) The minutes of 9/5/18 were approved as amended. Don Walters made a motion to approve the minutes. Tania Hartford seconded the motion and five members voted in favor. James Brugger, Andrew Shapiro, and Mary Jo Verde abstained.

**Motions Approved.**

*During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.*

- c) ***Evergreen Commons (2017- DEF-01 and 2017-SP-05) – Approval of Homeowners Association***

Attorney Lisa Mead, Mead, Talerman, & Costa, LLC, 30 Green Street, said due to the lack of a quorum the Conservation Commission continued the matter. She presented a mock-up of the plaque to be bolted to garage walls beside the garage door into the house in all units, in accordance with the Order of Conditions. She noted a typo in the mock-up and reviewed changes in the HOA documents signed in January 2018. On page 1, she added recording details and dates of the definitive plan and deed. On page 5, section 5.1-iv referenced changing the Rules and Regulations, where she added a copy of the initial Rules and Regulations. Chair Sontag said another line should be added, in case someone stopped reading at that point. Attorney Mead said on page 9, section xi, following the phrase ‘a reasonable period of time’ she added ‘and to do all the foregoing in full compliance with’ and she added a list of all of the permits. Chair Sontag noted a typo where two sections were titled iv. Attorney Mead said on page 9, section xii, she added all the recorded information and in section 5.2 she added all the fees. She added the Conservation Agent and Zoning Enforcement Agent where the name of enforcement agents had been blank. In section 5.3 she added the language

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'Lot Owners shall maintain a written record of their meetings and have the authority to remove the Trustee(s) as set forth in section 3.3.' On page 12, section 8.2.15, she added the prohibition of using fertilizers and pesticides on lawns and gardens unless approved in the yearly landscaping plan. Paragraph 11 of the Rules and Regulations mentioned the prohibition of amending the prohibition sign. The HOA documents required approval because closings would start next month.

Director Port said he wanted to make sure the Conservation Commission was satisfied before the board approved the HOA documents. Attorney Mead said the permits required sign offs from both entities. Director Port said the board would make their approval conditional upon the Conservation Commission approval. Chair Sontag said there were a couple of issues with the City reviews. The Water and Sewer departments wanted to review the HOA documents. She did not know what the specific issues were. The City engineer expressed hesitation with the documents and the plaque. Director Port did not know what sort of comments Water, Sewer, and the City engineer would make. It had taken a long time during the review process to receive their comments and he did not know how long it would take to receive their feedback this time. Attorney Mead said permits were approved in January 2018. The City had the original draft in January 2018, the peer reviewed draft revisions for three weeks, and the most recent draft for a week. City department sign offs were not required at this stage. Chair Sontag said if City reviewers had concerns they could attend the Conservation Commission meeting on October 2, 2018.

Andrew Shapiro made a motion to accept the Homeowners Association documents dated September 6, 2018, for Port Place, aka Evergreen Commons definitive subdivision, subject to approval by the Conservation Commission. James Brugger seconded the motion and seven members voted in favor. Don Walters opposed.

Attorney Mead asked whether the plaque was acceptable? Members asked if it would fade or bleed? The phrase 'please take notice' should be larger and in red. Attorney Mead agreed.

Don Walters made a motion to approve the plaque as discussed and conditioned. Tania Harford seconded the motion and all members voted in favor.

**Motions Approved.**

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***d) Approval Not Required – 1 Shandel Drive (2018-ANR-05)***

Attorney Mead said the only permit required was an Order of Conditions, which had been received. The resident at 5 Shandel Drive owned this lot in the original subdivision. The unbuildable portion would become part of the resident's property.

Mary Jo Verde made a motion to accept the Approval Not Required Plan for 1 Shandel Drive, file number 2018-ANR-05 that creates two lots, one of which, Proposed Lot 2, is non-buildable. Anne Gardner seconded the motion and all members voted in favor.

