

**City of Newburyport  
Planning Board  
May 19, 2021  
Approved Minutes**

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

**1. Roll Call**

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

Absent: Rick Taintor

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

Chair Sontag said the order of agenda items will change to start with the Request for Minor Modification for Evergreen Commons. A minor modification is not a public hearing. It is a review with the applicant. Specific issues are under review, including the written list of issues from some of the Evergreen Commons homeowners. Additional testimony from these homeowners is not necessarily needed as their list is clear, but she may allow them to speak.

**2. Other Business**

*a) Request for minor modification – Evergreen Commons (2017-DEF-01 and 2017-SP-05)*

Attorney Lisa Mead, Mead, Talerman & Costa LLC, 30 Green Street, said the modifications are in the landscaping, stormwater system, and a HOA provision. These modifications went before the Conservation Commission and received their approval.

She demonstrated changes on the modified landscape plan. The original plan had two bridges over a wetland area. One was removed because their conservation consultant Tom Hughes said the bridges were too close together and there would be less impact on the wetlands if a bridge is removed. Plantings in that area changed to be appropriate for no bridge. The Duffy Drive trail access location changed in an effort to meet standards for accessibility. Plantings in the open space pollinator meadows partially changed in two areas to account for the shade of tall trees along the edges because the original plants are not thriving. The variety and number of street trees remain the same, but the contractor misread the letters on the trees. The roadway around the central green are A trees, not B trees as indicated on the plan. The outer edge should have been hornbeam instead of a red maple. Red maples instead of redgum are at the entrance. Street trees around Gaboree Court and lots #22, #23, and #24 on Boyd Drive will be planted according to the original plan. She presented the list of shrubs and woody plants created in consultation with the Conservation Commission consultant to be installed along the shady edges of the pollinator meadows. She presented the final plan approved by the Conservation Commission.

Steve Sawyer, DCI, 120 Middlesex Avenue, Somerville, said the water quality and mitigation are not affected by the stormwater changes. A drywell with an overflow pipe is installed below

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lot #5. The flow goes behind the lots and discharges behind lots #5, #6, and #7 into rain garden B. Sheet flow is directed around the back of these lots to the rain garden through a flat area with a subtle swale in a gentle grade. The drywell addresses ponding that occurs between lots #1, #2, and #5. Rain garden overflow eroded things in rain garden C above lot #14. That overflow now has a controlled standpipe hard piped to the water feature behind lot #17. The last rain garden behind lot #23 has the same change. This is a different way to release the same amount of rainwater during extreme events to stabilize the erosion issues. All the changes were closely coordinated with city engineer Jon Eric White. Originally there were drywells behind lots #26, #27, #28, and #29 that went to a drainage pipe behind lots #26 and #27. Mr. White didn't like putting water directly into the ground closest to the City wells without any treatment. He asked for a re-design that directs water away from the area. A perforated pipe in a stone trench will send water across the street. There is no change in stormwater, only a change in the outlet.

Attorney Lisa Mead said there was considerable discussion with the Planning Office on a paragraph in the HOA document that allows a 5% increase in impervious surface over the lot size at the time of the occupancy permit through the life of the lot, except for two lots because of their 3-car garages. Questions were raised about how to accurately determine that amount of impervious surface. Mr. Sawyer did an analysis and worked with Conservation Agent Julia Gottfredsen and Ms. Blanchet to manage the site increases moving forward.

Steve Sawyer said he carefully tabulated the current impervious surface per lot across the site. Based upon the original drainage calculations it was 15,000 sf over the original. He recalculated the ILSF and the elevation, and it was between a quarter and a half inch higher which is insignificant to the ILSF elevation. He added an additional 5% to each lot to determine the total area of impervious surface, recalculated the impervious area with the additional 5%, and found a 3/4 inch elevation rise in the ILSF. The Conservation Commission agreed it was an insignificant increase and de minimis in terms of the calculations. Each house will be provided with an 8 1/2 x 11 hard copy for their lot that shows the current impervious lot area by item (house, walkways, driveway, etc.) and percent, as well as the 5% additional in terms of how many sf they are allowed to expand the impervious area.

Director Port confirmed that Mr. Sawyer's method deals with additional impervious cover in an organized way to ensure no more coverage than complies with the original permit.

Attorney Lisa Mead said the HOA document needs to be amended to be clear. Instead of saying "conditions of the lot," it says, "size of the lot." The proposed amended condition says, "5% over the size of the lot or 2% over the size of the lot." The Conservation Commission approved the language. She can file the amendment tomorrow if the Board approves it.

Bonnie Sontag advised adding a statement to the effect that there is to be 33% maximum impervious coverage for each lot to the HOA documents.

