

**City of Newburyport  
Planning Board  
March 25, 2021  
APPROVED Minutes**

The online meeting is called to order at 6:03 PM.

**1. Roll Call**

Attendance for the Planning & Development Committee and the Council as a Whole:  
Heather Shand, Jared Eigerman

Absent: Christine Wallace

Attendance for the Planning Board: Alden Clark, Tania Hartford, Bonnie Sontag, Rick Taintor, and Don Walters

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

**2. Public Hearings**

*a) Joint Public Hearing with the Planning & Development Committee and Committee of the Whole*

*1) Amend Section VI-C to modify the requirements on application of, and issuance of a Special Permit for more than one residential structure per lot*

Chair Councilor Shand called the City Council Planning & Development meeting to order to discuss Ordinance 086, an ordinance to amend Section VI-C of the zoning ordinance as to the number of residential structures permitted on a lot.

Chair Bonnie Sontag called the Planning Board meeting to order. She said a second piece of the amendment regards a change in the definition of use #103. The amendment results from the Planning Board's experience working with VI-C for several years and acknowledging changes would make it more useful and usable. She presented slides to make points of discussion easier. The purpose of VI-C is to authorize the Board to grant a special permit to allow 2 single-family dwellings on a lot in a district zoned for 2-family dwellings. From its existence in 1984 until 2004 the VI-C special permit required only a Finding from the Board. From 2005-2008, VI-C applications were heard under a special permit so the board could negotiate with the applicant for something beneficial. The average number of VI-C applications during this time was 4/year and the Board approved 10 of 16 total applications. A required public benefit was added from 2009-2020 in the form of affordable housing, preservation of natural resources, or preserving a historic structure in the application. The average number of VI-C applications during this time was 2/year and the Board approved 14 of 19 total applications. The purpose of proposed amendments is to encourage development that will complement traditional streetscapes and neighborhoods, such as filling in gap tooth streetscapes, does not increase neighborhood density, provide an option to approve desirable

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development that the ZBA is not allowed to approve, and support Master Plan Land Use goal #4, to preserve the character of the City's neighborhoods while encouraging a diverse housing stock. These revisions are designed to provide more predictability for the applicant, ensure development compatibility with the neighborhood, support the City's historic preservation and affordable housing goals, tighten up review criteria for 2 units on one parcel, and eliminate considerations for multi-unit uses. The problems the revisions will correct are that the existing ordinance lets the board allow multiple residential buildings and multi-family dwellings anywhere that residences are allowed by the ordinance, and that results in a lack of predictability. Other zoning ordinances such as the Open Space Residential Development (OSRD) or multi-family zoning districts, can be applied to allow larger developments. Other problems the revisions correct are that existing approval criteria bear no relation to the proposed use of the land or the neighborhood impacts. The existing regulation is ambiguous in that it suggests only 2 buildings but is often applied to developments with multiple multi-family dwellings on a lot, adding a redundant layer of review.

Bonnie Sontag summarized the existing ordinance as allowing more than one building and more than one dwelling unit in each building, while the proposed amendments clearly allow only single-family buildings. The layout permitted in the existing ordinance is side-by-side or a building in the rear that is 10% smaller than the building in the front. The proposed amendments allow a side-by-side layout with setbacks like what exists on the block, a layout with frontage on 2 streets such as on a corner lot or a through lot, and a conversion of a garage or carriage house with no more than 500 sf of expansion. She demonstrated on photographs examples of each of the layouts in approved VI-C applications: 346 High Street (side-by-side), 8 Oakland Street at Walnut Street (corner lot), 342 Merrimac Street (through lot), and 9 Orange Street (carriage house).

Rick Taintor summarized what the proposed amendments will not permit. The current ordinance allows backyard infill if the structure is 10% less floor area coverage than the existing building. The key issue is how the infill changes the character of the neighborhood. Open space is usually at the rear of the lot and shared by the abutting open backyards that create a larger shared open space. Backyard infill will not be permitted because of its impact on neighborhood character, privacy, and the loss of open space. He demonstrated on an aerial image a backyard infill example on a through lot at 311 Merrimac Street that the Board did not approve.

