

**City of Newburyport
Planning Board
July 7, 2021
Approved Minutes**

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

1. Roll Call

Attendance: Alden Clark, Beth DeLisle, Bonnie Sontag, Rick Taintor, and Don Walters

Leah McGavern arrived at 7:10 PM

Absent: Anne Gardner and MJ Verde

Planning & Development Committee and Committee of the Whole: Jared Eigerman, Heather Shand, Christine Wallace, Joe Devlin, and Sharif Zeid

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 and Chair Heather Shand opened the Planning & Development Committee meeting.

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)*

Director Port noted feedback he received from Councilors Eigerman, Shand, and Wallace, as well as the Planning Board. He summarized the nature of minor language edits and highlighted the substantive issues concerning policy language.

- 1) Yard Definitions & Setback Requirements: Is the 50% of setback allowance for unroofed decks adequate for smaller lots?

Jennifer Blanchet said the yard specifics and setbacks have caused confusion over where they are measured to and how that cross references with other sections of the ordinance. This is attempt to clean up the cross references and make them consistent with the way they are interpreted to eliminate confusion. A few items on yards, which may have been moved to another section, address flexibility. Today, decks are not allowed in the side or rear yard setbacks. Proposed language allows 1st floor decks to be in up to 50% of the setback, which leaves adequate space between adjacent lots for circulation.

Councilor Eigerman asked if there are larger setbacks in more suburban parts of the City, like the west end, that would cause this language to have strange results?

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Jennifer Blanchet said the largest residential setback is a 25 ft side yard. If both neighbors had decks, that would still leave 20 ft.

Director Port asked should there be a cap on the size of the extensions?

Councilor Eigerman said because this is side, front, and rear, someone can surround a house with decks by right. It seems unusual, but he did not feel strongly.

Rick Taintor asked about the phrasing “otherwise unroofed deck structures.” The previous sentence talks about decks extending upward by more than 30 inches. If it said, “unroofed deck structures no more than 30 inches above existing grade may extend up to 50%,” would that be the same thing? It would be clearer to say that. Director Port agreed.

Rick Taintor asked whether a deck 30 inches high with a 30 inch high railing all around is still allowed to go into the setback? Ms. Blanchet said yes. The measurement is to the deck surface, not to the railing. A 30-inch deck doesn't require a railing.

Councilor Eigerman suggested, “unroofed decks extending up to 30 inches may project...” if no one has a concern about decks on all 4 sides of a building. Director Port said it's a valid concern but an unlikely scenario.

Rick Taintor asked if swimming pools and fences are required to stay outside the setbacks entirely. Ms. Blanchet said swimming pools have their own section and their 6 ft setback is regardless of district.

Councilor Eigerman suggested, “fences and landscaped walls may be located...” in #6 and not “such as.” Would #4 allow any kind of mechanical equipment without limitation, such as placing a heat pump wherever you want? Ms. Blanchet said there is no restriction right now. You can put a heat pump right up to the property line. That was not the original intent, and we receive a lot of questions about that.

Councilor Eigerman suggested, “mechanical equipment appurtenant to the property (like HVAC and the like) shall be permitted in the side or rear yard, however, if greater than 4 ft in height, shall be screened.” Ms. Blanchet agreed.

Rick Tainter said the definition of “structure” is proposed to include mechanical equipment greater than 4 ft in height. He would therefore understand that mechanical equipment greater than 4 ft in height is subject to the side and rear yard setback requirements because this implies there is an exception somewhere.

Councilor Eigerman suggested, since all mechanical equipment is a structure, to eliminate “greater than 4 ft in height” in #4 because it's not relevant anymore.
Leah McGavern was concerned about putting condensers on a property line in any situation. If there's room, condensers should be close to the house because they're loud and unsightly. Locating condensers on a property line is a direct affront to neighbors. In other communities,

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condensers abide by setbacks, sometimes up to 20 ft, to keep them as far from neighbors as possible.

Bonnie Sontag said there was an incident abutting her street where the owners didn't have space. We could require screening for noise.

Ms. McGavern said noise is harder to screen. The typical condenser is 3 ft high, and screening could make it noisier. Councilor Eigerman asked if they preferred a noise attenuation regulation, such as what Boston has.

Leah McGavern said the language gives permission to put a condenser right under someone's window. Councilor Eigerman said it could lead to more conflict than today. Ms. Blanchet said that is the situation currently, as there is no regulation concerning mechanical equipment like condensers and pool equipment.

Councilor Eigerman said if it were silent, it wouldn't create a problem. In other cities, you have to provide the noise specification with the permit, and they can calculate the loudness. Maybe that's not practical for small-scale homeowners.

Councilor Shand asked who would measure the noise? Director Port agreed with the need for noise attenuation but monitoring and enforcement would be unwieldy.

Chair Sontag suggested accepting the proposed language as it is. If it continues to be a problem, we'll revisit it.

