

**City of Newburyport  
Planning Board  
June 15, 2022**

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

**1. Roll Call**

Planning Board Attendance: Alden Clark, Beth DeLisle, Bob Koup, Jamie Pennington, Heather Rogers, Bonnie Sontag, and Rick Taintor

Absent: Don Walters and Richard Yeager

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

**2. Public Hearings**

- a) *Brad Kutcher*  
*344 Merrimac Street*  
*VI-C Special Permit (PBSP-22-4)*  
Continued from 5/18/22

Nick Cracknell, 13 Picard St, Amesbury, said an updated landscape plan shows 4 trees on Union St. The Newburyport Historical Commission (NHC) still needs to agree with the final preservation restriction. There are two mortgage lenders. Both need to provide subordination agreements which could take many months. Glenn Richards, NHC Chair, spoke with the Massachusetts Historical Commission (MHC) about the possibility of the owners refinancing to create a new condo association. Mr. Cracknell suggested a resolution be required before the building permit is issued so that the PR accurately reflects any lender's subordination to the PR in case of a foreclosure. The language requests 3 entities approve the PR and that before a new mortgage is assigned to the property, the PR is recorded in the first position and not subordinate to mortgages or any lien.

Glenn Richards, NHC Chair, said 342 Merrimac has a clause with a subordination agreement. He didn't think the NHC would have a problem with this proposed solution.

Bonnie Sontag said the subordination process can take quite some time. The Board suggests a resolution prior to issuance of an occupancy permit which gives the applicant more time.

Nick Cracknell said the mortgage is on the second structure. He's comfortable with the occupancy permit and has no reason to believe anything will not get approved.

Bonnie Sontag suggests the applicant come before the Board for a decision after the PR language is accepted by the NHC, but with everything else the way it is now.

Planning Board  
June 15, 2022

Nick Cracknell agreed to Chair Sontag's suggestion. He reiterated that the PR wouldn't have a subordination clause at that time because the applicant would not have the written sign off from the lender.

Rick Taintor said it doesn't make sense to prepare the condo documents prior to closing out the appeal period because if the project is appealed or not approved, it would be a waste of money.

Bonnie Sontag said registering the PR will be in a separate condition.

Director Port suggests that language about the subordination is additive. Any questions about the scope of the PR will be resolved ahead of the Board issuing a special permit so there is no ambiguity remaining.

Rick Taintor said we have new landscape plan and need to make changes on #2 L10.0 and L 21.

Rick Taintor made a motion to continue the VI-C special permit for 344 Merrimac Street to July 6, 2022. Alden Clark seconded the motion, and all members present voted in favor.

**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.*

**3. Joint Public Hearing with the Planning and Development Committee and Committee of the Whole**

- a) (ODNC046\_01\_27\_2020): Add to the Newburyport Zoning Ordinance a new residential use category referred to as "Short Term Rental Units," and specify additional requirements and/or restrictions applicable to such use, including but not limited to the requirement for a Special Permit and/or a license issued by the Licensing Commission pursuant to a related non-zoning Ordinance amendment also under consideration.*

Bonnie Sontag opened the Joint Public Hearing. Councilor Ed Cameron opened the Planning & Development Committee portion of the Joint Public Hearing. He reviewed the context of the discussion, listing the 6 meetings on Short Term Rental Units (STRUs) since February 2022. There were some ideas on non-owner occupied STRUs to allow Newburyport residents who do not occupy their STRU to continue operating. The City Council did not get the 8 of 11 affirmative votes to pass the proposal and STRU ordinances were reposted to reopen public hearings. The sponsors are Councilor Jim McCauley and Council Chair Heather Shand.

Councilor Jim McCauley said the current draft strikes the balance the council is looking for. The balance is between residences and commercial uses, a balance between neighborhoods, balance

Planning Board  
June 15, 2022

between flexibility between parking and bedrooms and categories, quality of life issues for neighborhoods, investor properties on PI, which are all reflected in tonight's ordinance. The city will be able to implement it with supplemental staff or a 3<sup>rd</sup> party. The ordinance hasn't changed, but does have definitions, regulations, alludes to licensing with process and penalties.

