

**City of Newburyport  
Planning Board  
February 3, 2021  
Approved Minutes**

The online meeting was called to order at 7:01 PM.

**1. Roll Call**

Attendance: Alden Clark, Beth DeLisle, Anne Gardner, Tania Hartford, Leah McGavern, Bonnie Sontag, Rick Taintor, and Don Walters

MJ Verde arrived at 7:30

Andrew Port, Director of Planning & Development and Katelyn Sullivan, Planner, were also present.

**2. Other Business**

- a) *Bavarro Family Trust  
177 State Street  
Minor Site Plan Review (2020-SPR-08)  
Continued from 12/16/20*

Bonnie Sontag said the explanation in the staff report was justifiable.

Tania Hartford made a motion to continue the Minor Site Plan Review for 177 State Street to February 17, 2021. Rick Taintor seconded the motion, and all members present voted in favor.

**Motion Approved.**

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

- b) *Approval of Minutes*

Alden Clark made a motion to approve the 1/20/21 minutes. Rick Taintor seconded the motion, and seven members present voted in favor. Tania Hartford abstained.

**Motion Approved.**

- c) *Potential Zoning Amendments*

Bonnie Sontag reviewed the list of zoning priorities from the 1/25/21 planning committee meeting with Mr. Clark, Ms. Gardner, Mr. Taintor, and herself. No committees will be established at this time, partly to avoid burdening the Planning Office with Zoom meetings while

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they are undertaking major zoning legislation changes that are already underway. It means that small group members may work together on their topic without violating the Open Meeting regulations. Instead, she requested one lead volunteer for each topic who will take responsibility for that topic and communicate with the other members, stakeholders, and staff. A progress report is requested for the June 6 planning-only meeting. She would look for interim updates on progress for discussion during this agenda item at any Planning Board meeting. Through interim updates, if it is agreed that the timing is right for putting an official committee together to develop a proposal, that can be done. If any topic does not get a volunteer, we will set the topic aside. Members may prefer to assist a lead volunteer instead of leading a topic themselves. We're trying to make doing this easy and accommodate the desire to do more planning.

Rick Taintor said the planning priority list resulted from the committee meeting. The committee is open to any topic that's missing.

Planning Item: Waterfront West

Bonnie Sontag said the committee recommended putting the Waterfront West Overlay District on hold. She said Director Port already had the mayor's response that funding a 3D model is not a spending priority right now. Next, he will contact Planning & Development Committee chair, Councilor Shand, to learn if City Council is interested in collaborating with the Planning Board. If we learn there's a path forward, we can put it back on the table.

Rick Taintor said over a year ago the Planning Board put forth the idea of forming a joint committee with the City Council on Waterfront West. We've been waiting for the City Council to be ready to work on it but recognize there is limited capacity to take on new tasks. He expressed concern about having to react to the next proposal. The board should keep a pulse on any indications from the applicant, but things seem quiet for now.

Ann Gardner asked if in the event Councilor Shand expressed interest in a Waterfront West 3D model whether the modeling would fall within the guidelines for CPA funding and what is the date for the next round of CPC proposals.

Don Walters, CPC member, said the RFPs are out and due sometime in February. March and April are when different proposals are reviewed.

Director Port said the deadline for the current round of CPC proposals is tomorrow. He's not sure 3D modeling would be eligible. Funding categories are open space, historic preservation, and affordable housing. The affordable housing component of Waterfront West is minor. It would be wonderful to go forward now if there were other sources of funding.

Don Walters asked if the decision to fund 3D modeling is solely in the hands of the City Council, solely in the hand of the mayor, or a combination of the two.

Director Port said there has to be an appropriation of funds from somewhere by the City Council. The mayor, the council, and the finance director would jointly decide from which account to pull funds. The letter with the request can still be sent to the City Council. Some members may be

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skeptical of the expense at this time, but others may feel it's important to get ahead of the curve since this addresses the one fundamental issue that has never been resolved. The staff can work with the board on issues beyond massing and scaling, but this fundamental issue should be resolved first.