Councilor Eigerman suggested changing 4 ft to more than 30 inches. Mr. Taintor was more comfortable with 4 ft because of the potential for a base. He was not convinced the screening would look good. Ms. McGavern said sometimes mechanical equipment is on an 18 inch platform. It's tricky. Councilor Eigerman suggested "4 ft height measured from grade."

Don Walters asked how this section impacts a homeowner placing solar panels under 4 ft in height on the property line. Councilor Eigerman said solar panels have a statutory exemption with the carve out under Chapter 40A. Mr. Walters said other towns have restrictions.

Rick Taintor acknowledged Glenn Richards' point about the little free libraries. We may run into a 1st amendment issue if we allow that but not other signs. He supports free libraries, but they run up against #5. Councilor Eigerman said those are illegal under municipal encroachments on the public way. You have to allow it all or ban it all. He recommended not touching it.

- 2) "Letter Permit" for Accessory Structures: Things that don't require a building permit would benefit from documentation of what was approved. That supports zoning review and approval to ensure compliance rather dealing with sheds in the wrong places after the fact.

Councilor Eigerman said there should be a paper trail to account for these accessory structures. He doesn't feel strongly about a letter permit. Ms. Blanchet said this is one of the biggest problems she has. The letter permit is what Councilor Eigerman is suggesting, a single piece of

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paper from the Planning Department. Currently, nothing is required from the Building Department. A hand drawn sketch on a single sheet would allow the Office to address setbacks and lot coverage. Recently, an already constructed shed on Prospect Street had to be taken down.

Councilor Zeid opposed the creation of another type of permit. A letter permit would not change the fact that a property owner is responsible for the structure and the risk of complaint if requirements are exceeded. It's okay to leave that risk with the homeowner. How many sheds go up that aren't on record and not a problem? The letter permit could potentially expand to other things.

Councilor Shand asked how many times a structure has to be taken down. Ms. Blanchet said a couple per year. Her goal is catching the problems beforehand.

Councilor Wallace said something similar happened in her neighborhood on Arlington Street. The resident did not have anything in writing about where the shed would be located. She supported the letter permit, which could help neighbors without resources for legal fees to redress a problem. The letter permit is used in the local wetlands ordinance. How much additional work would a letter permit require?

Jennifer Blanchet said it's less work to address these situations proactively. Today, she uses an administrative tool not in the ordinance called an accessory structure permit for the office only. The paper is reassurance that if people build a shed as proposed it will meet the ordinance.

Councilor Wallace said it's not a bad idea and she would want to keep it simple.

Councilor Devlin asked if there was a fee associated with the letter permit. Ms. Blanchet said no, it's a form that can be accessed online. Councilor Devlin confirmed that a diagram or sketch is required. He asked how someone in a densely packed neighborhood would know where their property line was. Ms. Blanchet said she looks for the survey. A structure 20 ft off the property line would not require a survey. Councilor Devlin said his concern was that a simple application could turn into the need for a survey at added expense. It could become too complex. If this was proactive and efficient for something occurring 2-3 times a month that would be different. You are probably only seeing the smaller percentage of residents doing this. Residents want an easy process. The proposed process is for only a couple of problem incidents a year.

Councilor Eigerman does not feel strongly, but as an attorney, likes the idea that a client could provide this paper if needed. Ms. Blanchet is not going to use the amendment to tag people for not having shed permits. It protects the homeowner.

Ms. Blanchet suggested offering the paper as a zoning compliance memo, as the Office is doing now, without putting it in the ordinance. It would serve as a zoning review.

Councilor Zeid understood why a resident would want this to protect themselves in a dispute. But the neighbor will want to know what the basis of the letter permit is. The sketch will have to become a formal survey in order to be defensible. By issuing a permit, the City would own the problem if there were any legal challenges.

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Councilor Devlin suggested the letter is a safe harbor, showing if you do it this way you will have done it correctly, but residents bear the burden. But the more we put in, the more residents will use it to go after their neighbors, rather than talking to each other before putting a shed close to a property line.

Councilor Shand suggested re-wording Section 8 to describe the optional zoning compliance memo. Director Port and Ms. Blanchet did not mind doing that or taking the section out. Director Port said the expectation is that folks would apply for the letter permit in advance if it were in the ordinance.

Councilor Eigerman said it's not worth it to the Councilors. Any homeowner can always get a zoning compliance letter if they want to protect themselves.

Bonnie Sontag asked if it was possible to put something optional in the zoning code. Councilor Eigerman said a zoning compliance letter is optional. Ms. Blanchet confirmed that they are requested all the time. Chair Sontag supported language to that effect.

Leah McGavern and Alden Clark agreed.

3) Setbacks for Detached Accessory Structures: Questions about the maximum size allowed for sheds, how close sheds are to the lot lines, and what setbacks are adequate for small lots.

