

**City of Newburyport
Planning Board
June 2, 2021
Approved Minutes**

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

1. Roll Call

Attendance: Alden Clark, Anne Gardner, Tania Hartford, Bonnie Sontag, MJ Verde, and Rick Taintor

Absent: Leah McGavern, Beth DeLisle, and Don Walters

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

Planning & Development Committee: Heather Shand and Christine Wallace

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

- a) An Ordinance to amend certain provisions of the Newburyport Zoning Ordinance, including definitions, yard regulations, and requirements of the Demolition Control Overlay District (DCOD) and the Downtown Overlay District (DOD)*

Chair Heather Shand opened the Planning & Development Committee meeting.

Director Andrew Port summarized the ordinance amendment with a presentation put together by himself, Jennifer Blanchet, Zoning Administrator, and Councilor Eigerman. The proposal brings forward parts of the comprehensive zoning rewrite into the current ordinance structure with the help of the Zoning Advisory Committee (ZAC), the Community Opportunities Group consultant, and the zoning administrator. The Mini Reform Part One, which will be posted online tomorrow, includes changes in: housekeeping items and non-substantive updates for language clarification, definitions, and submission requirements; Agricultural/Conservation District lot size requirement clarifications of the defensible rationale for large lot sizes in the context of challenges; yard, height, and setback requirements language clarification and areas of routine dispute; administrative roles updates provisions for the Zoning Administrator and Building Commissioner; consistency with the Zoning Act, MGL Chapter 40A, for proposing zoning changes, updating to a 3-year permit allowance; deleting outdated sections and overlay districts where the buildout is complete, shortening document space for new provisions, and preventing confusion; and Downtown Overlay District (DOD) and Demolition Control Overlay District (DCOD) updates to clarify language, allow operable windows, and allow structures to be moved.

Director Port addressed specifics for the substantive changes. The DOD's current language explicitly prohibits changes in the mode of operation for windows. The proposed language allows windows to change their mode of operation with a special permit. Historic windows must still be preserved/repared, if possible, prior to their eligibility for replacement. Proposed

Planning Board
June 2, 2021

language in the DCOD better defines demolition triggers, thresholds, and how demolition is calculated for the lay person. Proposed language codifies the existing interpretation and application of the ordinance that arose from projects on 27 Hancock Street and 12-14 Harrison Street which had legislated disputes. KP Law provided an opinion relative to the ordinance today and the proposed language clarifies the areas of dispute. The ZBA approved a new exterior for the building at 12-14 Harrison Street, an increase in roof height, new siding, new windows, and some other changes. The dispute concerned other elements of that wall that were protected as well, such as the original framing when a fair amount of exterior was replaced with new studs. The three elements protected by the existing ordinance are the siding, the sheathing, and the framing underneath. The proposed language codifies the existing interpretation on enveloping a historic structure and better clarifies the provisions of how that should operate. The building at 27 Hancock Street concerned the issue of surrounding a historic structure on two sides with a new structure and whether converting exterior walls into interior walls triggered the demolition threshold. A diagram will be part of the ordinance that shows what might and might not be calculated for demolition.

Director Port requested feedback on minor language and editorial edits be emailed to him, the Zoning Administrator, and the City Council President. He would like feedback and concerns on substantive issues now, if possible. The next steps will include distributing and posting a revised and updated draft and a recommendation to the City Council. If this hearing is continued, he would appreciate a date certain.

Public comment open.

Ken Swanson, 10 Tremont Street, a member of ZBA, said the proposed changes have not been discussed at the ZBA, but he personally supports the proposal. Three areas stand out as nice to see. Section VI.F on setbacks clear ups confusion about whether sheds have to be 6 ft off the property line. DOD Section XXVII should not force applicants to go to both the ZBA for a variance to have open windows but go to the Planning Board for everything else to do with the storefront. The ZBA should not be ruling on the DOD. DCOD Section XXVIII, as proposed will help when developers come before the ZBA with challenging applications to demolish parts of buildings, including counting demolitions cumulatively over time, window and door shaped changes, and exterior walls being swallowed up. He hopes the amendment passes.

Public comment closed.

Councilor Shand said written testimony was received from Councilor Zeid, who was not in attendance.

Bonnie Sontag preferred to continue until Councilor Zeid could participate in the discussion because he made several substantive points. Director Port has received some feedback from the Planning Board already.