Jennifer Blanchet asked for clarification. The assumption for the unbuilt lots is that they would have a 33% maximum at the time of occupancy permit because Mr. Sawyer's calculations are based upon that. The 5% or 2% increase for the unbuilt lots would be a maximum of 33%. It's a point of clarification because we are referencing this table.

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Steve Sawyer said he calculated the average for the lots, and some lots are over 33%.

Director Port said the 33% maximum is on the unbuilt lots only. Ms. Blanchet said that is correct, based on Mr. Sawyer's averages. Director Port recommended approval of the modification with a condition to note in the Certificate of Approval that for the unbuilt lots there should be a 33% maximum as reflected on the table.

Attorney Lisa Mead said it would be inappropriate to include that in the HOA documents.

Steve Sawyer said he was concerned that the smaller lots, like lots #23 and #24, might creep over 33%. He was uncomfortable about applying 33% to all lots.

Attorney Lisa Mead suggested that the condition for lots not yet built be that the average can't exceed 33% of the remaining lots, which is the same that exists today.

Steve Sawyer and Director Port agreed.

Bonnie Sontag said the wording would be 33% maximum coverage on average for unbuilt lots as of this time.

MJ Verde asked where pools fit in?

Attorney Lisa Mead said they are part of the impervious surface calculation that is already in the HOA. She's not seeking a Certificate of Compliance related to issues from some of the homeowners because there are a number of issues still to be addressed on the site. The applicant had suggested that the 6 ft stone path trail be continued to connect up to the Garrison Rd. trail. Mr. Sawyer started working with Mass DOT in 2019 to approve that connection. More recently, it's become clear that Mass DOT will not approve the connection because of a line of demarcation that may not be passed over to connect to the trail. Director Port has suggested the applicant design a trail the City can build in the future. In addition, opposite the trail over by the City's wellhead area, the applicant is deeding a section of land to the Water Department to increase their well setback area. The Conservation Commission agent and the mayor would like a split rail fence in the half moon area she demonstrated on the plan. The fence would delineate the open space from what will become Water Department property. Ms. Godtfredsen indicated there is no demarcation between the back of the property line and the Water Department land. That is not true. There are bound markers at the back of each lot. Nonetheless, the applicant is willing to come before the Board at a later date with a request to install a split rail fence, along with a modification to require plans and a design for an accessible connection to the rail trail.

Bonnie Sontag asked if there's any indication that the trail is accessible to the general public.

Attorney Lisa Mead said signage approved by the Conservation Commission includes interpretive signs at the entrance of Boyd Drive and at the upper or middle end of Duffy Drive.

Bonnie Sontag asked if an easement for implementing the access trail is part of the modification.

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Attorney Lisa Mead said yes. It will need to be on the Conservation Commission plan.

Bonnie Sontag asked about the shutdown of the temporary irrigation system to allow the development to access City water. Attorney Mead said it's been capped and shut down.

Bonnie Sontag asked how Attorney Mead would assuage the concerns of homeowners from the Cottages at Port Place who wrote a letter with a list of issues. She wanted the homeowners to understand how their concerns would be addressed.

Attorney Mead said a number of their issues will be addressed over the next 4-6 months as everything wraps up. The last Certificate of Occupancy cannot be issued until all improvements required in the approval are completed to plan, until the Conservation Restriction is approved and recorded, and until the drainage is working. They have partial Certificates of Compliance from the Conservation Commission. All houses are now under agreement, giving the developer a time frame to finish three houses. The full Certificate of Completion will not be issued by the the Conservation Commission until two growing seasons have completed.

Director Port said the staff did not have any concerns about the applicant's requests.

Public comment open.

Bill Brown, 10 Duffy Drive, said at least 4 lots, including his lot #34, inaccurately reflect imperious surfaces on the drawing. His lot has 300 sf more impervious surface because the patio and some walkways are not shown. Homeowners should review this drawing before it becomes part of the record. The homeowners prefer no split rail fence. The proposed fenced area is in the middle of a field and will look odd. He understands the need to demarcate the area around the well. Boulders would look better than a fence that falls into disrepair over time. One of their biggest concerns is ADA access, both on the path and the playground.

Public comment closed.

Steve Sawyer said currently the as built is ongoing. He does not have a problem triple checking the drawings with the homeowners before submitting them. Attorney Mead added that Everett Chandler and Mr. Sawyer would be checking things together.

Bonnie Sontag likes the idea of a fence to protect the area near the wells.

Don Walters said the rationale for the fence makes sense.

Alden Clark said something more visible than boulders spaced far apart, like the proposed fence, is a better cue.

