

**City of Newburyport
Planning Board
March 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, Bonnie Sontag, Rick Taintor, MJ Verde, and Don Walters

Leah McGavern arrived at 7:06 PM

Tania Hartford arrived at 7:15 PM

Andrew Port, Director of Planning & Development, Katelyn Sullivan, Planner, Counsel for the City, Attorney Jonathan Eichman, and Linda Guthrie were also present.

2. Other Business

a) Approval of Minutes

Rick Taintor made a motion to approve the 3/3/21 minutes. MJ Verde seconded the motion, and six members present voted in favor. Anne Gardner abstained. Leah McGavern and Tania Hartford had not joined the meeting yet.

Motion Approved.

b) 2021 Planning Updates

Bonnie Sontag said the joint public hearing with the Planning & Development Committee on March 25th at 6 PM is to propose VI-C zoning amendments. She and Rick are 2 of 5 members needed to attend. They prepared a presentation at Councilor Shand's request. Director Port said the presentation would be posted on the website.

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 2/27/21*

Bonnie Sontag said all documents are available at the City's website under Planning Board. These documents will be displayed on the screen also. Tonight's meeting begins with the applicant presentation, followed by public comment, then board member comments where we

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will ask the applicant to respond. Then we will address the special permit. The City solicitor, Attorney Jonathan Eichman, is also present to answer questions.

Attorney Lisa Mead, Mead, Talerman & Costa, 30 Green Street, said the bank listened to the Board's comments and employed the suggestions to the extent that the comments did not affect the bank's intended use of the property. The façade along Prospect Street has been altered by a greater break in the facade, the introduction of new material and color, a change in roofline in the middle of the building that carries through to the Garden Street side. A door is added to the middle of Prospect Street and the corner of Prospect Street. Divided light windows are throughout the building with a different window pattern around the garage door. The material around the garage door is brick. The garage door color is more neutral against the brick façade. These changes continue to break down the massing and scale of the building. She demonstrated on the site plan where the only changes are the Prospect Street entrance and an entrance at the corner near the drive-through.

Christopher Angelakis, ARC/Architectural Resources Cambridge, 501 Boylston Street, Boston, demonstrated design changes on a series of drawings. He focused on matching the brick color of the 1980s addition and used a sympathetic color for the garage door that is in unison with the window framing on the rest of the project. The garage door connector piece has gone to brick. Divided lights added around the garage is an architectural device to help address perceived scale and size. There is a visually perceived door suggesting an entry near the garage. Prospect Street has a stronger sense of symmetry with 5 windows on either side. The broadened limestone break between the two masses has an indication of an entry where there is a break in the landscaping. Limestone and divided light windows can be seen on the back façade from Garden Street. The setbacks on Otis Place are maintained, as are the slate roof, 2 colors of brick, and limestone lintels and sills. The windows have dark framing similar to the 1980s addition and several adjacent buildings. The dark framing also makes a connection to some framing on the 1871 building. The lintel and brick façade design is common in downtown Newburyport. The light gray door on the back side will be the darker color.

Christopher Angelakis demonstrated a new view from the far end of Prospect Street showing the continuity established with the street. Another new view shows the entire fence line from Garden Street. The architectural light gray doors will be darker bronze similar to the window framing. The shadow studies have not changed. The dimensional properties of the eaves and the roof line have not changed, except there is less pitched roof because the center divider on Prospect Street is wider. The vernal equinox shadows (March 21st) don't cast any deeper shadows than the adjacent buildings down Prospect Street. The shadows don't roll up onto the buildings across the street to the first sill height of the windows. The series of houses on the bottom right of the image cast about the same shadow. Summer shadows are all short. Autumnal equinox shadows are similar to the vernal equinox shadows. Winter has long shadows all day long, similar to adjacent shadows down the street.

Attorney Lisa Mead said the building is separate and apart from the original structure. In scale and massing it is similar to the surrounding residential structures. At the last meeting, several comments from the Board and the Newburyport Historical Commission (NHC) implied that somehow the bank was limited under the Secretary of the Interior's Standards to construct an

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addition that is smaller in footprint and volume than the existing structure. When considering the existing structure for the purpose of the Downtown Overlay District (DOD) due to how the City has interpreted the DOD, one must include the 1980 addition, which is part of the original structure. There is nothing in the Secretary of the Interior's Standards that requires all additions to historic structures to be smaller than the historic structure itself. Standard #10 requires, "that new additions and adjacent or related new construction will be undertaken in such a manner that if removed in the future the essential form and integrity of the historic property and its environment

will be unimpaired. Standard #9 provides, "that new additions, exterior alterations or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with historic materials, size, scale, proportion, and massing to protect the integrity of the property and its environment." The proposed expansion as presented meets these standards.

Attorney Lisa Mead said there has been much discussion by this Board and some NHC members that a comparison of volume, new to old, is an appropriate comparison when applying the Secretary of the Interior's Standards. Such a comparison is misplaced under the Standards. She demonstrated on images a few examples of additions to historic structures that comply with the Secretary of Interior's Standards. The additions in the examples are substantially larger than the original structures. The images were provided by the bank's expert William Young. His commentary on the Thomas Crane Public Library addition in Quincy noted its review and approval by the Massachusetts Historic Commission (MHC) as consistent with the Secretary of the Interior's Standards. The Needham Free Public Library addition and the Milton Public Library additions are other examples that show how the Secretary of the Interior Standards are about proportion and not dimensions. One of the most frustrating aspects of the NHC review, and in turn this Board's review, is that the goal line seems to keep changing. For 2 months or more the NHC and some Board members have spoken about height and volume. After the bank's experts point out that the analysis and comparison is not valid under the Secretary of the Interior Standards, the chair of the NHC opined on his own that what they are really talking about is the overall mass rather than a few selected dimensions, even though at the last meeting he questioned whether the eave height could drop by a foot. The comment discounts or eliminates part of the historic structure to suit his purpose. At the last meeting, he eliminated the existence of the height of part of the original structure. This week, his comments eliminate the front portico of the historic building for length. There continues to be a quest to eliminate the 1980s structure, which under the DOD is integral to the existing structure itself. One does not have the privilege of discounting portions of the original structure just because it serves a convenient personal purpose. The zoning is applied as a whole, not in selected pieces and parts.

Attorney Mead said early on in this process, the Board and the NHC both opined that given the location on the lot, the proposed addition did not detract from the 1870 structure. Some Board members noted it was like a separate structure on the same lot. That has not changed. Some NHC members continue to seek numbers, like volumetric comparisons, which have no relevance and find no place in the Secretary of the Interior Standards or in our zoning ordinance. The Prospect Street façade of the existing building is 147 linear ft, whereas the proposed addition along Prospect Street is 87.5 linear ft. That is the entire building as it is defined in the DOD, the standard we must use. The length of the addition next to the Garden Street properties is 118 ft 11

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inches, still shorter than that of the existing structure. Similarly, the façade of the sections of the proposed structure are shorter than the 3 main buildings on the northerly side of Prospect Street. Are these dimensions Board members should review? Attorney Mead did not know. The eave height of the proposed building is slightly taller than the eave height of the 3 main buildings on Prospect Street, but the ridge height is shorter than those residential structures. Similarly, the eave and ridge heights of the proposed structure are shorter than that of the 1870 structure. These dimensions are not important alone. Under the Secretary of the Interior's Standards the question is more of proportion and overall review, such as, how does it work, is it consistent with the DOD, and is it compatible with and does not detract from the 1870 or 1980s buildings. The question is, will the proposed addition be compatible with the historic materials, features, size, scale, proportion, and massing to protect the integrity of the property and its environment. We have shown through the testimony of 2 experts with extensive experience in designing and redoing historic buildings under the Secretary of the Interior's Standards that the bank's proposal meets this standard.

Attorney Lisa Mead said the addition is positioned at the rear of the parcel, attached not to the historic building but to a later addition. This circumstance ensures the new addition's reversibility and visually subordinate relationship to the original building. These gestures alone might be enough to meet the Secretary of the Interior's Standards, which are famously receptive to contemporary designs as we have just shown. Nonetheless, as a committed partner with the community, the bank recognizes the value in balancing the addition's aesthetic expression in a manner that is also receptive to the historic character of the surrounding neighborhood. The current design, articulated massing, familiar height, traditional materials and fenestrations, its generous setbacks and the plantings compared to the rest of the neighborhood combine to achieve a compatibility with both the historic bank and its context.