Rick Taintor said page 5, Section XI, that discusses projections of structures, fences, and walls into required setbacks could be clearer. Projecting into a setback implies you are projecting out from something that is outside the setback, whereas the intention applies to things within the

Planning Board
June 2, 2021

setback such as a porch. He preferred a better word than “project.” The description of height above existing grade could bring a future challenge. Building height is the height above the average finished grade. The meaning of “existing” could be read different ways, for example, if someone raise a berm in front of their property and then put a fence on top of the perceived existing grade.

Page 7 raises a policy question he has mentioned before. The language allows zoning standards to be waived by the city engineer with the advice of the zoning administrator and opens up some problems. Only the zoning administrator should be involved in waiving zoning standards, in consultation with the city engineer. Page 10 raises concerns about the impact on the Planning Board’s process relating to waivers and the completion of the application. If all waivers have to be submitted in advance that doesn’t leave room in the process for waivers identified and considered during the application process.

Page 11 gives the City Council a role in determining whether expert consultants are required in terms of certain uses. Could the process be streamlined at the Planning Board level so that an applicant doesn’t have to come before this Board, go to the City Council, and return to the Planning Board. Page 12 has new introductory line, “Except as otherwise provided under Chapter 48 of the General Laws.” Our zoning ordinance simply quotes the state law for a number of paragraphs about how zoning ordinances are adopted. They have no effect at all because we have to follow the law anyway. There are new amendments to 40A that change the provisions by reducing the vote from two-thirds to 50 percent, so the phrase “except as otherwise provided” is not a clear way to say the threshold has changed. Most communities simply refer to the state law. In particular, the state law also changes the threshold for protest provisions for housing changes. He is not sure the phrase “except as otherwise provided” addresses that.

Page 15 refers to windows in the downtown. He understood Director Port’s interpretation of the language to mean that changes in the mode of window operation cannot happen unless it’s proven that the windows can’t be saved. Mr. Taintor does not read the provision that way. It seems to mean, regardless of anything else previous in the paragraph, the Planning Board can approve changes in the mode of operation. If the intent is to be strict as Director Port says, language in this section should state that the mode of operation can only change if the windows can’t be saved. He did not have a position and thinks it should be clear.

Page? at the very end has a new provision to ensure compliance that says, “the zoning administrator, building commissioner, and ZBA may require a clear, properly scaled drawing or diagram accurately depicting.” It would be helpful to say these entities could specify by regulation that this is required for all applications or could decide on a case-by-case basis whether this is required by a certain timeframe. If it is the later, it should either say it applies either to all applications or to applications over a certain threshold, or something that gives the applicant advance notice of the requirement. He submitted other comments earlier.

Councilor Shand asked if the Committee would see updates from the comments already received. Director Port said he could have it ready for the June 16th meeting in 2 weeks or the following meeting on July 7.

Planning Board
June 2, 2021

Councilor Wallace asked if the written comments could be sent to the Committee. She suggested letting other councilors know they can submit comments in writing as Councilor Zeid did.

Jennifer Blanchet said she supported the later date to leave time to get more written comments from council members. She just saw Councilor Zeid's comments this afternoon.

Director Por said comments would be posted on the website with the zoning amendment and kept updated with new comments. Check the City website for the location of the continued meeting, whether it's on Zoom or at City Hall auditorium, or a hybrid meeting format.

Christine Wallace made a motion to continue to July 7, 2021, in a meeting mode and location to be determined. Heather Shand seconded the motion and all members voted in favor.

Motion Approved.

Bonnie Sontag said it could be continued beyond July 7 if there were a lot of substantive comments.

Alden Clark made a motion to continue to July 7, 2021, in a meeting mode and location to be determined. MJ Verde seconded the motion, and all members present voted in favor.

Motion Approved.

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

Motion Approved.

3. Other Business

a) Request for minor modification – 1 Boston Way (2016-SGD-01)

Director Port said no MINCO representative is here this evening. The original permit had a lengthy set of conditions. The applicant is asking for an extension on submitting the as built plan to prior to final occupancy permit or by July 31, 2021, whichever is later. The original language says the as built plan is to be submitted when the project is completed. The Office has no objection. The applicant has been responsive to all our requirements. The other special condition relates to completion of the work on Boston Way. The applicant was expected to complete paving on Boston Way concurrent with the building's completion, but because they received a permit for construction at 3 Boston Way, they are requesting the paving be done at the completion of 3 Boston Way.

Rick Taintor raised two minor concerns. He didn't understand the full project context for having only one occupancy permit to guarantee completion conditions. Would one occupancy permit cover all the units or do individual units have individual occupancy permits? He would feel

Planning Board
June 2, 2021

comfortable if the condition represented a significant commitment by the developer. Could a final occupancy permit drag on for months and months?