Jennifer Blanchet said the language fixes the "and" and "or," and clarifies the exact dimensions of 6 ft off the adjacent property line and 10 ft away from a primary structure on an adjacent lot. It gives flexibility to the dimension by saying the structure cannot have a face longer than 24 ft or exceed the total area of 528 sf and doesn't need to be a rectangle.

Councilor Eigerman said 528 ft has been the law for at least 50 years. Is that the right number?

Jennifer Blanchet said it is the size of a standard 2 car garage.

Bonnie Sontag said, by way of example, 2 years ago a structure on the property line and several feet away from the house was connected to the house by an underground passage. It was still considered detached. Does it matter if it's detached from the house?

Director Port said attached accessory structures must comply with the primary structure setbacks.

Council Eigerman said the tunnel is fine because it's not visual.

Rick Taintor said there could be hundreds of pre-existing non-conforming garages, his included. The language speaks to neighborhoods being less dense, but in a dense neighborhood, the language requires new construction that's out of character with existing development.

Jennifer Blanchet said we are not creating new zoning as part of the re-write.

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Councilor Zeid supported Mr. Taintor's concern. Any street in the south end has garages well within the 6 ft setback. The language supports new structures unlike existing structures.

Leah McGavern said that goes to the heart of everything in zoning. Every setback for every structure in the south end is debatable. Councilor Zeid agreed and said there's debate about whether current setbacks make any real-life sense for the south end.

Councilor Devlin's takeaway from the zoning consultant was to make existing zoning as consistent as possible with existing characteristics on the ground. Fewer non-conformities make the ZBA and Planning Board's jobs easier. If this is the goal for the re-write, why wouldn't we try to change things while we're going over it?

Director Port said the Zoning Advisory Committee (ZAC) was unable to reach consensus over everything in the re-write proposal so the whole ordinance could not be brought forward. The ZAC is a group of members from the ZBA, City Council, Planning Board and City staff who worked with the consultant on the ordinance. The Office is unable to bring the entire ordinance forward at one time without funding for a consultant, therefore provision changes that affect the entire ordinance aren't possible at this time. The Office is working through manageable tweaks in existing provisions to bring forward in small batches. The ZAC had various opinions on the Dimensional Table and were unable to get a sponsor for that part of the zoning rewrite. Dimensional Table changes are a large task that could take months or a year, similar to the STRU and Waterfront West amendment discussions. We are working to clarify language in existing provisions only.

Councilor Devlin said there is some consensus here to make the code more reflective of practical considerations on the ground.

Councilor Eigerman said a few years ago we had data on setbacks and lot configurations. We can revisit it again, but this is a Citywide policy that we can't fix here and now.

- 4) "Joint" Public Hearings on Proposed Zoning Amendments: There's no requirement for joint hearings on zoning amendments, but the statute does require the opportunity for a Planning Board recommendation to the City Council. Shared discussion and cross-deliberation have benefits.

Director Port said the process of having a joint public hearing has been in place for years, and it's constructive for feedback but a joint public hearing is not required in the ordinance. There are disconnects when zoning changes are discussed separately.

Councilor Shand agreed there are more benefits to a shared dialogue and supported the joint public hearing.

Councilor Zeid said he was not advocating against joint public hearings but is against joint hearing as a rule of law. The process for initiating and passing zoning is already regulated by state law. A joint public hearing is preferred, but if scheduling or other issues prevent the two

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bodies from working together, that should not prohibit the City Council from writing zoning. A law like this adds no value and gives people something to contest.

Bonnie Sontag said joint public hearings work well and she can't imagine when we wouldn't do it, despite some contentious discussion, such as with the Brown School. She wanted to formalize the process because there are times when City Council sponsors a zoning amendment, and the Planning Board never sees the proposed amendment until the joint public hearing is already scheduled. Oftentimes, the Planning Board has not had its own meeting prior to that date or any chance to discuss it among Planning Board members. She asked about including language that would allow the Planning Board the opportunity within the 60-day window to schedule its own meeting to discuss amendments initiated by the City Council prior to a joint public hearing.

Rick Taintor said the proposed language would be in addition to what is prescribed by state law. He understood Councilor Zeid's concern. If the Planning Board closes its hearing but the amendment stays in the Planning & Development committee for more discussion, that could create problems. Nothing prevents the Planning Board from holding a separate public hearing on an amendment as it is now. Adding the word "joint" could restrict the Planning Board, whereas there is more flexibility without the word "joint," for both a joint public hearing and a separate public hearing. He was unsure the change was necessary or positive.

Councilor Eigerman was surprised the ordinance didn't already say all meetings are joint. Current language copies state law. He hears that some members of the City Council and the Board prefer the vague language. It's fruitful to meet jointly, as everyone agrees. A way forward is to strike the word jointly.

Director Port suggested replacing "jointly" with "each," meaning the Planning Board and the City Council, hold a public hearing. Councilor Eigerman said he preferred to leave language the way it is written today. Mr. Taintor wouldn't have to worry whether the Planning Board is precluded from having additional public hearings by the state mandated deadline.

