City of Newburyport Zoning Board of Appeals Instructions for an Application for a VARIANCE

In order to be scheduled for a public hearing before the Zoning Board of Appeals, the petitioner shall submit the following information. If materials are not included because they are not applicable then the applicant must request a waiver from the Office of Planning and Development in order to consider the application complete.

Office	or r larming	g and bevelopment in order to consider the application complete.
<u> </u>	Two (2) ha	ard copies of the following information.
	a	Completed "Application for a Variance" form.
	b	Zoning Determination form from the Zoning Administrator indicating the need for a variance.
	C	Assessor's Card available from the Assessor's Office or from www.visionappraisal.com.
	d	 A written memo addressing the following variance criteria: i. State the particular use proposed for the land or structure. (Ex. – Single family, office building, etc.) ii. Explain the conditions and circumstances related to soil conditions, shape, or topography of the land that are unique to the applicant's lot, structure, or building and do not apply to the neighboring lands, structures, or buildings in the same district. iii. Explain how strict application of the ordinance would deprive the applicant of reasonable use of the lot, structure, or building in a manner equivalent to the use permitted by other owners of neighboring properties in the same district. iv. Explain how the unique conditions are not the result of actions taken by the applicant subsequent to the adoption of the ordinance. v. Explain how relief will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.
	e	 Site plans or survey clearly showing existing and proposed conditions. Plans shall include the following: North point; Zoning district(s) Names of streets Wetlands (if applicable); Dimensional control requirements; Property boundaries; locations of buildings on adjacent properties and dimensional setbacks from property lines; Indicate the proposed dimensional setbacks of the proposed structure with the existing structure(s) dimensional controls; Deed restrictions, easements, and other restrictions that may affect the proposal; Proposed features in solid lines; Features that are to be removed in dashed lines; Title block including the Drawing Title, Location Address, and Date of Plan; Graphic scale; Existing and proposed parking spaces
	f	Elevation plans showing all four sides of the existing building(s) and any proposed work to be highlighted. Plans shall include the following: Title block including the Drawing Title, Location Address, and Date of Plan; Setbacks of any proposed dormers; Height of ridge and median roof lines
	g	Any other supplemental information such as narratives, memos, letters of support, reports, photos, etc.
<u> </u>	Pdf files of thumb drive	of the above information sent via file transfer or email to planning@cityofnewburyport.com , or provided on disc or ve.
3.		istrative fee of \$200.00 per application is required at the time of application, plus a publication/abutters notification to per project. Fees may be combined into one check made payable to the "City of Newburyport."

Rev. 9/21/20

City of Newburyport Zoning Board of Appeals Application for a VARIANCE

Petitioner:	
Mailing Address:	
Phone:	Email:
Property Address:	
Map and Lot(s):	Zoning District:
Book and Page(s):	
Owner(s) Name:	
Mailing Address (if different):	
The petitioner is requesting a Variance from section(s): (Refer to the Zoning Determination form supplied by the Zoning Administr	ator)
 □ Dimensional Controls (VI) □ Lot Area □ Open Space □ Lot Coverage □ Height □ Frontage 	Parking (VII)
☐ Modification of existing variance (please attach)	Other:
Request:	

All information contained within this application will become a formal part of the Zoning Board of Appeals proceedings and decision.

Owner (if different)

City of Newburyport Zoning Board of Appeals Application for a VARIANCE

	Required Dimensional Controls from Section VI.A	Existing Dimensional Controls from survey or site plan	Proposed Dimensional Controls from proposed plans
Lot Area			
Frontage			
Height*			
Max. Lot Coverage (%)**			
Min. Open Space (%)***			
Primary Front Setback			
Side A Setback/Secondary Front Setback			
Side B Setback			
Rear Setback			
Parking Spaces			
FAR****			
Area unoccupied by build in open space. *FAR is only applicable ir ny advice, opinion, or information g f Appeals. It shall be the responsib the City Clerk or Planning Office doe not legal notification. Failure to com by the ZBA of this application as incomp	ided by the lot area expressed as a ling, parking areas, or driveways explain the Plum Island Overlay District (Piven by any board member or any other illity of the petitioner to furnish all supports not absolve the petitioner from this reapply with the application requirements, a complete.	oressed as a percentage of lot area. IOD). official or employee of the City of Newborting documentation with this application. sponsibility. The petitioner shall be response.	Pools, patios, and decks may be included by a partial not be binding on the Zoning Boar. The dated copy of this application received by consible for all expenses for the filing, publication ules and Regulations may result in a dismissal plication.
- by checking his box an	id typing my hame below, ran	relectionically signing this app	nication.
Petitioner		_	
By checking this box an	nd typing my name below, I an	n electronically signing this app	olication.

