

**City of Newburyport
Planning Board
July 20, 2022
Minutes**

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

1. Roll Call

Planning Board Attendance in-person: Alden Clark, Beth DeLisle, Heather Rogers, Rick Taintor, Bonnie Sontag

Planning Board Attendance remote: Bob Koup, Richard Yeager

Planning Board Absent: Jamie Pennington, Don Walters

Planning Director Andy Port was also present.

2. General Business

a) Approval Not Required: **6 & 14 Pine Street**

Director Port explained the need for a slight lot line adjustment between these two parcels. It was a modification to a previously approved ANR for these two parcels.

Rick Taintor made a motion to endorse the ANR. Alden Clark seconded the motion. All members in attendance 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) Request for Minor Modification: **13 Doyle Drive** (2019-DEF-01 and 2019-SP-08)
Vincent Forzese and Michelle McCarty, property owners, presented their request for a minor modification to the Open Space Residential Development (OSRD) permits previously granted for the Colby Farm Road development. They were joined in the application by the developer, The Daly Group.

The applicant would like to add a 13'x7' Soake pool in the backyard. The pool will be installed approximately 3 feet in the ground and will stand 18 inches high from the ground with a stone surround/bench. It will be surrounded by stone pavers and a fence will then be installed around the perimeter of the yard. The pool will be at least six (6) feet off the property line per the Newburyport Zoning Ordinance (NZO) Section VI-F Yard requirements. The owners have obtained a letter of support from the Homeowner's Association (HOA) indicating that the HOA considers the proposed pool to be "in-ground" and supports this specific project. This letter is important because per the HOA agreement, "above-ground" pools are not permitted in the OSRD.

Background and related commentary from the Planning Office.

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Phil Christiansen, City peer review engineer, has looked at the proposal and comments that the installation of the pool will not affect stormwater management. The pool will capture rainwater and reduce runoff.

The pool is proposed to be located within the 100' wetland buffer area and accordingly per Section XIV-J.a.ii.2, the owners have applied to the Planning Board for a waiver to disturb the land and build a pool within this area. Both the shed (already on the property) and the proposed pool are within that 100' buffer. A waiver from the Planning Board is allowed if the Board determines that such a waiver is in the community's best interests. A waiver decision must be made in consultation with the Conservation Commission.

However, please note that this subdivision is still under an open Order of Conditions (OOC) per the Conservation Administrator so any changes made within the development must still be approved by the Conservation Commission as Amendments or Minor Modifications to the OOC. The developer has submitted a Request for Certificate of Compliance (COC) to the Conservation Commission. Once the developer has obtained the COC for the subdivision, then the Commission can address the changes and additional improvements (pools, etc.) that homeowners want without the encumbrance of the original permit, and without the confusion and compliance disputes that could arise if individual homeowners are undertaking work overlapping the developer's open permits. For this reason, the Planning Office is recommending that the Planning Board condition any approval of both the request for minor modification and request for waiver.

Director Port noted that the outstanding punch-list items for the developer, once completed, will not provide an obstacle to the Conservation Commission to close the OOC and issue the COC. The punch-list items do not relate to this waiver request.

Discussion with the applicant.

The applicant first requested this modification in February and after discussions with Planning staff would now like to have the application approved.

Rick Taintor asked if they must await approval of the Order of Conditions before they can put in the pool. Director Port confirmed the Conservation Commission must act before the applicant can install the pool.

The applicant requested Planning Board approval now, then they could ask the Conservation Commission to sign off on their request.

Rick Taintor asked if the applicant has, or intends to, attend a Conservation Commission meeting to present their request. The applicant understands that they need to get on the Conservation Commission agenda. Director Port defers to the applicant and the Conservation Administrator to determine the next steps.

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Rick Taintor noted that the request coming to the Planning Board before receiving advice or a decision from the Conservation Commission is a change to the procedure outlined in the zoning ordinance.

The applicant reminded the Board that he had been held back by the Daly Group open “permit”.

Beth DeLisle referenced the waiver standard and stated she did not believe this request rose to the level of the standard in terms of best interest to the community. A waiver from the Planning Board is allowed if the Board determines that such a waiver will substantially further the goals of the OSRD and is in the community’s best interests. A waiver decision must be made in consultation with the Conservation Commission. The location within the 100’ buffer zone led her to ask if we would have approved this location for a soak pool in the original OSRD plan. She thought approving this waiver would set a precedent for future waivers with regard to the 100’ buffer area.