Leah McGavern supports the new language because it's important that we're required to meet together for these beneficial discussions and there are few opportunities to engage together.

Bonnie Sontag agreed with Ms. McGavern because of concerns that zoning decisions could be made without input from the Planning Board. There is nothing in the ordinance that says the Planning Board should make a recommendation. If the word "joint" is removed she would want language inserted specifying a requirement for a Planning Board recommendation prior to adoption.

Councilor Eigerman said the next page has language requiring a Planning Board recommendation. Director Port said state law requires a Planning Board recommendation within a certain period, after which the City Council may act to adopt.

Councilor Eigerman said a vote on the Planning & Development Committee recommendation to City Council would have to take place next time.

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- 5) DCOD inclusion/preservation of exterior sheathing: Perhaps include preservation of exterior sheathing. Proposed language came from the KP Law reading on the existing ordinance regarding a case that raised an issue of whether or not the sheathing is seen, does it trigger demolition? Director Port had no objection to removing the sheathing language.

Councilor Zeid opposed this substantive change which may have originated from a strict interpretation by KP Law. He spoke with Director Port and Ms. Blanchet to learn that sheathing has been removed to run new wires, allow insulation, or enhance the structure from the outside. That should not be considered demolition because it would trigger a number of issues for homeowners. Removing sheathing could be done to address rotting. A homeowner could be denied the 25% demolition by right, under the DCOD, because they replaced some sheathing in a prior project. That would be detrimental. He supported the change that excludes sheathing.

Councilor Eigerman was okay with excluding sheathing. We were trying to prevent people from demolishing, with impunity, old houses that contribute to the national historic register district. We had always excluded siding because it rots and needs to be replaced. He agreed with Councilor Zeid that removing sheathing often has to do with insulation or rot. It is not seen by the public. What is the public policy purpose for protecting the sheathing? He draws the line at framing because it is part of the integrity of an old house and has a public policy purpose. Once you demolish a historic wall, it's gone.

Bonnie Sontag said she was not initially in favor of excluding sheathing but understands the issues better now. She supported preserving framing which is special to a historic structure.

Leah McGavern and Councilor Wallace agreed. Councilor Wallace said her home's sheathing was rotted and had to be replaced several years ago.

- 6) DCOD: modify the calculation of the demolition area: Some cases have raised the issues of what exactly counts in the calculation and providing diagrams to illustrate what counts, such as should removing or relocating a window count in the calculation that triggers demolition. Would we want a provision to address character defining details that a layperson could interpret? What are the parameters?

Councilor Zeid said the core tenet of the DCOD is that you get to demolish one wall. His concern about including windows is that takes on the core tenet, and it's no longer 25%. In his observation of large scale renovations there is consideration for changing fenestration to increase window size. Not including windows keeps it simple, but he sees how that could be abused. Adjusting a few windows in a large project increases the percentage and 25% is usually needed to do an addition. The entire DCOD is a difficult balance. A change in the core tenet could create additional variances and unintended consequences. The homeowner has to show a loss in economic property value for the ZBA. That's an odd argument to make and for the ZBA to parse through. He did not have a solution.

Councilor Eigerman supported the amendment as proposed. He was unable to reach an agreement with Councilor Zeid that the proposed language did not go against core of DCOD. The use of the word "wall" means the façade. You perceive one wall at a time, but the façade is a

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system of doors and windows. We have not uniformly excluded windows from the calculation. Homeowners try to exclude them and consider them a void in order to increase their demolition percentage. This is a loophole we need to close. We're trying to protect the façade.

Bonnie Sontag suggested a new provision. Anything on the wall you want to demolish is part of that 25%. Any other change in character defining features with historic relevance is a separate consideration. That puts pressure on the ZBA to comment on the nature of the historic nature of the other features and gets Newburyport Historic Commission (NHC) involved. But that gets complicated. It could be easier to include windows as part of the 25% on the wall in question.

Councilor Eigerman said we made the decision 7 years ago that we weren't going to get into architectural-defining features in the DCOD in the same way we do in the DOD.

Jennifer Blanchet said the existing window area can be replaced today without counting as part of the 25%. If a window is replaced with larger window, only the new area counts toward the 25%.

Councilor Eigerman said we do not regulate windows in the DCOD. When you talk about fenestration it's the pattern of void and solid. Nothing in the DCOD prevents you from replacing windows. But if you took the same area of window and filled it in, but also cut a new hole to match it, that's also demolition because it changes the façade and the fenestration.

Jennifer Blanchet said that was her understanding and the intent. KP Law recommended clarifying this language. If we wish to continue counting filling in existing window openings as demolition, we should explicitly state that.

7) DOD: Planning Board & ZBA Review for operable windows: The current ordinance prohibits replacement of non-operable windows with operable windows. The proposal would let the special permit granting authority (SPGA) allow an operable window to be installed but still require demonstration that the window could not be salvaged to be eligible for an operable window. In the case of the Brine Oyster Bar-Fowles storefront, the ZBA was asked for a variance to have an operable window without demonstrating the window was in poor condition. The ZBA allowed it subject to a design review by the Planning Board. The window design parameters were left to the Planning Board with the understanding the window could be replaced.