Rev. 9/21/20

Owner (if different)

City of Newburyport Zoning Board of Appeals Application for a VARIANCE

	Required Dimensional Controls from Section VI.A	Existing Dimensional Controls from survey or site plan	Proposed Dimensional Controls from proposed plans
Lot Area			
Frontage			
Height*			
Max. Lot Coverage (%)**			
Min. Open Space (%)***			
Primary Front Setback			
Side A Setback/Secondary Front Setback			
Side B Setback			
Rear Setback			
Parking Spaces			
FAR****			
Area unoccupied by build in open space. *FAR is only applicable in Any advice, opinion, or information of Appeals. It shall be the responsible the City Clerk or Planning Office does and legal notification. Failure to come by the ZBA of this application as income.	ided by the lot area expressed as a fling, parking areas, or driveways expent the Plum Island Overlay District (Pipiven by any board member or any other islity of the petitioner to furnish all supports not absolve the petitioner from this resupply with the application requirements, a complete.	oressed as a percentage of lot area. IOD). official or employee of the City of Newburting documentation with this application. sponsibility. The petitioner shall be respo	Pools, patios, and decks may be included by a support shall not be binding on the Zoning Boar. The dated copy of this application received by insible for all expenses for the filing, publicationales and Regulations may result in a dismissable lication.
		_	
Petitioner			
By checking this box ar	nd typing my name below, I an	n electronically signing this app	lication.



30 Green Street Newburyport, MA 01950 Phone 978.463.7700 Fax 978.463.7747

www.mtclawyers.com

May 13, 2021

By Hand

Rob Ciampitti, Chair Zoning Board of Appeals City of Newburyport City Hall 60 Pleasant Street Newburyport, Massachusetts 01950 Newburyport, Massachusetts 01950

Re: Request for Variance / Replace Storefront Windows with Operable Windows 17-21 State Street, Newburyport, MA (the "Property")

Assessor's Map: 6, Lot: 9

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, I represent Caswell Restaurant Group, Inc., the tenant at 17-21 State Street (the "Petitioner"). The Petitioner hereby respectfully requests a Variance under section X-H(6) of the Newburyport Zoning Ordinance ("NZO") pursuant to the Zoning Administrator's March 11, 2021 determination that modification of existing first floor windows to be operable is achievable only through a variance. Without waiving any rights regarding this determination, the Applicant seeks said variance. The Zoning Determination is attached hereto as **Exhibit A**.

The Applicant propose to install the windows as proposed in in **Exhibit B**. These windows will be operable by a fold up-and-in function.

The Property is located in the B2 zoning district and the Downtown Overlay District ("DOD"). The building and use are fully conforming to the use and dimensional requirements of the NZO. The lot is approximately 3,112 square feet with approximately 35.33 feet of frontage on State Street. The Building is approximately 30 feet tall. The use is a restaurant use on the first floor with residences on the upper floors and therefore is considered mixed use.

The DOD prohibits the change of operability of historic windows. By their very nature of being a part of this 1820 structure, having been updated in or around 1941 (See **Exhibit C**) the Property's windows are considered Historic under the NZO. The windows are not currently operable and as a result cause a great hardship on the occupants and allowed by right use, namely a restaurant. In light of the pandemic of 2020 which continues today, notwithstanding the state-of-the-art air purification system in the restaurant, the allowance of air circulation within the building, a place where

people gather, it is paramount to the health and safety of the people of Newburyport and its visitors.

As you will see on the attached plans, the proposed windows will be placed at the current base height off of the sidewalk. They will extend up to the bottom of the location of the lowest frame piece of the current banner sign. It is apparent from the historic photos, to the extent they can be reviewed, and from the construction in the façade of the building, that this area was within the then opening of the front façade for the windows. Indeed, it is more likely that the original opening went to the top of the frame of the banner sign. As noted, this is not the proposal of the Petitioner, that is to replace the banner sign with window – but it is an important piece of information.

Pursuant to Section X-H(6) of the Zoning Ordinance, "[t]he [Z]oning [B]oard of [A]ppeals shall have the power... to grant... a variance... from the terms of this zoning ordinance..." Here, the grant of a variance by the Board is consistent with the standards of G.L. c. 40A, § 10 and said Section X-H(6).

Here the Petitioner seeks a variance from the DOD to replace the current windows with the proposed windows and to have the proposed windows operable. As noted above, such a variance is necessary to address the need for air flow and circulation within the restaurant space.

