

**City of Newburyport
Planning Board
April 6, 2022
Minutes**

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

1. Roll Call

Planning Board Attendance: Alden Clark, Beth DeLisle, Bob Koup, Jamie Pennington, Bonnie Sontag, Rick Taintor, Don Walters, and Richard Yeager

Absent: Heather Rogers

Planning & Development Committee and Committee of the Whole: Ed Cameron, Christine Wallace, and Connie Preston. Council president Heather Shand, Jim McCauley, Bruce Vogel, and Mark Wright were also present.

Planning Director Andrew Port, Zoning Administrator Jennifer Blanchet, and note taker Linda Guthrie were also present.

2. Joint Public Hearing with the Planning & Development Committee and Committee of the Whole

- a) (ODNC00105_02_2022): Amend the Newburyport Zoning Ordinance to address the permitted location of, and requirements for, various uses (especially within the I-1 & I-B Districts), and their associated parking requirements, titles, and descriptions, including but not limited to community center, boat sales/service/storage/rental, marine equipment sales, marine repair services, marine manufacturing, shipbuilding and repair, canvas and canvas products, seafood handling/distribution, marine retail, boat storage, marina and related.*

Councilor Cameron opened the Planning & Development Committee meeting.

Councilor Shand said a seafood business interested in moving their seafood handling to the business park last year initiated an ordinance amendment discussion. Marine repair sales and the community center were added in the interest of being efficient.

Don Walters asked about the boat storage maximum height, which is sometimes multiple stories high when boats are stacked.

Jennifer Blanchet said indoor and outdoor stacked boat storage is not specifically acknowledged and should be addressed.

Director Port said the maximum height is 43 feet, use number 711 in the table.

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Don Walters recommended that a racking structure be considered similar to a building even if it's open air. Otherwise, a building might be made higher with an open air rack.

Jennifer Blanchet said structures are covered in the dimensional controls. The racked storage should be clarified in this modification.

Alden Clark asked why marine manufacturing, use number 705, is now in the medical area- Director Port said that was not the intention. Ms. Blanchet agreed.

Alden Clark asked about the rationale behind marine retail not being permitted when it was permitted in B1 and B2. Ms. Blanchet said marine retail deals with large scale equipment sales which is not appropriate for downtown at this time. Small scale marine, such as a hardware store, is different category. This is for large scale boats and other related heavy equipment.

Alden Clark asked if there was a definition for community center. Director Port said no, it's understood to be the senior center or youth services.

Alden Clark asked if the Firehouse Arts was considered a community center. Director Port said that's a theater/assembly use. Ms. Blanchet said a community center is an assembly use, but the Firehouse is privately run and does not qualify.

Rick Taintor said Marine Equipment sales is use number 703. Mr. Clark is talking about 709, the small stuff that should be along the water. The amendment allows that in B1 and prohibits it downtown, but the current use is more correct. It has to be in the WMD to be associated with marine dependent use. There are no marine uses in the business district. What is the intent?

Jennifer Blanchet would review the definitions before responding.

Bonnie Sontag said the notes say the Planning Board is the designated special permit granting authority for boat storage, seafood distribution, and canvas and canvas products and others. The Board does not usually get involved in use-related issues. Director Port said the uses involve site plan review and this makes one-stop shopping for the applicant.

Rick Taintor said the proposal is to change P to NP to prohibit these in the I districts. What about I2, which is not listed. Ms. Blanchet said I2 is Mersen. She agreed with Mr. Taintor that use number 709 does still want to occur along the water.

Councilor Cameron asked about the note on the community center saying it should be located within 500 feet from a school. Is that so nobody will pop a community center further into the business park? Director Port said yes.

Councilor Cameron recalled when a YMCA was looking into a business park location. Would we want to broaden those uses in the park? Director Port said nothing was brought forward to the City Council at that time because of the concerns of the business park businesses about traffic because that's the kind of customer traffic that should not be in the business park.

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Connie Preston, amendment co-sponsor, said adding the community center creates an opportunity down the line without ordaining 59 Low St. as the designated youth center location.

