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MEMORANDUM

TO: **Members of Planning Board and City Council**

FROM: **Andrew R. Port, Director of Planning & Development**
Jennifer Blanchet, Zoning Administrator & Enforcement Officer

CC: **Katelyn Sullivan, Planner**

RE: **ITIF Special Permits for Residential Uses**

DATE: **March 8, 2023**

The Office of Planning and Development would like to address some of the questions that arose during the recent joint public hearing regarding access to and use of ITIF (*Intermodal Transportation Improvement Fund*) Special Permits for residential uses. The Council docket includes [ODNC00135](#) (*Zoning Amendment ITIF Remove Residential Use*) which would amend [Section VII-A](#) of the Newburyport Zoning Ordinance.

Grandfathered Parking Nonconformities

The grandfathering of existing downtown parking nonconformities, and the underlying calculations associated with application for, or grant of, an ITIF Special Permit is addressed by the following ordinance provision:

Section VII-A (first paragraph)

*“New uses or development: No use of any premises shall be authorized or extended and no building or structure shall be erected or enlarged, unless on-site or off-site parking is provided for such extension, erection, or enlargement, as provided herein; provided, however, that **for any use or structure both (1) lawfully existing as of December 17, 2017, and (ii) currently located within three hundred (300) feet of a municipal parking lot and/or municipal parking structure that is located within the Downtown Overlay District (DOD), any lawful deficiency in the number or dimensions of accessory, off-street parking spaces that existed on December 17, 2017, may be continued at the same lot by right, notwithstanding any lawful extension, alteration, or change of such use or structure at such lot, such that off-street parking regulations of this ordinance shall apply only to those parking spaces newly required by such lawful extension, alteration, or change of use or structure.”** [emphasis added]*

Illustrative Map of the Downtown Area

The attached map depicts our downtown area, overlaid with the three hundred (300) foot radius applicable to the ITIF Special Permit provisions in Section VII-A of the Newburyport Zoning Ordinance entitled “Off-street parking regulations.” Highlighted on this map are several parcels of land in the downtown area which the Office has identified as either entirely vacant or demonstrably “underutilized.” As such, development on these lots may be considered entirely new uses unencumbered by parking commitments or allocations associated with existing uses on adjacent or nearby lots. New development on these lots would not invoke “grandfathered” parking nonconformities and would need to provide off-street parking in compliance with Section VII-A, including possible grant of an ITIF Special Permit for uses then (*at the time of permitting*) permissible.

Exclusion of Developments/Uses within the Waterfront West Overlay District

We note here that the third paragraph within Section VII-A explicitly excludes all properties and uses within the Waterfront West Overlay District (WWOD) from access to an ITIF Special Permit for the purpose of satisfying required parking calculations through the use of nearby municipal parking facilities.

Conversion of Upper Floor Commercial Uses to Residential Uses

At the 3/1/23 Joint Public Hearing, a hypothetical concern was raised by Attorney Mead about a given property owner’s ability to convert upper level commercial or office space in their existing structure to residential use (*e.g. use numbers 101, 102, 103, 104 and 109*) if the proposed zoning amendment (*prohibiting use of the ITIF for residential uses*) is adopted by the Council. First, it should be noted that the intent of the subject amendment was not to limit access to an ITIF Special Permit for those quasi-commercial uses which happen to be listed under the “Residential” section of the existing table of uses (*e.g. use numbers 105, 106, 107, 108 and 110*), and this is expected to be clarified prior to Council adoption with language added per discussion with the Council sponsor. Second, it must be acknowledged that the parking requirements for commercial uses such as Professional Office (1 space per 300sf) and Retail Service (3 spaces per 1000sf) are for all practical purposes more stringent per square foot than that of the residential uses mentioned above, where at most there are 2 per unit for the first 2 units, and 1.5 per unit beyond that. For example, a 600 sq.ft. professional office space carries the requirement of 2 parking spaces. A single dwelling unit also requires 2 spaces, but will be undoubtedly be larger than 600 sq.ft. Thus, parking requirements for the same space will be reduced when converted from commercial to a residential use. Accordingly, we do not agree with Attorney Mead’s suggestion that downtown Newburyport would be adversely impacted from the proposed zoning amendment by effectively precluding such residential conversion of upper floors throughout the downtown.