Attorney Lisa Mead said the Board's decision-making is also governed by the DOD determinations, purpose, and criteria. A decision must be made on the terms of the ordinance. The Board not only and first must look at the relationship of the proposed structure to the historic structure, its place on the property, then in the neighborhood, but also in the context of the district which includes an underlying business district as well as residential districts. The City Council determined, when considering projects under the DOD, these foundations must be kept in mind. Under Section XXVII-A, "The City hereby determines all of the following: architectural, cultural, economic, political, and social history of the City of Newburyport is one of the most valued and important aspects." Section XXVII-B Purposes says, "A Downtown Overlay District and discretionary DOD Special Permit are established due to the unique land use pattern and architectural, economic, cultural character of the buildings, structures, and lots both individually and as a group that are located in downtown Newburyport." The fact that the DOD lays over the economic center of our City is reflected in the Determination and Purpose section of the ordinance. Successful business that are allowed to grow and meet the standards of the time drive economics. When reviewing a project, the Board must keep in mind that the intent is to allow these characteristics to continue.

Attorney Lisa Mead demonstrated on a City zoning map that the DOD is replete with district edges which are directly adjacent to residential districts or wood frame structures. The edges include commercial structures, some 2 ½ or 3 stories tall or taller. The Garrison Inn on Titcomb

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Street is 4 ½ stories tall and directly across the street from the church and right next to wood frame structures. Off Middle Street is a 2 ½ story brick building up against wood frame structures that are shorter. On Essex Street there is a brick façade building across the street from wood frame structures and a 3-story commercial brick building directly against the wood frame structures. These examples exist in various parts of the City, but here they are shown in the DOD. What is proposed is not an aberration, merely a continuation of a historic land use pattern that is protected within the DOD. The proposal is completely in line with the City Council's stated determination and purpose of the ordinance. The proposal is entirely consistent with the historic zoning and land use patterns of the DOD.

Attorney Lisa Mead said she reviewed all the minutes and recordings of the prior Planning Board hearings on this application. The bank has met with the Board 7 times over the last 13 months. Each time the bank has provided substantive changes to this proposal at the request of this Board, the NHC, or the neighbors. The requested changes have not been insignificant. At times they have been completely different from prior meetings. The bank has acted on all the requests that included definitive direction. At times direction in and among Board members has conflicted and the bank had to decide which comments to address. For example, 13 months ago, at the very first Board meeting, the bank had originally applied for an ITIF Special Permit for parking to count spaces in the Harris Street lot toward the bank's parking, as permitted under the ordinance. The meeting was attended by numerous citizens from all over the City who were worried about the impact on the Harris Street lot and other parking spaces on the street. In response, the bank made accommodations to provide all of their required parking on site to comply with the City's onsite parking requirements. This included a significant redesign and alleviated many public and Board members' concerns. None of those members of the public have resurfaced for these hearings except for the immediate neighbors. It was not the bank's original plan to provide all of its parking on site but by doing so the bank responded to what was needed and required to alleviate concerns and comply with the ordinance.

Attorney Lisa Mead said in her review of the minutes, she found that in August Mr. Taintor suggested the bank look at putting the addition on the State Street portion of the property. However, the suggestion was dismissed after discussion by the Board and the applicant. Yet after 13 months and 6 redesigns, that suggestion was again made notwithstanding its prior dismissal. Both of the bank's experts say that location is the antithesis of the Secretary of the Interior's Standards, that such an addition would block the prominent side of the historic structure and require an attachment to the historic structure. Importantly, it would not be compatible with the flow of banking operations and vehicular traffic on this site. Traffic would be entirely funneled down Prospect Street. An NHC member suggested that the building be clapboard in wood siding similar to structures in the neighborhood, a position later adopted by the Board. The bank undertook this redesign only later to have the design dismissed by the Board. Members had a varying degree of comments, some which were specific enough to be acted upon and some of which were conclusory and contradictory. That gave the bank little ability to act. The plan before the Board tonight is the result of 6 redesigns and incorporates many of those comments. The bank has been understanding and responsive to the Board's comments but must also meet its business needs on this commercial property in this historically commercial district. The bank has again revised the plans.

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Attorney Lisa Mead said the bank is providing all required parking on site. The proposal will improve the stormwater discharge problems on State Street, meets fire safety requirements, meets all of the technical requirements of Site Plan Review, is signed off on by the City engineer, the Water Department engineer, and the peer review engineer. Significant setbacks have been added off Otis Place with a pocket park complete with benches. Setbacks and landscaping is provided on Prospect Street. Materials such as a slate roof, limestone, granite, brick, and a copper cornice complement the 1870 structure. The generator is fully enclosed and buffered from exposure to the neighborhood. The massing and scale are in line with the commercial properties of upper State Street, not lower State Street. The proposal is appropriate for the 1870 structure, is compatible with the neighborhood without being a residential structure, consistent with the DOD determinations and purpose, and continues the unique land use patterns that are the DOD. The proposal allows for the expansion and solidification of the bank, the longest and most continuous economic generator and contributor to the DOD.

Attorney Lisa Mead said the discretionary permit is not unfettered nor is it absolute. The Supreme Judicial Court (SJC) has opined on a number of occasions that applicants have a right to an honest uninfluenced opinion rendered in good faith by a town, city official, or board charged with deciding whether under a bylaw or ordinance a building or comparable permit shall be issued. While neighborhood input is important, the Board is governed by and must make decisions in accordance with the standards of the ordinance that serves an entire city, not just 8 people in a neighborhood. The bank has been here for over 200 years. The average ownership for the surrounding properties is 12 years for owner-occupied buildings and 23 years for rental property ownership. The zoning district has existed since before any of the adjacent residents owned their properties, both those that are residential in the residential district and those now non-conforming residences in the B2 district. The bank will be here long after they leave. The Massachusetts Appeals Court has stated applicants are also entitled to decisions not based on emotion but rather a calm reasoned approach to a just and fair decision based upon the facts presented. The bank respectfully requests that the Board approve both applications and allow it to withdraw the ITIF Special Permit without prejudice because it has provided evidence on the record that it meets all of the criteria of Site Plan Review and the DOD.

Public comment open

Bonnie Sontag said any letters submitted through mid-day today were read by members, posted on the City website, and are part of the record.

Bill Bixby, a business, and a building owner at 33 State Street, is in support. As a business owner his concerns would be parking and aesthetics. The bank has taken care of both those things. The building fits in historically and they have supplied parking on site. The Institution for Savings (IFS) has always been a fabulous supporter of the City. They are always the number one contributor whether it's a business, a non-profit, or the Newburyport Chamber of Commerce.

Glenn Richards, 6 Kent Street, Chair, NHC, speaking as a resident, is opposed. Sophistry makes a weaker argument appear stronger than it really is. That's what the applicant is doing. He takes exception to the accusations that he keeps changing his mind. It's as if height has no bearing on mass or size and that volumetric measurement zoomed in from outer space and has no relevance

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to anything in the Standards. The term massing is used over and over again. In the context of a building, we're talking about size. Size is length times height times width. The dimension missing omitted on their drawing is 118 ft and 11 inches. The idea that you can compare size without measuring anything doesn't make any sense at all.

Tom Kolterjahn, 64 Federal Street, co-chair Newburyport Preservation Trust (NPT) said the Trust still opposes the project in its present form because it impairs the integrity and character of the neighborhood. It is detrimental to the neighborhood. No matter how many paid consultants the bank brings in the proposal is not in harmony with the purpose and intent of the DOD. Patricia Peknik's written public comments about the examples put forth by the applicant's consultants are clear and concise. The examples do not at all represent the situation in Newburyport. The bank wants what it wants but that doesn't help the neighborhood or the City. This is a massive project still and has been from the beginning. A small reduction does not make it any more palatable. He hopes the Board will bring it to a no vote tonight.