**Motion Approved.**

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***e) Request for minor modification and plan approval – Hamilton Way (2010-DEF-01) and SP-05)***

Al Clifford, 5 Center Street, purchased three lots in the Hamilton Way subdivision whose building footprints required a modification to move the garages a few feet along the side the buildings to accommodate the three house designs for which he was also seeking approval. He had met with the Planning Office who advised that the designs should be complimentary to existing Gothic Revival residence set way back. Mr. Clifford proposed three different styles from the same historic period: Italianate Renaissance, Greek Revival, and Second Empire. The Italianate's distinctive style was taken from an Exeter, NH home. There were many examples of Greek Revival and Second Empire mansard roof designs in Newburyport. Chair Sontag said two of the garages would be pulled further away from the historic house. Members said the change to below grade parking would change the look of the houses from the field. The change dramatized the drunken slope. More of the sheer plane of the wall all the way to the bottom of the garage roof could be seen. Was there any discussion of changing the elevation of program elements? Chair Sontag said the meeting had been more concerned with the view of the historic house and making sure the flavor of the historic house was reflected in the new houses. Members said below grade parking changed the historic character of houses built close to grade level. Mr. Clifford said no houses had below grade parking. Parking was at the existing grade and the topography was unaltered. The modification improved how the houses fit with the topography. Chair Sontag said the new garage locations seem to show a lot more of the houses from High Street because of the existing grade. Mr. Clifford described the siting of each house. Members said the grade had to be brought up for the garage to be level with the house in order not to expose more wall showing three stories that could not be seen before. Mr. Clifford said from High Street you could see only the first house on the left, which was all at grade level. Members asked how many feet the garages would move back from their original positions? Mr. Clifford said roughly three feet on lot #2 and seven-to-eight feet on lots #3 and #4. Members said lot #3 was a problem because of the Italianate's large arched windows. Mr. Clifford said the home's layout and internal flow were the reasons for the modification because he wanted more square footage on the first floor. Chair Sontag asked what would be located where the garage was? Mr. Clifford used a member's smart phone to show two added windows. Chair Sontag said the new windows would reduce the massiveness of the wall. Director Port said comments were requested from the Newburyport Historical Commission (NHC), and they were neither supportive nor unsupportive. He assumed that meant the NHC was comfortable with the changes.

Don Walters made a motion to find the request to modify the approved footprints of the garages according to for the Hamilton Estates subdivision as minor. Anne Gardner seconded the motion and all members voted in favor.

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Don Walters made a motion to approve the modification of the approved footprints of the garages according to the Plot Plan dated 8/29/18 for the Hamilton Estates subdivision, 223 High Street, file number 2010-DEF-01. Anne Gardner seconded the motion and all members voted in favor.

Tania Hartford made a motion to accept the proposed elevation drawings for lots 2, 3, and 4 at the Hamilton Estates subdivision, 223 High Street, file number 2010-DEF-01. Mary Jo Verde seconded the motion and all members voted in favor.

**Motions Approved.**

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**3. Public Hearings**

- a) 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 9/5/18***

Attorney Bill Sheehan, MHD&S, 8 Essex Center Drive, Peabody, reported that agreement had been reached on two issues from the last meeting by increasing the number of trees as shown on a revised landscaping plan and filing plans for the retaining wall. He requested a few changes on the draft conditions provided by the Planning Office. Under the Cease and Desist Order he requested changing the tree planting from 'prior to building permit' to 'prior to occupancy permit.' Hay bales were in place. The site layout condition did not acknowledge the revised site plans submitted that had received consensus that the new size made sense. The re-grading condition should specify adhering to the contours on the July 11, 2018 site plan. The board could refer to his August 8, 2018 letter for condition language regarding the maximum sizes of the house envelope at 50 feet by 68 feet, the garage envelope 24 feet by 36 feet, the paved driveway area at 1,450 square feet, and total living area at 4,500 square feet.

