

**City of Newburyport
Planning Board
May 5, 2021
APPROVED Minutes**

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

1. Roll Call

Attendance: Alden Clark, Beth DeLisle, Tania Hartford, Leah McGavern, Bonnie Sontag, Rick Taintor, MJ Verde, and Don Walters

Absent: Anne Gardner

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

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

Chair Bonnie Sontag opened the Planning Board meeting.

Councilor Heather Shand opened the Planning & Development Committee meeting.

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

a) Change title and definition of Use #631 “Open Storage” to “Storage/Warehousing”

Councilor Shand said the discussion concerns ordinance V-E and the matter of a language clean-up that is part of the overarching zoning re-write. The specific item relates to the business park.

Jennifer Blanchet, Zoning Administrator, said the title and definition change clarifies the existing ordinance which references that retail storage housing is prohibited, such as mini-stalls or U-Haul storage for hire. Due to an evolution in uses for this definition the goal is to clarify that indoor warehouse storage is allowed if it is not open to the public. An allowed example is a warehouse facility for a manufacturing or off-site business. The goal is not to prohibit indoor storage but rather publicly accessible storage. The request came from an applicant. She had spoken with business park occupants to confirm that conformance met their expectations of activities in the park, and they agreed the change is appropriate.

Director Port said best practice is to allow the broadest possible business use in the business park, provided there are no conflicts. The priority concern the Office had heard over time from businesses in the park is for retail business traffic. Bulk warehousing can generate revenues without presenting the conflict of retail traffic. A diversity of businesses in the park is economically sound and he has no concerns about this change.

Public comment open.

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Public comment closed.

Councilor Jared Eigerman asked if the Section VII.B Parking Table should be amended where it says, 'open storage.' Additionally, something appears lost from the Use Table. The parking standard for open storage is incomplete. He didn't think the hearing would require re-noticing to address those changes.

Director Port concurred.

Councilor Eigerman read the ordinance language, "One per company vehicle plus." After that, it's blank. It may mean one per company vehicle plus one per employee. Warehousing and freight forwarding are not mentioned anywhere in our code, such as an Amazon center, which could also have a large impact.

Jennifer Blanchet said in her experience the default language is always, "one per employee plus one per company vehicle."

Bonnie Sontag asked for the use to be further explained. Ms. Blanchet said a truck unloads stored goods and drives away. One example is a company that comes to your house, packs your belongings into a pod, and stores the pod until you are ready to have it redelivered to your home. Individuals are not coming to the storage facility and there is no public access.

Amendment by Planning and Development Committee: Councilor Eigerman proposed to adding language that corrects the title of Use #613, Section VII.B reads, "storage/warehousing," and adds the phrase "plus one per employee." Christine Wallace seconded the motion and all members voted in favor.

Motion approved.

Planning Board Recommendation: Rick Taintor made a motion to recommend approval of the proposed zoning amendment as amended this evening to the City Council. Leah McGavern seconded the motion and all members present voted in favor.

Motion approved.

Planning and Development Committee Recommendation: Councilor Eigerman made a motion to recommend to the full City Council approval of the proposed amendment as amended this evening. Councilor Shand seconded the motion and all members present voted in favor.

Motion approved.

Director Port would provide the corrected language for Monday night's City Council meeting.

Christine Wallace made a motion to adjourn the City Council Planning & Development meeting. Councilor Eigerman seconded the motion and all members voted in favor.

Motion Approved.

3. Public Hearings

- b) 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 4/21/21*

Alden Clark recused himself.

Attorney Lisa Mead, Mead, Talerman & Costa LLC, 30 Green Street, said the Board reviewed criteria for the special permit for Courts and Lanes and the Subdivision plan last time. The final peer review report from Phil Christiansen confirms that the stamped landscaping plan, lotting plan, and enclosure reports were received. Mr. Christiansen's letter said, "from an engineering view, the plan can be approved and any minor changes in engineering and drainage can be made prior to the start of construction and the issuance of the building permit." The updated landscaping plan incorporates changes relative to snow piling on the rain garden and other changes in that area. The ZBA approved the Special Permit for Two-Family Use on 21-25 Hancock St. A new design to be shared with the Board this evening would go before the ZBA on Tuesday. She is waiting to see what the applicant will do regarding the new interpretation of the Demolition Control Overlay District (DCOD) relative to 27 Hancock St.