Mark Goldstein, 172 State Street, president and CEO, Anna Jaques Hospital, is in support. He wrote a letter of support last March. The basis of that support is his trust in IFS management, Mike Jones, Kim Rock, and their Board of Trustees. Properties the bank owns on the North Shore are all special. The bank has stepped up in every way possible and persevered on this important downtown project. A project of this magnitude during the pandemic is special when you consider the number of empty downtown storefronts right now. In 1918, bank president H.D. Little, who was the great-great grandfather of Charlie Baker, stepped up to help the hospital battle the pandemic of 1918. IFS has shown repeatedly they do the right thing and demonstrate their commitment to Newburyport. He encouraged an affirmative vote tonight.

Tara Cederholm, 20 Fruit Street, is opposed. She wrote her third letter to the Board today. The NHC has done an amazing job through 4 separate reports that show this project is not in compliance with the Secretary of the Interior's Standards. The bank's experts who say it is compliant have been paid. The NHC members are volunteers on behalf of our citizens. Attorney Mead showed many images in which commercial buildings are juxtaposed to wood frame buildings that were hard to see over Zoom, but the Garrison Inn was originally built as a residential structure and the fact that it is brick has nothing to do with its current use as a commercial building. In the early 19th Century brick was the preferred building material to prevent your house from burning. To compare one residential building to another and past building codes to today's building codes is irrelevant to this project. The fact that the IFS is a good corporate citizen is also irrelevant to the value of their application. She encouraged the Board to vote no on the application.

Peter Mackin, 13 Prospect Street, abutter, is opposed. Less than 30 days ago the Board opposed the size, height, mass, scale, and footprint. Tonight, the proposal is the identical height, size, mass, scale, and footprint. Nothing has changed but the façade and windows. Attorney Mead compares it to residential buildings when that's convenient and to the historic structure when that's convenient. Her examples of additions in other Massachusetts towns did not look at all like Newburyport's historic downtown neighborhood. The bank says this proposal protects their property. What about protecting the residential neighborhood? This is not 3 separate buildings. They are all connected in one massive building. In 7 meetings over 14 months the building has

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had no substantial changes in size, height, mass, scale, and footprint. How long has the bank president been in the bank? Every resident here lives in this neighborhood 24/7. The bank president and employees are here 8-5. It's still 2 ½ times larger than the 1870s building.

Cindy Johnson, 99 Lime Street, trustee of IFS, speaking as a resident and business owner, is in support. She echoed the Chamber of Commerce and other community leaders in support. In this lengthy process, the bank has demonstrated its responsiveness to the Board's suggestions. The project is consistent with the character of downtown. The DOD was not meant to discourage business activity. The health of our downtown is one of the DOD's key drivers. Businesses wishing to expand is a positive statement in most downtowns. The vitality of our downtown is not historic buildings, it's the people working, shopping, and eating in our historic buildings. To show that B2 zoning is meaningless along its edges is not a good message to send to businesses. Unlike the abutters, the bank has been there for 200 years and worked all that time to be a good neighbor. Don't send a message that businesses aren't welcome in our downtown.

Tim Wacker, 13 Otis Place, abutter, is opposed. Throughout many meetings and comments the IFS is not making headway because it's a bad project that's inappropriate for this area on the most constricted street in the City. You can change the windows, the landscaping, the setback, and it's all lipstick on a pig. The Board is doing a good job looking out for everyone's interests.

Chris Skiba, 14 North Atkinson Street, member, Chamber Economic Action Committee, is in support. He urged the Board to approve the project. The bank has been here since 1820. They have listened to concerns, been flexible, and done a fantastic job working with the Boards. The proposed project is thoughtful and in keeping with the downtown. The IFS expansion adds 7 FTEs at a time when we could really use the jobs. Their \$6 million expansion will increase their tax payments. The IFS is incredibly generous, donating millions of dollars to charities. Let's approve this project now so they can continue to do an amazing job serving this community.

Colleen Turner Secino, 15 Otis Place, abutter, is opposed. The NHC and Board have worked hard. The bank should be ashamed that they never talked to the neighbors. It would be inappropriate for this enormous structure to be built. She begged the Board to say no.

Claire Papanastasiou, 4 Otis Place, abutter, is opposed. She submitted several letters over the last 14 months. The statement that none of the abutters have been here for 200 years has no credence because no one lives that long. We are talking about the legacy and lasting impact of this structure. There were missed opportunities on the bank's part to show good will. It's not as if the bank is adhering to DOD guidelines, the NHC guidance, and this Board when all they have done is make design changes when the issue all along is size. At what point do we say why aren't you listening to us? She thanked the Board and NHC for their work. We are spinning our wheels because an entity that has a lot of power wants what it wants.

Mark Griffin, 4 Otis Place, abutter, is opposed. He thanked the Board for its diligence over many months and their good faith attempt to get to yes. The bank has been stingy about size reductions having made one size reduction in 14 months and no size reductions on this latest plan. The bank seems unwilling to move on this issue. This intransigence is not worthy of further continuances. Abutters have mobilized their time, effort, and sometimes legal fees for every hearing to make

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their voices heard for 14 long months. It's time to bring this to conclusion. The NHC report and Board comments reflect the standards the bank has not met for a DOD Special Permit. To allow this permit is to provide an example for anyone else in the DOD. TD Bank and The Newburyport Bank could propose similar additions in their parking areas. Vote to deny the special permit.

Mary Ann Clancy, 16 Neptune Street, senior vice president, communications, IFS, is in support. The last 3 speakers are a handful of the abutters in the process of moving out of the neighborhood. When the ink is dry on this project they will be gone. You've heard the ambiguous requests the bank has been asked to make. All along the bank wanted guidance from this Board on whether the plan would never work. This Board was asked to provide guidance on getting to yes or whether a plan would never work when she was mayor. That did not happen on this project. Transcripts prove that the guidance continually changed. The current and five former mayors have provided guidance that this plan is worthy of support and approval. If the neighbors, 4 of whom will be gone shortly and one who lives in San Diego, were not opposed to this project would Board members be opposed? A downtown business who wants to expand is watching what will happen on this project. The business is ready to scrap their plans and move elsewhere with its 2 dozen employees who will no longer be downtown buying lunch. This City was founded on the concept of urban living with houses and businesses coexisting. The DOD which explains the unique land use pattern has no clause that says as long as the neighbors approve. She asked the Board to respect the intent of the DOD and approve the project.

Steve Charette, 16 Prospect Street, abutter and State Street business owner, is opposed. He has never objected to the bank reasonably and sensibly expanding. He appreciates the window and façade design changes that provide some visual relief, but continues to oppose the height, scale, and massing. It was shocking to hear the vitriol that somehow the bank is listening to the guidance. The bank had the guidance to reduce height, scale, and massing and simply did not do it. One Board member said it best a few months ago. She had never seen a project with so much opposition. The NHC, the NPT, most Board members, and neighbors oppose this project. That has not changed. It's been a bad project from the beginning because the bank chose not to solve the problem of height, scale, and massing. After 14 months it seems like a strategic move by the bank to wear everyone down by claiming anything smaller won't meet their programmatic needs that include a museum, gym, and showers. They can certainly build something smaller and subordinate to the historic building for 7 new employees. He agreed with Mr. Mackin that the bank staff spends 40 hours a week here while the neighbors are here 168 hours a week. He thanked the Board and asked them to deny the project.

Jeff Caswell, 3 Jefferson Court, bank corporator, property owner of 780 State Street, and downtown business owner, is in support. The zoning requirement for parking makes the building bigger. He knows the neighbors are upset, but they are neighbors to a business district. The bank, as a business, needs accommodations to run their business and the City needs commerce and the IFS downtown. There are vacancies in his downtown buildings. Half the neighbors are moving out. The bank has done a great job of listening to everyone. The B2 has zero setback yet the bank has provided setbacks and shrunk the building which can be 35 ft tall. It's almost as if the DOD is taking away rights from the business district. The Board is trying to impart residential stuff on a business district. He urged the Board to approve.

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Ben Savoie, 17 Prospect Street, abutter, is opposed. He has been here 10 years and is not moving. This will not hurt the IFS business one bit. It's a museum mostly. There are plenty of downtown buildings that could use a museum. If they are looking for museum space, they could easily help some of the other buildings.

