

**City of Newburyport  
Planning Board  
September 5, 2018**

The meeting was called to order at 7:06 PM.

**1. Roll Call**

In attendance for the Planning Board: Anne Gardner, Tania Hartford, Leah McGavern, Bonnie Sontag, and Don Walters

Rishi Nandi arrived at 7:27 PM

Absent: James Brugger, Andrew Shapiro, and Mary Jo Verde

In attendance for the Planning & Development Committee and Committee of the Whole: Jared Eigerman, Heather Shand, Charles Tontar, Afroz Kahn, and Larry Giunta

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

**2. Joint Public Hearing with the Planning & Development Committee and Committee of the Whole**

Chair Sontag opened the Planning Board meeting. Chairman Eigerman opened the Planning & Development Committee and Committee of the Whole meeting.

- a) Prohibit Use Variances: Amend the Newburyport Zoning Ordinance Section X-H.6.A so as to expressly prohibit the granting of Use Variances by the Zoning Board of Appeals*

Chairman Eigerman said the Zoning Advisory Committee (ZAC) finished their review of the Use Tables and requested to be noticed if there were any Zoning Board of Appeals (ZBA) applications for a Use Variance. The ZBA did not meet on August 28 due to lack of quorum, so 79 Parker Street, whose variance application was in before August 1, 2018, had not been reviewed. ZBA Chairman Ramsdell wanted to introduce an amendment on signs, where the custom is to go before the ZBA for a use variance, but the measure was not noticed therefore nothing was changed from last year. A minority of communities in Massachusetts allowed use variances. He believed the ZAC had caught everything on the Use Tables, but if that proved to be incorrect, the Planning & Development Committee would go to City Council to make further changes in the law.

Jared Eigerman made a motion to add the language ‘this ordinance shall not apply to complete applications filed with the ZBA before August 1, 2018.’ Heather Shand seconded the motion and all members voted in favor.

Board members asked whether the review had excluded commercial and industrial? Director Port said City Planner Kate Newhall-Smith commented that those uses generated the most debate. The Council would allow those uses to be updated in the table if the City allowed larger

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commercial and industrial areas. Residential areas were typically seen as the most passive neighborhoods, with less noise and traffic. Directed Port supported the amendment as proposed. Councilor Eigerman said the correct process for improving land use management policy was to go before the City Council instead of the ZBA. Board members asked if the Use Table had been codified yet? Director Port said the ZAC met regularly to work on the comprehensive rewrite. The new Use Table draft still had to be rolled out to the public. The simplified and more legible draft allowed certain things under certain circumstances, but addressed the majority of issues. Board members asked whether a Use Variance request presented to the ZBA would be granted? Chairman Eigerman said the ZAC did not find anything to change in the Use Table for commercial and industrial uses now that business uses were allowed in the industrial park. Nothing would be sacrificed by banning Use Variances. Board members thought it more difficult to properly consider zoning modifications in a piecemeal fashion ahead of the comprehensive rewrite. Chairman Eigerman said he rushed the amendment forward because the rewrite was initiated due to problems with Use Variances. The amendment closed off a tool that was bad practice, which allowed for clearer focus on the rewrite. Chair Sontag said the ban would not have come under discussion if an updated Use Table had already existed. The stopgap measure legitimized the work already done by the ZAC. The Dimensional Controls, Use Table, and related pieces of the zoning code would undergo a public review before the end of the year.

Public comment open.

Lisa Mead, attorney, Mead, Talerman & Costa, 30 Green Street, representing Plum Island LLC, asked for a timeline to see Use Table modifications for long term planning. Director Port said a draft would be available online in the next couple weeks. He was seeking feedback from board, the ZBA, and the building commissioner before the ZAC draft recommendation. The complicated effort involved all parts of the ordinance. The cumbersome zoning ordinance was hard to tackle all at once. Chair Sontag said the ZAC was not comfortable specifying a release date publicly. Attorney Mead said the onerous rewrite affected the entire ordinance and required a comprehensive view. Chair Sontag said the ZAC was doing that to the best of their ability, but it might not be possible to bring it all forward at the same time.