MJ Verde agreed but appreciates that the fence will need to be replaced in 5 years. Is there some accommodation for that?

Bonnie Sontag suggested that composite materials last longer.

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Attorney Lisa Mead said the mayor and Conservation Commission requested a natural wood split rail fence on the City's side of the property. It would not be the responsibility of the HOA.

Director Port said the Water Department's original request was for a substantial 6 ft high fence that people couldn't just hop over would best protect the area. The split rail fence is a compromise from their perspective. Yard waste dumped on this City property is an ongoing problem. There's no delineation of City property from the open space, resulting in a lack of clarity about where things are, whereas many homeowners have fences delineating their backyards from the open space.

Attorney Lisa Mead said the fences aren't bleeding into the open space. They have to make sure there are no encroachments into the open space for the Conservation Restriction. Four encroachments, by inches, were found when bounds were installed. Letters were sent. The applicant has agreed to the fence and will work with Director Port, the mayor, and the Water Department on a proposal.

Bonnie Sontag said the dumping of yard waste is a different issue. The fence proposal would get a detailed review when it comes before the Board as a modification.

Tania Hartford made a motion to deem the request minor, approve the request for minor modification to the Definitive Subdivision and OSRD Special Permit for Evergreen Commons with the condition of 33% maximum coverage on the average for the unbuilt lots as of this time, and the HOA modification added. Leah McGavern 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.*

**3. 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 5/5/21*

Alden Clark is recused as an abutter.

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Bonnie Sontag said the Board reviewed the findings and conditions in the draft decisions at the last meeting. The final site and building plan need to be confirmed as a result of the ZBA's decision to approve a two-family use at 27 Hancock Street.

Attorney Lisa Mead, Mead, Talerman & Costa LLC, 30 Green Street, said the ZBA also approved the Special Permit for Non-Conformities as well as the two-family use at 27 Hancock Street. The Board has the final footprints, final landscape plans, and a corrected plan set incorporating comments from the Water Department .

Public comment open.

Public comment closed.

Bonnie Sontag said the Definitive Subdivision decision includes granting of waivers, which will be included in the motion.

Anne Gardner made a motion to approve the Definitive Subdivision application for 21-27 Hancock Street (2021-SP-01), including the waivers as listed. MJ Verde seconded the motion and seven members present voted in favor. Alden Clark is recused.

Beth DeLisle made a motion to approve the Courts and Lanes Special Permit applications for 21-27 Hancock Street (2021-SP-01 and 2021-SP-02). MJ Verde seconded the motion and seven members present voted in favor. Alden Clark is recused.

**Motions 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) Discussion of Proposed Zoning Amendment: Housekeeping/Mini Reform***

Director Port reviewed the content in preparation for the upcoming joint public hearing. The language clean-up is a top priority for the Office because clarifying ambiguities makes Ms. Blanchet's zoning sign-off job easier. The discussion began with Definitions.

MJ Verde requested clarification on the temporary awning, page 1, #5. It was odd to consider a temporary awning part of a roof structure.

Jennifer Blanchet said she had not encountered any issues and did not flag this existing language for changes. Director Port had no objection to removing the phrase "not permanent in nature."

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Leah McGavern asked for clarification on “or similar covering.” She found it vague. Director Port said it’s better for enforcement to leave the broader language.

Bonnie Sontag said a broad definition can be used to more clearly define a situation and gives the zoning administrator room to maneuver. Director Port added that people can install something never considered before. Broader language helps to address those situations.

Beth DeLisle asked for clarification on “exterior” and “external.” Director Port said in the discussions about consistency, they settled on the term “exterior.”

MJ Verde asked how political signs are impacted by yards and signage on page 5, #5. Director Port said political signs are temporary. Ms. Blanchet said signs, including political signs, are covered in a different section of the ordinance. This section refers to a display of goods.

Bonnie Sontag said language on page 5, F-1 “no decks extending upwards shall be permitted in setback areas” conflicts with the language in #50 where it says, “ an unroofed deck may project into applicable yard setbacks.” The definition of yard on page 4 should be compared to the language on page 5. If you put this standard into a dimensional table, it could lead to problems. Jennifer Blanchet would review the language to identify the conflict and resolve it.

Bonnie Sontag said this is the first time she has seen swimming pools called out as imperious areas. The definition in #33 lists swimming pools as part of open space, which never made sense to her, and she would be interested in removing that language. Ms. Blanchet did not find the references inconsistent. Whether a pool is considered part of the open yard, as a perception and use of space, could use more discussion. The other reference relates to stormwater discharge. Chair Sontag understood and withdrew her question.