Lloyd Hamm, CEO, Newburyport Bank, 60 State Street, is in support. He commented on the fairness in the Board's approach, the energy of the abutters, and the bank's patience. Challenging our downtown district by making more difficult to bring employees to an already fragile area will continue to make it more fragile. Every day he watches employees pass his desk to move their cars on the street. They set alarms to do this. A comment was made about his bank expanding into its parking lot, but he doesn't have the patience, time, or money that the IFS has. If he adds employees, he is likely to move them out of the downtown district and take those economic dollars away. Industry statistics show the average employee spends about \$20 a day within 300 yards of their employer 220 days/year. Twenty-five employees add \$110,000 in economic vitality to downtown businesses. We can't ignore this. Walking around that area you can see our businesses are challenged. He appreciates what the abutters are saying but the beauty and wonderous nature of downtown Newburyport will become increasingly fragile if businesses relocate their employees elsewhere. He wishes everyone the best in finding a solution.

Joseph Morgan, 55 Hill Street, NHC member, is opposed. The NHC was asked to comment on the feasibility of a State Street location, a potential solution he advocates and that was not scrutinized enough. He saw no plans or studies generated for the idea. Doing so would demonstrate the commitment of a business institution that wants to be visible in the City. The location would strengthen their image on State Street. There are no non-historical buildings at the perimeters of this historical site. Relating to the front side of the site would be a demonstration that declares the bank a true historical partner in the City. The 8,500-9,500 gross sf, depending on the setbacks, on the corner of Prospect and State Street is quite a bit of real estate. The existing footprint of the proposed building is 7,500 sf. By providing additional setbacks on Prospect Street the bank could easily realize the footprint they have at the rear of the site while producing something more in keeping with the relevant precedents Attorney Mead provided regarding the Secretary of the Interior Standards that were precedents for actual additions to historic buildings, not just new construction. State Street would be more in keeping with a historical sense of place and would remove it from the view of adjacent houses at the rear of the site. It's the solution that should be explored and it hasn't.

Ann Clausen, 3 Otis Place, abutter, is opposed. She thanked the Board for listening to the abutters and reading many letters written in the past 13 months. Glenn Richards did a better job of speaking on their behalf than they could. She wished he had more time. Mary Ann Clancy's statement about people moving is irrelevant to the project. The initial issues of size, height, and massing still remain and have not changed. She does not understand how the IFS can be so disrespectful to the Board, residents, and the NHC, and continue to ignore us and the DOD guidelines. The project will affect her day-to-day life and the Board should deny the project.

Stephanie Niketic, 93 High Street, is opposed. She is one of many non-abutter residents who opposed the project over the last 13 months. She highlighted the written comment of NHC vice chair Patricia Peknik, who debunked in detail the argument that the 3 large library additions

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examples compiled by Mr. Young are comparable to the IFS situation. The cited additions in Quincy, Needham, and Milton are all on much larger lots and abut parks, lakes, athletic fields, or woodlands. None abut historic neighborhoods or are on historic streetscapes. Whatever you call it, massing, scale, proportion, or volume, these are all concerns addressed in our DOD and the U.S. Secretary of the Interior Standard. It is clear IFS will not reduce the size. Whether the building proposed is on the rear of the lot or on State Street, it is too big for its setting. She hopes the Board will vote tonight to deny the permit.

Paula Renda, 16 Otis Place, abutter, is opposed. She attended every meeting, wrote several letters, and thanked the Board for hearing her concerns. A solution between the bank and the neighbors has always been her goal. It is frustrating that 14 months of continued suggestions to adjust the scale and size has been ignored. As it stands now, the impact of this massive structure will permanently affect our neighborhood. She urged the Board to vote no.

Freeman Condon, 6 Forest Road, Salisbury, IFS trustee, is in support. This project is better, safer, and more attractive because of the Board's incorporated suggestions. He commended the Board for their diligence. As a 6 term, 18-year elected official he has on occasion voted in support of a proposal of which he did not fully agree because the applicant met the criteria. On the one occasion he joined the majority to deny a license the decision was appealed, and the judge ordered the license issued and the town to pay the applicant for their trouble. It's nearly impossible to change a mind that's already made up. He encouraged the Board not to let a preference for something different cloud their judgement about what is allowed. This decision should not have to be made in court with a long and costly appeal paid for by Newburyport citizens concerning a decision with which many of them disagree. The City is well aware that we would appeal any unfair decision as is our right. He urged the Board to approve the project with the many changes they requested. This is a reasonable, justifiable, and allowed use.

Sean Sullivan, 9 Prospect Street, abutter, is opposed. The bank has continued to ignore requests from neighborhood, the NHC, and the Board to reduce the size, height, and massing of the project, no matter how many times we've asked them to address those core issues. Instead of listening to the NHC, the bank purchased new expert opinions. He doesn't care what goes on in Milton, Quincy, or Needham on totally different plots of land than the plot at Prospect and State Streets. He asked the board to bring it to a vote tonight and vote no because the bank is not going to listen to any other comments. Attorney Mead compared how long the neighbors have been here compared to the bank. His house existed 20 years before the bank incorporated and 70 years before the bank built a structure on State Street. Please keep other historical structures in mind when making your decision. Regarding comments about the brevity of people's stay in the neighborhood, his 9-year-old daughter has lived here her entire life, in the only house she knows, on the only street she knows in the neighborhood.

Gary Karelis, San Diego, CA, property owner of 15, 17, 19, and 21 Prospect Street, is opposed. He doesn't know who the other neighbors are that Attorney Mead said spoke in favor of this project that live on Harris, Middle, and Essex Streets. She talked about the bank having the right to grow. What about the effect on the abutters? Do any of the employees, trustees, corporators, or vendors doing business with the bank live in the neighborhood? Many of them have spoken in favor of the project. Board member Mr. Taintor has said many times the project is out of context

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with its surroundings. It was also said many times that the scale and mass are too big, too tall, and too much. The ability of trash haulers, fire engines, and snow removal trucks to around in the congested area remains a problem. He asked the Board to reject the proposal.

Public comment closed

Bonnie Sontag said the Board, and then the applicant will respond prior to a permit criteria review.

Director Port provided context for the project. He demonstrated on an aerial map the property location at the transition between business and residentially zoned districts. The subject property and others abutting it fall entirely within the business district where the zoning ordinance continues to allow a greater height than the applicant is demonstrating and zero lot line setbacks which the applicant does not propose. This is presumably to ensure the vitality, appropriate buildout, and active frontage essential for a vibrant downtown. Newburyport's downtown is relatively small. It's important to balance the purposes of our equally important business zone and district with the local historic district's style and design review process as called for in the DOD. Design and contextual review within the downtown are necessary. He does not believe 2-story infill within the downtown business district is inherently detrimental to the historical and architectural context here where business and residential often come together at the fringes as they do here. It is a common aspect of our downtown land uses and historical architectural context.

Director Port said this co-existence, not necessarily conflict, can be found in other locations where the downtown transitions into dense residential neighborhoods. It does not seem unreasonable, with all this in mind, to interpret the DOD or the Secretary's guidelines as they are contained or referenced in the Newburyport zoning ordinance. It is necessary to contemplate and allow for continued co-existence in the transition areas between our downtown business district and dense, abutting residential neighborhoods. Both provide important context to the review of this project and the scale and massing of the proposed structures. He is not an expert on the Secretary's guidelines, but he is not persuaded that the addition proposed is a detriment to the historic integrity of the original bank building given its distance at the rear of the site. The surrounding neighborhood provides important context and must be reviewed for similar impacts. It's important to remember that the underlying business district, current zoning, and/or historical built forms also provide important context when evaluating appropriate scale and massing for this project.