Steve Sawyer, DCI, 120 Middlesex Ave., Somerville, said the sheet flow previously went off the end of the roadway and nothing controlled snow from going onto the rain garden. He demonstrated the major project change on the plan . The superelevated road tilted to the left. The gutter line directs stormwater down the road's left edge to a stone area that sends water to the rain garden. A section of curb at the end of the road ensures all the water is captured by directing any stormwater that hits it to the left and into the rain garden. That makes maintenance easier. The standpipe is the same as before. The rain garden is 8-12 inches deep during a maximum storm event, overtops into the standpipe, where a leaching pipe introduces the water into the ground. Good gravel material there makes this a perfect application. Water running from the back of the property onto abutting lots is a concern during larger storms. In addition to the curb at the end of the roadway, a berm runs along the end of the property line. When the rain garden overtops, water will stay on this property and run along the edge to the Rail Trail side where there is a low area and an outlet pipe into the Rail Trail storm drain system. The reduction in the rate and volume water leaves the property is confirmed by the peer review.

Attorney Lisa Mead demonstrated the updated landscaping plan with the approved footprint of both 21-25 and the as yet unapproved footprint of 27 Hancock Street. Landscaping is unchanged. She demonstrated design drawings of the units. Waivers relate to the pre-existence of Leavitt Court: 1) from the minimum right of way width of 40 ft, 2) from providing a cul-de-sac or T/Y turnaround, 3) from the curb radius of 25 ft at the existing intersection with Hancock Street, 4)

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from 6 inches vertical granite curbing down Leavitt Court, although it is on Hancock Street, and 5) from any sidewalks on Leavitt Court. There is one additional waiver: 6) from 4% grade at the intersection of Hancock Street and Leavitt Court where 4.8% is proposed.

Bonnie Sontag said Mr. Christiansen suggested another minor waiver from the contents of the plan lot frontage and lot width that the design does not reflect.

Director Port said the 80% square requirement calls for a square to fit into the lot without cutting into 80% of either frontage.

Attorney Lisa Mead said the pre-existing 1916 lot configuration is not changing. No new lots are created, and lots pre-existed the lot width requirement. But she can add the waiver.

Director Port said Attorney Mead was accurate.

Chair Sontag said if the Office agrees with the rationale for not including the 80% square waiver, the Board was amenable. Mr. Christiansen said notations are needed on various plans. Have those plans been updated?

Steve Sawyer said yes. They are on the plans waiting for the final plan submission. The final footprint would be submitted as soon as the footprint of lot units A-B are final. He would update any stormwater calculations resulting from minor changes in the footprint in the final construction plans for the Office. Any percentage increase or decrease would be insignificant for treatment and mitigation as designed.

Attorney Lisa Mead said Mr. Christiansen suggested a condition that notations to be made could be confirmed prior to issuing a building permit.

Bonnie Sontag said Mr. Sawyer indicated the notations would be in the final plan set before the Board for the final vote. The condition is unnecessary.

Attorney Mead read the April 20 email from peer reviewer Phil Christiansen. "...with the additional information submitted this morning, which the Board already has, I am recommending from engineering viewpoint the plan can be approved and minor changes in engineering and drainage analysis can be made prior to start of construction."

Steve Sawyer said his comments refer to some detail callout notes that were inconsistent with actual key numbers on the detail sheet which sometimes happens when details are added and removed. There were a couple of spot grades on the plan. Mr. Christiansen stated that the hydrology and drainage work, but there's an inconsistency with the elevations referenced in the hydrologies. Fixing that will not impact how the hydrology will function as designed.

Rick Taintor asked for an explanation of the last presentation sheet with individual houses rather than duplexes and which had not yet been shown.

Attorney Lisa Mead said at the last meeting there was a discussion about whether the Board would be interested in a VI-C, but the zoning had not passed. A VI-C plan is laid out but can't go

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forward without approval for the Courts and Lanes Special Permit and ZBA approval for the two-family use for 27 Hancock Street. She planned to wait for the special permit and subdivision approval to ask whether the Board is interested in the single family plan which is not part of the application before the Board this evening.

Rick Taintor suggested another waiver maybe needed. A provision in the subdivision regulations says street numbers have to be assigned by the assessor and included with the Definitive Subdivision application submitted to the Board. The two-family plan would presumably be 1 and 2 Leavitt Court because the front door access is on Leavitt Court. In the City's street number requirements, duplexes have to be A and B, for 1A, 1B, 2A, and 2B Leavitt Court. If that is Attorney Mead's understanding, she should request a waiver from section VI.7.5 which requires that specific numbering to be on the plan submitted.

