

**City of Newburyport  
Planning Board  
February 17, 2021  
Approved Minutes**

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

**1. Roll Call**

Attendance: Alden Clark, Beth DeLisle, Anne Gardner, Leah McGavern, Bonnie Sontag, Rick Taintor, and MJ Verde

Tania Hartford arrived at 7:15.

Absent: Don Walters

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

Bonnie Sontag said materials for tonight's applications are available on the City's website and will be displayed on the screen also.

**2. General Business**

- a) *Bavarro Family Trust  
177 State Street  
Minor Site Plan Review (2020-SPR-08)  
Continued from 2/3/21*

TJ Melvin, Millennium Engineering, 62 Elm Street, Salisbury, said the mixed-use commercial and residential project, with four parking spaces on the northern portion in Newburyport, had an independent 3<sup>rd</sup> party Licensed Site Professional (LSP) review that resulted in suggestions for making utility connections and the trench. Three peer reviews are completed with the town of Newbury. There are no major changes, other than slight modifications to the parking layout and a change in plantings by the bioretention area. A revised parking layout should address the Newbury Fire Department comments, but he is waiting for confirmation from the Fire Chief.

Director Port said the applicant made the revisions requested by City departments and the LSP to protect the water supply. There are no remaining issues.

Rick Taintor made a motion to approve the Minor Site Plan Review Application to include the waiver for narrative of submittals for 177 State Street (2020-SPR-08) in accordance with the draft decision provided by the office of Planning & Development. Alden Clark seconded the motion, and all members 7 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.*

### **3. Public Hearings**

- a) *Institution for Savings, Newburyport c/o Lisa Mead, MTC, LLC*  
*93 State Street*  
*Site Plan Review (2020-SPR-02)*  
*ITIF Special Permit (2020-SP-01)*  
*DOD Special Permit (2020-SP-09)*  
*Continued from 1/20/21*

Bonnie Sontag laid out the process: applicant presentation, Historical Commission presentation on their latest report, public comment, member comments, and a response from the applicant.

Attorney Lisa Mead, MTC, LLC, 30 Green Street, said the bank undertook a significant redesign following the last meeting in November. Changes include a decrease in usable square footage from 7,712 square feet to 6,512, removal of all first-floor program space, a reduction in 2<sup>nd</sup> floor program space, and removal of the 1<sup>st</sup> floor hallway and loggia overhang. The new design returns to a brick façade, increases the number of Prospect Street windows, adds a hip roof with slate shingles to reduce height and massing, and adds a copper cornice. Masonry features include two types of bricks to delineate the facades and break up massing, granite and limestone base, lintels, sills, and the area above the garage. Windows are aluminum clad. The reduced footprint increases setbacks. Prospect Street is setback 5 feet 6 inches, Otis Place setbacks range from 24 feet 7 inches at the widest and 9 feet 9 inches at the narrowest, and Garden Street setback are 7 feet 1 inch to 7 feet 7 inches. The generator remains fully enclosed as are the minimal vents and mechanical equipment on the roof. Prospect Street and Otis Place have additional landscaping. Ridge heights are reduced.

Attorney Mead said the peer review letter confirms Site Plan criteria are met by the conditions previously provided. Any changes would improve the conditions previously provided. Letters from the Fire Department, City engineer, and new Water Department engineer all say they have no issues with regard to the project. She and the applicant do not agree with the Newburyport Historical Commission (NHC) Advisory Report and believe they mis-applied the Secretary of the Interior's Standards. The proposed addition is subordinate to the 1870s structure given its location, setbacks, roof design, and compatibility with the historic scale and character of the historic structure and setting. Dr. Judith Selwyn provided new review of the proposal. The bank also engaged William Young, formerly of the Boston Landmark Commission, to provide another independent review against the Secretary of the Interior's Standards. Both experts with 70 years combined experience provided in separate opinions that the National Park Service (NPS) regulations specifically state that all aspects of the rehabilitation, including new additions or related new construction, will be reviewed first as they affect the subject historic building and second as they affect the district in which the building is located. This section falls under the Tax

Planning Board  
February 17, 2021

Credit section of the Secretary's regulations. The NPS specifically points to this standard in their technical preservation guidance, *Planning Successful Rehabilitation Projects* that states, "New Additions in Historic Districts: When a building's historic status derives from its inclusion in a historic district it is also necessary to look beyond the building itself in evaluating the addition. Relevant guidance comes from 36 CFR Part 67.6(b)(6) of the program regulations guidance makes clear all aspects of rehabilitation, including a new addition, will be reviewed first as they affect the historic building and second as they affect the district in which the building is located." Where the Secretary's standards are general, the interpreter of those standards will look to the more specific standards in the state's statutory scheme to find guidance. This is a general rule of statutory interpretation. Both the NPS guidance document and the bank's experts follow that guidance. The document she quotes from was provided to the Planning Office. This is important given the NHC 2/28/21 report. Their opinion noted that members of the NHC had differing opinions. Perhaps because their review had become too subjective and were not tied specifically to the Secretary's standards and stated guidelines.