Volunteers when it come up again: Leah McGavern

Rick Taintor said three items on the priority list, Storey Avenue, Environmental & Resilience Review of the Zoning Ordinance, and Site Plan Review & Parking, look at similar or overlapping issues from different points of view. The lead volunteer could take on all or some of these together.

Planning Item: Storey Avenue

Rick Taintor said this item involves revising a zoning district for better traffic management, pedestrian & bicycling accommodations, environmentally sensitive low-impact development, the possibility of including a mix of residential and non-residential development and improving development standards.

Volunteers: Rick Taintor as lead volunteer with Alden Clark and MJ Verde

Planning Item: Environmental/Resilience Review of Zoning Ordinance

Rick Taintor said this involves looking at the entire ordinance. When we were originally thinking about a committee, we were looking for representatives from the Resilience Committee, the Energy Advisory Committee, the Tree Commission, the Conservation Commission, citizens knowledgeable and skilled in environmental issues to find what needs to be updated with respect to the changing climate. Topics would include low-impact development, landscaping and open space, renewable energy, and so forth. We should all take a look at the Resiliency Report and see if it spurs any thoughts as to how it might affect work you are volunteering for on another topic.

Volunteers: Beth DeLisle, Alden Clark, MJ Verde, and Bonnie Sontag as note taker for the other groups ideas on how resiliency fits in with other topics

Planning Item: Site Plan Review & Parking

Rick Taintor said this involves looking at the standards for all major development in the City such as landscaping, open space, bicycle parking, coordinating on the resilience side, general off-street parking, incorporating new technologies, such as the parking lifts, how parking regulations particularly in the downtown relate to municipal parking lots.

Rick Taintor said the Storey Ave., environmental/resilience, and site plan standards projects are three different overlapping ideas, one from the perspective of a zoning district, one from the perspective of development standards, and the third looking at the entire ordinance through the lens of the environment, sustainability, and resilience.

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Volunteers: Rick Taintor as lead volunteer and he would pull in Alden Clark as needed

Anne Gardner asked if the Resiliency Committee looked at zoning for their upcoming report.

Rick Taintor said the report is mostly looked at infrastructure with a couple of vague references to zoning and looking at building codes in the floodplain area. The report has been online since October. Not much is directly applicable to our planning items.

Director Port agreed. The first follow-up effort will be to add detail to the plan. The presentation on February 18 is a good overview of the vulnerabilities we have and strategies that can be used like regulation changes for Plum Island, for example. Although it doesn't say so directly it is implied in the plan that resiliency should be incorporated in things like the Waterfront West development. We'll be bringing forward an update in the Master Plan in a couple of weeks.

Bonnie Sontag said you can access the Resiliency Report presentation on February 18 from the City website if you look under the Resiliency Committee. The calendar notes it and the zoom connection for members of the public. The report is 112 pages.

Planning Item: Design Standards

Bonnie Sontag said instead of going forward with writing design standards, the Planning Committee decided it was more reasonable to do a feasibility review to figure out where standards should apply and why because there are neighborhoods within districts that vary a lot. We're probably going to need professional expertise. While we have a model for how this could be done with our 40R design standards, that doesn't mean it will be easy to devise design standards for the rest of the City. The big focus would be the National Register Historic District, but plenty of buildings in the City are not contributing buildings to the National Register Historic District. We will determine what locations should be the focus, whether it should be for new construction or renovations, differentiate between architectural and site design standards, as well differentiate between guidelines and standards. The Zoning Advisory Committee (ZAC) broke down the districts and did a lot of work that will help us.

Volunteers: Leah McGavern as lead volunteer with Bonnie Sontag and MJ Verde

Planning Item: Planning Board Policies and Procedures

Volunteers: Tania Hartford and Beth DeLisle. They will decide who will lead.

Planning Item: Inclusionary Zoning Revisions

Bonnie Sontag said this is the language used for affordable housing.