Director Port said the applicant has made several design changes in an effort to address concerns raised at previous public hearings. They claim to have exhausted all architectural options to lower the roof and eave height structurally. The most recent criticism focused on an approximately 18-inch difference between a comparison with the average surrounding eave heights, some of which were in the residential district where lower roof heights are both protected and required. The applicant's proposed changes to the architectural detailing tonight responds to Board member comments at the prior hearing. It seems they do not believe the height or size can be reduced any further while meeting other project and zoning requirements. Although this business addition abuts residential properties, given its location entirely within the business district and recognition of the common areas of transition we have in other areas of the

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downtown, it does not seem unreasonable to accept the 18-inch difference as comparable and not detrimental. He has no objection to the use of brick, a common material for construction in the subject business district, however if clapboard siding somehow returns to the design plans, he has no objection to that treatment either. Both have contextual relevance to this location.

Director Port said if revisions made by the applicant this evening are not sufficient to address the Board's concerns, he recommends clarifying what changes the Board finds necessary, whether that be size and scale or more detailed elements. That may be difficult to do as a 9-member Board. Reaching a general consensus will help all in lieu of potentially conflicting requests or expectations. The Board has broad and sole discretion to determine if required findings and standards are met based on input from all stakeholders. Recognizing the extensive time spent by this Board, the applicant, and other parties during the past year on a sometimes-controversial project, he hoped for a reasonable place of compromise regarding scale and massing in light of the regulations and application of the guidelines for context regarding our architectural heritage.

Board member comments

Don Walters asked if the City's counsel would repeat what he said at the last meeting about the goal and the duty of the Planning Board. He listened to the recording of the last meeting in full since he was not present. Is the obligation of the Board to work to get a yes vote as compared to is it the Board's duty to hear all the facts and based on whatever findings the Board makes, to approve or disapprove? The NHC has made their recommendations. They have been fairly consistent. The applicant's historic experts have been fairly consistent. There is a chasm between the two. It seems no matter what we do we're not going to get any compromise even if we independently hired a third party. The plaintiff's experts are better credentialed and paid by the applicant. One could say there is a certain implicit bias because of that. The abutters' feedback has been fairly consistent. The bank has made some modifications that are not as substantial as the abutters and the Board wanted. He is prepared to close the hearing and vote.

Bonnie Sontag said working to yes doesn't mean the Board has to come to a yes decision. The Board is working toward a point of agreement with the applicant, with all the facts and all of the input, so we can try to find a way to say yes, but a yes decision is not required.

Don Walters said you are always going to have a difference of opinion between the applicant and the Planning Board on the facts. They are not binary.

Bonnie Sontag said she did not mean to say they will agree on everything. The Board wants to approve applications if they meet the criteria in the zoning under review. But the Board is not required to continue pushing the applicant to move in the Board's direction or vice versa. If it doesn't all come together, there could be a negative vote.

Don Walters said if all the facts and findings are consistent with our zoning, the Board must find in favor of the project.

Rick Taintor said, in the process to date, the most honest argument is that IFS is a valuable and valued business that Newburyport residents should support. He agrees with that. He believes

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everyone in Newburyport would agree. The bank should be able to expand on this site. He wishes the IFS would come up with a plan that does a better job of meeting the purposes of our zoning ordinance. The argument most irrelevant to the issues raised about the application has a subtext that seems to indicate the bank deserves special consideration and that its value to the community preempts the purposes and criteria the Board is supposed to consider. The most dishonest argument in favor of the bank's plan is the suggestion that any criticism to a particular development plan represents opposition to business expansion on their property or is meant to send a message that businesses aren't welcome in the downtown. That is untrue for him. He suspects people making those statements know that it's untrue, but they are trying to make the strongest case they can.

Rick Taintor said the DOD was established and overlaid on the underlying districts to modify the criteria of those districts and in part to protect the surrounding properties regardless of what underlying districts they are in. But if economic development is the primary objective, the City Council should repeal the DOD or amend it so the Board can ignore zoning criteria that gets in the way of an important project. Regarding this specific plan, Attorney Mead would like to pick and choose aspects of historic context based on which ones are valuable and which ones are disposable. The plan argues in favor of maintaining a 1970s parking lot and a modernistic reinterpretation of a clock tower combined with a fountain which is a modern, non-historic layout on the site. Regardless of the architectural details, the site plan is in no way convincingly contextual. Instead, it seems arbitrary and random when you have a downtown streetscape that really needs to be filled. The historic context in the bank's argument was that you wouldn't be able to see the side of the building as you travel up State Street, but the idea has not seriously been considered as far as he can tell.

Rick Taintor said that we have only considered putting the building back among the residences and leaving the 1970s parking lot where it is. When Newburyport was down on its luck in the 1970s, a demolition knocked down historic buildings to build parking lots like on Unicorn and Green Streets. He doesn't know what happened in the subject location, but that is not the land use pattern the Board should be promoting in our historic community. This is not an all or nothing situation. There is room on the site to expand to fill in the missing tooth on State Street and in that way, have less impact on the neighborhood. He has some resentment about the way the Board's attitudes have been characterized by some of the speakers. All Board members have looked at this very carefully and would like to come to a solution we are all happy with, but it's difficult because of all the conflicting interests. He will hear all comments before commenting on his vote.

Tania Hartford supports the project. It meets the zoning ordinance. The applicant has done a good job of listening to the Board. She appreciates the Board's varied comments. She agrees with the applicant's opinion on the Secretary's Standards.

Bonnie Sontag said she was glad to see the design improvements, but she is disappointed the applicant has not found a way to lower the eave line to reduce the structure's mass. To reduce the eave line, they would have to redesign it in some way. Plans show a reduced roof ridge height but not a reduced eave height from the previous proposals. The eave height is more visible from the street level and that's why she is more focused on it. She had hoped the applicant would alter

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their programming or use plan, which the Board has no authority over. Or submit an acceptable alternative parking arrangement for the equivalent of one level of parking so the building could be reduced. Or produce a building design that allows them to lower the height in some regard. But the applicant has done none of those things. She agreed with Mr. Taintor and other's comments that the applicant had not been willing to consider in any serious way the idea of placing the structure on the corner of Prospect and State Streets. That would remove a good portion of the addition from the residential neighborhood and position the project as a contemporary addition to the historic bank building, which is within the Secretary's Standards for a new addition. While reviewing tonight's plans something that the applicant likely cannot respond to occurred to her. Queueing for the stacked garage parking could cause a traffic back up on Prospect Street that could potentially overflow onto the adjacent streets at the start and end of the workday. It might take longer to get those cars off the street because of the stacking system.

Leah McGavern agreed with Mr. Taintor, in particular his comments about how the bank's team distorted some of the Board's comments and selectively chose points from the law to support their argument. Looking at this holistically, we can argue dimensions and bring the height down one foot and push a wall or two back. The plan has arrived at a good place. The building almost feels like it fits visually. It's almost in balance with the residences. The applicant has a right to build at this location, but as Mr. Taintor eloquently said, it should be located on State Street. If only there had been an opportunity to see it on State Street, that would have alleviated so many of the difficulties for getting to yes. She is unsure how she will vote.

MJ Verde agreed with Mr. Taintor. Nobody likes to look at surface lots because they are ugly. When you look at the proposed addition from State Street you see a surface lot before you see the addition. She would rather see a building that interacts with State Street than a surface lot. Director Port brought up the active street front they are creating on Prospect Street. The active street front should be on State Street. Residents don't want the active part of the project in their neighborhood. There are a number of banks with surface lots in the back. She would hate for all of them to become infill to accommodate more employees. That's not a good trend for the City. She cares less about the particular height or roof line detail than she cares about overall massing. As proposed, this is still too massive on the site and on the wrong part of the lot.

Anne Gardner said she was excited by revised plans presented at the last meeting because for the first time, she saw a significant change. She saw a reduction in massing and likes the landscaping additions. It was a great step. Her disappointment tonight is because she hoped for an equally significant reduction again. The Board's criteria, particularly under the Special Permit, is where she is still stuck. As proposed, it will impair the adjoining district although it meets all the requirements of the business district. She is not anti-business, but she continues to be very concerned about changing the historic character of the residential neighborhood for the people today and all the future generations in that neighborhood. Many of us may regret that not paying more attention to Mr. Taintor's suggestion a year ago to place the building on State Street. The more she reflects on the idea the more she realizes Mr. Taintor's suggestion would solve a lot of problems, especially her primary problem of the negative impact on the adjoining residential neighborhood. If this is the final product without a significant change, like moving or shrinking the building again, she is ready to vote.