Attorney Lisa Mead said agreed. There is a lapse in the ordinance compared to what we do now for 911. It's actually the assessor and the 911 officer that assign street numbers and letters. The current assessor's records show this location as 21-25 and 27 Hancock Street. Depending on what happens at 27 Hancock Street, it may have different numbers. The applicant would do whatever the assessor and the 911 officer require.

Rick Taintor said there is no detail on the plan for the added curb at the end of the road.

Steve Sawyer said it would be a standard 5 inch granite curb. The Mass Highway standard is 6 inch but DPS and the engineering reviewer are fine with 5 inches for a project of this size. He would add the detail to the sheet.

Rick Taintor said the trees in front would typically be in the public right of way and because of the issues here they are not. The possibility of future City maintenance and replacement, if necessary, would require a maintenance easement to the City so that the City would have the right but not the responsibility attend to attend to a tree that has not been taken care of.

Attorney Lisa Mead said she would find the answer to that and agreed to a condition that provides right-of-access to the 4 street trees for maintenance if needed.

Director Port suggested adding that to the plan prior to the start of construction or building permits.

Attorney Lisa Mead suggested a condition that the easement be recorded prior to occupancy permits, or something similar.

Director Port said agreed.

Don Walters asked if it would be prior to building permits or occupancy permits?

Director Port said there are 2 separate deadlines. Mr. Sawyer will submit a plan with the requested details prior to construction. The other, for easements to take care of the trees, is prior to occupancy.

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Rick Taintor appreciated the drainage easement added to the back of the lot. He asked how that would work since the applicant cannot issue an easement to himself.

Attorney Lisa Mead said the owner would create the easement as a reservation or a grant, depending on how they convey it, prior to the creation of the condominium association.

Rick Taintor said it would be helpful to see the exact wording for prospective review by the City attorney and for the condition of approval.

Attorney Lisa Mead said a different joint project with Mr. Sawyer involved creating two different condominium associations on two different lots. Cross easements allowed access, drainage, and maintenance. The city solicitor on that project is the same as Newburyport's city solicitor.

Director Port said it might be appropriate for the condition to request demonstration of submission of those document prior to occupancy.

Attorney Mead agreed and would refer to them as 'required cross easements.' 27 Hancock Street's perpetual rights over Leavitt Court will continue. She would highlight that in the condominium documents.

Bonnie Sontag asked if maintenance to ensure the rain garden's proper functioning was already incorporated into the O&M plan.

Steve Sawyer said yes, as part of the drainage report reviewed by Mr. Christiansen.

Bonnie Sontag said she read the letter from a variety of abutters and concerned residents. There were 2 major concerns. The Board's authority for Courts and Lanes and Subdivision encompasses access to lots, utilities, drainage, sidewalks, and curbing, as well as the use of a two-family in this neighborhood which has been approved by the ZBA for one of the lots. But this Board did not have any control over the design of the structures. Issues related to the design's impact on the character of the neighborhood based on designs already viewed should be held for the ZBA tomorrow night. Construction and hazardous waste can be addressed.

Public comment open.

Tom Coleman, 24 Hancock Street, said the construction would disrupt many creatures living on the lots. He had asked Attorney Mead about mitigation. How would that be addressed?

Rob Jorgenson, 70 Purchase Street, said his house abutted the back property line. He still had concerns about stormwater management because the project is uphill from his home. The stormwater system needs to be maintained to work properly. It needs a guarantee to work for a reasonable amount of time, including after properties change hands. He wanted a provision included in the approval process and public record for a meaningful tool to address defects. He didn't know who the inspection report was filed with or whether was a public document. Are there penalties for not performing the work in the O&M plan? There should be documented guidance for the snowplow on what not to do. A bad winter could disrupt the performance

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expectation for the superelevated road extension on Leavitt's Court. What controls exist for any future changes at the site or to the structures that will guarantee the soil grade doesn't change through future landscaping, excavation, or tree root growth? Even abutter's trees have root that could clog the system. He hoped there would be language, documents, and tools for addressing these concerns proactively that are part of the public approval process. He said the City should do meaningful outreach to the neighbors about their concerns.

Tom Coleman, 24 Hancock Street, said in his experience, condominium association members balk at expenses for future maintenance on water mitigation. There's no obvious advantage for a condominium association to spend money to ensure runoff is not affecting their neighbors. Some kind of protection for runoff mitigation should go beyond the condominium association.

Mary Anne Macaulay, 25 Madison Street, said the project filing included a letter that mentioned neighbors' support for this project. An increasing number of neighbors do not share this view. She is concerned because the process so far has not allowed a full airing of neighbors' concerns or a thorough consideration of the project's impact on the neighborhood. She requested that their concerns be addressed by the Planning Board and the ZBA, including special permit criteria #9's requirement that construction and thereafter use will not itself create hazardous materials and transmissions, and an assessment of the bus garage structure itself, specifically the cement and soil underneath. She said the City should do meaningful outreach and discussion with residents because it is rare for a project of this size to occur in the South End.