Jennifer Blanchet said her role is deciding what to do with properties that do not meet the ordinance. The intent is that Plum Island be exempt from owner occupancy and parking restriction and of those units will be licensable. Of the 80 or so units on the mainland registered with the state, about two-thirds are not owner occupied and ineligible to be licensed. The May 2 STRU draft reflects parking requirements amended by the City Council. Homeshare units need no additional parking. Owner adjacent units require one additional parking space in addition to the requirement for the single family use. In the south end most people are lucky to have the spaces required for the use. The limited share is the most parking restrictive because in addition to spaces required for the use, an additional parking space is needed for each bedroom rented. She doesn't know where that exists in the proposed STRU districts. About 150 STRUs operate on the mainland today. Many, if not most, homes where STRUs could happen do not have the required parking, thereby reducing the number of STRUs legally allowed in the City. There is reason to discuss the amnesty provision further if the goal is allowing STRUs at a certain level. Another discussion would be about shutting down these uses.

Councilor Cameron said Attorney Eichman advised the City on allowing existing non-owner occupied units belonging to residents to continue but not allowing any new ones.

Director Port said that an amnesty provision that would require non-residents to discontinue their STRUs was suggested with caution as it could open the City to litigation in a challenge to the ordinance.

Bonnie Sontag said the Salem ordinance does not allow any new non-owner occupied, but existing non-owner occupied STRUs that are registered with the state by a date certain can continue. She assumes Newburyport could do the same. There are two separate issues. Whether the City can limit STRUs to people in Newburyport who own property is resolved. But whether we want to consider amnesty for pre-existing STRUs is unresolved.

Director Port said there are two public purposes. The neighborhood impact has been the primary focus over the last 2 years. The other is the impact on affordable rental units should they convert to STRUs. It's not apparent to him what the concerns would be for allowing the number of STRUs on the amnesty list today to continue if there are no problems with them today. In an amnesty provision that allowed them to continue, most of the public purposes concerns that have been raised to date can be addressed through licensing which can be enforced more quickly than zoning by pulling the license if there is a problem. That would allow more simplistic approach to the zoning ordinance.

Public comment open.

Tim Smith, 53 Marlboro, has been experimenting with STRUs recently. How can you create a policy objective without a quantifiable set of problems and the data. He would like to see the

Planning Board  
June 15, 2022

data on the problems. He supports licensing. The issue is too many STRUs and large corporations with investment properties. Those are the issues he would address. It will be complicated to enforce the layered policies proposed. Registration will disincentivize the bad actors. He advocated for a community-friendly STRU ordinance.

Buck Amesworth, 77 Curzon Mill Rd., owns STRUs on the mainland and on PI and also own long term rental units. He asked everyone to think about the people heavily invested in these properties and the economic benefit to the City from the guests. He supports registration and licensing. Neighbors of STRUs on PI are pleased with the significant property improvements, that's an additional consideration.

Jane Snow, 9 Coffin St., listed the most current breakdown of STRUs by ward. Of a total of 77, 59 or 77% are not owner occupied, 61 people on PI have registered, 13 have 2 or more properties, one of those in particular has 8 properties. She has a tough time with the idea of introducing a business into neighborhoods. You don't expect a business to be next door. There is no data because when you seek to file a report, no information is collected when you call in a problem. She supported enforcement through licensing is a faster, more accurate process. She wanted to know if residents had to pay a fee to go before the Licensing board. She suggested allowing the ones that are here as a start.

Teresa DiPiero, 54 Marlboro, owns a STRU that is not owner occupied. The ordinance seems too complicated with complex categories and definitions. The licensing is straightforward. She doesn't see the issues that people have identified. She would ensure that parties and events are not allowed. Existing STRUs are doing a good job. She doesn't want to see businesses owning 8 or 10 STRUs. STRUs could be regulated at a higher level with licensing.

Rita Mihalik, 53 Warren St., said it's a compelling issue. The residential market economy is under siege from the tourist market economy. She would like STRUs banned for tourism, banned from downtown and the north and south ends, and that STRU hosts are only renting space in a unit they own and live in full time. Her neighbors are her friends. Neighbors play a pivotal role in the lives of residents. Investor STRU owners don't care about neighbors, they only care about extracting wealth. The issues have changed the way she feels about her home.

Stephanie Niketic, 93 High St., said 59 mainland STRU units not being available for permanent housing is a lot. Many people are looking for long term rentals and they are not available. The ordinance continues to prevent an excess of STRUs uses and there should not be an excess. A defined list of complaints can be found from neighbors of STRUs, but it's not their job to provide hotel space for the City. Councilor McCauley said the real problem relates to the industrial park. Companies will not locate here because there is not enough affordable housing. Allowing STRUs changes the economics of living here. We should go back to the original ordinance of December 2021 because that version provided balance.