Stephanie Niketic, 93 High Street, Newburyport Preservation Trust (NPT) board member, said the NPT was in support. It was unusual for Massachusetts' towns and cities to allow a city councils' legislation to be overturned by the ZBA. The council voted unanimously to downsize R3 to R2 with public support. An R3 structure that had become R2 could still get a Use Variance. That was a problem. The zoning rewrite had been delayed for four years. The ZAC applied deliberate, thoughtful, and intensive process. There would be no surprises in the new table and no reason to think the ZBA could overturn it.

Jeanette Isabella, 1 Lime Street, was in support. She attended a lot of ZBA meetings where waived and excused items were detrimental to neighborhoods. This was a good step to make the public more satisfied with the process.

Public comment closed.

Don Walters made a motion to recommend adoption of the amendment as proposed and

discussed. Anne Gardner seconded the motion and five members voted in favor. Tania Hartford abstained.

Jared Eigerman made a motion to approve the amendment. Heather Shand seconded the motion and all members voted in favor.

**Motions Approved.**

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***b) Colby Farm Lane Residential Overlay District (CFL-ROD) & Open Space Residential Developments (OSRDs)***

Director Port demonstrated on the map the areas of Storey Avenue, downtown, and open space preserved by the City. He highlighted land that was not permanently protected in the Low Street area. Many residents had told the City they wanted this space protected through repeated outreach. He demonstrated on a map with zoning layers and overlay districts that had other standards the industrial/business overlay district that was adopted years ago. Today, residents did not want industrial development there. The City had preserved one area but not others. A developer was interested in the property for a subdivision.

He described how the Oleo Woods Overlay District used an adjusted density formula to allow a clustered subdivision instead of the typical subdivision sprawl in order to preserve land and open space. The result was a nice place to live. The City looked at the Colby Farm area with that in mind. He displayed an enlarged map of the area where the amendment would allow subdivision clustering and said it made sense for preserving the open space. He showed the percentage of Oleo Woods development versus preserved land, and displayed the Colby Farm lot lines under current zoning. Development could occur in different configurations. He displayed an illustration depicting a typical subdivision scenario in the space. The Community Preservation Committee (CPC) was in support because offsetting clustered homes from the view permanently preserved the view. The City would not have to spend significant funds to buy the lots in order to preserve the land and save the viewshed. Affordable units were included in the cluster. The proposed amendment would also remove the Industrial B Residential Overlay District (IB-ROD) that was created to allow the Oleo Woods OSRD project.

Amendment co-sponsor Councilor Giunta said Colby Farm was in Ward 5. Councilor Tontar was the other co-sponsor and Ward 4 was nearby. Many residents had reached out to him to save the farm and preserve the viewshed. Subsequently, the City purchased lot #8, but could not afford to buy the whole farm. The developer's project would preserve 80% of the farm, preserve the view, and revitalize the Colby Farm Lane area under the proposed amendment. Councilor Tontar said many people preferred the farm to remain in operation. It was extremely expensive for the City to purchase the land at market value now that a developer was interested. The City tried imposing an ordinance that designated the land agricultural. That got the developer's attention

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and initiated conversations between the property owner, the City, and the developer during which everyone supported using the OSRD for density purposes and building houses that were more affordable than typical new units in the City.

Planning Board members said the board agreed in June that other properties around Colby Farm Lane should be considered also. Director Port said the Woodman Farm property, where a dense housing project was once proposed, could not be seen from Low Street. It was included along with the Cooper property.

Public comment open.

Leslie Bushiks, 185 Low Street, said her 1864 house faced the farmland. Her view would be completely obstructed by the cluster development. Mr. Bushiks was supportive of open space, but they bought their property because the house faced the field instead of the road. The clustered development would remove barns that were part of the farmland's look and feel. Was the back land all wetlands? Director Port said from his discussions with the Conservation Commission, conservation agent, and people in the community, that it was possible wetlands could prohibit the subdivision. There was more upland than wetland and lots could be reconfigured, but the upland could not be accessed without crossing the wetlands. The building commissioner could say no. Director Port had reviewed all the other options and costs. The proposed was the best scenario for the City. He would set up a meeting with the Bushiks.

Jeanette Isabella, 1 Lime Street, was in support. She asked if the development was accessed from Colby Farm Lane? Director Port said yes.

Director Port wanted to work in a phrase or two about the use of the open space before a vote. Some people wanted to allow a ball field but no structures in the open space. The Parks Department was interested in the field, which might or might not be possible. He also wanted to change the language so that agricultural operations were an explicitly allowable use.