Rick Taintor described differences in the application process and requirements. The existing process requires submitting a plan that shows the same number of residential buildings could be developed through a normal subdivision. Knowing the alternative development plan does not help achieve goals such as neighborhood compatibility. The proposed amendments require plans to comply with the lot area standard for a 2-family dwelling and the setback standards for the district, both of which relate to fitting in with the neighborhood. The additional existing requirement is a public benefit in one of 3 ways (affordable housing, and preservation of historic building or open space) that does not need to be on, or related to, the lot. This creates a disconnect between the benefits and the impact on the neighborhood. The Board proposes that if the lot has a historic building, it must be protected with a preservation

restriction, and every VI-C development must provide financial contribution to the Affordable Housing Trust, in any case.

Rick Tainter described the differences in required Findings for approval. The existing ordinance is vague. It requires finding that the application is a reasonable alternative to other allowed developments of the parcel, which is a judgement call. It also requires finding a clear public benefit, including but not limited to affordable housing, historic preservation, or natural resource conservation. The proposed ordinance tries to be more specific. The design and layout will be consistent with established character, scale, massing, and density of the neighborhood rather than saying, it's a "reasonable alternative" to other allowed developments. Further, the location and design of the second building will be compatible with adjacent properties, will not significantly reduce privacy, and will be equally or more beneficial to the neighborhood than a subdivision or 2-family dwelling.

Rick Tainter concluded with the amendments' benefits. VI-C will provide more protection to the neighborhood by protecting neighborhood character and ensure more predictability for the owner/developer and the neighbors.

***2) Modify the definition of "Multifamily" (Use 103) in Section V-E***

Jennifer Blanchet, Zoning Enforcement Administrator, said this amendment came forward from the Board's occasional use of VI-C to allow larger multifamily developments to consist of several smaller structures rather than a single large structure. A revision of the definition for multi-family allows the Board to still have that ability and does require 3 units. The proposed language specifically requires 3 units in the primary structure and 2 or more units in additional structures to maintain the flexibility that the Board currently has under the existing VI-C, should the new ordinance move forward.

Public comment open.

Public comment closed.

Councilor Heather Shand said in a previous committee meeting, Councilor Jared Eigerman had suggested getting rid of VI-C.

Councilor Eigerman said the reason we have VI-C is because our lot area requirements are not realistic. A consultant hired a year ago examined existing conditions in Wards 1, 2, and 3 and devised a mean and mode average for lot sizes, which turned out to be smaller than what our code requires in some areas, like Joppa. We could change lot minimums if we wanted to. We've talked a lot about carriage houses or garages that convert to a unit. The ward councilors care about parking in that regard. VI-C does not give relief on parking, but his point at the last discussion was why not simply create a carriage house ordinance since historically there have been conversions to make them into a unit. Since that time, a case now coming before the Planning Board in April which answers the question of why we need VI-C. He saw Jay Caswell's development plans for 21, 25, 27 Hancock Street because there was a hiccup with the Demolition Control Overlay District (DCOD). It's a weird situation that

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came before the ZBA. Mr. Caswell has two 16,000 sf lots separated by a common alley that already exists on the assessor's map as a private way. Each lot is quite large and surrounded by single-family homes on smaller lots of 6,000 sf. There's a modest contributing historic building, circa 1917 and listed on the inventory, on one of Mr. Caswell's lots. He can demolish 25% of the exterior, or one out of 4 walls. He proposes two 2-family houses. The challenge is how you do that without destroying the historic building. Councilor Eigerman agrees the current VI-C is flawed for all the reasons presented. Under the new VI-C Mr. Caswell could preserve this building with a deed restriction and get two single family homes on the right hand lot and a 2-family home on the left hand for 4 total units on 32,000 sf of private land without violating anything in the proposed ordinance. That seems fair. He would like to hear more about how parking accommodations and the affordable housing payment of \$10 per sf. He reserved judgement on changing the definition of multi-family.

