

**City of Newburyport  
Planning Board  
April 21, 2021  
APPROVED Minutes**

The online meeting was called to order at 7:00 PM.

**1. Roll Call**

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

Absent: MJ Verde, Tania Hartford, and Bonnie Sontag

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

Rick Taintor chaired the meeting.

**2. Public Hearings**

- a) *Caswell Development LLC  
21-25 & 27 Hancock Street  
Definitive Subdivision (2021-01)  
Courts and Lanes Special Permit (2021-SP-01 and 2021-SP-02)  
Continued from 4/7/21*

Rick Taintor said the Board did not have six members eligible to vote this evening, with three absent and one member ineligible to vote. Attorney Lisa Mead, Mead, Talerman & Costa LLC, 30 Green Street, said she preferred to continue to the next meeting.

Don Walters made a motion to continue the Special Permit application and Definitive Subdivision Approval application for 21-27 Hancock Street (2021-01, 2021-SP-01 and 2021-SP-02) to 5/5/21. Anne Gardner seconded the motion and all members present voted in favor.

**Motion Approved.**

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

- b) *Chris Crump – CWC Design LLC  
112 High Street  
Definitive Subdivision (2021-01)  
Special Permit for Non-Conformities (2021-SP-03)*

Architect Chris Crump, CWC Design, LLC, 19 Inn Street represented with the applicant who proposed replacing the dilapidated enclosed, covered porch on the back of the house. The

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proposal removes the existing porch and deck and adds a new enclosed porch and a covered deck with storage below. He demonstrated the existing State Street side elevation and the proposed State Street elevation. The new porch design with period correct details followed the roofline and horizontal line of existing bay windows. Porch railings matched the rooftop railing. He said the design matched the scale, size, and architectural style of the house. Storage doors under the deck open outward, similar to carriage doors. He demonstrated on the rear elevation a side view of the porch to point out where the existing deck ended compared to the proposal. The new enclosed porch would be slightly larger. The new covered deck overhangs 2 ft further out than the existing deck. He demonstrated on the site plan the outline of the existing and proposed deck and porch. Stairs to the deck will be at the same grade. The wall below the proposed deck is in line with the existing deck. The existing non-conformity is the 17.8 ft front setback from State Street to the bay window. The proposal is for relief on a 16.7 ft setback from the State Street side to the corner of the covered deck. The immediate abutter's front setback at 105 State Street is closer than that. There are tighter setbacks at 114 High Street, directly across the street, and 103 State Street. The proposal will not be more detrimental to the neighborhood.

Rick Taintor observed that wall of house is not parallel to State Street. The non-conformity is a small triangle at the corner and not the full length of State Street.

Chris Crump agreed.

Leah McGavern said in most of her work this would be considered a variance because this is not an extension of the existing non-conformity but a more intense a non-conformity than originally.

Director Port said the proposal, reviewed by the zoning administrator is treated as a special permit for non-conformity to modify the existing non-conformity in terms of the ordinance for this kind of change.

Don Walters asked about the architectural features and windows.

Chris Crump demonstrated on the elevations the energy efficient windows which match the head and sill height of existing windows and the eave line. He demonstrated how the covered porch's alignment matched the bay window and the railings match the existing roof railings. The same clapboard siding will be used, either cedar or hardy plank, composite trim for the lowest maintenance possible, in the same color, thicknesses, and style of the existing architecture. The railings and balusters are also composite wood.

Don Walters said it's a nice modification that a lot of people will see.

Beth DeLisle asked about entrances. Mr. Crump demonstrated on the design plans for the door at the top of the stairs that cannot be seen from the street profile.

Public comment open.

Stephanie Niketic, 93 High Street, a nearby abutter, was in support. She views the High Street façade from her home office window. The owners have impressed her with their slow and careful

restoration and rehabilitation of this visible and iconic building, including retaining the historic windows and storm windows which are a big feature of this house. The proposal is a big improvement although she is not a fan of composite material.

Public comment closed.

Rick Taintor said the finding included there is no new addition of a new non-conformity and that the proposal is not more detrimental to the neighborhood than the existing condition.

Director Port said Board does not deal with these types of special permits often, but this is the Downtown Overlay District (DOD) where the Board is the special permit granting authority. The findings are similar to what the ZBA would make for elsewhere in the City.

Leah McGavern said in the past things are spoken of in meetings that are not on the drawings. It would be nice to see the meeting comments about materials on the actual drawings that the Office could approve.

Chris Crump agreed to add that information.

Director Port would add that as a condition.

Don Walters made a motion to approve the Permit for Non-Conformities (2020-SP-03) for 112 High Street as amended. Leah McGavern seconded the motion and all members present voted in favor.