Jennifer Blanchet said the new language clarifies an originally proposed change that allowed for an operable window but did not deal with whether the replacement depended on declaring the existing window in poor condition under the Secretary of the Interior's guidelines. The ordinance still requires a variance and a DOD special permit. There is a desire to avoid the double permitting process for the same item.

Bonnie Sontag said we've solved the problem by putting operable windows in the part of the ordinance overseen by the Planning Board. The ZBA is less likely to be cognizant of window quality issues.

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Director Port said the Office agreed. In order to have the ability to apply to the Planning Board for operable windows, one must first verify and prove to the Planning Board that the window cannot be salvaged or restored, which is stated earlier in the ordinance. This language simply allows operable windows.

Bonnie Sontag had a different understanding of the language. She assumed they would be looking at the quality of the existing windows as part of the application review for operable windows. If the static windows are fine but there's a good argument for operable windows, the Planning Board should have the opportunity to allow that. How much flexibility is the SPGA allowed on this matter? Can we not do that as it's written now?

Director Port said if the existing windows are demonstrably historically relevant it would be inconsistent with the ordinance to allow a replacement if the window is not in poor condition.

Councilor Eigerman said 7 years ago the phrasing was "mode of operation." Now we've learned we need to deal with opening a window. He suggested saying, "proposed replacement of windows involves making them operable or opening, without regard of their condition provided such mode shall be approved by the SPGA." Director Port agreed that suggested language would address the issue.

Rick Taintor said his concern was the previous sentence. Did it mean Planning Board could authorize a currently static window to be opened, but that the dimension and configuration and other general characteristics of the historic window must be matched? If you have a plate glass storefront, does that mean you can't put in old-timey shop windows with many small panes?

Bonnie Sontag said making operable window maintain the general characteristics of the historic window is a good guideline.

Councilor Eigerman said that's the proposal from Brine. Years ago, we envisioned not needing to match materials. We tried to achieve matching materials with Vera Restaurant, but they didn't want to adopt the proposed design.

Rick Taintor's concern is that an operable window typically breaks the window design into smaller pieces. Each piece needs a frame to hold it together. In those cases, the operable window is not going to look similar to the window it's replacing. He's not sure that would work.

Councilor Eigerman said the idea is to give the Planning Board and the applicant an opportunity to make it work, because right now you can't make it work.

Bonnie Sontag said the Brine Oyster Bar-Fowles example is recent and unusual. Most windows in the DOD are divided lights and provide more options for simulating the existing framing for an operable window. The proposed language should be okay.

Don Walters supported the proposed language. Planning Board members will need to be very consistent or be open to litigation.

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Leah McGavern said the Board has been consistent that a window should be restored and preserved if it can be. Operability is a secondary issue.

Bonnie Sontag confirmed that the amendment will reference the condition of the windows. Director Port said that is his understanding.

8) DCOD/DOD Any waivers by Special Permit vs a Variance: A good example is above. In the OSRD, the Planning Board grants a special permit to reduce lots sizes at its discretion. Are there other places in the ordinance that would require a ZBA variance where you would like some latitude for the SPGA to have the flexibility to grant a waiver from the standard provisions?

Bonnie Sontag suggested a general statement at the end, such as “at the discretion of the SPGA.” She did not know if it was wise from a legal perspective to have a catchall flexibility statement where the Board can hear and allow things. Director Port did not see any legal issue at first glance.

Jennifer Blanchet said it opens up more issues than it solves. She would not know how to write determinations on proposals that did not meet the standards. Right now, if you don’t meet the standard, you need a variance. If the Planning Board has the ability to write a waiver, would she send everyone to the Planning Board to ask for a waiver?

Bonnie Sontag said we probably don’t want that kind of flexibility.

Councilor Eigerman said if you put in a catchall then you don’t need any other guidelines because you can wave your hand and get rid of all the diagrams and details. The only place it’s become an issue is with operable windows.

Public comment open.

Glenn Richards, 6 Kent St, speaking for himself and informed by his role on the Newburyport Historical Commission (NHC), had no problem with the sheathing removal and calculating the window areas in the demolition percentage. He agreed with Councilor Eigerman that it’s good to have a review of larger remodeling projects. A review is not a denial. It’s good to simplify the process for operable windows. The Brine case was an outlier. A similar case was on Liberty Street where the operable window would look exactly the same as the existing window. The proposed language simplifies cases like that. He had no problem removing consideration for the condition of the window as long as there is a thorough review so as not to defeat the purpose of the ordinance altogether.

Public comment closed.

Bonnie Sontag said Director Port would pull together the comments into a newly edited version for another review.