Attorney Mead said the DOD's Determination section states that the City has determined: 1) the architectural, cultural, economic, political, and social history of Newburyport is one of its most valued and important assets. The DOD's Purposes section states, "A downtown overlay district is discretionary, and the discretionary DOD Special Permit is hereby established due to the unique land use pattern and architectural, economic and cultural character of the buildings, structures and lots, individually and as a group, that are located in downtown Newburyport." In creating the DOD, the City Council understood the importance of all aspects of what makes up the district including the economic generators located in the district, the value of the commercial and residential buildings, and the land use patterns. William Young opines in his letter that, "IFS buildings have co-existed alongside each other throughout their existence. Thus, the proximity to the bank, a distinguished work of 19<sup>th</sup> Century commercial architecture and its vernacular, residential neighbors of the same period, is itself a historic condition. Thus, the addition does not represent an intrusion within the context but rather a continuity of historic circumstances."

Engineer Nick Betts, Meridian Associates, 500 Cummings Center, Beverly, demonstrated features on a series of plans. An additional plan shows surrounding ridge and eave heights, the reduced footprint, and a 62-space with ADA compliant parking layout that exceeds requirements. The utility plan is unchanged. Connections to the existing City utilities are approved by the Water, Sewer, and Fire Departments. The stormwater design for the larger building improves stormwater flow rates. He quoted the approval sentence from the City's peer reviewer, Phil Christensen's letter. Trees on the parking lot island will remain. The island is enhanced with shrubs. The entrance northeast of the island has more shrubs, perennials, and a serviceberry tree. Foundation plantings of evergreen shrubs line the backside of the Prospect Street sidewalk. Otis Place features a small lawn area with foundation plantings consistent with the existing buildings, 2 serviceberries, and an American Hornbeam. All trees planted are from the Newburyport list of recommended trees, are salt tolerant, and native species. Lower shade tolerant hostas line the concrete walk between the fence and building rear.

Attorney Mead said the bike rack remains at the ATM entrance.

Planning Board  
February 17, 2021

Architect Christopher Angelakis, ARC/Architectural Resources Cambridge, 501 Boylston Street, Boston, demonstrated dimensional changes on previous and new plans to address neighbors' concerns about mass, height, and setbacks. Key statistics are the 32 feet 3-inch ridge height compared to the previous 37 feet. He demonstrated on drawings the new setbacks previously detailed by Attorney Mead. Prospect Street residential eave heights are from 23 feet 2 inches to 23 feet 5 inches. The addition's eave height of 24 feet 6 inches has not changed but the perceptual mass is different because of the lower pitched, slate-shingled hip roof, and many windows more closely spaced and proportionately different from the previous windows. The Otis Place setback and the public area with benches creates a new street face that responds to the adjacent property. A lighter brick matching the 1870 building is separated from the darker brick mass by limestone. He demonstrated new photo-realistic images. The backside property line facing Garden Street is filled with office space windows above and opaque spandrel glass windows at the first floor garage.

Mr. Angelakis demonstrated new shadow study results compared to previous shadow study results. Shadows are longest during the vernal equinox, as demonstrated by the March 21<sup>st</sup> 3 PM image. The model demonstrates that almost no time of year are shadows above the first floor windowsill heights of adjacent building facades because the proposed addition's eave is no higher than the peak height of adjacent buildings. Summer solstice 3 PM shadows do not reach across the street. Autumnal shadows on September 21<sup>st</sup> essentially mirror the vernal equinox shadows. Previous winter solstice shadows were long and low at 9 AM, 12 PM and 3 PM. New December 21<sup>st</sup> shadows are not as long in comparison and are similar to shadows on existing adjacent buildings that just cross the sidewalk at 3 PM.

Mr. Angelakis demonstrated on technical plans the program space changes previously detailed by Attorney Mead. He demonstrated on plans the elevations and section views that compare heights, show materials more clearly, compare the previous and proposed roof heights, and shows why the eave height is hard to lower because of the parking system.

Historic Preservation Consultant William Young, 44 Warwick Road, West Newton, said the design has been considerably modified to reflect the particular character of the bank and the adjacent buildings, recognizing the challenge of introducing an addition to a distinguished historic building. The NPS guidelines which provide expanded interpretive criteria for the Secretary of the Interior standards specify the primary aesthetic obligation of any addition is to relate primarily to the historic building within a larger historic district. This has been achieved through the masonry material, traditional fenestration pattern, and traditional hip form clad in slate. The use of the hip form does an effective job of acknowledging the historic bank building, which gives the appearance of a flat roof while avoiding competition with the gable roofs of the adjacent houses. Subordination is achieved through its massing and placement at the rear of the lot to the point that it has no visual impact from State Street. The scale, materials, regularity of fenestration, and the recessive quality of hip roof form are all responsive to the adjacent residential buildings and that responsiveness is magnified by the setbacks at Otis Place where the angle admits a view down Otis Place for an enhanced glimpse of the gambrel-roofed house. All of these design adjustments promote the addition's relationship to the bank and to the adjacent houses. The juxtaposition of a masonry bank building and framed residential houses is historic circumstance. The addition reflects a continuity of use and a polite and responsive commercial

Planning Board  
February 17, 2021

vocabulary in the residential context and the context of the original bank building. The design meets the NPS, Secretary of the Interior, and City of Newburyport criteria and standards.