Chair Sontag met with the Tree Committee about measuring the tree caliper four and a half feet from ground level. That would be added to the tree ordinance and to these conditions. The Cease and Desist Order had five sub-conditions but no deadline other than prior to the building permit. Should the board add a deadline that was sooner rather than later so that more of the property would not start sliding away? Members said hay bales should be along the property lines and hay spread all over the site where it had been disturbed if no standing grass existed. Chair Sontag said the erosion control measures were not specific. Winter seed should be planted now. Erosion control measures should be in place in case seed did not hold. Members said the work should all be completed this season, within 30 days after the appeal period. Director Port said the zoning administrator would decide whether things were satisfactory for lifting the Cease and Desist Order. The repercussion was a daily fine. Attorney Sheehan requested a deadline of November 30, 2018.

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Chair Sontag asked why Attorney Sheehan wanted to pull tree planting from the Cease and Desist Order? Attorney Sheehan requested a language change to 'prior to occupancy permit.' Director Port advised against it given the history of the property. Chair Sontag said trees were needed on the site now. Attorney Sheehan explained that some of the trees were very close to the building envelope. He suggested keeping only the perimeter trees in the order and delaying planting trees so close to the building footprint so they would not be damaged during construction. Chair Sontag asked whether responsibility for planting trees close to the house would pass to the homeowner? Attorney Sheehan said probably half the trees were located a good distance away to the west from the building envelope. The house abutted the Eramo's property at the rear of the site. Any tree within 20 feet of the building envelope should be delayed to the occupancy permit. Members said the trees were not huge with large root balls. Contractors regularly worked around trees. Trees that were 10 feet from the building envelope seemed more reasonable. Attorney Sheehan said some trees were 10 feet or less from the building. He identified three Eastern pines that should wait to be planted. Members agreed. Chair Sontag asked why he wanted to change adhering to the original site plan layout? Attorney Sheehan the building footprint proposed on July 11, 2018 was consistent with the neighborhood. The contours were also shown on the July 11 plans. Both were vetted with the neighbors. Members agreed to the revised plan on August 15, 2018. Chair Sontag said the detention basin redesign to meet the 100-year storm would be a condition as well as two years of watering, which was consistent with the tree ordinance.

Public comment open.

Attorney Mead confirmed that the abutters accepted the July 11 plan with the amended landscaping plan, the retaining wall plan, and building envelope and pavement details. She requested a condition that property lines be re-measured and marked prior to the commencement of any work on the site so that everyone knew the boundaries. Attorney Sheehan agreed to survey the southern property line. Attorney Mead said work was done on the northern property line also. Abutters wanted to know the boundaries. Chair Sontag agreed to mark the north and south boundary lines.

Public comment closed.

Anne Gardner made a motion to approve 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, as discussed and conditioned, including completion of plantings by November 30, 2018, except for three Eastern pine nearest the building envelope, adhering to the July 11, 2018 site plan, and surveying and marking the north and south property lines prior to work beginning. Mary Jo Verde seconded the motion and all members voted in favor.

Director Port said the zoning enforcement officer should release Mr. Bolio from the cease and desist order.

Tania Hartford made a motion to approve the proposed work as it relates to the front lot and to recommend to the building commissioner to lift the cease and desist order as it relates to the front lot. Mary Jo Verde seconded the motion and all members voted in favor.

**Motions Approved.**

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***b) 106-108 High Street LLC c/o Mark Griffin Esq.  
106-108 High Street  
DOD Special Permit (2018-SP-13)  
Special Permit for Non-Conformities (2018-SP-14)***

Attorney Mark Griffin, Finneran and Nicholson, 30 Green Street, said the large lot just under 11,000 square feet in R3 was non-conforming to the 20,000 square feet of lot area required for a multi-family. The frontage of little over 87 feet was non-conforming to the required 120 feet. The front setback of 13 feet was non-conforming to the required 20 feet. Everything else complied. Proposed construction would not alter nor extend non-conformities. The four-unit building was a contributing Greek Revival in the Downtown Overly District (DOD). Proposed renovations included a two-story addition from the ground level in the rear of the building. The addition was somewhat visible to abutters on Otis Place. The ground floor was 1,140 square feet, the second floor was 1,058 square feet, and the third floor was 372 square feet. Some architectural features would be removed. He distributed plans that incorporated NHC recommendations from their September 12 meeting. Property manager Blake Wilcox said three main trees would be kept. A fourth tree in the rear, which they would like to keep, may need to be removed. Black top had been minimized. The carriage entry may have to be peeled up and rebuilt. Every effort would be made to maintain as much greenscape as possible. The slope from front to back was six-to-eight feet. At the lot line, Arborvitae measuring 10-foot plus would be planted at the lot line to honor an abutter's request. In addition, blocking two of three windows in the back of the garage would avoid lights shining into the abutter's windows. Mr. Wilcox would either renovate the basketball court or donate \$10,000 to renovate the Kelly school playground as part of the project.