Alden Clark said page 4-D has additional language in the Agricultural Conservation District where it talks about a minimum lot size of 400,000 sf. How applicable is this language if the existing lots are grandfathered? Director Port showed a map of the remaining agricultural land areas of buildout in the City. The language ensures farmland is not carved up into smaller lots. It’s better to have defensible language in the ordinance that’s not in conflict with case law. There were inquiries from some developers and the case law one developer referenced may not be defensible. This is one of the tools for protecting open space and undeveloped areas.

Director Port reviewed sections on Yard Setbacks, Maximum Height Requirements, Traffic Visibility Across Corners, DOD controls for façade changes like awnings, and the position of the zoning administrator.

Bonnie Sontag asked about the language, “...the mayor shall appoint, and the City Council may confirm...” because the zoning administrator is an employee. Director Port said the City Council has the discretion to confirm or not, so the word “shall” cannot be used. The language is consistent with other employee appointments.

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Bonnie Sontag did not see any reference to electronic files in #3. She asked for more elaboration than “permanent files.” Director Port said the phrase “permanent files” encompasses both electronic and paper files. He and Ms. Blanchet agreed to work on that phrasing.

The next sections deal with: 1) permits and tries to address situations where people try to poke holes in the regulations by not submitting all materials required before the clock starts running on a Planning Board or ZBA application; 2) addresses consistency with the state law 3-year term for permits rather than our shorter timeframe; 3) gives latitude to the City Council, with guidance from the Board, ZBA, zoning administrator, and building inspector, to look into situations that exceed performance standards; 4) the adoption and amendments section clarifies whether zoning amendments can originate from anyone other than the City Councilors. The state’s Zoning Act statute overrides our current language.

Bonnie Sontag asked about the language, “The City Council shall, within 14 days of receipt of such zoning ordinance or change, submit it to the Planning Board for review.” The next paragraph goes directly into the joint public hearing. She is looking for something that allows the Board to review a zoning proposal before a joint public hearing is scheduled to fully digest a proposal and address questions or fine tune it. Director Port recommended reviewing content at the following Board meeting as a matter of procedure rather than add language here given the timing problems it could create.

Beth DeLisle asked why “submission of the proposed zoning ordinance or change by the City Council” was changed to “to the City Council.” The word “by” is appropriate. Director Port agreed and would find all the pertinent uses of “to” and change them to “by.”

The next section updates old language for consistency with 40A, the Zoning Act and for consistency with the new Housing Choice Act adopted in January that encourages the creation of housing. The threshold for zoning changes that encourage or allow housing now requires only a majority vote of the City Council instead of a two-thirds vote, lowering the bar for passage. A special permit that allows new housing is also a majority vote for the applicable Board. The next change deletes sections no longer used in the ordinance for Federal Street Overlay and Towle Complex Overlay Districts. Those districts are already developed, and any future permits need to be reviewed in today’s context under the existing decisions.

The next section deals with the procedure and criteria for the DCOD in relation to relocating a building to salvage it. The next section references the SPGA and ensures the board has as much latitude as possible to hire a consultant rather than 10 days. The next change deals with whether or not a downtown business can change their windows to operable windows with application under the DOD. The original language disallows a change in the mode of operation for windows. There’s a benefit to anything that activates the streetscape. The next change addresses the demolition of structures in the DCOD and clarifies the calculation of what has to be preserved, such as framing, because current language is not clear for lay people. It also allows the zoning administrator or building inspector to call for drawings and diagrams to clarify compliance. Ms. Blanchet said KP Law identified confusing sections that would benefit from clarification.



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Alden Clark asked about the use of the word “demolition” where it doesn’t say anything about moving a structure. Director Port and Ms. Blanchet agreed to add and adjust that language.

Bonnie Sontag recommended creating a chart to get through the material at a higher level for the joint public hearing, rather than spend an hour just going through all the sections. Director Port agreed.

Leah McGavern left at 8:55 PM

***b) Other Updates from Chair or Planning Director***

Bonnie Sontag said the amended VI-C was adopted. It’s unclear if the Hancock Street owner will submit an application under the amended regulation.

Director Port announced the dates for 2 meetings on PI and sea level rise on Monday, 5/24 and Thursday, 6/3. The executive session with KP Law has a different Zoom link for Monday night.

Bonnie Sontag requested all Board members attend the executive session.

Tania Hartford said goodbye to Board members.

Bonnie Sontag said Bob Koup, the replacement candidate, is a large development architect and planner.

**5. Adjournment**

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

**Motion Approved.**

The meeting adjourned at 9:11 PM.

Respectfully submitted -- Linda Guthrie