Glenn Richards, Chair, NHC, disagreed with and clarified the statement in Attorney Mead's memo saying one member of the NHC thought the massing and scale was appropriate. The minutes of that NHC meeting reflect that the member was more concerned with the materials than the scale, and not that the massing was okay. The cladding was more of an issue due to the greater mass. This design is a big improvement. He addressed why the NHC arrived at different conclusions than the bank's historic consultants. Ms. Selwyn's memo says, "no mathematical or other formulaic definitions are provided to evaluate words like smaller, larger, higher, further, etc. All guidance is by necessity generic. As NPS Preservation 124 states, 'every historic building is different and each rehabilitation project is unique, therefore the guidance offered here is not specific but general so can be applied to a wide variety of building types and situations.' In fact, there are no numbers used anywhere in the guidelines to measure or determine if a proposal is consistent with the standards." He said there is a certain amount of subjectivity to this evaluation process. He demonstrated on a plan how far back on the lot the addition sits, how it is barely visible from the historic structure's main façade, and how it sits immediately across from 13 residential structures on three sides. The NHC spent considerable time on the proposal's relationship to the historic structure. However, the plan he displayed demonstrates why the NHC spent as much time as they did on how the proposal affects the immediate area. Both the applicants' consultants and the NHC are familiar with the Secretary's standards and have quoted from them extensively over the last year with regard to this project.

Mr. Richards said Ms. Selwyn's report states that the size of the addition and the historic building are roughly comparable. In the NHC's view they are comparable only in that you can compare them. He demonstrated on an overhead plan view the historic and proposed structures. The words used in the standards are 'slightly bigger,' but the proposal is considerably bigger than the historic building. This is one reason the NHC has always been affected by the mass. It's still a particular problem. Mr. Young felt it was out of place for the NHC to talk about the perceived height of the 1870 building and said the frontispiece is the most prominent feature of the building. Mr. Richards demonstrated on an overhead drawing view of the historic building's roof the relationship of the frontispiece and raised section to the majority of roof area that is at the eave height of about 23 feet. He demonstrated on a photograph a view of the historic building's eave height area to show it is the major roof area of the historic building as viewed from the neighborhood and the proposed addition. The addition is higher than this part of the old building which attests to the issue that the addition is not subordinate. But because the proposal is further back on the lot subordination is not a problem.

Mr. Richards said the proposal's second story windows are much higher than they would be ordinarily because the parking system makes the second story about 16 feet high. Whereas windows on Prospect Street are closer together and a normal second floor height. This is the single biggest problem. If it could be a foot and a half lower, he thinks the design would be fine. He said that Attorney Mead quoted a section from the DOD about new additions in a historic district. That section does not quite apply because it says, "when a building's historic status derives because of its inclusion in a historic district." We are dealing with a building that is historic in its own right. Even if it did apply, you always consider the historic building first in

Planning Board  
February 17, 2021

relation to the building you are adding. Given the unusual circumstances here, the design of the old building shows the prominent green eave height at about 23 feet compared to the smaller section of the entry pavilion. These images demonstrate why the NHC feels it is important to assess the impact on the community most directly affected by the addition.

Public comment open.

Bonnie Sontag said all the letters from the public as of this afternoon are posted on the City website.

Mayor Donna Holaday said in the 11+ years she's served she has never come before the Planning Board or any board to speak. The Institution for Savings (IFS) has been a significant part of our community for over a century. They financed saving our downtown and spent many millions of dollars to support of our City. They made some missteps at the start of this process. That caused a lot of neighborhood concerns. Since the initial plans, they have listened to the neighbors, the NHC, and the Planning Board. The new design is a significant improvement. She was discouraged by the clapboard design and glad to see a return to the brick façade, a reduced height, and new setbacks that are significant for the neighborhood. They address the 62 parking spaces they need. Overall, the new design meets the requirements of Site Plan criteria and the DOD. Even the NHC recognizes the significant effort and improvement in this design. She supports the project and the time and energy they have put toward meeting our requirements. She asked the Planning Board to support the significant changes proposed.

Colleen Turner Secino, 15 Otis Place, abutter, is opposed. Attorney Mead and Mayor Holiday disappoint her, as well as the applicant and their team's disregard for the NHC. The team's arguments are disingenuous because no one ever reached out to her. The proposed structure changes the fabric. The structure is too tall, too big, and entirely too much in mass, scale, and size. Every iteration insults the original 1870s building and the residents surrounding the IFS.

Frank Cousins, 242 Water Street, President, Newburyport Chamber of Commerce, is in support. He appreciates the work the IFS has done to scale down the size. The Chamber's Economic Development Action Committee voted to support the changes. The IFS is committed to our community and our citizens. The additional people they will employ is positive for the downtown and provides additional tax dollars for the City. A strong downtown is important, and you have our letter of support.