Mary Creche, 232 High Street, was in support, but a development would erase the farmland feel of the lane and the neighborhood. Would the other side of the lane be developed also? Director Port said properties further down Colby Farm Lane were landlocked and would not change. Someday, solar panels might be on the landfill. The Common Pasture was already preserved. The only pieces of land that could be developed were the ones in question. No development proposal had been received yet for lots further up Low Street where a future subdivision was likely and a similar process could be worked out with a developer. Ms. Creche asked about potential complaints on yard waste facility noise and the landfill smells from new residents. Director Port said there were discussions about a requirement, such as a deed restriction and language in the permit, for new residents to acknowledge the existing uses.

Chair Sontag read letter from Alida Frey, 5 Wilson Way, who was opposed unless the amendment also addressed remediation for the dangers presented by heavy Low Street traffic and the lack of adequate sidewalks and paved bike paths for the safety of children and adults.

Public comment closed.

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Board members said the proposed was a better solution than the piecemeal agricultural zoning effort. An overlay district usually addressed a problem. Chair Sontag considered whether an amendment that facilitated development was acceptable. An amendment aligned with Master Plan goals was good. Board members were in support, but commented that this was ahead of the comprehensive zoning rewrite. Chairman Eigerman gave a brief history of recent deadlocks in the City's preservation district efforts. He took exception to any notion that amendments brought forward by the committee were not good, given that they had been pressing for a comprehensive zoning rewrite for years. Board members asked about adding a recommendation on sidewalks? Chair Sontag said sidewalks would be dealt with during the permitting process. Director Port agreed. Board members wanted that information communicated.

Don Walters made a motion to recommend adoption of the proposed amendments to the OSRD, which includes (1) removing the IB-ROD, and (2) adding the CFL-ROD language, as discussed and amended, to the ordinance. Leah McGavern seconded the motion and all members voted in favor.

Councilor Giunta made a motion to approve the amendment. Councilor Shand seconded the motion and all members voted in favor.

Councilor Shand made a motion to adjourn the Planning & Development Committee meeting. Councilor Giunta seconded the motion and all members voted in favor.

**Motions Approved.**

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**3. General Business**

*a)* Approval of minutes (8/15/18). No minutes were available.

*b) Informal Discussion – 342 Merrimac Street VI.C Special Permit (SP)*

Attorney Lisa Mead, on behalf of Dan and Judy Lynch, said the 13,150 square foot property backed up to Merrimac Court. The existing two-family structure was originally a single-family house and converted to condominiums prior to 1980. Owners proposed building a separate, smaller residence in the rear and reconverting the existing house to single-family. The City's benefit would be the restoration of a significant historic building. The Newburyport Historic Commission (NHC) expressed interest in a preservation restriction (PR) on July 11 and believed the Massachusetts Historical Commission (MHC) would be interested also. Eric Drake, US Forest Service archeologist, took a complete history of the house and updated Form B. The circa 1795 house, originally owned by John Currier, Jr. who operated a shipyard out of the house, was

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not in an historic district. Restoration plans presented to the NHC included replacing all windows with six-over-six or eight-over-eight, removing the bay over the front entry, removing the late addition, and keeping the fireplace and chimney, resulting in a reduction to the current 3,733 square feet. A six or seven foot elevation drop at the rear of the lot would make the shorter new house appear less tall. Mr. Drake discovered there had been a line of structures in the back in earlier times. A gravel driveway from Merrimac Court provided access. A gravel walkway on the side accessed the back of the house. The Lynch's had a history of restoring historic homes. Was the board interested in their proposal?

Chair Sontag had seen the big open parking area that said 'private property.' Attorney Mead said it all belonged to the Lynch's property. Chair Sontag confirmed that access would still be from that location. Members said a new house would create a neighborhood where one used to be but the cars would be in view before the house. Would the Lynch's change the location so the new house would be on Merrimac Court with an access on the side? Attorney Mead said the lot was in the Waterfront Marine District (WMD). Anything was possible with cooperation from all boards and commissions. Members considered the dilemma of how the property presented. It wanted to be two lots with two fronts and two backs. Attorney Mead noted the need to meet setback requirements. Members asked if houses were to the left and right of the property? Historically, it looked as if there were half a dozen. Attorney Mead said there were five. Chair Sontag that there neighbors' yards and a fence on one side. Members asked if there were houses on the same side of the street in the rear that faced Merrimac Court? Attorney Mead said no. Surrounding homes were single family and a two-family. The two-family could make a similar proposal. Members said it was hard to support the configuration. The new house should have a traditional relationship to the street and the houses across from it. Mr. Lynch said changing the configuration was acceptable. Attorney Mead said a variance would be needed.