Tania Hartford described how she and Don Walters devised the affordable housing fee. In the VI-C examples the Board reviewed, all of them came in with a preservation restriction, which does not cost the developer anything. We discussed how to help minimize the impact of the second structure and funding for affordable housing when the second structure is not really built for affordable housing. Sometimes you're taking away a 2-family which may have the most affordable unit. Across the state, there is not much that is similar to VI-C, so we looked at development impact fees, which is not the same but somewhat similar. Two units are 2-3,000 sf each. We landed on \$10/sf to put toward affordable housing because that is comparable to what a contribution would be through our inclusionary zoning. It also might help a developer think about building something smaller rather than a larger unit. The Affordable Housing Trust had hoped for a larger amount. Planning Board members agreed a recommendation of \$10/sf seemed reasonable. That can be revisited if the City Council would like to ask for more.

Councilor Eigerman said the law requires a nexus between what is proposed and what is asked for in terms of a fee. As Ms. Hartford said, the nexus is that by building two single-family homes, they're arguably going to be less affordable than two units in a 2-family building. The law also requires it to be roughly proportional. He sees what they are getting at in terms of the delta between the single-family house versus a unit within a 2-family building. That may be the proportionality of what the developer is getting versus the impact on society. He doesn't have the answer but that is the framework for what the right number is when it comes before the City Council for review. You don't want it to be so high that it kills the pro forma. He respects the effort by the Board members and needs to think about it. The proposal on Hancock Street gives us an opportunity. The developer would get two single-family buildings of about a 3,000 sf each instead of two 6,000 sf 2-family buildings, and roughly a \$30,000 payment and deed restriction on the historic building. Under the DCOD he could still demolish as much as 25% without losing its contributory status and without triggering a DCOD review. This is like the example on High Street, except this is a workingman's house versus a wealthy homeowner's house, but he agrees that the same principle applies. With the proposed changes, is there any parking relief?

Bonnie Sontag said there is no parking relief. The applicant must have off street parking per our ordinance anyway.

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Councilor Eigerman said this development is a good case. It has frontage all over the place because of the T-shaped private roadway. He asked if VI-D, which has to do with spacing the buildings and meeting setbacks, would need revising if VI-C is amended. He read from VI-D.a.

“Both residential buildings shall comply with the setback requirements for principal single-family buildings.” A developer would first go to the Board to get a special permit for VI-C for permission to build two single-family buildings on one lot meeting all the front, rear, and side yard setbacks. Then, the same developer would go to the ZBA for a different special permit to modify the yard dimensions. It seems crazy to go before two different bodies.

Rick Taintor said that’s a good point. The proposed VI-C requires the building to meet the external yard requirements on the lot but VI-D talks about creating an internal yard requirement. It’s a good idea and perhaps VI-D should be changed to make the Planning Board the special permit granting authority to avoid making somebody go through two separate steps.

Councilor Eigerman and Bonnie Sontag agreed.

Rick Taintor suggested it made sense to incorporate the provisions of VI-D into VI-C and remove VI-D because it’s strange to have two different sections dealing with the same thing.

Jennifer Blanchet said consideration should be given to VI-D b) and c) on the following page.

Rick Taintor retracted his suggestion about merging VI-D into VI-C. He realized that VI-D.a. could relate to a project that was not a VI-C project, like the project off Parker Street on Hines Way with multiple multi-family dwellings on a lot.

Councilor Eigerman said b) and c) talk about a non-residential building. That is different. If we pass VI-C it says, “Except as otherwise permitted, only one building containing a residential unit(s) shall be permitted on a lot.” Are we saying that you can mix residential and non-residential in a building by-right?

Jennifer Blanchet said it needs more careful consideration.

Director Port said the hearing is advertised only to discuss VI-C. Further discussion about VI-D would require re-advertising.

Bonnie Sontag said it’s sounding less like they could be combined. We can deal with the VI-C proposal before us.

Councilor Eigerman asked if it would violate due process and notification to reconcile VI-D.a? He suggested adding language to VI-C that says the Board can handle VI-D.a as well. In the absence of a VI-C, an applicant would go to the ZBA. If they applicant is doing a VI-C, does due process constrain us from discussing VI-D.a?