Councilor Vogel, amendment co-sponsor, said he receives questions about smells regarding the seafood handling business. Director Port said the issue came up when discussing cannabis facilities. The Planning Board would look at that issue in this discretionary permit to determine if a special condition for filtration to handle odors is advisable. That's part of the reason for having this as a special permit.

Public comment open.

Public comment closed.

Director Port would revert back to the original language for the marine retail row, add footnote "j" to the existing SP category for marine manufacturing, and maintain the N in the medical district.

Don Walters made a motion to recommend to the City Council the adoption of the ordinance as amended this evening. Rick Taintor seconded the motion and all members present voted in favor.

Motion Approved

Connie Preston made a motion to recommend to the City Council adoption of the ordinance as amended this evening. Ed Cameron seconded the motion. Christine Wallace voted against.

Christine Wallace preferred to continue the discussion in committee to give the public time to know what's happening, given the history of Low St. She wanted to do more research on the community center and the marine uses.

Ed Cameron said there will be 2 votes in the City Council, allowing opportunities for questions from the community. This was introduced on Feb 14. He is in favor of voting this evening.

Motion Approved

Connie Preston made a motion to close the joint public hearing. Christine Wallace seconded the motion and all members voted in favor.

3. General Business

Richard Yeager, an architect involved with college real estate and campus planning and knowledgeable about historic preservation, is introduced as the newest Board member.

a) Discussion of major and minor modifications within Colby Farm OSRD

Bonnie Sontag said there are several compact developments like this around town. The request for a minor modification to add a soak pool raises issues for the Planning staff. Director Port said

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a general discussion of modifications on reduced lot sizes in open space developments is important because of the smaller setbacks and frontage. Abutters could have concerns about expansions and additions to the site. Also, the Conservation Commission needs to close out the permit on this particular OSRD, ideally before residents start making modifications. The applicant has been notified of the punch list issues that need resolution. His office has been working with Julia Gotfredsen.

Bonnie Sontag said a major modification is distinguished from a minor modification by the notification of a public hearing and a minor modification is decided by the Board. The details on this request for modification complicates things, in that it involves the Conservation Commission. Any outstanding or complicating coordination must be dealt with so the Board isn't deciding in isolation when it relates to something another entity has control over.

Don Walters asked how it happened that a shed already exists within the 100 ft buffer.

Jennifer Blanchet said she was the first to receive the application requesting a minor modification, which the Board voted to allow at staff level. The shed is small enough not to require a building permit. It was reviewed for its placement against the view easement and drain easement and looked at by the City engineer and the conservation administrator. After those steps, staff approved the shed. The request for the pool in addition to the shed caused enough concern to bring to the Board. She is looking for guidance making these decisions.

Don Walters said the shed probably should have been brought to the board.

Director Port said there is a concern each lot owner may want to do a similar thing.

Don Walters agreed he would take the same view.

Jennifer Blanchet said not all lots are equal in this development. Some meet the OSRD criteria, and some lots have waivers. She suggested that houses meeting the setbacks and other criteria could be extended certain permissions but, if a lot already has waivers, perhaps further permissions should not be granted.

Don Walters said the Board would have to take what all other homeowners might do into account even if the lots are all conforming.

Bonnie Sontag said the OSRD decision says there's a view easement area that allows an in-ground pool, a split rail fence, and an accessory structure less than 100 sf in size and not more than 10 ft high. It does not mention placement. A letter of support from the HOA should also be included in the criteria about whether it comes to the Board or stays in the office.

Rick Taintor said there are a number of overlapping but distinct issues. The even numbered lots are relatively small compared to the houses on them. The odd numbered lots have a drainage easement cutting across them. Traditionally, drainage easements are not buildable, and the shed built there surprised him too. The Board could use more clarity about what we're approving on a plan like this, when there's a requirement for the Board to grant a waiver in consultation with the

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Conservation Commission. He doesn't know if a waiver for a special permit is appropriate for a staff decision or should come before the Board. The issues are, can you build in a drainage easement and what exactly is the Board approving given the considerable complexity in this plan. There are 3 categories of modifications -- major modifications, minor modification as determined by the Board, and minor-minor modification as approved by staff.