Jennifer Blanchet said some occupancy permits were issued for the public spaces. In phase one each section of units gets an occupancy permit. She likes the suggestion of the first occupancy permit for the new structure rather than put it off until the final occupancy permit. Director Port suggested adding, “not later than July 31.”

Rick Taintor agreed. Should the modification shift responsibility for paving from 1 Boston Way to 3 Boston Way? Director Port said the matter can be continued to ask them to request a modification for the 3 Boston Way project, tying the paving to 3 Boston Way.

Rick Taintor said whatever the Board decides is not going to slow them down if the deadline is July 31 for the first part. He suggested continuing to the July 7 meeting if other people share his concern.

Bonnie Sontag agreed. She'd like to see that noted in two places on the 1 Boston Way decision and in the 3 Boston Way decision as well. Is “completion of construction of 3 Boston Way” language enough or should it say, “before issuance of final occupancy permit for 3 Boston Way,” learning from our prior experiences that this is clear leverage.

Jennifer Blanchet preferred requiring paving before they are granted first occupancy of 3 Boston Way.

Bonnie Sontag preferred to hold off on approving the paving of Boston Way, but approve the as built modification, “before issuance of final occupancy permit and in any event, no later than July 31, 2021” for general condition #6.

Rick Taintor made a motion to approve the minor modification extending the deadline for submitting as the built plan prior to the final occupancy permit or in any event no later than July 31, 2021, for 1 Boston Way (2016-SGD-01). Anne Gardner seconded the motion, and all members present voted in favor.

Bonnie Sontag asked that the applicant come back to discuss Condition #12 on June 16, 2016.

Rick Taintor said we're asking for a modification to both 1 and 3 Boston Way. Director Port said we could send that draft certificate to the Board before the next meeting, after confirming with MINCO.

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) Approval of Minutes

Rick Taintor made a motion to approve the minutes of 4/21/21. Alden Clark seconded the motion and three members voted in favor. MJ Verde, Tania Hartford, and Bonnie Sontag abstained.

Rick Taintor made a motion to approve the minutes of 5/5/21. Alden Clark seconded the motion and five members voted in favor. Anne Gardner abstained.

Motions Approved.

Executive session minutes would be approved in a future meeting.

b) 2021 Planning Update

Bonnie Sontag said the Board will be reviewing zoning rewrite sections on parking - site plan review at the June 16 meeting. She encouraged everyone to do some reading and make notes.

Rick Taintor said the parking section has significant, substantive changes from the existing ordinance including a simplified parking table and combining uses. Should members assume the revised parking table is the one the Board will be working with, and any comments should not dig too deeply into the table. Director Port would wait for the updated table. The Office has to convert the Community Opportunities Group draft back into the existing zoning ordinance structure so that the uses align. The Board members will comment on standards that need to be updated and the substance of what you want. Those comments can be done on the 4/19/21 draft and will be incorporated in the right places with the right language.

Rick Taintor asked about the intermodal transportation improvement fund and recognizing public parking within 300 ft. Is that sacrosanct or are you open to changes? Director Port said he is always open to suggestions and changes that improve the existing regulatory structure.

Rick Taintor asked if it's more helpful to distribute comments in advance so members can comment on them? Director Port agreed and would post the comments before the meeting.

Bonnie Sontag said it would be helpful to members if we had instructions in writing for how to prepare for this discussion on June 16th before the staff report comes out. That would help our expectations, thinking, and written preparation.

Director Port said the more cooks in the kitchen, the more different drafts there are, the more time it takes to resolve those issues, which is usually not in a single meeting. He will send something out this week. Give us your thoughts on whether you want to work on the original ordinance or the Community Opportunities draft. We can take feedback in multiple formats.

Bonnie Sontag said Ms. Verde and Ms. Gardner have sat on the ZAC at different times.

Planning Board
June 2, 2021

MJ Verde said we vetted things between the moderator and Director Port. It was great to have Ms. Blanchet and Councilor Eigerman at the meeting.

Bonnie Sontag what members will be looking at is from a broad base of support. There was a lot of discussion, but a lot of things have happened since then and maybe some issues need a fresh set of eyes.

Jennifer Blanchet said Mr. Taintor noticed the new uses in the parking table in the brand new draft. If he'd like to have a conversation with her to talk about the new parking table, she would like to hear his feedback to help clarify it for everyone as they put the new uses back into the existing ordinance format.

5. Adjournment

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

Motion Approved.

The meeting adjourned at 8:21 PM.

Respectfully submitted -- Linda Guthrie