Chris Dallmus, architect, Design Associates, Inc., 1035 Cambridge Street, Cambridge, showed detailed changes on a plan that showed existing conditions and new conditions. Shutters were removed. The main gable and the pediment structure would be maintained. The NHC recommended adding a broad overhang on the east side to the west side. He could not run a pediment across and created a gutter return instead. All aluminum siding would be removed and either replaced with new wood clapboard or the existing wood clapboard would be restored. The right-side chimney, eliminated on the original plan, would now be retained. The proposal opened up the closed entry porch by removing the contemporary glass and installing a new Greek Revival period door with sidelights. The existing street side skylight would be removed. All existing trim details, sills, casings, moldings, and crown would be preserved and restored. Greek Revival detail on the corner boards would be brought back all the way around the house. A labyrinth of stairs and passageways to access the units on the north side would be replaced with one exterior stairway.

Members asked about access to Otis Place from the property? Mr. Wilcox said there was no access. Was there a retaining wall? Mr. Wilcox said it was only land built up through landscaping. Could it be seen from the houses on Garden Street? Attorney Griffin did not think so. Were there two existing curb cuts now? Mr. Wilcox said yes. Would drywells be put in? Mr. Wilcox said the black top was being reduced. Members said dry wells were good practice. Mr. Wilcox said he would add

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them. Chair Sontag asked about the windows. Mr. Dallmus said any existing single-glazed authentic divided-light windows would be restored. Windows in the back would be donated and replaced. He hoped to keep all the original trim, even where a new window would be installed. Chair Sontag read the conditions from the staff report. Mr. Wilcox said new clapboard would be added where the porch was opened up and on the driveway side, but clapboard on the front would remain, if possible. Mr. Dallmus said Boral coal ash siding was originally planned, but the NHC did not agree.

Attorney Griffin said all alterations were on the exterior, nothing was detrimental to the neighborhood, and features that did not fit with the neighborhood would be removed to bring the property back to its essential form and integrity. He referred to a letter from Patrick Guthrie, Design Associates, about the architect's intent to stay as close to possible to Secretary of the Interior standards. The restoration was a neighborhood improvement, the rear addition not visible from High Street was somewhat visible for Otis Place, and plans included landscape screening.

Public comment open.

Kimberly Neely, 20 Otis Place, was an abutter in support because blocking the garage windows and installing the new fence would retain her privacy. Would the letter become part of the conditions?

Stephanie Niketic, 93 High Street, was an abutter who met with Mr. Wilcox and Ms. Neely after she contacting Mr. Wilcox's attorney to request elevations. The Newburyport Preservation Trust (NPT), not the NHC, recommended all of the significant changes made by Mr. Wilcox. She was concerned about the plan's undefined green areas. Director Port said that could be conditioned. The property next door lacked any greenscape. The High Street side and the left of the driveway should be significantly landscaped. The tree at the garage corner should be retained. But those steps were not enough given the location, addition's size, and lack of greenscape on this section of High Street. The board should request landscaping specifics and more details on replacement windows that would be on elevations highly visible from Otis Place and High Street. Under the DOD, replacement windows were an architectural feature. Specifying Marvin Integrity did not provide information on the material, fenestration, or muntin profile. The same was true with the new door and sidelights, which were visible from High Street. If something oddly inappropriate were installed, she would have no specifications to show the zoning administrator. Materials and design details of these features needed to be on the plan.