Steve Charette, 16 Prospect Street, abutter, and State Street business owner, is opposed. He does not object to the bank reasonably and sensibly expanding their operations. The latest design is an improvement that provides visual relief, but he opposes the project's height, scale, and massing, and supports the NHC Advisory Report. The passage of a year does not relieve anyone from our duty to ensure this is a responsible project. The bank made a conscious decision to expand here to house 7 employees rather than on State Street or any of its other locations. It is incumbent on them to propose a subordinate expansion which this is not. The size of their assets, deposits, loan balance, or property taxes are irrelevant arguments. Their viability as a 200-year-old bank may hinge on fintech innovation and execution of other business principles but does not ride on this

Planning Board  
February 17, 2021

project as proposed. IFS's bylaws assure us it will stay here. He asked the project be denied as submitted. It affects the neighbors 168 hours every week forever, compared to the bank's hours.

Paula Renda, 16 Otis Place, abutter, is opposed. The IFS has been a generous organization and she appreciates the setbacks on Otis Place and Prospect Street, in addition to some full-shaded trees. She agrees with Mr. Charette that the structure is too massive for the neighborhood and does not complement the neighborhood at all. The institutionalized factory-like design does not fit in with the congested clapboard neighborhood. Two other large projects here for almost two years meant we could hardly find a parking space. Snow removal makes that worse. She worries about the upkeep of landscaping and clearing the IFS sidewalks on Otis Place.

Ann Clausen, 3 Otis Place, abutter, is opposed. She agrees with Mr. Charette. The building is too high, the massing too large. She asked the Board to deny the project.

Freeman Condon, 6 Forest Road, Salisbury, member, IFS Board of Trustees, is in support. The proposal is better, safer, and more attractive because of the Planning Board's scrutiny. The bank spent hundreds of thousands of dollars on design and engineering, seeks no dimensional zoning relief, complies with height limits, exceeds setback requirements, and meets parking standards. IFS needs additional space to remain competitive. Donald McKay produced clipper ships, but his most famous was not built here because, like Nabisco and Towle Silversmiths, he abandoned Newburyport. The IFS will never join that exodus or have another corporation's logo. He asked the Board to approve this application.

Tom Kolterjahn, 64 Federal Street, co-president, Newburyport Preservation Trust (NPT), is opposed. The new plans are much improved with the brick and reduced size, but the proposal is still too massive to meet the standards. The NHT agrees with the NHC. The proposal still impairs the integrity and character of the neighborhood, is detrimental to the neighborhood, and is not in harmony with the purpose and intent of the DOD. Neighbors deserve relief and a resolution of their concerns.

Peter Mackin, 13 Prospect Street, abutter, is opposed. He agrees with Mr. Charette. He is glad to hear some recognition, after an entire year, of input from the neighbors. The location is too small for the height, size, and mass of the building. It overwhelms the historic neighborhood and will change its character forever. It's hard to believe that to accommodate 7 employees it takes a structure this large. The bank never considered other locations or other creative use of the bank's current space on State Street. He recommends the Board deny the project.

Patricia Peknik, 4 Dove Street, NHC member, is opposed. The NHC's support for the pitched roof and clapboard proposal was because, at one point, the bank explained the addition would be so far from the bank building it would be a separate structure. The NHC was thinking about the kinds of materials the standards would require if the structure would read as separate new construction set among wooden houses. The bank's consultant was at the meeting where that design was proposed, apparently in agreement that the plan at that time was an appropriate treatment with the standards for going forward. If the addition can be reduced in size so it doesn't read as a separate structure, if its height and massing are reduced so that it reads as an addition and not as a second building, then she agreed with Mr. Kolterjahn that brick is the

Planning Board  
February 17, 2021

appropriate historical idiom. The hip roof design, slate shingles, wood trim, masonry, limestone, and granite all would, in her view speaking for herself, satisfy the standards for compatibility. But on an addition of the current scale, no materials would really work the magic of making it comply with the height, size, and massing standards. She agrees with people who have raised their concerns. The NHC's mission is to protect, preserve, and promote Newburyport structures, neighborhoods, and landscapes. The NHC reviewed the proposal in its totality on its impact to the entire setting.

Claire Papanastasiou, 4 Otis Place, abutter, is opposed. She agrees with her neighbors' concerns. It is an improvement. It has never been about the bank's generosity. It's about the size of the expansion which continues to be too large. The proposal is a different set of facts but the same dynamic. IFS is leaning on its influence and power to get what it wants as witnessed by the Mayor speaking on the bank's behalf. No one is denying the bank its opportunity to expand. She asks that the bank work with the neighborhood and the City to build something more appropriate and less intrusive that won't impact the neighborhood negatively. These are fair requests.

Mark Griffin, 4 Otis Place, abutter, is opposed. The positive is the reduced size of programmatic space, but he doesn't know what that means. He hopes the Planning Board will drill down on that. The setback on Otis Place is a positive, but he got only 6 inches of setback. Does that seem sufficient to the Board? On the negative side it's still huge. It's a 1/16<sup>th</sup> reduction. That's a small reduction from where it started, and it took a year to get that. There's still a way to go. He agrees with the NHC. The footprint and massing are issues. We have made progress. The comments on the bank's viability are irrelevant.