Parking Requirements for the Redevelopment of Vacant or Underutilized Lots

With regard to vacant parcels that have existing parking on them one must first consider if the parking is dedicated to a particular use on an adjacent property under existing permits or under the doctrine of merger with an adjacent lot held in common ownership. From there, the proposed use(s) of the subject lot(s) would then be considered. Under the proposed amendment, one could still apply for an ITIF Special Permit to satisfy parking requirements for commercial uses, while the spaces required for residential uses would need to be provided on site. For example, a proposed 5000 sq.ft. mixed-use structure with commercial on the lower level, and five (5) residential units in total on the upper levels could apply for an ITIF Special Permit for the commercial spaces if located within the 300-foot radius of a municipal parking lot or structure. 5000 sq.ft. of

retail service/trade space requires fifteen (15) parking spaces under the current parking ratios (i.e. \$7,693/space x 15 spaces = ITIF payment of \$115,395). The project would also be required to provide nine (9) parking spaces on site for the residential units.

A Recent ITIF Special Permit Application as Illustration

A recently permitted project mixed-use project at 2-6 Market Street provides all residential parking on site (i.e. off-street and without the use of municipal parking facilities) while utilizing the ITIF Special Permit for proposed first floor commercial use). This project was before the Planning Board again recently when the applicant thought they would be unable to provide the stacked mechanical parking arrangement promised during original permitting to satisfy the residential demand and zoning requirements. This modification request was later withdrawn when the applicant determined that the stacked parking arrangement was in fact achievable and would be provided consistent with the Board's initial project approval. The Planning Board was concerned about the applicant's late request for a permit modification (*i.e. after the building was constructed and while seeking occupancy permits*) with what seemed like a presumption that the Board would be summarily grant further ITIF Special Permit approval for the residential units as well. Here we note that the Council sponsor of ODNC00135, and several abutters to the project, attended the public hearing and expressed concern for the *practical impact* of displaced on-street parking adjacent to the new development.

It has been noted by the amendment's sponsor that the current City policy of "no overnight parking" in municipal surface lots is potentially at odds with the issuance of ITIF Special Permits for residential Uses which by their very nature result in a *practical need for overnight parking*. In this context, issuing an ITIF Special Permit for residential uses would have the *practical effect of displacing existing residents who already utilize the limited number of available overnight on-street parking spaces*. Overnight parking in the garage is permissible via a valid parking permit/pass that is distinct from the ITIF Special Permit, but also with some overall capacity limitations. Here we defer to the Parking Clerk and City Council regarding the nature of fees and restrictions applicable to off-street municipal parking facilities (*the garage and several surface lots*).

Unless the discrepancy between prohibited/restricted overnight parking is reconciled with the allowance for residential ITIF Special Permits associated with these same parking facilities, it is logical to assume that overnight on-street parking demand will increase, and place undue burden on a limited/finite number of existing parking spaces, if ITIF Special Permits continue to be authorized/issued for residential uses. Since the basis for overnight parking restrictions within municipal lots is not entirely clear, it may be possible (*subject to Council review and approval*) to eliminate this restriction, thereby providing an alternative path to avoid the "practical impact" of displaced neighborhood on-street parking from new residential uses for which an ITIF Special Permit is granted. The proposed zoning amendment was sponsored in the context of the existing policy which restricts overnight parking.

Summary of ITIF Special Permits & Payments Received to Date:

There have been three (3) ITIF Special Permits issued since the adoption of this zoning provision, all for commercial Uses. \$53,854.50 has been collected for the thirteen (13) total spaces of relief granted for Unmet Parking Need Credit (UPNC). To date, none of these monies have been spent and any future expenditure would require a recommendation of the Mayor and 2/3 approval of the City Council. The following Order language prescribes the proper use of these funds:

“Intermodal transportation improvement fund (ITIF): The city hereby creates a dedicated municipal revenue fund whose purpose is to provide for necessary funding to support transportation related improvements that are necessitated by use of municipal parking lots and structures by residential and non-residential uses. The improvements necessitated by such uses are intended: to increase the supply of available public parking spaces which would otherwise be available if not for use of the municipal parking lots and/or structures by such non-residential users; to allow for related improvements that are necessitated by the use of municipal parking lots and/or structures by such non-residential users; and to pay for increases in the cost of operating and maintaining municipal parking lots and/or structures which said costs can be directly attributed to the use of the municipal parking lots and/or structures by such non-residential users.”

We hope this memorandum helps to address some of the questions and concerns raised at the joint public hearing held last week regarding this proposed zoning amendment. Please feel free to reach out via phone or email with any additional questions that staff may be able to address.