Public comment closed.

Councilor Khansaid as a STRU user she knows how families act and behave. STRUs are currently illegal. She wants to see something reflected in the Table of Uses. She reviewed the

Planning Board  
June 15, 2022

research and doesn't support any corporate investor owning STRUs in Newburyport. She's comfortable with the proposal as a way to begin to learn and collect data. She supports an amnesty provision to provide balance and as a way to say let's see how this goes.

Councilor Wallace asked whether it is known how many STRUs are owned by residents vs non-residents? Jennifer Blanchet said she analyzed that but as the City was counseled by KP Law we would not be allowed to restrict non-residents from owning STRUS, she didn't bring that data to this meeting. KP Law says there's no way to restrict who owns an STRU.

Councilor Preston asked if limiting the number is under consideration. Jennifer Blanchet said we can restrict how many a person owns, including those under amnesty. Director Port suggested doing that in conjunction with the license.

Councilor Cameron said the City Council adjusted the length of time you can rent out your property to 120 days. He would encourage limited shares. STRU is defined as for a period less than 32 days. If we did not allow investors to do non owner occupied STRUs, they could rent it out for 62 days or 90 days. He's comfortable with where the draft ordinance as of the end of May. The bigger the number of existing non owner occupied or investor STRUS, the less he likes the idea of amnesty. He would like a hard number for those. If the number is 59, that's a lot compared to the guesses of 12-15. We've lost hundreds of rental units in the last decade.

Councilor Wright preferred the terms "permitted" and "not permitted" compared to "legal" and "illegal." He supports amnesty whatever the number is, and the number will be higher than it is today, not lower. Amnesty effectively sets a date in time when, if the STRU goes out of operation, it will no longer be allowed to be permitted. Someone living in the property is more likely to control their tenants, but the ordinance is only successful through good enforcement. We fail to provide the balance we're looking for if we fail to have the ability to enforce it. Good and bad STRU owners can be identified through enforcement. He would like to understand more about what the licensing will be so it can better guide the Committee on the zoning side. He supports amnesty for existing investment STRU owners.

Councilor Preston could not have married in Newburyport without STRUs. The City needs STRUs. She preferred a broad ordinance managed through licensure and a solid licensure process along with amnesty for all existing units no matter what type they are. She recommended establishing a limit on how many STRUs one person can have, such as 3.

Rick Taintor said without an amnesty provision it would be a near ban on mainland STRUs. There are only 18 owner occupied units on the mainland today. Of those, he thinks that at least half can't meet the parking requirements. This is complicated ordinance that could be much simpler if it said you can't do it on the mainland, but you can do it on PI. Is it amnesty from all the provisions of the ordinance or just for investor owners? Amnesty is a big piece to figure out to move forward. The licensing is the easiest place to get quick enforcement. Without amnesty, a lot of effort and time will go into closing down 59 mainland units. If we allow STRUs in residential and business districts, we should look at districts that have residences in them like AG/CON and the waterfront mixed districts WMU and WMD.

Planning Board  
June 15, 2022

Alden Clark supported Mr. Taintor's last statement. He doesn't understand why folks in AG/CON, WMU and WMD are being penalized with the ordinance. He found conflicts between the licensing and zoning ordinance as of now. Specifically, section 9-304 under licensing exemptions says, "a resident who rents no more than 14 days in a calendar year they are exempt from licensing." Using the word 'resident' there is contradictory because they are exempt from licensing." In section 9-306 F under requirements says, "the operator must certify the unit will not be rented for more than 14 days a calendar year" but fails to identify what types of STRU that applies to. That seems like an error because we don't allow more than 14 days and that implies no one needs to apply for a license. Under section 9-307, registration, does the ordinance need to say when the STRU will be removed from the registry? Some provisions out of sync. In the zoning, the limited share has no limit on the number of days. There was language removed from the zoning ordinance because it was duplicated in the licensing, There are many other sections that are duplicates that were not removed.

Beth DeLisle supported doing something, but she is concerned about parking and units not qualifying. Defining what the amnesty would protect needs definition. She supports some sort of amnesty, including for the investor properties.