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Beth DeLisle wished the Board could get to something the NHC could agree is in keeping with the standards and that everyone could be clear and confident the project would meet the DOD standards and the Site Plan Review criteria. She is still concerned about the size and massing. It's enormous in that lot. The architects have done everything they can to break it up, but it does not fit in as far as size, mass, and height where it's located on the lot, in the neighborhood, and its DOD setting. She is concerned it overwhelms the historic building. Even considering the 1980s addition, this seems too large. She had asked whether the bank could consider renovating existing space and put some of the parking off site in order to have a smaller addition. Attorney Mead indicated that everyone was outraged when the proposal was 32-parking spaces off site. There is a middle ground between all parking on site or off site that can reduce the size of the structure. The bank could consider a spectrum of parking with some on site and some off site. She spent a lot of time looking at the Sanborn maps and historic documentation of the site. There was a garage more towards State Street. Historically, there were dwellings on this property. Historically, it was a residential neighborhood. That was the historic land use pattern and is in keeping with the way the City is set up with brick and wood clad buildings. In this area, as you go up State Street as you go toward Federal Street, there are fewer of those situations. The bank should develop their commercial site, but in this plan, the size and mass need to be more compatible with the neighborhood.

Applicant response

Attorney Lisa Mead appreciated everyone's comments. The bank never asked for special treatment. A number of people in the community supported the bank and indicated that the bank's history should be considered. The bank, as applicant, has always shown how they meet the criteria. The zoning ordinance requires us to resolve the parking on site. Doing otherwise was clearly a problem with the neighborhood. The bank tried to address that issue. The idea in August to put the addition on State Street was dismissed by the Board per her review of the minutes. A State Street location would have to be connected to the original structure, blocking the most prominent part of the original structure as you come up State Street. A building at the front of the property means all traffic visiting the bank would go down Prospect Street to both enter and leave the property. Traffic would then go through the Otis Place-Garden Street neighborhood as well as Prospect, Fair, and Federal Streets. It would absolutely impact the neighborhood if all bank employee, customer, and visitor traffic enter and depart from Prospect Street and through the neighborhood. The bank is not interested in that and not interested in another full-on redesign, because it does not accomplish their business purpose and it is not better for the neighborhood.

Attorney Lisa Mead said in regard to impairing the integrity of the adjoining district, this is a standard land use pattern in the B2 district as Director Port commented tonight. The zoning ordinance does not have a transition. We have hard transitions. Ms. DeLisle is correct that there were multi-family residences at the rear of this property at one time, and maybe a single-family a long time ago, but it's now the business district and residences are still there. The business district, absent the DOD, allows a full build out on this property. The City Council acknowledged in their adoption of the DOD these unique land use patterns downtown, in the DOD, and in the B2 district. These hard transitions, which exist all over the DOD, are why people move to this area. It's urban and you can walk to businesses. This proposal is not unique.

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Are we changing land use patterns in the downtown? Discouraging development behind existing downtown buildings and businesses is of great concern. Those comments were frightening to her as a downtown business owner and long-time resident. As a former mayor she was always concerned with the economic survival of downtown businesses which generate tax revenue and jobs for residents. The bank is not interested in moving the addition toward State Street. Enormous sums were spent trying to address the concerns of the Board and the neighborhood and while maintaining a program that meets their needs and provides for parking requirements.

Chris Angelakis said, as a designer, it's difficult to hear about how size relates to the program and how disappointed the Board members are that the program can't be changed. Imagine an empty lot in a residential neighborhood that allows a 2,300-sf wood frame home with 4 bedrooms by-right. And, in the approval process there's a lot of opinion about size and someone says it's just too big for the area and the homeowner is asked to go down to 2 or 3 bedrooms. Massing is a modification of size and a way of modulating size. The idea that program equals size equals mass equals something not acceptable even though it fits within the envelope is hard to put into a logical, actionable set of statements. If we were all sitting around a table we could come together, get our language straight, and understand what's happening behind all those windows and walls. Every criterion is being met. It would be great if the Board could come to some understanding that program is not something you can decide to lop off another 30% and make it all better. Program is a criterion for accepting the existence of the project at all. If a homeowner needs a 4-bedroom house and the property can only have a 2-bedroom house, then that property is worthless to him. Mr. Angelakis hoped to dispel the notion that a building which fits within the criteria envelope he has been given to design within has a fault that can be addressed by changing the program. It's difficult to understand how a designer can react to that.

Attorney Lisa Mead asked to display slide #45 that looks down Prospect Street. In a planning process the applicant team looks at these bird's eye views. Nobody in real life looks at or experiences buildings with the bird's eye view. Slide #45 is the view of the size and height of the proposed structure compared to structures in the neighborhood. As you walk down the street and see the proposed structure, it's no different than the eave line and roof line of structures on the opposite side of the street, or even the bay window on the left.

DOD Special Permit Findings

Bonnie Sontag introduced the DOD Special Permit criteria, which would be followed by the General Special Permit criteria, and lastly the Site Plan Review criteria. The Board will only look at the most pertinent areas which are highlighted because those specifically have been under consideration. The Board works with each special permit applicant to reach a compromise that the applicant, abutters, and other interested parties can live with. We live in a community where residents and business owners share a deep concern for our historically significant built environment. That is the reason City Council adopted the DOD. Multiple meetings, the outpouring of public comment, the due diligence of the NHC all attest to the willingness of community members to work with the IFS to build an addition that will fit in this historic location. The DOD authorizes the Planning Board, as the Special Permit Granting Authority, to evaluate an application based on the underlying zoning as well as the provisions of the DOD. But

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in the case of a conflict, the DOD takes precedence. In addition, this application requires approval under Site Plan Review. The Board will consider all these sections for both ordinances.

Bonnie Sontag said Attorney Jon Eichman, the City's counsel, made a statement during the last hearing concerning how the Board views and talks about the criteria, which is, "When we discuss massing and size, we should not focus on whether massing and scale are appropriate for use in the neighborhood, but whether the massing and scale are appropriate for the standards of this special permit, i.e. compatibility with existing historic buildings and the historic character of the district. These are similar considerations, but not exactly the same standard."

Attorney Jon Eichman, KP Law, P.C, 101 Arch Street, Boston, said that Chair Sontag said it well and he would not change it. That would be his primary advice to the Board. The DOD Special Permit focuses on the historic character of the district and the buildings within it. The standards and criteria, specifically the criteria in Section 5 of the ordinance about new construction and alterations, must be read in the context of the historical character of buildings in the district. The first sentence in V-A is the overall standard for special permits in this district. It says, "New construction and alterations must be compatible with the existing historic buildings and structures within the DOD," and then there is a colon followed by further standards which he considers within the envelope established by the first standard. A focus on the key elements of massing and size has to be within the context of whether it is compatible with existing historic buildings or structures in the DOD. That would be his focus regardless of how the Board votes. The Board should pay careful attention to the factual findings that support its vote, referencing the criteria that's in this section.

Director Port displayed the Downtown Overlay District (DOD) criteria.

Rick Taintor said this paragraph causes a lot of difficulty because the first sentence quoted by Attorney Eichman seems like it is the basic criteria. To him, that says the Board does not look at the boundary of the business district, we look across the street to the residential district. Then, there are more sentences which confuse the issue by talking about the subject historic building structure, the lot where it is located, or its setting within the DOD. Its setting within the DOD probably refers to other structures within the DOD. It's unfortunate that the language isn't consistent. The basic criteria say structures within the DOD and then subsequent sentences say its setting within the DOD. It would be much stronger if it didn't have the remaining sentences that make the analysis fuzzy. Attorney Mead talked about the fact that we don't have a transition district. He thinks the DOD is meant to function as a transition district. It's meant to say that when you have these hard districts running up against each other, or as she has described it, hard boundaries, you use the DOD to try to soften that boundary and recognize the impact on the abutting properties. This paragraph is clearly the nub of the Board's task, to look at this and say whether this development is compatible with the smaller structures surrounding it on 3 sides.

Bonnie Sontag asked if Mr. Taintor had a comment about whether or not the proposal meets the criteria described here.