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Director Port agreed with the consolidation of VI-D.a and VI-C, but experience shows if there's a question on the procedures we went through, because the notice only references VI-C, there could be questions about whether proper steps were taken.

Councilor Eigerman said he now sees the merits of VI-C. He would like to hear from Jay Caswell because if he doesn't want to do a VI-C, Councilor Eigerman can't think of another reason to keep VI-C. when lot areas can be tweaked, and a carriage house ordinance can be written instead.

Bonnie Sontag said there could be other situations. It's another tool the Board has, even if we don't use it very often. This cannot be accomplished through the ZBA so it helps to have it on the books. There are times when a huge 2-family structure would be inappropriate. We could rue day we threw it out just because we couldn't find enough examples where it would be used. Is there any reason it should not be kept on the books? The Board has found a use for it and it provides two benefits to the City in preserving a historic house and an affordable housing contribution.

Councilor Eigerman asked if the difference between the proposed and VI-C's prior abuse where it was filling in the rear of long narrow lots, addresses the concern that applicants are not complying with setbacks requirements.

Bonnie Sontag said exactly. Several people mentioned concerns about infill in the prior meeting.

Councilor Eigerman said a smart developer will use VI-D to get relief from the setback and we're back where we started. Although you would not grant the VI-C if you knew they had a waiver for VI-D.

Tania Hartford said they can do that now. The impact of infill projects on neighborhoods is what interested her in joining the Planning Board. The Board has been thoughtful in reviewing VI-C projects and thoughtful in putting this ordinance together in terms of what we don't want to see. There are corner lots and the project Councilor Eigerman mentioned where this can work. Fixing some of the issues and keeping it on the books doesn't hurt.

Councilor Eigerman said he'd like to get a reality check from Jay Caswell who is on the line.

Jay Caswell, developer, said the historic house sits on the middle of a 16,000 sf lot. All along, VI-C would have been the preferred route. The only solution that satisfies the rules and makes sense because of the lot size and land use is a detached house on one parcel. He's trying to figure out where to go from here since the two two-family buildings on his plans are not an option. because of the massing. He needs clarity.

Councilor Shand asked Councilor Eigerman to speak on the definition change for multi-family.

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Councilor Eigerman said he did not support allowing a multi-family use to be defined as more than one building on the same lot. One of the Board's changes if we pass the revised VI-C is that it's only two one-family buildings on one lot. The example on Orange Street would no longer be allowed. Something we don't want to do when something's already carved up into a multi-family is use a VI-C to add more units in the back. He doesn't understand or support the reason for a definition change.

Jennifer Blanchet said bringing it up for consideration she was trying to preserve something the City is currently doing. If the practice is discontinued the definition can stay as is. This was put forward understanding that we were changing VI-C in a way that would allow two single-family buildings on one lot. The changes affect the multi-family definition. The change to VI-C does impact some approvals the Board has been making with respect to multi-families, but the definition can stay as is.

Bonnie Sontag suggested separating the two and taking a vote on a recommendation to ask City Council to adopt a revised VI-C ordinance.

Don Walters made a motion that the Planning Board recommends adoption of the revised VI-C ordinance by the City Council. Alden Clark seconded the motion and all members present voted in favor.

Director Port recommended keeping hearing open to continue the discussion.

Tania Hartford made a motion to keep the hearing open on amending Section VI-C to modify the requirements on application of, and issuance of a Special Permit for more than one residential structure per lot open. Rick Taintor seconded the motion and all members present voted in favor.

Councilor Eigerman made a motion to recommend to the full City Council to adopt the proposed amendment to VI-C with an amendment to strike the proposed use change to 103. Councilor Shand seconded the motion and all members present voted in favor.

#### **4. Adjournment**

Tania Hartford made a motion to adjourn the Planning Board meeting. Rick Taintor seconded the motion and all members present voted in favor.

#### **Motion Approved.**

Jared Eigerman made a motion to adjourn the Planning & Development Committee meeting. Heather Shand seconded the motion and all members present voted in favor.

#### **Motion Approved.**

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The meeting adjourned at 6:59 PM.

Respectfully submitted -- Linda Guthrie