In accordance with section X-H(6) of the NZO and G.L. c. 40A sec. 10, the Petitioner has a hardship related to the structure¹ on the Property, namely the structure has no operable windows to the first floor on any side. Indeed, the commercial space contains no windows except those which exist in the front of the structure, and which of course, cannot be operated. Otherwise, the only opening on the first floor are the front egress, a rear north east egress and a rear south east egress.

Such a configuration is a hardship, particularly in light of the time in which we live, and which of course could not reasonably have been contemplated at the adoption of the DOD. The Massachusetts Appeals Court has determined that safety concerns that would result if the owner complied with the ordinance, qualify as a "hardship" supporting a variance determination. In *Furlong v. Zoning Board of Appeals of Salem*, a boat repair facility sought a variance, as compliance with the ordinance would place building too close to a boat lift and resulted in safety risks, "likely to cause 'injury to people and property." 90 Mass. App. Ct. 737 (2016). Here, the inoperability of the windows in a time where air circulation to prevent deadly viruses, is a paramount safety concern.

Where a zoning variance diminishes the risk of an existing harm, or where it prevents a greater risk of harm that would result from compliance with a zoning ordinance, such hardship can merit a variance. Furlong v. Zoning Board of Appeals of Salem, 90 Mass. App. Ct. 737 (2016). Here, a variance from the prohibition on the operability of windows allows for dramatically safer and more appealing restaurant experience.

This condition further then poses a financial hardship on the Petitioner as the lack of windows leads to a reduction in customers and/or potential harm to employees. The lack of fresh air circulation will surely lead to a financial hardship which is all related to the structure, which existed long before the DOD was ever contemplated.

¹ In part, G.L. c. 40A sec. 10 provides that owing to circumstances relating to the soil condition, shape or topography of such land <u>or structures</u> and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance... would involve substantial hardship, financial or otherwise...

As noted, the Petitioner or the owner did not create the condition of the structure. Further, the requested relief can be granted without nullifying or substantially derogating from the purpose and intent of the Ordinance. Here, the Petitioner proposes to use the same apparent original opening and use high quality materials. The windows when open will fold up and in and will not appear to the outside as a modern or non-historic amenity. When closed, the windows will appear as it is likely similar historic windows might have appeared, prior to the 1941 renovation. The lower wall will remain the same as will the sign area above. The door, similarly will remain the same.

Finally, the proposed grant of relief will not be a detriment to the public good. As noted above, the historic look and feel of the building will remain. Indeed the provision of new windows which are operable aids in the public good by providing fresh air in the restaurant, rendering it more safe for restaurant patrons due to the addition of ventilation, activating the street scape in the central downtown business area and providing a safer place for the employees to work.

Based upon the foregoing, the Board can grant the relief requested and approve the removal of the existing windows on the first floor and installation of the proposed windows which are operable.