Public comment closed.

Attorney Lisa Mead said the applicant is required to pull a demolition permit and, as part of that, institute a rodent plan. The applicant will comply with the law. The stormwater system is peer reviewed and then inspected by the zoning code enforcement officer before occupancy permits are granted. It is likely the City engineer will review it also. That is the guarantee that ensures the stormwater system is constructed and works properly. The O&M plan and maintenance required will be part of the condominium association documents, cross easements, and maintenance requirements. In addition, all special permits will be referenced in the condominium documents and will have to be followed. The special permit and ZBA approvals would be part of the condominium documents so that everyone knows what the requirements are. The Board could review the condominium documents. Any changes to the structures would be modifications before the various boards for approval. Special permit criteria #9 says, "the proposed use shall not be conducted in a manner..." It does not talk about construction. The construction is governed by the building department and state building code. A 21E was undertaken by the property owner in 1988 and the use has not changed since then. Another 21E is required only if the use changes. There is no water or heat in the building which stores wiring and pipes related to the owner's construction business. The applicant use of institutional money for the project will rely on the 21E from 1988. The client will comply with the rules, the ordinances, and the building code for the removal of the building and for any tests that need to be done, which at this point are none.

Beth DeLisle asked if the 1988 document was given to the City. Attorney Mead said it's a private document.

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Don Walters asked if the fence at the end of Leavitt Court was solid? Attorney Mead said yes.

Don Walters said the fence is 7.9 ft from the end of the property line to one of the abutters. The snowplow could easily push snow more than 8 ft. onto the abutter's property if the fence is ever replaced with a split rail fence. How often do we provide something as to current design conditions versus something 20 years in the future? We've seen in the past that there are no enforcement provisions. The only way to enforce something that the applicant fails to maintain is to provide some type of bond or surety that decreases over time. The abutters' concerns are valid based on the City's past performance.

Director Port understood. He said there would be oversight during construction. After construction, if issues arise and are brought to his attention by abutters, the Office tries to determine whether or not issues are caused by changes that were inconsistent with approved plans. The zoning administrator steps in to reach out to the property owner. The Office looks to restore things per the approved plans.

Bonnie Sontag said Attorney Mead's comment reinforces that all decisions are referenced in the condominium association documents, in case owners have a question about their responsibilities.

Steve Sawyer said some of his projects had been in place 10-15 years. He looks at their performance after big rain events and strives to design systems that are easy to maintain. His Twomey project has a similar stormwater design and is simple to maintain. Avita's rain gardens are over 10 years old and still functioning perfectly.

Attorney Lisa Mead said the project as proposed gives the City 100% more control than if the project were single family homes, where the road would need improvement, but no permits (other than a building permit) would be needed for a public process on stormwater. The Special Permit for Non-Conformities for 27 Hancock Street has no control over stormwater or road design.

Bonnie Sontag said questions from the public were useful. She hopes the answers gave them the confidence they are looking for in the process. She recommended the hearing be continued after the Board reviews the Findings and Conditions. The Office could draft the decisions for review at the next meeting, during which time final plans and designs can be coordinated so the plan sets going before the ZBA are the same ones this Board will review. Any subsequent revision comes back before this Board for review, but minor revisions do not include public comment.

Rick Taintor was confused about what the Board is approving. In the building layout on the site plan before the Board, the civil plan has a building layout that differs from the landscaping plan building layout. The latter is older and doesn't have the size reduction in the connection. He wants to avoid the perception that this Board would approve something different from what the ZBA approves. How much of the building footprints and utility line's location is approved through the Courts and Lanes Special Permit or the Subdivision approval?

Attorney Lisa Mead said the process Chair Sontag laid out is good. This Board approves the road, the two lots, and where the utilities are in relation to the road under Courts and Lanes, and

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also the stormwater. The landscaping plan will be updated with the right footprint prior to the next meeting.

Rick Taintor verified that everything past sheet #13, such as the perspective views and architectural drawings, would not be part of the Board's approval. The plan set would be reduced compared to what is before the Board tonight. Attorney Mead said yes.

Bonnie Sontag said a review of updated plans and any modifications would take place at the next meeting.

Don Walters asked who would own the water and sewer lines in Leavitt Court?