Director Port agreed that the configuration should be altered if the NHC supported the PR and restoration plan. Chair Sontag said the Master Plan described a desirable streetscape as cars in the back and houses facing the street. Attorney Mead said the lot had two front yards without being a corner lot. The variance argument would be that the new house should have the same characteristics and setting. A member was not ready to comment without more research. What were the alternatives if the variance was not approved? Attorney Mead said the new house needed to sell at market price in order to fund restorations. Members said that would make the new house less affordable. Attorney Mead said the Lynch's would not be able to make the second house affordable with a PR on the front house. Members said the other side of the street would be dead, like Daniel Lucy Way. A properly sited house on Merrimac Court would be a contribution. Sometimes a PR held the value of the home, making it less affordable than it would be otherwise. Attorney Mead said 2,200 square feet was proposed for the new house. Members said that had become a modest home in Newburyport. Chair Sontag said the board was in support. Attorney Mead would talk further with Mr. Drake and go to the ZBA.

***c) 32 Union Street – Acceptance of performance guarantee, plan endorsement***

The applicant was not present. Chair Sontag said the proposed was an alternative to a security deposit. Director Port said the board held responsibility for the financial guarantee, which was particularly important on large subdivision. This was a relatively small project where financial

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security was lots that could not be sold until improvements were made. The Planning Office recommended signing the agreement. Members asked why any kind of security was needed? Director Port said security was needed until the developer built a reduced roadway, more like a common driveway, after which the board would release the lots being held for financial security. The board might want a finance guarantee once lots sold in order to ensure that sidewalks were built, as recorded on the plan. A member noted that the applicant was allowed to pick a form of security from three available options.

Anne Gardner made a motion to accept the proposed performance guarantee in the form of a covenant and to sign the Mylar plans for the subdivision at 32 Union Street, file number 2017-DEF-03. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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**4. 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 7/18/18, request to continue to 9/19/18*

The request for a continuance was expected.

Leah McGavern made a motion to continue the application for a modification to an approved special permit and definitive subdivision, file numbers 2015-SP-02 and 2015-DEF-01, to September 19, 2018. Tania Hartford seconded the motion and all members voted in favor.

**Motion Approved.**

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- b) *Bert Baldarelli/Wilson Holdings LLC  
124 High Street  
DOD Special Permit (2018-SP-11)*

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Bert Baldarelli, Deputy Treasurer/Director of Facilities, Wilson Language Training Corp, 47 Old Webster Road, Oxford, represented the owners who had serious problem with the front steps this spring. The brick structure failed and was unsafe. The structure also failed in 2011. A mason made repairs. The owners wanted to add a granite landing. The NHC reviewed the plans and voted approve restoring the steps exactly the same as they were now and adding a granite landing. He had specifications on the granite, mortar, and concrete. A SP was needed because the granite would change the look of the stairway. Patrick Nesieus, a Newburyport mason, would do the work. Chair Sontag asked if Federal houses ever had granite?

Public comment open.

Tom Kolterjahn, 64 Federal Street, co-chair, NPT, said Federal houses had solid granite steps and paths. Mr. Baldarelli said the NHC asked him about installing solid granite steps. The project was already an \$8,000 job. Solid granite would be considerably more expensive.

Public comment closed.