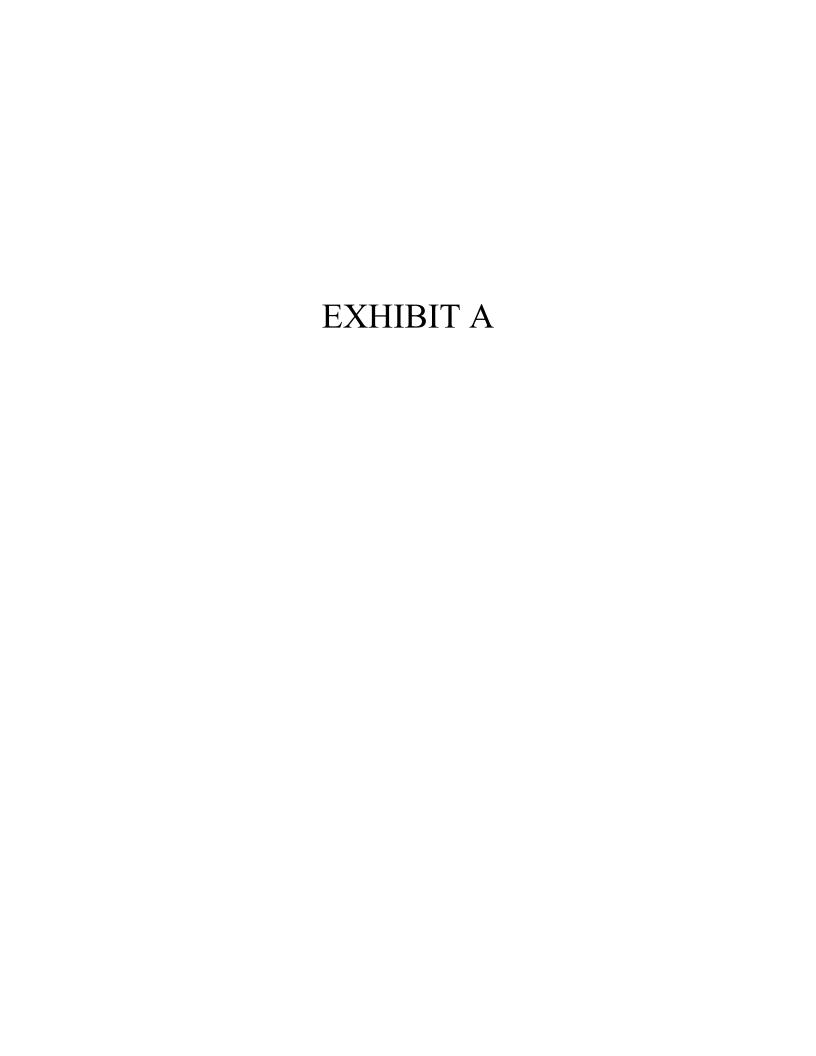
Respectfully submitted,

Caswell Restaurant Group LLC,

By its Attorney,

Lisa L. Mead

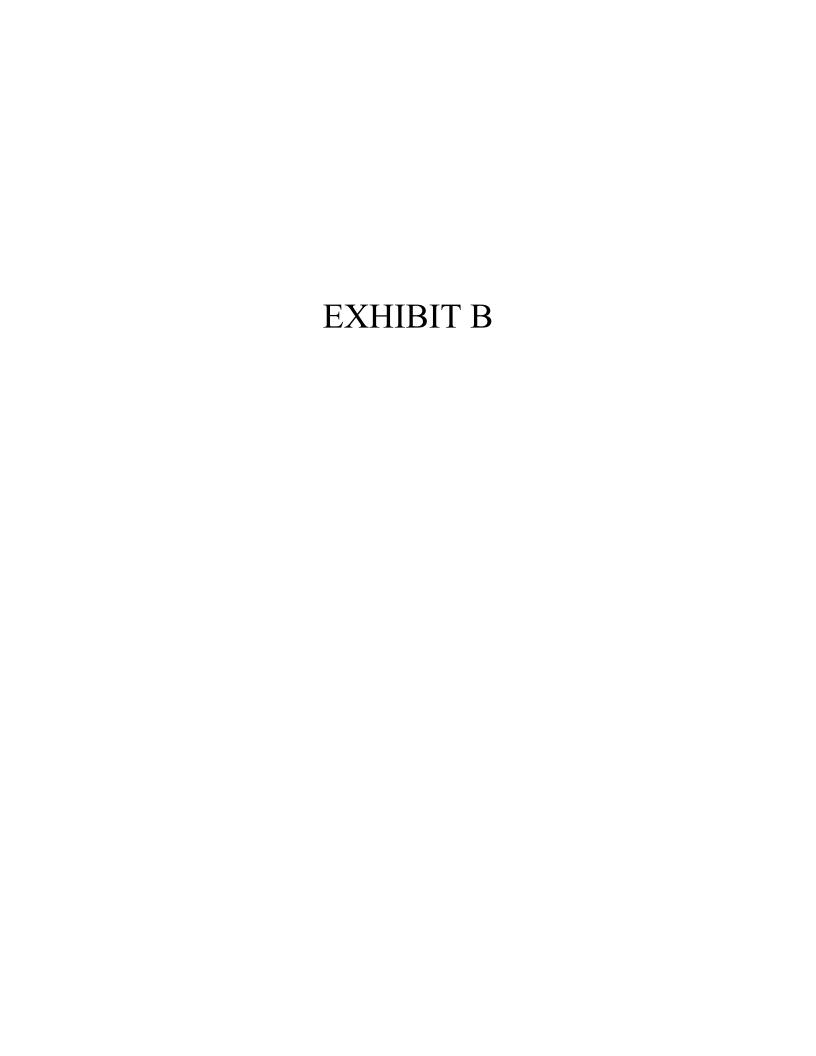
Attachment cc: client

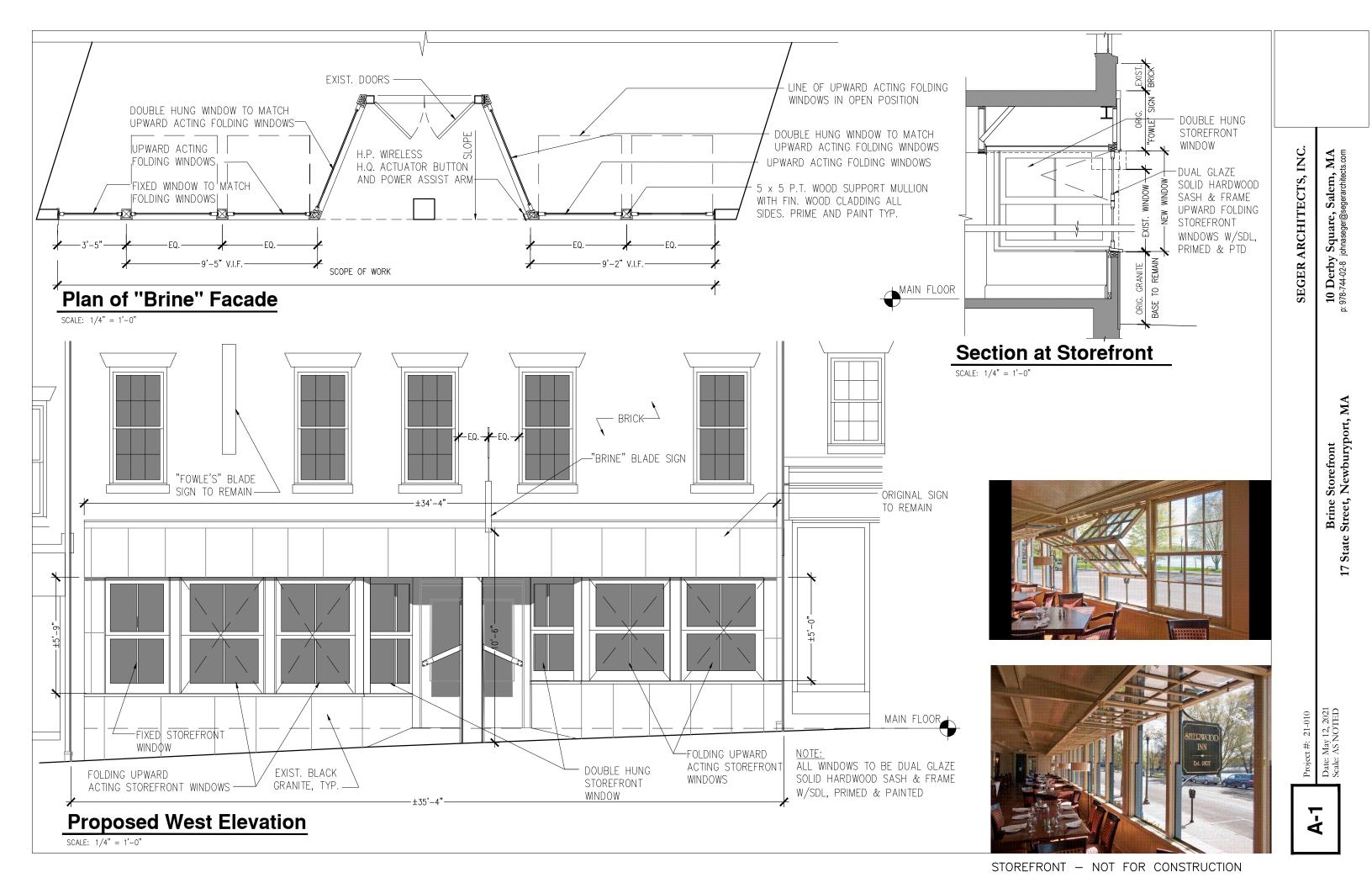


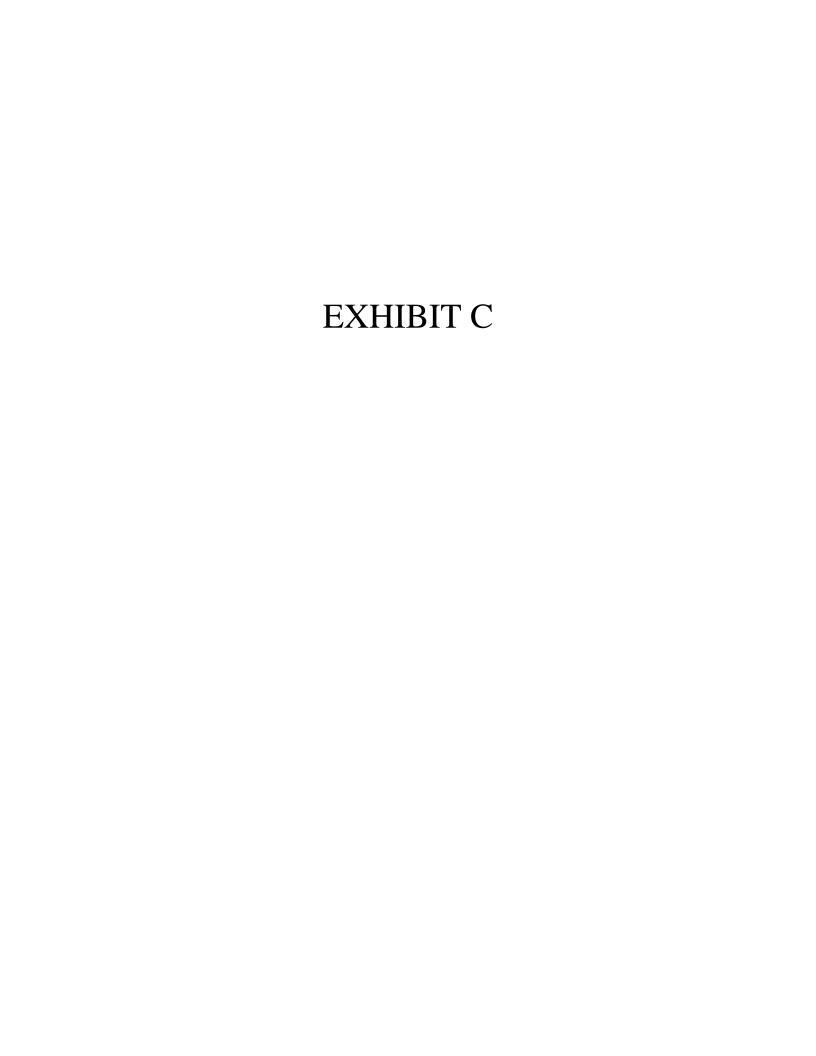
CITY OF NEWBURYPORT, MA **ZONING DETERMINATION**

Name: Jay Caswell			
17-21 State Stade State	reet	Zoning District(s):	
Request: windows and v	g first floor storefront windows wood panel sign band. New s ws in the DOD requires a vari	and art deco sign band to incign above entry. Window oper ance.	lude new operable ation change of
Spacing (VI.E) In-Law Apart Bonus for M Personal Win Demolition C	Controls (VI) Open Space Front Ya Height Side Ya Lot Width Rear Ya Regulations (V.D) #:	Special Permit for Non-Conform Extension or Alteration Parking Upward Extension Open Space	rmities (IX.B.2) Rear Yard Lot Coverage Side Yard Lot Frontage Front Yard