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Jared Eigerman made a motion to continue the public hearing on 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) to July 21, 2021, at 7:00 PM, in a joint meeting format between the Planning & Development Committee and the Planning Board. Christine Wallace seconded the motion and all members voted in favor.

Motion Approved.

Don Walters made a motion to continue the public hearing on 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) to July 21, 2021, at 7:00 PM, in a joint meeting format between the Planning & Development Committee and the Planning Board. Rick Tainter seconded the motion, and all members present voted in favor.

Motion Approved.

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

Motion Approved.

3. Public Hearings

- a) *Joshua Van Dyke*
19-23 Pleasant Street, Unit 1
DOD Special Permit (2021-SP-41)

Matt Ward, construction manager for the kitchen renovation, demonstrated on photographic images a proposal to relocate the storefront entry door to its original position directly facing the street as approved by the NHC. The proposed design matches the left side window opening to the right side window opening. The flow of entry will be impacted by the proposed renovations.

Alden Clarke asked if the new door would match the existing door? Mr. Ward said, yes, it is the existing door that's being relocated.

Lea McGavern said it looked good.

Public comment open.

Public comment closed.

Bonnie Sontag said the DOD Special Permit draft findings and the General Special Permit findings on the required use, as defined and opined on by KP Law in a previous application, is

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the project itself. The language, “The requested use is the relocation of the restaurant entrance within the storefront alcove and the replacement of the existing door location in the alcove and a window,” is the interpretation of the required use. The findings can be incorporated into the decision as stated in the staff report.

Don Walters made a motion to approve the DOD Special Permit Application submitted for 19-23 Pleasant Street, Unit 1 with incorporation of the draft findings reviewed tonight, as provided by the Office of Planning & Development, into the Board’s decision accordingly. 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.

4. Other Business

a) Request for minor modification – 7 Morin Road (2005-SP-01 and 2006-OSRDDEF-01)

Justin Dutcher, property owner, proposed to add a small 4-season room off the back of the house where a deck exists now, and build a new deck alongside the new room across the back of the house. This would involve relocating an existing infiltration system so that it is not beneath the new structure. Mr. Dutcher demonstrated on designs and plans the existing and proposed conditions for the home in Oleo Woods.

Director Port said the Board has flexibility in the OSRD to allow smaller lot sizes and dimensional setbacks up to 50%. This would be a modification to the original lot approval. The Office sees no technical reasons not to approve as proposed. The City engineer approved the calculations.

Mr. Dutcher said he gathered information from the abutters and anyone else who could view the proposed change. No one raised concerns and the neighborhood is supportive. The homes across the street were not approached because they can’t see the change.

Leah McGavern asked if there was any reason not to approve as proposed.

Don Walters said, hypothetically, if lot coverage is exceeded, the Board would not approve it, but this is okay. He understood the City engineer approved it, but there’s a lot more impermeable area. He asked whether someone from the City engineer’s office could verify that what is built conforms with what the engineer okayed regarding relocating the drain field?

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Director Port said the Board could amend the motion to say the City engineer will verify the proper installation of underground infiltration prior to back filling.

Bonnie Sontag said the motion is to deem this minor and to approve it with the additional language.

Leah McGavern made a motion to deem the request minor and approve the minor modification to the OSRD Special Permit and Definitive Subdivision Approval for 7 Morin Road (2005-SP-01 and 2006-OSRDDEF-01) with the additional requirement that the City engineer verify the proper installation of underground infiltration prior to back filling. Alden Clark seconded the motion, and all members present voted in favor.

Motion Approved.

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

b) Approval not required – 34 & 34R Spofford Street (ANR-21-2)

Attorney Jim Connolly, Connolly and Connolly, 51 Green Street, said the straightforward moving of a lot line concerns the location of a well on the 34R property. The owners of 34R don't want the well, but the owners at 34 do. He demonstrated on a drawing the lot line change that shifted ownership of the well to 34 Spofford Street. Both lots end up the same size. The setbacks created by the new lot line are within the guidelines.

Leah McGavern made a motion to endorse the ANR Plan as submitted for 34 and 34 R Spofford Street. Alden Clark 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.

c) Minor Site Plan Review – 86-88 Prospect Street (2021-SPR-01)

Attorney Douglas Deschenes, Finneran and Nicholson, P.C., 30 Green Street, said he sent a revision earlier today. Director Port noted that revised materials were not posted to the website.

Attorney Deschenes described the proposal to renovate a 5-unit multi-family structure. The proposal includes an addition to the main structure, adding a 3-car garage, a new driveway access off Parsons Street for the new garage, and the conversion of all impervious surfaces to permeable material. The project requires a ZBA special permit. Existing conditions include

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preexisting non-conformities for: use in R2, lot size (11,322 sf vs the 20,000 sf required), front setback (1.2 ft vs the 20 ft required), and rear setback (8.5 ft vs the 10 ft required). The proposal does not add new nonconformities, but the non-conforming rear setback is extended by the addition. The project reduces the need for on street parking and increases parking spaces from 9 to 10. Justifications for the waiver requests were submitted in writing, and include traffic, lighting, soil narrative, environmental and community impact report, traffic impacts, signs, massing relationship to other building, renderings or models, cross-sections of building, product literature on proposed light fixtures, and peer review.