**Motion Approved.**

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**3. Other Business**

***a) Request for Lot Releases – Evergreen Commons lots 23, 24, 26, 27, and 28***

Attorney Lisa Mead, Mead, Talerman, & Costa, 30 Green Street, offered an update on implementing the conditions that are part of the decision and requested release of 5 of 7 lots in phase 5. Two lots will remain under the covenant. Through the peer review and the DPW engineer, the City has reviewed that the 2 remaining lots are sufficient to cover the remaining roadway and sidewalk work. The last occupancy permit cannot be released until certain things are done as per conditions and the City has control of the occupancy permits for the seven homes are under construction.

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The declaration for a Conservation Restriction (CR) for the open space was initially put on before any lots were sold. She said they had to wait until January 2021 to submit the CR to the Executive Office of Energy and Environmental Affairs (EEA) and the Conservation Commission. All the formations in the open space needed to be working before sending the description. The EEA's comments were addressed in February and a new draft CR was sent to the City. Conservation Agent Julia Godtfredsen sent it a second time to the City solicitor for this second review. We're waiting for the City's comments before sending it back to the EEA. In April 2020 she provided the deed for the Water Department land and the access easement to the City for all open space areas. They were both sent again in June and September 2020. To date, the City has not approved or authorized execution of the easement or the deed. Both documents were approved by the City solicitor as part of the special permit subdivision decision after the OSRD was approved.

Attorney Lisa Mead said signage mock-ups for the CR area were approved by the Conservation Commission in February 2021. Interpretative signage and signage demarcating the open space and wetland areas not to be encroached upon is ordered and will be installed within the month. The Conservation Commission asked for an additional interpretive sign that will be a history of the site and go at the entrance to Boyd Drive. She met with the Conservation Commission on February 25 about minor modifications that will soon come before the Board. There were originally 2 bridges over the pond and wetland areas in the back. The Conservation Commission approved removing one bridge, because the bridges were too close. A section of trail going up Duffy Drive needs to be moved slightly to meet the accessibility requirements. There are slight modifications to the open space plantings. There are landscaping changes related to stormwater management and the location of rain gardens. Those minor modifications were continued at last night's Conservation Commission meeting, pending a site walk and the agent was not present. The formal review is on May 4.

Attorney Lisa Mead said a February 25, 2021 meeting with the Conservation Agent and Zoning Enforcement Officer addressed long term management and provisions of the Homeowners Association Agreement (HOA) and method of impervious surface calculations. Homeowners are permitted to increase their impermeable surface by 500 sf. The last 2 years demonstrated the method was not as clear as it could be. Homeowners of every lot will be provided, at the time of the occupancy permit, a plan, as-builts, and a spreadsheet that details the amount of impervious area. Those documents would go into every file for every home. Ms. Godtfredsen and Jennifer Blanchet like the idea and it will come before the Board as soon as Conservation Commission discusses it.

Sidewalk tip downs at driveways are under construction. They expected completion of the roadway topcoat and sidewalks in late September. Some of the open space got packed down with all the construction making it tough to grow them in the last 2 seasons. A tractor is digging up dirt now to replant some of open space areas. Open space will be completed in the fall of 2021 after a season of new growth. All lot corners have granite markers to delineate open space, except for the last 7 lots. The bike walking path connection from the development up embankment to the path along Rt 95 is not done. Director Port will be helping them with a communication problem with DOT. That needs to be constructed this summer.

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She demonstrated on the new O&M plan provided to the Conservation Commission an island in the wetlands area with two bridges. A bridge north of that is removed. One proposed landscaping change is a westerly pollinator meadow closest to the highway had too much tree shade. It is now shrubbery and with different vegetation. A second southern pollinator meadow has the same change for the same reason. She showed several photos, including 2 approaches to the bridge crossing, a trail, the loosening of dirt in open space, last spring's pollinator meadows around the wetlands area. There is a lot of wildlife there including coyote, fox, deer, and great birds. She demonstrated the original phasing plan approved in 2018. The lots are released in Phases 1-4. Phase 5 in purple is up toward the end of Duffy Drive. Two lots in Phase 5 have been released. She requested the release of 5 more, (lots 23, 24, 26, 27, and 28) out of the remaining 7. The City still holds 7 occupancy permits. She demonstrated the estimates and the remaining work to complete as reviewed by peer reviewer Phil Christiansen and DPS Deputy Director Jamie Tuccolo who had both been on site visit. The Board has ample funding left with 2 lots remaining under the covenant to cover \$566,000 in work. She would be back before the Board to discuss the minor modifications after the meeting with Conservation Commission.

Don Walters asked when the HOA agreement would be enforced?

Attorney Lisa Mead said the HOA was recorded prior to the first lot being sold and is in force, operational, and the HOA was meeting.

Don Walters said the staff report referenced an annual report to be submitted by December 15. Did that occur in the previous 2 years? Under Perpetual Conditions, he read, "The homeowners association shall submit a report at the end of the season (no later than December 15th of each year) documenting a qualified third party inspection of the CR and summarizing the maintenance steps taken within the Open Space area."