Mr. Taintor said it's difficult. His sense is that the proposal does not meet the criteria described here. He wants to hear from other Board members who have specialized training in design. This

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is not the same situation referred to by Mr. Angelakis' when comparing this project to a vacant single-family lot. This is a situation where we don't have a cut and dry set of criteria to work with. It's all a judgement call, analysis, and figuring out how we can make things work better. His sense now is that it doesn't comply, but he's still listening.

Bonnie Sontag said the findings for the decision will come from the discussion the Board is having right now in the review of this criteria. She asked members to be as specific and clear as possible.

Leah McGavern said the difficulty in this one sentence is the word compatible. What does it mean for a residential structure to be compatible with an institutional structure? How compatible should it be? Does one have to be just like the other? She did not know the answer and she is a designer. In many ways it's compatible and in many ways it's not compatible. The distinction from the residential is an important distinction. It comes back to general size and massing, but can those two be slightly distinct also?

Don Walters said the residential aspect has already been spoken to. Regarding the commercial aspect, it is zoned downtown commercial, and we have this juxtaposition. If you want a binary answer, the proposal does satisfy that finding in his opinion.

Tania Hartford concurred with Mr. Walter's opinion.

Leah McGavern said it pains her to think the Board would have to close the door on considering the State Street opportunity. The State Street issue aside, the proposal has reached a certain level of compatibility that she is comfortable with.

Bonnie Sontag recognizes the addition is new construction and as such does not need to mimic any other structures in the DOD. But it is new construction on a site with a historic structure within a historic district. The proposed addition should contribute to preserving and not detract from the historic character of the overlay district, which includes commercial and residential structures. The addition could fulfill both requirements if it were designed on a scale that is subordinate to the existing historic structure on the site and at or below the average eave height of abutting historic structures. The NHC has reinforced this view, especially in their January 28th report that shows neither standard has been met. She agrees with the NHC that the standard has not been met on new construction.

Bonnie Sontag said, as for compatibility, returning to brick positions the addition as a continuation of the historic structure and its 1980 addition. She cited Patricia Peknik's statement from the previous meeting on February 17th, "If the addition can be reduced in size so that it doesn't read as a separate structure and if its height and massing are reduced so that it reads as an addition and not as a second building, she agreed that the brick is an appropriate historical idiom." Chair Sontag agreed with that. "Throughout the City and the downtown, we have lots of examples of commercial and residential buildings next to each other." Chair Sontag said other members have said this site historically had a combination of residential and commercial buildings, two on State Street, and one was right next to the bank. One was clapboard and the other was brick or brownstone. Someone mentioned a garage on the Prospect Street end, and

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farther down there was a clapboard boarding house. Clearly, that was the context the bank was constructed in and operated in. Context matters. She has no problems with the brick but without lowering the eave height to at least the level of the wings on the historic structure and adjusting the design of the addition accordingly, she believed the massing of the proposed structure was not subordinate to the historic bank building nor was it compatible with the abutting historical residential structures in the neighborhood as required by the Secretary's Standards. She did not think the proposal met the criteria.

MJ Verde agreed with Chair Sontag. The structure is not subordinate to the existing structures on the site as required by the Secretary's Standards. To her, that was the most important thing.

Beth DeLisle agreed with Ms. Verde, Chair Sontag, and Mr. Taintor. If the language stopped at "compatible with existing buildings and structures within the DOD" then the fact that there are other situations like this in the DOD somewhere would mean the Board could say the proposed addition is compatible. But when you look at the more specific language that discusses the lot where it is located and its setting within the DOD, we then need to take its setting individually, where the actual lot is located. The brick and the color could be compatible, but the size, scale, and height are not compatible with the historic building, the lot, or its setting within the DOD.

Anne Gardner agreed with Ms. DeLisle, Ms. Verde, and Chair Sontag on that analysis.

General Special Permit Findings

Bonnie Sontag introduced the criteria for General Special Permit Findings. She read, "The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare." Everything else in the criteria seems to be met.

Beth DeLisle said the General Special Permit findings reference the requested use. She asked Attorney Eichman if the Board should take the use generally, as in banking or service industry use, or the specific use of this actual project as proposed.

Attorney Jon Eichman said in this case the requested use is the historical structure in its context in the district. It is not a reference in this particular situation to the commercial use of the property. The ordinance already allows the use as-of-right. This has to be read as referencing the use that's allowed for an alteration to a historical structure in the DOD.

Beth DeLisle said the proposed addition to the historic building would impair the character of the district.

Tania Hartford said the requested use of the proposed project is no different than what is there now. She does not see where it would be detrimental to the health and welfare of the neighborhood given the parking and office use currently on the lot do not seem to impair the integrity or character of the adjoining district.

Rick Taintor said the only reason the Board is looking at the General Special Permit findings is because the applicant is looking for a DOD Special Permit. It has nothing to do with the bank

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use, the parking use, or anything like that. It all has to do with the permit for the DOD and is almost saying the same thing as the DOD Special Permit, which says, "Does the granting of the DOD Special Permit impair the integrity or character of the district or adjoining districts." It has nothing to do with the bank use. It's so unfortunate this all gets wrapped up in whether we want to have business and commercial development on the lot. It's all about the DOD. Board members would answer this criterion in the same way they answered it for the DOD.

Bonnie Sontag agreed. She already covered it in her other response. Her comments on the DOD criteria apply here as well. She asked Mr. Taintor if he was clear about his response on the DOD criteria and findings?

Rick Taintor did not think the proposal was compatible. So much can be done with the skin of the building but here the doors don't seem to be active doors and the windows are not active windows. Basically, the building is a parking garage with a little bit of commercial space on the top floor. The length of dead space at the ground floor along Prospect Street is not compatible. When you combine that with the massing of the building, the proposed addition does not work with the properties across the street.

Don Walters said he believed the application met this particular special permit finding.

MJ Verde said Mr. Taintor said it best. We're creating a use that is actually a parking garage with a non-active façade on a residential street. It's not in character with the neighborhood.

Anne Gardner agreed with Ms. Verde.

Leah McGavern said there is a degree of compatibility although it is a tricky one.

Site Plan Review

Bonnie Sontag introduced the criteria for Site Plan Review, beginning with Community Character.

MJ Verde said in some sense the building fits into the character of the community. There are other brick buildings, other examples similar in the height, although it is not in harmony with the adjacent buildings. The architectural detailing is appropriate. The massing is the problem.

Rick Taintor agreed. Items #4 and #7 are problematic and replicate concerns about the DOD. He realized as he was looking at Site Plan Review criteria that the Board has less leeway in how they evaluate those criteria. Is that true?

Attorney Jon Eichman said that's generally true of Site Plan Review. The use is either special permit or as-of-right, but the Site Plan Review criteria is there to determine whether the use can comply with the Site Plan Criteria. It is essentially a technical review for the project.

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Rick Taintor said the character portion of the Site Plan Review criteria is such that whatever we decide for the DOD criteria flows through to Site Plan Review criteria. Members cannot be inconsistent in that way and that's why #4 and #7 stand out for him.

Tania Hartford would agree that the project meets the community character. The proposed structure fits in with the downtown district in which it's located as was shown by the applicant. The applicant has been able to provide the screening and other items asked for by the Board.

Anne Gardner said the proposal did not meet the community character criteria in that it's not in harmony with the immediate neighborhood.

Bonnie Sontag agreed with Mr. Taintor on #4 and #7. The proposal is not in harmony because the size and shape is not appropriate in relationship to the land area. Context matters. She had some concern about being "located in the National Historic District is consistent with the architectural style, scale, and density." She has a problem with scale, density, and massing, but the rest of it is okay. We can approve dimensional requirements that are different than the underlying zoning. In this case it is definitely advantageous to have the setbacks greater than the underlying requirement. She does not see compatibility on the other issues.

Beth DeLisle agreed with Chair Sontag. The proposal does not meet the community character requirement.

Leah McGavern said the proposal is compatible with the neighborhood, but is it in harmony with the neighborhood? It's in harmony with the downtown district. While it accommodates itself well to the residential neighborhood it's not in harmony with it.