Tom Kolterjahn, 53 Federal Street, co-president of the NPT, was in support. The building had not lost too much historic integrity because much of it was under aluminum siding. Greek Revival moldings were original to the building. The right side overhang would be put back and the carriage entrance restored. It was only worth putting shutters back if they chose expensive, high quality shutters. He was happy with no shutters. He requested that all window trim detail be left on and serious consideration of Ms. Niketic's comments.

Public comment closed.

Mr. Wilcox would be happy to select the door style with the NPT. Windows would be Marvin Integrity with a wood interior and an exterior wood wrap. Members requested a cut sheet. Chair Sontag recommended a landscape plan. Attorney Griffin thought a landscape plan was unnecessary because the applicant would limit the pavement. What remained of the rest of the yard should be for

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the tenants who should be able to plant a garden if they wanted one. Members asked if the units had ownership of any yard spaces? What was the difference between the new windows here and the new windows of the recently approved project next door? The process should be the same. Chair Sontag the consistency was the procedure, not the window. New windows should be historically accurate. The other applicants brought in a sample that was not requested. Members requested a close up photo of the existing windows to compare to the new windows. Attorney Griffin said the original letter from Patrick Guthrie, Design Associates, specified Marvin windows that would match the six-over-six light pattern and muntin width of the windows to be restored. The plan listed each space where windows would be replaced or restored and described how it would be done. Members needed the material itself, the kind of casing, and muntin profile. The cut sheet would answer all those questions. Attorney Griffin asked if the cut sheet approval could be a condition? Members said they could approve the project and segregate the approval of the windows and doors.

The board did not want pavers mentioned in the greenscape details in the front and wanted more specificity about which grass and shrubs would be planted. Attorney Griffin said those conditions were not reasonably related to the exterior architecture. Director Port said, given the permits, the board had broad latitude. The concern was the front, facing High Street. The Planning Office would find it difficult to review cut sheets and a landscape plan without more discussion of the detail that should be included. Chair Sontag said the board was making an effort to secure more greenscape on High Street, especially with street trees. They could add green landscaping in the front and on the south side as a condition with no hardscape in areas that were currently green. Members asked about the condition of the sidewalk? Mr. Wilcox said the sidewalk was in good to fairly good condition. Director Port said the trigger would be one additional residential unit or spending 50% of the appraised value of the property. When no costs were associated with a project, the ZBA used a boilerplate condition that said if the cost of the project exceeded the trigger, sidewalks would have to be upgraded. That might be sufficient. Chair Sontag agreed to use the ZBA's boilerplate condition and not bring the applicant back for the landscaping plan. Outstanding were details on windows and doors. Conditions would include the 10-foot tall arborvitae and blocking the two windows in the three-car garage. Director Port said conditions were to review and approve the revised plan, two letters, the cut sheet submittal, the front and south landscaping with no hardscape, boilerplate language on the sidewalks, the NHC's recommendations from the staff report, the shutters to being removed, and to retain original hardware.

Leah McGavern made a motion to approve the applications for Downtown Overlay District Special Permit at 106-108 High Street, file number 2018-SP-13, as discussed and conditioned. Don Walters seconded the motion and all members voted in favor.

James Brugger made a motion to approve the application for Special Permit for Non Conformities at 106-108 , file number file number 2018-SP-14, as discussed and conditioned. Andrew Shapiro seconded the motion and all members voted in favor.

**Motions Approved.**

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**c) 101-102 State Street Condominium Trust**  
**101-103 State Street**  
**DOD Special Permit (2017-SP-10)**  
**Continued from 8/15/18**

Chair Sontag said the applicant was in the process of developing plans with a contractor and needed to continue. The office was making every effort to get the documentation ahead of the meeting.

Anne Gardner made a motion to continue the DOD-Special permit application for 101-103 State Street, file number 2017-SP-10 to October 17, 2018. Mary Jo Verde seconded the motion and all members voted in favor.

**Motions Approved.**

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

**a) Other Updates**

NED's Waterfront West project expectations, feedback, future meetings with the mayor, and the marijuana cultivation ordinance were discussed.

**b) Executive Session**

See Executive Session minutes.

**6. Adjournment**

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

The meeting adjourned at 10:14 PM.

Respectfully submitted -- Linda Guthrie