Rick Taintor's preliminary recommendations are, first, that major modifications include any modification requiring a waiver to buffer requirements that requires the Conservation Commission to weigh in, as this one did. Secondly, any modification that results in a cumulative reduction of open space of 10% or more of the lot, or if a condominium, of the open space within the exclusive use area, is a major modification. Thirdly, any modification to the configuration of a common open space area or exclusive use area is also a major modification. These are 3 things that should go to a public hearing because they involve changing lot lines which have to be recorded.

Director Port said the shed was placed in its location by the owner, after which staff initiated a discussion with the City engineer who was not concerned about its placement on blocks over the drainage easement and it did not have to be moved. Staff had not approved the shed in advance of these events.

Bonnie Sontag said the shed is still in an area where building is not supposed to happen.

Bob Koup asked if the HOA had guidelines for modifications to structures that were part of the overall approval. Ms. Blanchet said the decision was issued with plans and elevations for each home. There is a list of things the HOA said would be allowed beyond the Board's OSRD plan. The Board's special permit decision is more restrictive than the HOA document. A pool, for example, is below the threshold of concern to the HOA. The HOA ruled this an inground pool despite the fact that the lip of the pool is 30 or so inches above the adjacent grade which led to a discussion about whether this is a minor or a major modification.

Rick Taintor said the Board at some point granted the Planning Director the ability to approve minor modifications. Condition #9 of the standard general conditions for special permits says, "Should the applicant or property owner determine that a plan needs to be modified, they shall notify the Board of the proposed modifications in writing and obtain approval from the Planning Board for such modifications. The Board shall then determine whether such modifications are minor or major in nature and shall subsequently schedule a public meeting or hearing as it determines appropriate, to review the proposed changes." Does this wording not apply? Director Port said Lisa Mead, representing the developer, had asked for a modification to the original permit after the approval. The Board voted to allow that to happen, overriding the original language Mr. Taintor mentions under this special permit.

Bonnie Sontag said we still need criteria for approval whether the Office does it or the Board does it. If we leave that language, all applicants seeking modifications will come before the Board. With the Evergreen project that language served us well. It might be safer to leave the language and focus on developing the criteria.

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Jennifer Blanchet said modifications that affect lot coverage, approved setbacks, and new roofed structures are items the Office is uncomfortable approving. Minor changes to the exterior of the structure do not affect the character of the community the same way and could be evaluated by staff. She's unsure about the pool and hardscaped surfaces. Elsewhere in the City, a deck less than 30 inches high doesn't require railings and doesn't count against the setback. But if it's within a buffer zone, it would need to come before the Board. There's a reasonable expectation that structures would not be built in the buffer zone.

Director Port said the applicant hopes for Conservation Commission and Planning Board approvals for the pool to install it for the summer season. The Board might be able to approve it with a condition or wait until the Conservation Commission and Planning Board have resolved their punch lists with the developer. Two weeks may not be sufficient time to resolve the Conservation Commission issues, but that's without conferring with the Conservation Commission administrator. Ms. Blanchet agreed. The homeowner was willing for the Board to have this conversation without their application complicating the general discussion on the broader issues.

Bonnie Sontag is open to a conditional approval while waiting for the Conservation Commission requirements to be met.

Rick Taintor asked about the Planning Board punch list of open items. Director Port said the follow up with the developer concerns a few things inconsistent with the original plan according to peer reviewer Phil Christiansen and the City engineer. He would have to confer with other departments to verify the developer is substantially done with the outstanding items on the list as they now claim.

Rick Taintor asked if any items on the punch list require the applicant to come back to the Office or the Board for approval. Director Port said no. Ms. Blanchet agreed. The drainage issues on some private parcels are not at this location. The right-of-way issues relate to curbing and signage. All are compliance issues.

Director Port would follow up with the Conservation Commission Administrator to see how April 20 fits with their agenda.

Bonnie Sontag said the Board would need Conservation Commission information to make a decision.

Rick Taintor said in addition to the Conservation Commission closing out the Order of Conditions, the Planning Board needs their recommendation for placement of the pool in the upland buffer, which is what the waiver calls for. He would agree to grant a waiver on the condition the Conservation Commission recommends in favor of it. He would also like their opinion on the shed so the Board could grant a retrospective waiver for the shed.