Richard Pollak, abutter and 1, 3, 5, 7 Garden Street property owner, is opposed. The new structure doesn't fit into the historical character of the neighborhood and does not belong in a neighborhood setting. He agrees with the NHC. It looks like a factory building. It's too massive, too tall, too big, and too close. He's glad they enclosed the generator. He asks the Planning Board to deny the proposal.

Sean Sullivan, 9 Prospect Street, abutter, is opposed. He appreciates the bank's first real changes to the proposal in a year. The setbacks make a significant change although Mr. Griffin and Ms. Papanastasiou got no setback relief. He agrees with the NHC. This is too high, too large, and not in the ballpark to be subservient to the original bank building. He is happy to see these changes, but Mr. Richard's diagram points out that this addition is fundamentally flawed on height and scale. He hopes the Board takes that into consideration and denies the project on that basis.

Tim Wacker, 13 Otis Place, abutter, is opposed. He has stated many points in opposition to this project. The traffic issue is not duly considered. He appealed to someone on the Board to find out why, when the bank has 14 other locations, it has to be this location when it is so onerous on the neighborhood.

Gary Karelis, San Diego, CA, 15, 17, 19, and 21 Prospect Street property owner, is opposed. What the bank has done for the community cannot be minimized but it is not relevant to this project. The size remains a significant issue and it can be reduced, built at another of their locations, or built more forward on the lot. These have been suggested numerous times before



Planning Board  
February 17, 2021

and have not been addressed. It adds to congestion on Prospect and Garden Streets, and Otis Place. Nothing has been done to address blocked views and loss of sunlight that makes all rooms facing Prospect Street colder. The bank said the hip roof addresses the concerns of the neighborhood, but it does not address the height of the building. The NHC says the eave height should be lower. He asks the Board to deny the project. Abutters who expressed concerns need to have more of those concerns met because abutters live in this area 24/7.

Public comment closed.

Member comments:

Bonnie Sontag introduced Attorney Jon Eichman, KP Law, the City's counsel. The Board works with applicants with an expectation of achieving a positive outcome. The Board is performing its due diligence for this application to ensure the proposed IFS addition meets the criteria for a special permit within the downtown. If Board members thought this was not the proper place to expand the bank's footprint, we would have made that clear long ago. With each proposal iteration the Board has raised specific concerns and asked for an appropriate response from the applicant. Concerns about height and massing have dominated all our conversations. We will keep the application open until a super majority of 6 members find that the applicant has provided a solution to our concerns and others that have been raised.

Anne Gardner likes the decrease in square footage, increase in setbacks, landscaping additions, and the brick that's in keeping with the original structure. She doesn't find the brick intrusive to the otherwise clapboard neighborhood. She still did not know if the project meets the Secretary of the Interior's standards. The Board would feel better if more neighbors embraced this design. Everyone else seems to welcome it as a step in the right direction, but she doesn't know if all these changes are enough for her.

Leah McGavern said it's not there yet. She appreciates the space on Otis Place, more vegetation on Prospect Street and more space for the sidewalk. For her, it's about the architecture, meaning the scale, massing and how it's detailed. In particular, the façade on Prospect Street is harsh. The windows, while aligned, equally spaced, and symmetrical, are like a row of soldiers and do not respect traditional design nor reflect the traditional pattern of residential windows surrounding it, but almost comes so close. If the façade on Prospect Street is thought of as two buildings, the one on the right is so close to a federal style building but so clearly not a federal style building it's disturbing. The section on the left with 6 windows in a row is making fun of the one on the right. She doesn't recognize the traditional fenestration pattern it's supposed to reflect. She's curious why the windows are so large and not reflective of the neighborhood window sizes. Windows are proportional to the massing and massing is part of the problem. She is stymied by how to solve the problem of reducing the height and maintain the parking. That's a big problem. Is the roof slate or faux slate? She has never seen faux slate successfully done. She has seen repeatedly that the lower windows are drawn as cottage style, where the upper sash is shorter than the lower sash. That's odd. The harshness of the façade has a lot to do with the massing. It's unclear why that length of building isn't broken down. It's flat and two dimensional. It needs to be broken down into sizes that are more familiar to Newburyport. Why is entry no longer there? It added animation to the building and enlivened the street. Now it looks impenetrable and suggests non-pedestrian and non-participatory.

Planning Board  
February 17, 2021

Beth DeLisle agreed with Ms. McGavern about the lack of a visible entrance and the length of the Prospect Street facade needing to be broken up. She appreciates the setbacks and vegetation. She is still concerned with the massing. It appears subordinate to the historic building only from the State Street side. Otherwise, looking at it from anywhere else it's overwhelming. The Board suggested taking some parking off site last time. Was there any consideration of that? The Secretary of the Interior and NPS guidelines talk about using current existing space before embarking on an addition. How thoroughly did the bank examine that? She would like to know what kind of consideration the bank has given to changing existing space and moving some parking offsite to make this smaller and more in line with the historic building and the site.