Heather Rogers supports amnesty as a broad stroke. She doesn't know what the problems were with the investor companies. The City needs a place for overnight stays. If any existing STRUs are dissolved it will affect the downtown. She struggles with lots of the variables in the ordinance, but her main concern is how this will impact the downtown.

Bob Koup supports STRUs in the city. The conversation has moved from protecting neighborhoods to protecting the STRU market. The market is driven by 3<sup>rd</sup> party participants whose growth is driven by the participants. There is a potential for unfettered growth of the STRU market at the expense of historic neighborhoods and we have to be careful about that. The limitation on parking might eliminate units for consideration but controls the growth of STRUs in those neighborhoods where parking is a problem. Growth is driven by businesses that want this market to grow. We should not relax the ordinance to an extent that we can't control growth.

Jamie Pennington supports an ordinance. STRUs are valuable but we shouldn't have too many. He thinks there should be an increased focus on regulating through licensing instead of zoning. We won't get it right the first time. We can course correct as we go. Over time we will have more data on the issues we're trying to preempt.

Bonnie Sontag agreed with Mr. Pennington. She supports amnesty in a limited way. Whatever regulations go into the ordinances should apply equally to the legal and the amnestied units. She didn't support two distinct categories of STRUs and dealing with messy appeals. She wants to define a limit for how many units an investor can own.

Councilor Cameron wanted real life examples of the parking issues before he is ready to vote.

Councilor Connie Preston made a motion to close the Committee's portion of the joint public hearing to keep it in committee. Councilor Christine Wallace seconded the motion, and all members present voted in favor.

**Motion Approved.**

Rick Taintor said the Planning Board will make a recommendation on the draft ordinance in a subsequent discussion.

Rick Taintor made a motion to close the public hearing and delay the Planning Board's recommendation. Alden Clark seconded the motion, and all members present voted in favor.

**Motion Approved.**

**4. General Business**

*a) Waterfront West discussion*

Jamie Pennington demonstrated what a 3D model could do to help the Planning Board use their own visualization before bringing in other parties. He demonstrated 3D models of the two primary schemes presented to date using information from the Merrimack Valley GIS system. Verticals are estimated on the number of floors, which leaves room for error. We can highlight where things are precisely.

Bonnie Sontag is also concerned about topography. Could elevations be shown in relation to the topography on the site?

Bob Koup said another way to look at building heights is at what flood elevation retail and residential can exist. That would separate the planning from the existing contour and is one way to look at overall building height.

Jamie Pennington showed what it would look like to get a podium (fill or a parking structure) at 13 feet.

Rick Taintor talked about resiliency and sea level rise that would make buildings closer together at the water and further apart near Merrimac St.

Jamie Pennington said we're trying to craft a policy about how much more building there can be after we start at sea level rise.

Rick Taintor said the distant view is less important than the experience from the perspective of walking on the street.

Jamie Pennington said the GIS has most of that property at 6 ft. We're trying to put some parameters on building envelopes. We can also explore more massing in the center and breaking it down on the water's edge as if it were 2 different zones.

Planning Board  
June 15, 2022

Bob Koup thought it would be important to incorporate landscaping and, rather than focus on the buildings, focus on the connections and the circulation. Market St. should extend into the site to suggest a place where cars could enter the site. He mentioned 2 other potential car connections. The buildings may fill-in in an obvious way after that.

Rick Taintor said once you figure out the connections and the resiliency piece, the 4 linear routes are the key.

Bob Koup said a central decision is do you want cars on the waterfront. One way of looking at it is that it's a district. The developer may say retail and restaurants thrive on visibility. Part of that visibility relies on cars. It doesn't really work if there's no visibility. If there's retail on the waterfront it is understood there will need to be cars. He gave the example of the Hammett Hotel in Newport, RI and showed their public space on an elevated platform.

Jamie Pennington agreed it seems inevitable for what will happen on at least a portion of this site. He proposed 2 or 3 different versions of the existing diagram of connections.

Rick Taintor said there is no need for a low rise on Merrimac St. because it's beginning to be developed at 4 stories already.

Jamie Pennington said a good question is where you would want to put a hotel. He suggested the 3 options of filling the site, building a bathtub, or building a sacrificial layer. The site should have variety.

Rick Taintor said keeping the framework of connections intact will make it easier for the developer to come up with design concepts.

## **5. 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 9:57 PM

Respectfully submitted -- Linda Guthrie