Bonnie Sontag said the Board can offer a conditional decision that way, as long as the recommendation comes from the Conservation Commission.

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Beth DeLisle would prefer having the Conservation Commission recommendation prior to any Planning Board approval. Is there enough information to conclude the matter if the Board doesn't know what the Conservation Commission will say?

Rick Taintor said closing out the Order of Conditions for the whole development is not the Board's purview. Waiting for the recommendation from the Conservation Commission might be easier. That would avoid dealing with all the other issues in the development.

Jennifer Blanchet said the Conservation Commission administrator concluded that the two approvals could be separated, and they could offer an approval without the full Certificate of Compliance, but they prefer to do the two together. She would find out if a recommendation could be obtained prior to the next Board meeting.

b) Request for minor modification – 13 Doyle Drive (2019-DEF-01 and 2019-SP-08)

After discussion among Planning Board members, this item was postponed to 4/20/22. No vote was taken.

c) Review of STRU amendment recommendations report

Bonnie Sontag commented on the opening statement including the term “majority recommendation” when there were other opinions. The opening statement may change after tonight's discussion.

Rick Taintor said the overall recommendation favorably supports comments and modifications in 3 sections as a majority recommendation for each item. That may not be the case in the end. He reviewed the draft report.

Owner Occupancy Requirement

The fundamental recommendation supports the draft that requires owner occupancy on the mainland, while allowing existing investor-owned STRUs registered with the state to continue if they obtain a special permit from the ZBA, comply with ordinance requirements, and obtain a license. The SP continues with the current owner only, not any future owners. There are 10-15 investor-owned STRUs on the mainland. Two minority opinions include either permitting investor-owned STRUs anywhere in the City under the current owner or not allowing investor-owned STRUs anywhere on the mainland.

Bonnie Sontag would contact Heather to find out where she stands on all 3 issues.

Bob Koupp asked to confirm only 10-15 investor-owned units exist on the mainland. He feels one way about 10-15 units but would feel another way about 30-40 units. It's a matter of scale.

Bonnie Sontag suggested adding language about limiting investor-owned STRUs on the mainland to manage the scale and impact. The big problems we heard about were at investor-owned STRUs.

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Don Walters suggested dropping the second majority opinion and saying the majority of members support the recommendation outlined. Mr. Taintor agreed.

Districts Where Permitted, and Type of Approval

Rick Taintor said the draft lists STRUs as permitted in all districts except High Street and business districts. The Board supported a special permit for the High St. districts and the possibility of extending regular permits to Agricultural/Conservation, Waterfront Marine and WMU districts. There were no dissenting opinions.

Off Street Parking

Rick Taintor said the Board supports breaking parking out by type of STRU. The Planning Office recommends that the proposal clearly state that regardless of the off-street parking required for the use, the underlying primary use shall continue to be vested for any existing legal non-conformity with the off-street parking requirements. Rick's draft recommendation is for no additional parking requirement for home share beyond the underlying single-family use, one additional off-street parking space for the use (not per guest bedroom as the current proposal states), for owner adjacent, and one additional off-street parking space per guest bedroom for limited share (as the current proposal states). His recommendation deals with where the increased parking impacts are by STRU type. There are several minority opinions.

Bob Koup supports one off street parking space per guest bedroom for all types of STRUs. He doesn't support parsing the parking by type of STRU. He heard issues related to this at one public hearing mostly from Plum Island residents. If you create a STRU, you should have to meet a parking requirement. He would not push back on Mr. Taintor's limited share parking recommendation, but the owner adjacent language is not enforceable. Language in #6 says, "a provision requiring the owner/operator to include in all listings the number of parking spaces available for the short-term rental and a notice that the renter will have to find remote parking for additional cars." There's nothing to prevent those cars from ending up on the street because if they park on the street, you cannot give them a ticket. It falls to the neighbors to police the situation. What makes you think those cars are going to go to a remote location? It allows on street parking again.

Don Walters agreed with Mr. Koup.

Beth DeLisle said there's no way to perfectly enforce any of this if 4 cars show up -- even if there are only 2 spaces provided. She thinks #6 should just apply more broadly, that all listings should specify the number of parking spaces, not just owner adjacent. Investor owned STRUs should be treated similarly to a home share. It currently says they have to meet parking requirements.