Rick Taintor said that inclusionary zoning mandates that affordable housing be included in certain types of residential development, as opposed to zoning that encourages affordable housing by providing incentives. Inclusionary zoning provides some way to have affordable housing whether mandating an in-lieu fee or by provision of affordable units.

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Bonnie Sontag said the idea was to incorporate different levels of affordability and multi-housing projects that could be mandated. There are other amendments such as the proposed accessory units amendment which has not been finalized by the Zoning Advisory Committee that could be adapted to meet the requirement for inclusionary zoning, or incentivized.

Rick Taintor said it could be one of those things where ‘capital A’ affordable housing is formally restricted by income and renter costs and ‘small a’ affordable housing has to do with the nature of the unit being developed and is affordable because of its size.

Bonnie Sontag said Chair of the Affordable Housing Trust, Judy Tymon, is a resource.

Volunteers: Anne Gardner as lead volunteer with Don Walters as a possible volunteer

Rick Taintor said if there are no volunteers, for a particular topic we don’t have to address the topic. If it’s a strong interest, but you don’t want to take the lead, feel comfortable to reach out to others with your interest. We wanted to get away from the problem that a committee meeting needs to be noticed every time it meets. We’d like to have informal progress reports and at the June meeting a more formal report that helps us decide what we will focus on.

Bonnie Sontag said volunteers should feel free to call her and Mr. Taintor. It’s a luxury to work at our own pace when our feet are not against the fire. We don’t have grand expectations that a lot will get done in a short period of time. This is very informal.

Leah McGavern asked about the expectations for the groups.

Bonnie Sontag said it would be good to have an interim progress report on each topic at a Planning Board meeting some time before June 16 on the progress being made. We are taking an exploratory approach. Don Walters gave us a good point of reference with “If you don’t have clear goal posts you’ll never know if you got there,” but in this case we’re going to try an exploratory approach for the first 6 months, and after that we’ll buckle down if the exploratory approach isn’t working.

***d) Other Updates from the Chair or Planning Director***

***• Review of H.5250 and 40A zoning changes***

Director Port said the MA legislature adopted Bill H.5250 on 1/14/21 with potential implications for Newburyport. He displayed highlighted language on the screen. There’s a definition for multi-family because it is used elsewhere and there is now a requirement that in order to be eligible for certain grant programs the local communities around the MBTA have to have multi-family housing in close proximity. He believes Newburyport meets the requirement because of our 40R district, but he is waiting on additional guidance to ensure that the City is still eligible for grants from the state.

Alden Clark saw language that said the requirement is multi-family housing within ½ mile from the train station. The boundaries of our zone don’t go out that far.

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Director Port said he doesn't think it means everything within ½ mile radius has to be multi-family, there is some flexibility, because of the word 'reasonable' in the legislation. There is more clarity coming on that. The minimum gross density is 15 units per acre, and we are meeting that. He doesn't think we have to change our zoning to comply. The most interesting thing is the change from a 2/3 majority vote to a simple majority vote, which lowers the threshold and allows for more reasonable and responsible changes.

Leah McGavern asked if the change is for any zoning ordinance.

Director Port said this zoning is about creating more housing by lowering the threshold by which certain types of housing can be permitted. It allows multi-family and mixed-use housing as-of-right in eligible locations like train stations and allows increasing permissible density for multi-family or mixed-use. It mentions accessory units and OSRD can now be done with a simple majority vote rather than a 2/3s majority vote. We'll have to pay attention to how we package any of our initiatives. The other aspects of zoning are not related to this housing component. This legislation lowers the threshold by which local zoning can be changed for this type of housing to be built. The same thing will apply to the special permit process, even to modify regulations regarding the bulk and height of structures, yard size, lot area, setbacks, open space, parking and building coverage requirement to allow for additional housing units beyond what would otherwise be permitted. One could broadly read that to say when someone wants to reduce the dimensional requirements in the R2 to develop more housing it would be eligible. We'll probably see some case law around whether some of these things should be a 2/3s majority vote. The bottom line is that some housing initiatives we might be interested in doing here will only need a simple majority vote of the City Council. The adoption of the special permit issued by a Special Permit Granting Authority (SPGA) shall require a simple majority vote for reducing parking for housing if it ties back to creating more housing.