MJ Verde said all along the program is too large for the site. It's been mentioned repeatedly. It's the largest issue. She concurs with the example Mr. Richards gave of the size of the building compared with the historic structure. You are trying to get too much into a tiny spot and it still doesn't work. She appreciates the landscaping. The brick gives it more stateliness. The garage door needs to be softened. There's no pedestrian friendly area on the longest façade and that turns you away. It's like adding another garage downtown and that's not in character with the DOD neighborhood.

Rick Taintor said he expressed concern at most meetings that this project perpetuates a mistake made in the 1970s, when the empty tooth on State Street was created. The project doesn't show appreciation for the site's context on a historic, commercial main street. There's a parking lot and a non-contextual sculpture/fountain/clock in the most prominent place at the corner. It seems obvious that you build a building on the main street rather than in the neighborhood. The Board as a whole has moved beyond that and the bank has not responded to it. It would be a huge lost opportunity not to restore a street frontage on State Street in this location. He's not sure he has anything positive to provide. There's nothing wrong with this building in a different location. It looks like an imitation mini-mill. There are many places in Newburyport where a factory building faces a residential neighborhood. If a mini-mill were appropriate in this location, that would be okay. But the scale is wrong for that far back on the lot. Something with more architectural detail would work better at the front of the lot. He agrees with comments that the addition is only subservient from State Street but not subservient from Prospect Street, Otis Place, or Garden Street. It is out of context with its surroundings. This whole issue of an addition being subservient doesn't take into account the cumulative additions to the building. We are ignoring the addition that's already at the back of a previous addition. Together they are hugely larger than the original building. The whole discussion is accepting that the commercial part of this development is going to be in the residential neighborhood.

Bonnie Sontag said progress has been made with the setbacks and the landscaping. Anyone who looks at those will say they aren't typical for that neighborhood. The special permit allows us to approve something that wouldn't ordinarily be allowed if they are good for the overall design, so the Board can approve the setbacks and landscaping. The brick works because it reflects the downtown buildings. The clapboard didn't work. The addition intrudes into a neighborhood of clapboard buildings because of its location, but there are examples of that throughout the City. But the brick leads to other architectural challenges as we've heard from other speakers tonight.

Planning Board  
February 17, 2021

The additional design features go further than previous proposals to break up the massiveness of the facades, but she would like to see more in that direction. The Otis Place side does a good job of breaking up the façade with two different bricks colors and a clear recess with limestone. She would like to see that on Prospect Street, with one or two indentations to read more as three individual buildings that break-up the sense of a heavy brick building. That would help a lot. The lintels and copper break it up a little bit and are improvements. The overall height is a problem, both in how it fits in with the neighborhood and compared to the original building. She prefers that the applicant use the wing section of the original building as the guide for height because that's what you see when you go down Prospect Street. The oldest addition was done very well because it is subordinate to the original building and is what guides the structures behind it. The roof takes the addition higher than the wing building at the front, but then you have to deal with the massive building effect from the materials as well. She suggested looking at that wing addition as the guiding height. She suggested some type of setback on the second floor with the hip roof behind it to create a view down Prospect Street and have the effect of a building that isn't quite so solid and tall.

Tania Hartford appreciated the time and effort put into this as well as the NHC's effort. The reduced size is below the dimensional controls for this business zone. The bank is caught in the conundrum of needing to fit in with a residential neighborhood, and you cannot build a residential building on this site, and the bank needs parking. She likes this architectural style better, but it needs some work. It needs different windows. She agrees with Ms. McGavern about that and about breaking up the façade. The landscaping makes it look like a very flat front and could also use breaking-up. Maybe the middle piece should look more like an entry, as opposed to a flat row of buildings. She personally likes a flat roof and said that would be interesting. As a Board, we should decide dimensionally and philosophically where we stand before we get into the architectural details to finalize a design. She does not want the bank to spend more time and money on this design if we're not okay with dimensions and location on the site. The Secretary of the Interior standards are subjective. The Board could get another opinion as a sort of peer review. But is the board okay on the footprint, the scale, and massing before we talk about changing the windows, lintels, and the garage door?

Bonnie Sontag asked members to comment on the footprint and dimensions of length, width, and height.

Leah McGavern was okay working with this location and the general form. She assumes that the dimensions are still tweakable. There's still room for improvement on the architecture. She agrees with Mr. Taintor that it would have been better if the bank had put this addition on State Street.

Tania Hartford clarified that the bank has gone back three different times over the course of a year. If there is another iteration, the Board can't then say we don't like this at all.

Bonnie Sontag said we have to be very clear about what we're asking if we ask for another iteration. The Board should be able to vote on what they come back with if it meets our criteria. She wants to make sure the applicant knows the members' thoughts as clearly as possible.

Planning Board  
February 17, 2021

Anne Gardner said the massing and size is still too large. She did not know if there was a possible solution to this problem of subordination with the size and massing. They shrunk it 15% from the last iteration. She doesn't know if programmatically they can go any further. She wishes that early on the Board got behind Mr. Taintor's comment about seeing a sketch on State Street. Massing is an issue for the context, the location on the site, and the neighborhood. She doesn't support tweaking the architecture at this point.