One reside Open Space Water Resc Federal Str Courts and Waterfront Towle Com Downtown Other Smart Growth Di	e Regulations (V-D) #	Special Permit for Non-Conformation Extension or Alteration Parking Upward Extension Open Space Height Lot Area Use Over 500 sf. increase (Site Plan Review (XV) Major	Rear Yard Lot Coverage Side Yard Lot Frontage Front Yard
CONSERVATION C	OMMISSION REVIEW REQUIRED	The name typed below represents the intent	
		Jennifer T Blanchet Newburyport Zoning Administrator	03/11/21 Date

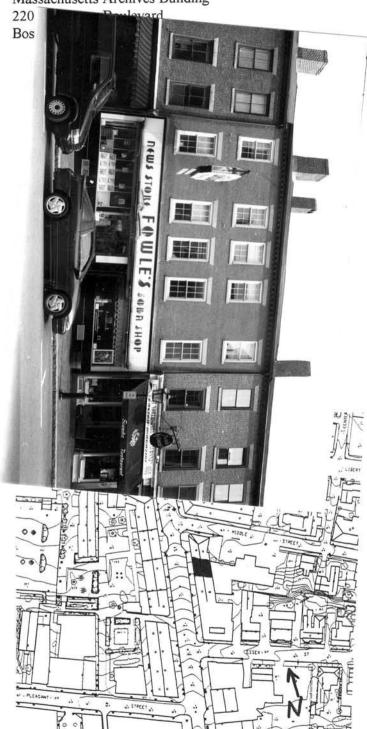
Newburyport Zoning Administrator







Massachusetts Historical Commission Massachusetts Archives Building



Recorded by Lisa Mausolf

Organization Newburyport Historical Commission

Date (month/year) April 1999

Town Newburyport

Place (neighborhood or village)

Address 17-21 State Street

Historic Name Fowle's News

Uses: Present Commercial

Original Commercial

Date of Construction c.1820

Source visual inspection

Style/Form Federal (altered)

Architect/Builder unknown

Exterior Material:

Foundation Granite

Wall/Trim Brick/Granite

Roof

Asphalt Shingle

Outbuildings/Secondary Structures

none

Major Alterations (with dates) 1941 - storefront

Condition good

Moved ⊠ no □ yes Date

Acreage 1628 SF

Setting central business district, flanked by similar

brick blocks

BUILDING FORM (17-21 State Street)

ARCHITECTURAL DESCRIPTION

Describe architectural features. Evaluate the characteristics of the building in terms of other buildings within the community.