Rick Taintor commented that the shed had been approved for a location within the buffer area without obtaining Conservation Commission approval or a waiver. He asked if the shed location was part of this application.

The applicant said it had been approved earlier. Director Port said that the Zoning Administrator had made that decision.

The applicant had spoken to the City Engineer who said there was no issue with stormwater management.

Beth DeLisle asked about location and dimensions of paved area and fencing which is not depicted on the plan. The applicant said the pavers would cover an 18” seating structure around the pool; the pool would have a locking top; a fence would be installed; the inside of the pool would have a light and small lights would be installed around the perimeter of the pool. The pool and surrounding structure would cover a space 16’x 10’.

Bonnie Sontag asked for clarification of the fence location.

The applicant described it as following the southern property line to the back of the parcel to meet the already installed split rail fence at the back, then a new fence to be installed back up to the house.

Note: Following the meeting board members raised questions as to the accuracy of the plans particularly with respect to the pool structure, surrounding hard scaping and fencing and that these issues should be clarified prior to any further submittals on the application. At minimum a detailed site plan should show the dimensions of the structure surrounding the pool and new fencing location, height, and design.

Rick Taintor made the motion to consider the request for modification minor and approve said minor modification request and waiver request for 13 Doyle Drive (2019-DEF-01 and 2019-SP-08), pursuant to the Newburyport Zoning Ordinance Section XIV-J.a.ii.2, to include a fence along the southern property line, with the condition that no swimming pool permit shall be issued until the Conservation Commission approves a Certificate of Compliance for the original

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OSRD/subdivision and also approves the instant waiver request to build the pool and fence at 13 Doyle Drive within the 100' Wetland Buffer Area of this OSRD. Said Conservation Commission approvals shall be submitted as part of the swimming pool permit application.

Alden Clark seconded the motion.

Four members voted in favor: Alden Clark, Bob Koup, Heather Rogers, Rick Taintor.

Three members voted against the motion: Beth DeLisle, Bonnie Sontag, Richard Yeager.

Needing 6 positive votes for approval, **the motion failed.**

Rick Taintor asked the application if they could locate the pool outside the buffer area.

The applicant stated there was no space to do so.

Bonnie Sontag explained that the Planning Board prefers to make a decision like this one with the input of the experts, i.e., the Conservation Commission.

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) Request for Minor Modification: 25 Duffy Drive (2016-SP-03a, 2017-DEF-01 and 2017-SP-05)

The applicant David Rini presented his request for a minor modification to the approved decisions for the subject lot to add a "patio accessory structure" above the existing permeable patio to the rear of the main structure. The pavilion will be a hexagon bell shape, white vinyl with gray asphalt roof structure supported by six poles and measures 14ft. x 14ft. The height will be 10 feet. It will fit into an existing area of the pervious paved patio.

Mr. Rini offered another option: a pergola (trellised structure) 12'x16' supported by four poles.

The applicant has submitted written approval from the immediate abutter and the HOA.

The Staff Report states that the Open Space Residential Development (OSRD) plan for the development where this parcel is located allows 503 square feet of additional impervious material post occupancy per HOA document/Special Permit. Per the HOA, "Lot Owners shall not increase the impervious area on each individual lot by more than 5% over the conditions of the lot at the time the certificate of occupancy is issued for that lot". The proposal will add to the impervious material on site but still be within the maximum allowed. This particular modification to the site plans also implicates additional visual "massing" to the site. As the accessory structure is not discussed in the original OSRD decision or shown on the referenced plans, the Zoning Administrator is calling for Planning Board minor modification review.

Rick Taintor asked for clarification of lot coverage and Director Port confirmed that the additional structure would be within the allowable 5% additional coverage.

Alden Clark noted that additional rain water runoff would go into the pervious patio.

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Director Port said that the Board should consider the additional massing of the pavilion.

Richard Yeager commented that the pergola fits the design of the space and house better than the pavilion.

Beth DeLisle asked how the pavilion is measured. The applicant responded that the domed roof measures 11.5'x 12'.

Richard Yeager reiterated that the pavilion would have a greater visual impact. The pavilion seems more “formal” and ornate and is not in keeping with the setting. The pergola fits better as an “informal” addition to the property.