Don Walters said the proposal is compatible with the neighborhood. There are two neighborhoods, the commercial and the residential. If it only meets with one of those, the Board is making a decision that one neighborhood takes precedence over the other with respect to the larger decision. In his opinion they should be treated equally because there is nothing in the zoning that says one neighborhood is more important than the other. Because of that, the project meets the criteria.

Rick Taintor said he was happy with b), c), d), and f). He did not see issues with the remaining items. They are non-controversial.

Bonnie Sontag introduced criteria for traffic, parking, and public access.

MJ Verde said the impact for these criteria had not changed.

Don Walters, Rick Taintor, and other Board members had no concerns about public access in terms of sidewalks, crosswalks, walkways, bike racks or other pedestrian access.

Bonnie Sontag introduced criteria for parking areas.

Board members had no comment.

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Bonnie Sontag introduced the criteria for site plan and architectural design.

Rick Taintor said #1 and #2 flow from the DOD criteria as they relate to height, bulk, and massing.

Bonnie Sontag reinforced criteria #3, “Where appropriate, large continuous buildings shall be avoided, and massing of buildings should be broken up and staggered.” The applicant has made a reasonably good attempt but #3 is difficult to agree with because of the overall height and bulk of #1 and #2.

Leah McGavern and one other member agreed.

Don Walters observed that other members have a different point of view.

Tania Hartford asked if, in regard to the height and bulk massing, the determination is whether it meets the zoning requirement or in members’ point of view.

Bonnie Sontag said this is what she asked Attorney Eichman about earlier in the meeting. It has to do with the review of the overlay district which drives all other considerations because the special permit is based on the overlay district.

Tania Hartford confirmed that the Board is not looking at the dimensional requirements but rather members’ interpretation of the special permit guidelines.

Bonnie Sontag said that is correct. The guidelines are the most important piece and anything members comment on refers to the guidelines rather than personal statements.

Tania Hartford said the applicant meets the requirements of the zoning ordinance based on the dimensional requirements in the zoning ordinance.

Rick Taintor read the paragraph preceding the list of site plan and architectural design criteria. “In determining the appropriateness of buildings, the basic design elements of proposed buildings should be evaluated in relationship to existing adjacent or surrounding buildings. In most cases, to be considered appropriate new buildings should respect the architectural character of adjacent buildings or in the case of multi-tenant commercial centers, the overall architectural theme of the center. Importantly, when new buildings or additions are considered, compatibility rather than conformity is desired. The Planning Board will use the basic design elements listed below when reviewing applications.” It’s clearly not saying does this comply with zoning but says is the height appropriate for the surrounding area.

Tania Hartford asked, in that case, how does the Board determine whether it is or is not in compliance if we are not looking at the objective criteria.

Rick Taintor said members may look at this differently because the language is similar to the DOD language. If members determined the proposal did not meet the massing requirements in

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their review of the DOD criteria, the same analysis applies here because it talks about consistency with adjacent buildings. The paragraph leading up to this is not asking for a comparison to the dimensional zoning standards. Rather than a zoning compliance analysis it is a Site Plan Review analysis, which is different.

Rick Taintor read the paragraph preceding the list of general architectural review criteria. “ The Planning Board shall not consider interior or architectural features not subject to public view from the public way or public property. Building design shall be compatible with the vernacular structure, historic character, and scale of buildings in the surrounding neighborhood including the following design elements.”

Bonnie Sontag said the proposed addition is not in character with the immediate neighborhood, although it is in character with State Street farther away, but with all the building features she would not expect it to be. She is mostly concerned about the vertical emphasis, or height, of the building. If that could be adjusted in a way that would change the building’s massing and it would fit both commercially and residentially.

MJ Verde asked if this is the place to talk about the Certificate of Appropriateness from the NHC. Chair Sontag said that is not relevant here because this is not a Local Historic District.

Rick Taintor said the criteria refers to the type of things mentioned by Ms. McGavern in earlier meetings, such as the arrangement of windows. The horizontal or vertical emphasis of the building in this context is about, for example, whether windows are taller than they are wide or whether shop windows that are wider than they are tall. Building height was addressed in the previous section and this is all about architectural proportions. On this, he differs from his review of the DOD criteria. If the building were acceptable in that location in terms of scale, he would probably be okay with the architecture.

Bonnie Sontag asked Mr. Taintor for clarification on scale, height, and width proportions.

Rick Taintor said the language refers to the proportion of height versus width. He does not have a strong point of view on this criterion.

Leah McGavern said this is meant to be different than scale and massing because it refers to the features and their proportions, not the general bulk of a building.

MJ Verde agreed and changed her opinion. There is nothing wrong with the general design proportions.

Bonnie Sontag agreed and changed her opinion. The applicant’s response to Board comments from the previous meeting addressed her concerns in this regard.

Tania Harford, Leah McGavern, and Don Walters had no changes from their comments on the DOD criteria.

Anne Gardner had no problem with the architectural character.

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Beth DeLisle said, not considering the overall bulk and size, the applicant did the best they could with the architectural character.

Bonnie Sontag introduced the criteria for lighting and exposed storage areas/screening. There were no comments that differed from the comments on the DOD criteria.

Beth DeLisle asked to revisit the General Special Permit Findings criterion on use. The banking use is obviously fine. Her issue is with the project as proposed.

Chair Sontag said that Attorney Eichman earlier described this criterion as the requested use to alter the historic building. This is the banking use.

Beth DeLisle said she is thinking about the banking use in general versus the permit for which they are applying specifically. She wanted to make sure members were being consistent.

Anne Gardner said banking is appropriate under the first criterion, "The requested use is listed in the table of use regulations." She reads the sixth criterion differently, "The requested use will not impair the integrity or character of the district or adjoining districts."

Rick Taintor suggested the Board stipulate in the vote they are referring to the banking use. The Board will be voting on DOD criteria prior to voting on General Special Permit criteria. If the proposed application did not satisfy the DOD Special Permit criteria, in a sense it wouldn't matter how we found on the General Special Permit Findings because everything else is irrelevant. It matters only if the vote were that the DOD criteria were satisfied.

Attorney Jon Eichman said Section [X-H.]7-A.(1) is the focus and is fairly straightforward. He sees no need to get too confused about it. The Board is supposed to review whether the use is listed in the table of use regulations or elsewhere as requiring a special permit or whether it's similar in character to the permitted uses. The only distinction is that the Board determines whether this is a use that can obtain a special permit. Clearly, it is listed as a DOD Special Permit. As long as members understand the DOD Special Permit this category is satisfied.

Bonnie Sontag asked if pulling out one element of the language is not relevant because the whole thing goes as a package in terms of whether the DOD is acceptable or not acceptable.

Attorney Jon Eichman said the use in question here is the DOD Special Permit. The criterion asks if this particular special permit is listed in the table of use regulations. Probably it's a special permit use listed in the ordinance and that satisfies that criteria.

Bonnie Sontag asked if the applicant would like to speak again. Attorney Mead said the applicant had nothing further and thanked the Board for their time.

Bonnie Sontag closed the public hearing.

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Don Walters made a motion to approve the DOD Special Permit (2020-SP-09) and Site Plan Review (2020-SPR-02) Applications for 93 State Street, pending the Board's review and approval of draft decisions to be provided by the Office of Planning and Development for review at the meeting of April 7, 2021. Rick Taintor seconded the motion. The vote on the motion was 3 members in favor (Don Walters, Leah McGavern, and Tania Hartford) and 5 opposed (Bonnie Sontag, Anne Gardner, Rick Taintor, MJ Verde, and Beth DeLisle). Alden Clark was ineligible to vote on this application.

Motion Failed.

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 Lisa Mead said the applicant has requested to withdraw the ITIF Special Permit without prejudice.

Don Walters made a motion to accept the withdrawal of the ITIF Special Permit (2020-SP-01). Anne Gardner seconded the motion and 8 members present voted in favor. Alden Clark is recused.

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.

4. Adjournment

Tania Hartford made a motion to adjourn. Anne Gardner seconded the motion and all members present voted in favor.

Motion Approved.

The meeting adjourned at 10:27 PM.

Respectfully submitted -- Linda Guthrie