MJ Verde said they are trying to fit too much in this location on the lot. She agrees with Mr. Taintor that there is plenty of room on the lot. The flat parking lot is not friendly to look at from State Street, nor is it friendly to see the size of this building and the garage door from the neighborhood. She does not support this size in this place on the lot. The best letter submitted was by Patricia Peknik. It's clear from her letter we are not following the standards if we let it go forward at this size.

Beth DeLisle agrees with Ms. Gardner and Ms. Verde. She has concerns about the size and massing and the points raised by the NHC. She'd like to see a proposal at a size and scale that's more compatible with the neighborhood and that doesn't overwhelm the historic building, which this does.

Attorney Mead said this is not about fitting into a neighborhood. This is a commercial district in which residential structures are not permitted. Our ordinance has hard stops at the end of the district. We are trying to construct a by-right commercial use in a commercial district that abuts a residential neighborhood. There are many areas in town where the commercial districts are adjacent to smaller residential structures. That is not an unusual land use pattern in Newburyport. It's been lost in all the conversations that the reason we are here is because the DOD considers the 1980 addition to the building as part of the historic structure. Therefore, we are altering the historic structure. The massing of the 1980 structure exists. We are adding on to it. The current original site includes the historic structure and the 1980 addition. That's how it has to be judged. In reference to a comment by Ms. Hartford, the Secretary of the Interior standards are general and subjective but there are standards and guidelines. Our consultants have given examples of how it meets those standards. You can't pick and choose which height of the building you want to compare it to, nor pick and choose which parts you want to include in the massing and exclude other parts.

Attorney Mead said it will be a real slate roof. The reason the entrance on Prospect Street is gone is because we lost the program space. The entry was there because you actually walked into space that was removed to reduce the building size. She appreciates the neighbors' comments. This plan meets all requirements of the zoning ordinance. It is under the dimensional requirements and we believe it meets the Secretary of the Interior's standards. At our first hearing we proposed to have an ITIF Special Permit that is still open which would allow us to count the parking spaces at the Harris Street lot and not provide all the parking on this site. The local abutters on Harris Street, at the library, and up State Street made a huge outcry that we accommodate all the parking on the bank premises. The bank listened to that and decided to pay the extra money to take care of the parking. Ever since that time, the only people who have spoken against the parking are the same 7-10 people in the direct neighborhood. It is disingenuous for Mr. Karelis, who owns two of the biggest properties on Prospect Street, to say

Planning Board  
February 17, 2021

that his rooms will be colder with the addition built there. The facts do not support that, as demonstrated on the shadow study. No shadow rides up the side of those buildings with this proposal. None of those units have sufficient parking to apply for the use that is in those structures. The bank has made great efforts. It's disheartening because the bank is permitted to use this property. There was originally a discussion about putting the addition on State Street. The concern was that it would truly diminish the view of the 1870 building coming up State Street, but the people at the back of this property would be happy. That's not the right thing to do for the streetscape and it does not meet the bank's program needs. She is perplexed. There appears to be a failure in understanding of the bank's ability to use their property, which should carry the same weight as the neighbors' concerns. She requested a continuance.

Anne Gardner asked Attorney Eichman what advice he could give the Board if they were to deny the permit based on the NHC report that it does not meet the Secretary of the Interior standards, when the applicant has two other peer review reports stating that it does,

Attorney Eichman, KP Law, 101 Arch Street, Boston, did not have any magic advice. Testimony has made it clear that the standards referenced contain a lot of room for interpretation, as does the zoning ordinance. Should the Board deny the application on the same grounds that the applicant's two experts have testified to, it will be a difficult issue on appeal. At this point he would not want to talk about the pluses and minuses in a public discussion. It's safe to say it's a broad standard, there's going to be a difference of opinion, and it will be very difficult to predict the outcome of an appeal.

Anne Gardner asked about the two opinions that the bank obtained. Obviously, the bank paid for those. Is there anywhere else the Planning Board could go? Should we seek other advice?

Attorney Eichman said it's not clear that would get you to a different point than you are at now, which is a disagreement about how those standards are interpreted based on people who have knowledge of that particular situation. He did not think it would hurt for the Board to consult an expert unless their position was the same as the applicant's. It would not guarantee making this decision any easier. It would be more information that looks a lot like what you have right now.

Beth DeLisle said if not for the DOD, it might be a by-right use. But the DOD overlay is an additional standard the project needs to comply with for the Board to grant the permit.

Attorney Eichman said that's true but there are two things going on and both are correct. The applicant's counsel indicated this is a by-right commercial use based on the underlying zoning classification. That is correct. It is also correct that it is subject to an additional requirement because it's in this particular district which exists to preserve the historic character of the district. By-right uses are subject to requirements of district as well. The standard for this district is that new construction and alterations have to be compatible with existing historic structures. There are several criteria that demonstrate what it means to be compatible, primarily the Secretary's standards. It is as-of-right but at the same time it has to comply with these standards. It is important for the Board, when they are thinking about the important issues of massing and size, not to focus on whether massing and size are appropriate for the use in this neighborhood, but whether the massing and size are appropriate for the standards of this special permit, that are

compatibility with existing historic buildings and the historic character of the district. It's similar but not exactly the same standard.