Bonnie Sontag and Alden Clark agreed. Mr. Clark further agreed with exempting the first limited share bedroom from the parking requirement but considered all of it unenforceable.

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Bob Koup supports a definitive standard as in the current draft. One space is not enough for units with more than one bedroom because of the potential for more cars to show up. Suggesting remote parking is not a solution. He supports guidelines that can be enforced because there is no limitation on the number of STRUs in a neighborhood. The growth of STRUs in one year with no guidelines will continue. Parking requirements can limit an explosion of STRUs.

Rick Taintor said owner-adjacent is one additional space over what you are required to have by zoning without an STRU. If you specify only 2 spaces for owner adjacent that would be less than what he is currently recommending. He would clarify his language by saying, "require one additional parking space beyond the underlying single-family use." He would also remove the reference to the licensing ordinance.

Beth DeLisle confirmed that investor-owned STRUs would be treated like home shares because the investor-owner will not be parking there.

Bob Koup and Don Walters both supported the same requirement for owner adjacent and limited share STRUs, with parking for each guest bedroom, as currently written because both types have the potential for guests to bring more than one car.

Bonnie Sontag confirmed that members support means one parking spot for each guest bedroom, as currently written. She prefers Mr. Taintor's recommendations in #3 and #4 because of concern about eliminating too many STRUS which is a different perspective from neighborhood impact. Her primary concern is ordinance passage that enables the data collection everyone is asking for. Data will inform the adjustments needed in a year. Another concern is to make the parking less restrictive to start so that more people have the opportunity to create STRUs.

Beth DeLisle said her concern is whether starting with minimal requirements will make it hard to make the requirements more restrictive a year for now relative to grandfathering the existing STRUs on parking requirements. She supports the majority opinion on the home share. For owner adjacent units she supports meeting the requirements of underlying zoning plus one additional parking space but would be okay with no additional parking for a two-family structure. For limited share she supports one additional parking space per guest bedroom.

Rick Taintor summarized. There's no disagreement on the home share. All members except himself, Mr. Clark, and Mr. Walters support one additional parking space per guest bedroom for limited share. He and Mr. Clark support not requiring additional parking for only one guest bedroom but requiring one parking space per bedroom **for** each additional guest bedroom. Mr. Walters would only require one additional parking space for any number of guest bedrooms, for 3 spaces in total with no grandfathering for both limited share and owner adjacent. For owner adjacent, Mr. Koup supports one additional parking space for each guest bedroom above the 2 spaces required.

Don Walters made a motion to recommend submission of the STRU Report to the City Council for adoption as drafted, discussed and amended this evening. Alden Clark seconded the motion, and 7 members present voted in favor. Jamie Pennington abstained.

Motion Approved.

d) The minutes of 3/16/22

The minutes are postponed to the next meeting.

e) Other updates from the Chair or Planning Director

Bonnie Sontag said the Waterfront West project is active. The Mayor is creating a special advisory committee to advise him on substance and strategy that includes his Chief of Staff, his Special Projects Manager, Director Port, 3 City Councilors, (Councilors Shand, Cameron and Zeid), herself, Resiliency Committee Chair and one citizen who is a planner. The advisory group wants to ensure that any development agreement linked to a zoning requirement will serve as a foundation for a project that meets the goals of the City. Newburyport is trying to be in the driver's seat with NED this time around rather than responding to proposals NED presents. The Mayor is preparing for a preliminary discussion with them in May and is looking for Planning Board and City Council input, particularly on high level zoning considerations. The less detail we give them the better, so we don't get committed to anything. Mr. Walters, Mr. Taintor, and herself are the only members who were on the board when the 2019 proposal was turned down. To prepare for a meeting with NED the Advisory Committee is meeting on April 28th. She suggested another special Planning Board meeting as a workshop to discuss zoning inputs for that committee meeting.

Don Walters mentioned the importance of a 3D model because we don't know what we want until we can see it from different views.

Richard Yeager mentioned adding view corridors

The meeting will be Tuesday, April 19 at 7 PM.

4. Adjournment

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

Motion Approved.

Meeting adjourned at 10:27 PM

Respectfully submitted -- Linda Guthrie