Director Port moved to another section and read, "A special permit issued by a SPGA shall require a simple majority vote for any of the following: multi-family housing that is located within ½ mile of a commuter rail station. That overrides local zoning.

Leah McGavern asked what qualified as a bus station.

Director Port said the park and ride probably would not qualify.

Rick Taintor said mixed-use development is defined as anything with residential and non-residential in it. He's not concerned about the change to majority vote but understanding what will qualify is interesting. He could imagine a large industrial development adding 3 residential dwelling units. Under this statute that would make it would qualify for a simple majority vote.

Director Port said it's not 100% clear nor is it that flexible. This is sort of a mixed blessing. We'll have to keep an eye on these pieces and look at our local zoning to see if we need to make some adjustments for those things that might be more desirable with a simple majority vote. We can carry that over to the next agenda if the chair would like.

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Rick Taintor said maybe some adjustments could go into the housekeeping changes that you are bringing forward.

Director Port did not mean to refer to housekeeping changes. When the board is thinking about the zoning planning items discussed this evening, consider that those might have easier thresholds to get over.

Bonnie Sontag said we usually trip over something when we have an application. Whatever situations we can think of in advance to incorporate into the zoning would help so we aren't caught at a point where we should have already decided.

Leah McGavern said generally a town can write their own zoning. She asked if when it's part of the state's zoning act (40A) does that overrides local zoning.

Director Port said communities adopt zoning under Chapter 40A, the State's Zoning Act, which sets the parameters for local zoning, for example, how the special permit process works, and also adopts zoning underneath generic home rule as long as that zoning doesn't conflict with anything the legislature has done, for example, doesn't conflict with building codes. But everything we do needs to be in compliance with 40A, particularly if we want grants. We pursue almost all grant opportunities. It's an attempt by the legislature to unify things because every town does their own zoning and it's a little chaotic for the Commonwealth.

Bonnie Sontag asked whether the SPGA section on mixed-use development in centers of commercial activity was relevant to potential rezoning for mixed-use development on Storey Avenue? To get the City Council to adopt new zoning for that area for residential or mixed-use development would require a simple majority. Then, when we review a new application for the old Kmart building for a project that includes housing, we'd only need a simple majority of the Planning Board.

Director Port said if it meets one of the definitions, i.e., multi-family or mixed-use, in a center of commercial activity, yes.

Bonnie Sontag said reduced parking spaces to the residential unit ratio is the challenging one to justify because you have to show a reduction in parking will result in additional housing units. It doesn't say anything about affordability.

Rick Taintor said if this were in place when the board was doing the Market Street development project, where there was a lot of discussion about the number of parking spaces, this would have allowed us to reduce the parking requirements to get one or two more units in there.

Bonnie Sontag said the downside is where are those people going to park. That may come up. The old gas station behind the police station might relate to reduced parking for additional housing. It doesn't say at what market value.

Rick Taintor said yes, this is just to produce housing.

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Leah McGavern said it's not like every car you take away you get a new unit. You only get a bathroom for every car you remove.

Director Port said this is only going to work on bigger projects.

Bonnie Sontag said it affects the Planning Board as well as the City Council.

Rick Taintor said it changes the ratios both for the adoption of zoning and for the granting of special permits.

Director Port said only for certain categories -- anything related to multi-family or mixed-use.

Bonnie Sontag said it's assumed that creating more housing is in multiples, not for single residences.

Director Port said yes. It's effective immediately.

Rick Taintor said this was adopted as part of an economic development bill. It doesn't provide reduced voting for economic development, but it provides reduced voting for housing. The two are different.

#### **4. Adjournment**

Tania Hartford made a motion to adjourn. Alden Clark seconded the motion, and all members present voted in favor.

**Motion Approved.**

The meeting adjourned at 8:15 PM.

Respectfully submitted -- Linda Guthrie