Flanked by similar Federal-era brick blocks, 17-21 State Street is a three-story building constructed of brick laid in a common bond. The building is capped by an asphalt-shingled gable roof with a tall square chimney on the front slope. The rear chimney is topped by two pointed arch chimney caps. The upper two stories of the facade are five bays wide; the bays are arranged with a cluster of three bays at the center and one opening on each end of the building. The third story windows are slightly smaller than those on the second floor. All of the windows contain wooden 6/6 windows with splayed granite lintels and plain sills. A hanging metal sign with neon letters is mounted between the first and second bays on the second floor. A brick dentil course decorates the cornice.

The first floor storefront is a 1941 alteration and consists of a central entrance recessed behind a load bearing post. The double swing doors have a large glass window set in a wooden frame with diagonal push bars. The angled display windows on either side are set above a black Carrera glass bulkhead with metal ventilation grates. The ivory enamel metal panels above the windows are incised by black letters reading "NEWS STORE FOWLE'S SODA SHOP" in an Art Deco style font. The storefront is fitted with awnings with an aluminum cornice above.

HISTORICAL NARRATIVE

Describe the history of the building. Explain its associations with local (or state) history. Include uses of the building and the role(s) the owners/occupants played within the community.

Like its neighbors, this early 19th century block was constructed after the 1811 fire which destroyed much of the Market Square area. Directories indicate that in 1849 Charles Currier, a tailor, was located upstairs at 17 State Street, Enoch Smith sold fancy goods at 19 State Street and Moses Hale was the proprietor of a fancy goods store at 21 State. In 1853 Sarah Moody, milliner, was located at 17 State Street while J.G Tilton & Co., paper hangings, was located at #21. A tailor named J.W. Ballou was occupying the space at 17 State Street in 1860 while George Geary sold hats, caps and furs at 21 State Street in the early 1870s. The 1888 Sanborn map indicates that the occupants included a clothing store and tailor with offices upstairs. In the late 19th and early 20th century a boot and shoe store was located at 19 State Street.

Fowle's moved to its present location at 17 State Street about 1900. Stephen Fowle first began the delivery of newspapers in 1853, maintaining a small shack for the sale of newspapers near the Eastern railroad station. Fowle opened his first newspaper, periodical and confectionery establishment at 11 State Street in 1865. By about 1873 Fowle's had outgrown the original location and moved next door to 13 State Street where the store remained for 27 years. After Stephen Fowle's death in 1895, his wife continued to operate the business. Nicholas Arakelian became a clerk in the store about 1905 and in 1911 became Mrs. Fowle's business partner. The partnership continued until 1920 when Arakelian purchased Mrs. Fowle's interest in the store. Later he bought the actual building from the Todd heirs. Although Mrs. Fowle retired from the business in 1920 she continued to work in the store until 1923; she died in 1929.

In 1941 Nicholas Arakelian greatly expanded and modernized Fowle's. The local newspaper described it as "a model store, one that could be copied but not excelled. It is 1941 store architecture at its best...the expansion of this long established company is one of the most important business changes Newburyport has seen in a long time" (Daily News, 9/5/1941). The store was enlarged by taking in the vacant store just above it on State Street. The renovations included the installation of a streamlined 26-foot soda fountain and 17 booths. The other half of the store was equipped with display cases and counters, candy counters, a nut counter, a large tobacco department, magazine display racks 33 feet long and a newspaper counter.

In 1957 Nicholas Arakelian sold Fowle's News Co. to two Hampton Beach businessmen, George Enright and Fred Schaake.

Recommended for listing in the National Register of Historic Places. If checked, you must attached a completed National Register Criteria Statement form.

INVENTORY FORM CONTINUATION SHEET

Town Newburyport Property Address 17-21 State Street Area(s) Form No.