Attorney Lisa Mead said the CR is not in place yet and the open space has not been turned over to the HOA and Evergreen Commons still owns it. The HOA is not taking care of the open space area yet because it's not finished.

Don Walters says it doesn't say who will own the CR at that point.

Attorney Lisa Mead said right now a declaration of restriction is recorded prior to the sale of any lots so that buyers know that Evergreen Commons would put a CR on the land and homeowners would all be subject to it. The CR is not yet done because the open space yet done. The CR is not required to be in place until prior to the issuance of the last occupancy permit. We have already started to work on the CR. It has had one turn at the EEA. We have submitted 2 drafts to the City of Newburyport and have received no comments. The modification shared tonight are part of finishing the open space. Everybody is doing what they are supposed to be doing.

Don Walters asked if language about the impervious area says, 'greater than 5% of the approved drawing' or of the as built. They could be different.

Director Port said he didn't think the language was in the Board's decision, but it is in the HOA documents and says, "...greater than 5% compared to the as built."

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Rick Taintor asked if there was any signage for the common open space and trail system to indicate that the public is can get onto the path at entrances along the edge of the streets. He was thinking of something similar to the Harborwalk signs where it goes across private property.

Attorney Lisa Mead said she believes there is are indications that the trail is public open space at upper end of Duffy Drive, one off Boyd Drive, and between lots 16 and 17. She is not certain of all the specific language.

Rick Taintor said that the Harborwalk signs off Savory Lane specify only open to public between sunrise and sunset. Are there similar restrictions? Attorney Mead said there are none.

Rick Taintor said the connecting trail does a switchback on the displayed plan, maybe for accessibility reasons. On pages 15 and 16 the trail is straight across. On the sketch plan for the special permit the trail connection is much further north. Is the applicant still looking at different locations?

Attorney Lisa Mead said it all depends on where we can get the trail connected with Mass DOT based on the topography. The issue is how to do this while taking down the least number of trees. There is not a set location yet.

Rick Taintor said the staff recommends granting the lot release.

Alden Clark made a motion to approve the request for Release of Covenant for Evergreen Commons for Lots 23, 24, 26, 27, and 28 and authorize the Planning Board Chair to sign the related Releases of Covenant. Leah McGavern seconded the motion and all members present voted in favor.

Director Port asked if Mr. Taintor would sign the document if Chair Sontag wasn't available in the next couple of days.

***b) Approval of Minutes***

Beth DeLisle made a motion to approve the 3/17/21 minutes as amended. Don Walters seconded the motion, and all members present voted in favor.

**Motion Approved.**

***c) 2021 Planning Updates***

Anne Gardner said she and Don brainstormed on affordable housing last week. Mr. Walters agreed to take the lead on affordable housing.

Rick Taintor said he and Chair Sontag talked to Director Port about the Board beginning to chip away at the work compiled by the zoning re-write committee rather than starting anything else from scratch. He displayed the list of chapters that had been worked when the concept was a

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restructuring. Restructuring is seen as too daunting and wide ranging. The thought is to use the work that was done within the existing structure of the ordinance. The first item to chip away at is parking and site plan standards. Parking is in Chapter 9 but also in other areas like Site Plan Regulations. Director Port will send out those areas that would benefit from an update. The Board will all look at this information and pull our thoughts together for the June planning meeting to decide what should go into these sections and perhaps do some drafting. The final incorporation of a draft will be handled by the staff.

Director Port said putting forward the zoning changes in bite sized pieces makes the number of policy and language changes in the zoning re-write more manageable for everyone's bandwidth. The plan is to plug away at the different chapters like Site Plan Design criteria and things the Board would like folks to adhere to such like how many trees on a parking lot size and whether parking is allowed in the front set back. The section he most wanted to address is updating the Administration and Enforcement section of the ordinance updated because it was originally written only for the ZBA. Administrative protocols for both the ZBA and Planning Board needs to be updated, along with the city codes. In 2019 the re-write trailed off because we took on too much all at once. Then the pandemic hit. They will all work on chapters and submit rewrites every couple of months to the City Council, first getting the language changes out of the way before tackling policy items. He'll send out the link to the draft document and the Municode. He is open to all thoughts on improvements and doesn't want members to be concerned about where their suggestions fit in the code. There would be a joint public hearing for the housekeeping items that he plans to bring forward probably the first meeting in June.

Rick Taintor suggested Mr. Walters and Ms. Gardner keep working on Affordable Housing. The rest of the members were having trouble getting started and will focus on moving the zoning re-write forward.

*d) Other Updates from Chair or Planning Director*

There were no other updates.

**4. Adjournment**

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

**Motion Approved.**

The meeting adjourned at 8:08 PM.

Respectfully submitted -- Linda Guthrie