Leah McGavern asked if the reason for the lighting waiver is because there is no additional exterior lighting. Attorney Deschenes said there is no commercial lighting or formal lighting plan, but the elevation shows the location of wall-mounted, residential style, shielded, low-glare, low-impact lighting. Cut sheets were submitted. Director Port said he had not reviewed them.

Don Walters asked if incremental lighting is added to the structure other than the lights on the proposed garage. Ms. McGavern shared the concern about too many added lights.

Attorney Deschenes said the purpose of the waiver was not to do a photometric lighting plan because it's a residential use. The lighting will be reviewed with the elevations.

Bonnie Sontag asked if the waiver for a registered landscape architect was removed. Attorney Deschenes said no. The landscaping plan waiver is requested because the proposal does not modify much, other than adding a row of arborvitaes along Parsons Street. Otherwise, there are no landscaping changes. A proposed fence is on the site plan.

Attorney Deschenes demonstrated on an aerial photograph of the site the corner of Parsons and Prospect Streets showing the position of the house at the far end of the lot fronting Prospect Street and the location of the new garage. Additional photographs of the site at different angles from Parsons and Prospect Streets were shown. The new garage would be on top of an existing impervious surface.

Steve Sawyer, DCI, 120 Middlesex Avenue, Somerville, demonstrated existing conditions on the plan, including the Prospect Street curb cut for a small driveway and an existing, larger curb cut on Parsons Street for existing parking. The sidewalk was recently redone with tactile warning strips at the corner crosswalk. The DPS said no new sidewalks are needed. He demonstrated the proposed 790 sf garage layout and the 670 sf addition at the back corner of the house. He demonstrated on the site plan where all concrete and paved surfaces would be removed. The tandem parking spot off Prospect Street would be permeable bituminous pavement. Beyond the gate are permeable pavers for a multi-use parking or patio area. Permeable pavers lead up to the stairway. A row of arborvitaes for privacy is between the new patio of permeable pavers and the sidewalk. A 3-4 ft high fence would go along Parsons Street. The Parsons Street curb cut is unchanged. Additional space for a 4th car is alongside the proposed 3-car garage. There is space for additional cars between the garage and the sidewalk. The 5 sets of tandem spots total 10 spaces, which is one more than is required for the 5-units on the site. A large, landscaped area between the garage and the back of the house is an open space area where Jennifer Blanchet was concerned about the potential for too many permeable pavers should we add another patio. We

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agreed, and therefore the hatched areas will be a maximum of 1,200 sf of permeable patio area and the remaining area would be lawn or gardens. Ms. Blanchet was comfortable with that in relation to the open areas surrounding the building. Fences are added to define outdoor areas for each of the units. The permeable surfaces reduce the stormwater. A low area in the back upper left corner and the proposed addition's impervious area doesn't drain to Parsons or Prospect Street. A drywell that infiltrates to the chamber is added for the new roof area of the proposed addition that also picks up drainage from the back eave of the garage. There is substantial gravel in the soil throughout the area for good drainage. Any potential impact to abutters is mitigated. The rest of the drainage, which is reduced, goes to Prospect and Parsons Streets. The City engineer is okay with the plan and not concerned about the drainage capacity of Parsons and Prospect Streets. Developer Craig Messina used a permeable driveway and parking area on a project several years ago that is still performing well.

Rick Taintor asked about the permeable area in the back, as reflected in note #1, "Total permeable paver surface within the area should not exceed 1,200 sf. All of the area within the zone shall be maintained as planting areas, gardens, or lawn." What is the total sf of the area of which 1,200 sf will be pavers? What sf is left over and how will that be documented once the project is done? Will an as built be provided to the City showing the 1,200 sf of pavers and the sf balance of the landscaped area?

Director Port suggested requiring an as built plan as a special condition for the zoning administrator to verify when checking overall compliance for the occupancy permits.

Steve Sawyer said the total hatched area is 4,251 sf and little more than a quarter of that could be pavers, at a maximum. Blake Wilcox said he always does an as built and agreed to provide one.

Don Walters asked what changes were made from original site plan? Mr. Sawyer said he discussed the plan with Jon Eric White who asked that the dry well, which was originally located halfway between the garage and property line, be moved as far from the property line as possible. There was room to move it closer to the garage. The other comment was from Ms. Blanchet who wanted to nail down the landscaping in the rear, and we noted the 1,200 sf maximum of permeable area.

Don Walters asked where replacement trees are indicated if there is no landscaping plan? Director Port said the Tree Commission recommended replacing 2 street trees on the public right of way. The ordinance requires a Planning Board and ZBA review of sidewalk and street tree conditions. Recommended upgrades should be incorporated into the decision.