Attorney Lisa Mead said the condominium association for 25 Hancock Street would own the water and sewer lines as with any other private road. They would be shared with 27 Hancock through the cross easements.

Steve Sawyer said this is basically a large service – a 4-inch service for the water and an 8 inch service for the sewer. The City's responsibility for the water is from the water main to the gate valve. The condominium association is responsible for the private side of the gate valve, and for the sewer and all the way back out to the manhole.

Don Walters asked what the impact to the City would be if someone downstream from the gate valve wanted to use a different type of material, go a different number of feet below ground, or use a different type of line.

Attorney Lisa Mead said the City has sewer and water construction standards for services which prevent someone from building any kind of service they want outside of those standards. The standards dictate pipe size and type and what connections can be used. The Water and Sewer Department must be present to observe the installation. These are not just performance standards.

Steve Sawyer said the City is involved in overseeing the private installation, but they do not maintain it.

Bonnie Sontag said the plans are complete and technically adequate from what the Board has seen so far. She read the Subdivision Findings.

Beth DeLisle asked if the roadway was 20 ft., or the 25 ft. stated in the finding.

Attorney Mead said 20 ft is paved, but the layout is for a 25 ft right-of-way.

Bonnie Sontag corrected Subdivision finding #5 and continued to the Subdivision Conditions where she changed homeowners' association to condominium association.

Attorney Lisa Mead said Subdivision Condition #4, relative to maintaining plantings adjacent to the Rail Trail in perpetuity in coordination with the Parks Department, is a big ask. The applicant

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agreed to clean-up, reconstruct, and plant material along the Rail Trail, but did not agree to maintain plantings in perpetuity. She objected to the added cost to property owners.

Director Port said the request may have originated from the Rail Trail or Tree Commissioner.

Katelyn Sullivan, planner, said the Rail Trail Commissioner was concerned about maintenance.

Attorney Lisa Mead said the homeowners would maintain the plantings for two years to ensure 80% survival. That's a standard condition.

Director Port had no objection to the change and suggested 100% survival of the plantings.

Bonnie Sontag read the previous draft of this Subdivision condition: "Prior to approval, a sufficient watering and maintenance plan shall be noted on the Landscape Plan Sheet plus a note regarding warranty for replacement. The actual planting of the trees and shrubs shall be done in the field with previous coordination and oversight by the City. The warranty/maintenance plan for the plantings shall be for at least a two year window after the Certificate of Occupancy is issued."

Don Walters requested adding the standard of 100% survival within the 2-year window.

Rick Taintor suggested adding the easement for maintaining the trees along Hancock Street here.

Director Port would delineate those areas on the plan set as well.

Rick Taintor read the Courts and Lanes Special Permit Findings and General Special Permit Findings. He suggested #5 be changed to, "There are no special regulations for use."

Director Port would incorporate the Board's comments into the next draft. He asked if the submission of the condominium documents for review would include a review by the Board.

Bonnie Sontag said condominium documents are not traditionally reviewed in a Board meeting.

Attorney Lisa Mead said the provisions discussed tonight would be incorporated into the condominium association documents draft and submitted to the Office for review. Upon approval by the City, the documents would be recorded, and a file copy returned to the City.

Don Walters asked who in the City would review the condominium documents?

Director Port said the Office would review the relevant content and seek assistance from KP Law if needed.

Don Walters said legally reviewing and approving are two different things.

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Attorney Lisa Mead had no objection to a legal review of the condominium documents, limited to ensuring the required references to the special permit, the conditions relevant to cross easements, and the operations and maintenance of the stormwater system.

Director Port agreed.

Rick Taintor said the draft decision would include the 5 waivers listed in the staff report, the sixth waiver identified regarding the grade at the intersection, and potentially a seventh waiver related to street numbering. These are all subdivision waivers.

Director Port said agreed.

Bonnie Sontag said the ZBA had not approved the use for 27 Hancock Street. The continuance is needed anyway.

MJ Verde 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 5/19/21. Leah McGavern seconded the motion and seven 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. Other Business

a) Approval of Minutes

Beth DeLisle made a motion to approve the 4/7/21 minutes as amended. MJ Verde seconded the motion, and all members present voted in favor.

Motion Approved.

b) 2021 Planning Updates

Bonnie Sontag said the planning priorities would transform to reviewing sections of the zoning re-write.

c) Other Updates from Chair or Planning Director

Tania Hartford submitted her resignation to the Board this week. Her last meeting is 5/19/21.

5. Adjournment

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

Motion Approved.

The meeting adjourned at 9:02 PM.

Respectfully submitted -- Linda Guthrie