Tania Hartford made a motion to approve the application for a DOD Special Permit for 124 High Street, file number 2018-SP-11 as discussed and conditioned. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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**c) Mark Wojcicki, Wojcicki Development, LLC**  
**97-99 State Street**  
**DOD Special Permit (2018-SP-12)**

Scott Brown, architect, 29 Water Street, said project leader Nick Cracknel could not be present for the DOD SP and a SP for non-conformity for parking. The site was pre-existing non-conforming with one parking space. Proposed were four additional parking spaces for a total of five spaces. The added parking would not be substantially more detrimental than what existed today. He displayed a rendering of the late 19<sup>th</sup> Century Queen Anne Victorian structure that had converted from a half house to four units in the last century. A reconfiguration to three units would make minimal structural changes to the house. Proposed were changes to the front porch entry using the existing architectural details as a guide. He showed the rear elevation where two existing stairs and two entry doors would be removed. Original windows were in original locations. He demonstrated on a view from Garden Street an added third floor balcony. The NHC recommended not using all skylights as originally planned. He showed the front elevation and view from State Street where porches would be changed. The right side elevation showed skylights that were not viewable from a public way. Porch modifications made the stairs work with the new parking spaces. The NHC's favorable response included two recommendations: 1) keeping and repairing the existing windows and 2) saving and restoring some existing original

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shutters at the basement level. He demonstrated parking area details on the site and landscaping plans. Three spaces used an existing curb cut on Garden Street. The fourth space was in the opposite corner.

Lela Wright, realtor, William Raveis, 12 Federal Street, said a wrought iron fence would surround a formal garden facing High Street. New plantings would be added all around the building. Images were shown of flowers that would be planted. The brick driveway had a cobblestone apron. Chair Sontag noted the lack of a grassy area. Ms. Wright said that was correct. Members asked which original architectural details would be kept? Mr. Brown did not know what was underneath the vinyl and whether it would be repaired, restored, or replaced. Cedar shakes was a possibility. Members asked if new details would be introduced? Mr. Brown said the front porch entryway was the only new structure. All other detail would remain except for a built-in gutter that could not be kept. Chair Sontag asked if one set of added skylights was removed? Mr. Brown said yes and demonstrated on the rendering which skylights were eliminated. Three skylights were positioned high up on the right side. Members said the roofline faced High Street, even though the house did not face High Street. Mr. Brown concurred.

Director Port said it was customary for the ZBA to review a SP for non-conformities, but the project was in an overlay district, which brought it before the Planning Board. The proposed clearly passed the criteria. The neighborhood would not be negatively affected by the changes.

Public comment open.

Kathleen Dunham, 21 Otis Place, questioned the existing parking spot in the City's two-hour parking zone and asked about the parking ordinance. What if the unit owner had two cars? There was no room to park on State Street. Garden Street had parking all day long. Would the porch on the other side of house be removed? Ms. Wright said it would be pulled back a bit and the direction of steps changed to the other side. Ms. Dunham said the congested area would make parking difficult with snow. Chair Sontag said the applicant had provided for all parking off the street. What was the size of the third apartment with only one space? Mr. Brown said the unit was about 1,700 square feet. Chair Sontag said technically there should be another half space. Director Port said the applicant was providing more parking than existed today.

Tom Kolterjahn, 64 Federal Street, co-chair, NPT, said the NPT was in support. Many windows had original glass and there were many historical details still on the building that would make it stand out on State Street. Chair Sontag asked if restoring original windows was included? Director Port recommended incorporating the same conditions recommended by the NHC.

Jeanette Isabella, 1 Lime Street, was in support. Decreasing the number of units and increasing the number of parking spaces was an improvement over a single parking space for four units.

Public comment closed.

Leah McGavern made a motion to approve the application for a DOD Special Permit for 97-99 State Street, file number 2018-SP-12 as discussed and conditioned. Anne Gardner seconded the motion and all members voted in favor.

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Leah McGavern made a motion to approve the SP for parking non-conformities, as discussed and conditioned. Tania Hartford seconded the motion and all members voted in favor.

**Motion Approved.**

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**6. Planning Office/Subcommittees/Discussion**

***a) Subdivision Rules and Regulations***

Subdivision rules and regulation had been distributed for input. The board would adopt them at the next meeting. Note a new section on page 55 where Kate suggested adding cluster mailboxes.

***b) CPC Representative***

The vote would be submitted to the mayor for the appointment before going to the City Council.

Anne Gardner made a motion to appoint Don Walters as CPC representative. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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***c) Other updates***

The NED Waterfront West process and public meetings were discussed.

**6. Adjournment**

Tania Hartford made a motion to adjourn. Leah McGavern seconded the motion and all members voted in favor.

The meeting adjourned at 10:02 PM.

Respectfully submitted -- Linda Guthrie