Attorney Eichman said the difficulty is that it is two layers of broad, very discretionary sets of standards that the Board has to consider. This is not uncommon for a special permit. The focus has to be on the nature of the special permit district which is to preserve the historic nature of the district and all standards should be looked at in that light.

Director Port pointed out that this project falls fully within the business district. The Board is expected, through this permit process, to balance the needs for the vitality of the downtown, the business district itself, and the overlay of architectural compatibility. It is a difficult task but given the amount of time the project has been before the board he recommended the board make a determination on what would make the project acceptable. The suggestion of the State Street location mentioned early in the permitting process is not something the applicant has brought forward. He's unsure about the type of opposition that might face, and would conflict with the original structure. The Board has to make a call at some point as to when the applicant has crossed the viable project threshold.

Attorney Mead requested a continuance to the March 17 meeting.

Leah McGavern made a motion to continue the DOD Special Permit (2020-SP-09), ITIF Special Permit (2020-SP-01), and Site Plan Review (2020-SPR-02) Applications for 93 State Street to March 17, 2021. Rick Taintor seconded the motion, and all 8 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.*

**3. Other Business**

*a) Evergreen Commons subdivision – request for release of security*

Attorney Lisa Mead, MTC, LLC, 30 Green Street, said there are two requests. The OSRD special permit requires the applicant to post a bond for \$47,000 for sidewalk and road improvements on Boyd Drive. The improvements were completed last year and the DPS Deputy Director, Jamie Tuccolo, has signed off on them. She requested the bond release based on meeting that condition.

Director Port received confirmation from DPS that they are satisfied with the work. There are no remaining issues. The Office has no objection to the release of the bond.

Planning Board  
February 17, 2021

Rick Taintor made a motion to approve the request for Release of Financial Security for Evergreen Commons in the amount of \$47,000 pursuant to the “Upgrades to Boyd Drive” condition in the approved decision. Anne Gardner 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.*

Attorney Mead said the applicant was required to obtain an insurance policy to make sure they did not contaminate the wells. The applicant does annual testing of all the wells under the guidance of the Water Department expert and provides those results to the City. We thought this condition related to heavy work. Director Port pointed out that the insurance policy is supposed to continue until the last house in the OSRD is built. We’re close but not there yet. The applicant withdraws the request because the condition is not met yet.

**b) Correspondence**

- ***Letter from Jacob Cross re: proposed short term rental ordinance***

Bonnie Sontag said the letter is on the record. There have been two License Committee meetings on STRUs. She and Mr. Taintor attended the first meeting. The second meeting occurred at the same time as this Planning Board meeting. The License Committee is considering all aspects of STRU licensing and referring back what is in the zoning ordinance. There may be a point when the committee requests moving certain licensing elements back into the zoning. STRU licensing will be discussed in a meeting of the whole City Council, after which the committee will give us guidance and parameters for what they believe should be in zoning. Another regulatory issue is that we’re beyond the 90 days within which the STRU zoning ordinance should have been taken up. It has to be re-advertised. We will leave this alone until we hear back from the City Council.

Rick Taintor said Councilor Devlin and residents would like to see more about where in the City STRU licenses would be allowed. The concern is that it is too wide open. The suggestion is more specificity for where STRUs would be allowed.

**c) Approval of Minutes**

Tania Hartford made a motion to approve the 2/3/21 minutes. Alden Clark seconded the motion, and all members present voted in favor.

**Motion Approved.**

**d) Potential Zoning Amendments**

Director Port said Councilor Shand agreed to sponsor the VI-C amendment and hold a hearing on it. Councilor Connell agreed to sponsor an amendment to curtail development on Plum Island

Planning Board  
February 17, 2021

(PI). The essence of the PI change is that the ZBA would be directed, when approving modifications on PI, to allow only modifications that do not add square footage, enlarge the footprint, or add bedrooms. The Office suggests scheduling both amendments for the same joint public hearing. The council packet will be finalized tomorrow. The Office will continue with the housekeeping items for the next City Council meeting. The City's new Climate Resiliency Plan will be presented tomorrow night at 7 pm. The plan is posted on the website and will be presented by the Resiliency Committee and the Mayor. The resiliency issues related to PI emphasize the importance of the amendment to curtail continued building. The Citizens Training Collaborative (CTC) will be addressing defensible decisions on March 1 at 6 PM if anyone is interested in attending. He will send an email.

Bonnie Sontag said if anyone attends a training session and learns something that would help the entire board, please share it.

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

Bonnie Sontag said the IFS discussion was productive. She was encouraged that they asked for a continuance. The Board is doing the best we can.

**4. Adjournment**

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

**Motion Approved.**

The meeting adjourned at 9:49 PM.

Respectfully submitted -- Linda Guthrie