Don Walters asked who bore responsibility for the upgrades. Director Port said it's the applicant's responsibility to do required upgrades, depending on the size of the project. Mr. Sawyer said he had no problem replacing the trees.

Don Walters said the area defining the building perimeter is very hard. It could use softening. The site plan should show where the dumpster is, and in this case, it's visible from the street.

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Leah McGavern agreed about the hard edge around the building and asked if there was room for more vegetation on Prospect Street? Mr. Wilcox agreed. He demonstrated the softscape area on Prospect Street that he would bring up to the sidewalk.

Bonnie Sontag agreed with extending the softscape.

Rick Taintor asked about the one-story section at the corner where an inset doorway is beneath a roof extending to the corner. The original site plan showed some infill there, but this plan doesn't show that. What is the intent at this corner? Mr. Wilcox said he was not modifying the entryway alcove under the overhang. There was a miscommunication on the site plan.

Rick Taintor asked if that meant a special permit for non-conformities was not needed there because the overhang would remain. Mr. Wilcox said the special permit was not for the front, but for the rear. The overhang would remain.

Rick Taintor said keeping the tip down for the handicap ramp is important. What's in the white rectangle on the plan next to the front stairs? Mr. Wilcox said low-maintenance greenscape.

Matt Langis, Scott Brown Architects, 38 Madison Street, Amesbury, said the proposal includes stripping the exterior of tired materials, restoring the aesthetic by using better quality products, and a complimentary addition. The design includes aluminum clad, 6-over-6 windows, pre-primed hardy plank clapboard, architectural asphalt shingles, and a dark gray standing seam metal roof at the new entries. The first floor addition has subtle changes in color and shingle siding. The hip roof extends over the addition in the rear. The 22 x 36 ft, 3- car garage is consistent with the style of the building and the neighborhood. He noted the locations of down lit wall-mounted outdoor lighting near the entries and walkways.

Bonnie Sontag asked if the garage's compatible materials are same HardiePlank and shingled roof materials as the house. Mr. Langis said yes. Ms. Sontag noted that the divided light windows on garage matched the house windows.

Rick Taintor said the proposed front and left elevations before the Board were different than what was shown on the website. Mr. Langis explained that the corner entry door would be replaced with a window.

Attorney Deschenes said he would detail how the proposal met the minor site plan review criteria, but Katelyn Sullivan's determinations were the same as what he would present.

Bonnie Sontag reviewed the special conditions. The ADA ramp stays as is, so that special condition can be removed. Special condition #2, "the applicant shall install the replacement street trees..." should be more specific and say prior to issuance of an occupancy permit. A condition will be added to require an as built prior to occupancy.

Rick Taintor asked if there would there a revised plan showing the Prospect Street landscaping.

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Bonnie Sontag requested a revised site plan to reflect landscaping on the Prospect Street side by the driveway. The Planning Board did not have any issues with the proposal but would wait to approve until after the ZBA meeting on July 27. The Board could vote on the waivers and the application completeness tonight.

Attorney Deschenes said the applicant was comfortable with that.

Leah McGavern made a motion to grant the requested waivers of the submittal requirements found in Section XV-E for the Minor Site Plan Review – 86-88 Prospect Street and as indicated by the applicant and discussed, and to deem the application complete. Rick Taintor seconded the motion, and all members present voted in favor.

Don Walters made a motion to continue the Minor Site Plan Review – 86-88 Prospect Street to August 18, 2021. Alden Clark 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.

d) Correspondence

- ***Notice of Ch. 91 License Application – Merrimack River Dredge/Plum Island Sand***

Director Port said this concerned dredging the channel and putting the sand on Plum Island.

e) Approval of Minutes

Leah McGavern made a motion to approve the minutes of 5/24/21, 6/2/21, and 6/16/21. Rick Taintor seconded the motion.

- Three members voted in favor of the 5/24 minutes. Leah McGavern and Don Walters abstained.
- Two members voted in favor of the 6/2/21 minutes. Beth DeLisle, Leah McGavern, and Don Walters abstained.
- Four members voted in favor of the 6/16/21 minutes. Leah McGavern abstained.

Motions Approved.

f) Other updates from the Chair or Planning Director

Bonnie Sontag asked if members wanted to meet in person starting August 18. Don Walters, Beth DeLisle, and Alden Clark wanted to have the option to do either remote or in person. Rick Taintor, and Leah McGavern agreed to meet face-to-face. Ms. Sontag said there may be a new member on Aug 18.

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Director Port suggested continuing the usual process to notice the public who should check the calendar to determine whether the meeting is on Zoom, in-person, or hybrid. Two rooms have the hybrid meeting capability -- the Senior Center and the Council Chambers.

Leah McGavern left the meeting at 10:18 PM.

5. Adjournment

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

Motion Approved.

The meeting adjourned at 10:23 PM.

Respectfully submitted -- Linda Guthrie