> L,U 2170

Massachusetts Historical Commission Massachusetts Archives Building 220 Morrissey Boulevard Boston, Massachusetts 02125

BIBLIOGRAPHY and/or REFERENCES

Colby, Grace L. "Fowle's News Company is Marking Centenary", Newburyport Daily News, May 15, 1952. Currier, John J. History of Newburyport, Massachusetts, 1764-1906, vols. 1 & 2. Newburyport: 1906 & 1909. "Fowle's News Agency Sold", Newburyport Daily News, January 30, 1957. Massachusetts Historical Commission. Historic Resources Inventory: Newburyport.

Newburyport City Directories, various dates.

Newburyport Daily News, September 5, 1941.

Maps

Atlas of Essex County, Massachusetts. Philadelphia: D.B. Beers & Co., 1872.

Atlas of Essex County, Massachusetts. Boston: George H. Walker, 1884.

Beck & Paul. City of Newburyport. Framingham, Mass.: Bigelow and Hazen, 1880.

Plan of Newburyport. Philadelphia: H. McIntyre, 1851.

Sanborn Insurance Maps, Newburyport, 1888, 1894, 1906, 1914, 1924, 1946. Massachusetts State Library, Boston, Massachusetts.

Newburyport MIMAP Merrimack Valley Planning Commission (2020)

Search...

Sign in



17-21 STATE ST

Location 17-21 STATE ST

MBLU 6/9///

Owner

NEWBURYPORT MANAGER

LLC TRS

Assessment \$1,222,300

PID 195

Building Count 1

Current Value

Assessment				
Valuation Year	Total			
2021	\$598,200	\$624,100	\$1,222,300	

Owner of Record

Owner

NEWBURYPORT MANAGER LLC TRS

CO-Owner

Co-Owner C/O NEW ENGLAND DEVELOPMENT

Address 75 PARK PLAZA

BOSTON, MA 02116

Sale Price \$1,631,414

Certificate

Sale Date

Book & Page 23919/0574

ı agc

02/01/2005

Instrument 1

1G

Ownership History

Ownership History						
Owner Sale Price Certificate Book & Page Instrument Sale Date						
NEWBURYPORT MANAGER LLC TRS	\$1,631,414		23919/0574	1G	02/01/2005	
WATERSIDE GROUP LLC	\$100		14998/0233	1F	08/03/1998	
FOWLE'S NEWS CO INC	\$1		09908/0426		02/28/1989	
BARN REALTY INC	\$0		5779/0134		06/29/1971	

Building Information

Building 1: Section 1

Year Built:

1800

Living Area:

8,132

Building Attributes			
Field	Description		
Style:	Stores/Apt Com		

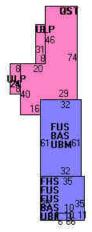
Model	Commercial
Grade	Average +10
Stories:	3
Occupancy	5.00
Exterior Wall 1	Brick/Masonry
Exterior Wall 2	Average
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Floor 1	Pine/Soft Wood
Interior Floor 2	Ceram Clay Til
Heating Fuel	Oil
Heating Type	Steam
AC Type	Central
Struct Class	
Bldg Use	STORE/SHOP MDL-94
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
1st Floor Use:	3220
Heat/AC	HEAT/AC SPLIT
Frame Type	MASONRY
Baths/Plumbing	ABOVE AVERAGE
Ceiling/Wall	SUS-CEIL & WL
Rooms/Prtns	AVERAGE
Wall Height	14.00
% Comn Wall	0.00

Building Photo



(http://images.vgsi.com/photos/NewburyportMAPhotos/\01\01\11\11.jpg)

Building Layout



 $(http://images.vgsi.com/photos/NewburyportMAPhotos//Sketches/195_212$

		<u>Legend</u>	
Code	Description	Gross Area	Living Area
FUS	Upper Story, Finished	4,402	4,402
BAS	First Floor	3,117	3,117
FHS	Half Story, Finished	1,225	613
FOP	Porch, Open	60	0
UBM	Basement, Unfinished	3,177	0
ULP	Loading Platform, Unfinished	440	0
UST	Utility, Storage, Unfinished	2,602	0
		15,023	8,132

Extra Features

Extra Features <u>Leger</u>					
Code	Description	Size	Value	Bldg #	
CLR1	COOLER	48.00 S.F.	\$2,200	1	

Land

Land Use		Land Line Valuation	
Use Code	0322	Size (Acres)	0.07
Description	STORE/SHOP	Depth	0
		Assessed Value	\$624,100

Outbuildings

Outbuildings	<u>Legend</u>
No Data for Outbuildings	

Valuation History

Assessment							
Valuation Year	Improvements	Land	Total				
2020	\$584,200	\$624,100	\$1,208,300				

(c) 2021 Vision Government Solutions, Inc. All rights reserved.