Bonnie Sontag agreed.

Mr. Rini mentioned that the pergola could be covered with fabric stretched across the top if they want a covered structure.

Rick Taintor stated that the pergola is an open structure and probably doesn't even require a minor modification.

Director Port agreed that technically the applicant doesn't need a minor modification decision but this application was originally for the covered pavilion structure.

Alden Clark was not so concerned with the massing.

Rick Taintor made a motion to consider the request for a minor modification as minor. Beth DeLisle seconded the motion. All present voted in favor. **Motion Approved.**

Rick Taintor made a motion to approve the minor modification to install a pavilion for 25 Duffy Drive, Lot 24. Alden Clark seconded the motion. Five members voted to approve: Alden Clark, Beth DeLisle, Bob Koup, Heather Rogers, Rick Taintor. Two members voted to deny: Bonnie Sontag, Richard Yeager. As the decision requires six positive votes to pass, **the motion failed.**

Rick Taintor made a motion to approve the minor modification to install a pergola. Beth DeLisle seconded the motion. 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) Market Landing Park Expansion: Informal Discussion with Sasaki

Director Port, along with members of the Sasaki team, presented the proposed plan to redesign the park in three phases. Multiple stakeholders have weighed in on the plan along with the City

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Council and its Ad Hoc Committee. City Engineer Jon-Eric White, Conservation Administrator Julia Godtfredsen and representatives from the Resiliency Committee have been heavily involved in the review of plans in order to ensure that they have adequately addressed project details like stormwater design and adaptation for projected Sea Level Rise (SLR) on balance with various other important considerations.

The proposed site improvements beneficial to the public (as determined already by the City Council) include: improved public access, the completion of outstanding perpendicular pedestrian ways to the water's edge, a completed East-West Shared Use Path connection (i.e. Clipper City Rail Trail link), historical interpretive panels, sculptures and much improved or expanded areas for public seating in close proximity to the water's edge (behind the existing earthen berm abutting the central boardwalk).

Director Port explained that due to limited funding they intend to complete this project in phases, beginning with the primary park areas as "Phase I." This means that work related to the parking areas may be postponed to Phase II. A third Phase, most likely through alternative funding sources, would cover installation of a new Visitor Center/Restroom Facility at Merrimac Street. To extend City funds as far as possible in the "base bid" for Phase I they will be seeking local fundraising for certain site amenities in the coming months (e.g. sculptures, architectural swing seats, benches, etc.). The City Council voted on 7/11/2022 to appropriate and bond CPA revenues in order to support this Phase I construction, and Sasaki is under contract to provide "shovel ready" plans and specifications in the coming months for a late fall/winter bid cycle. As they move from 75% design plans to 100%, they are refining interim transition zones between the phases in order to minimize the kind of problems or gaps that could result if Phase II does not immediately follow Phase I. Generally speaking, the existing gravel parking lots would be reduced in size during Phase I, but without all the paving, curbing and plantings that will round this area out during Phase II.

Areas of greatest concern to Planning Board members were the configuration of the shared use path, screening of the east parking lot, and the design of the visitor center/bathroom facility.

Rick Taintor was opposed to interrupting the shared use path at the embayment, which is the most heavily used portion of the park. He was concerned about not having a continuous shared use path through the park as had been part of the original concept. Even if cyclists have to dismount and walk their bicycles along the boardwalk, there will be increased conflicts with other users. Several other members concurred with this concern.

Rick Taintor was also opposed to directing the shared use path onto the private sidewalk in front of Tuscan Sea Grill. This is an area where patrons cross from the parking lot and gather while they wait. Directing bicycle traffic through this area will create conflicts and unsafe conditions.

Several members expressed concern about having doors to the restrooms opening directly onto seating areas and requested that screening structures be added to provide visual separation.

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Rick Taintor asked if the proposed shade pergolas (or any other structures within the park) would be subject to special permit under the Downtown Overlay District. Director Port will confirm with the Zoning Administrator what other aspects of the site are included in the SP application.

One suggestion from Board members was to separate out the Site Plan Review application from the Special Permit – specifically the design of the visitor center – in an effort to move forward with the Phase I bid process for which a complete site plan would be required. This idea of separating the two applications will be further explored with the design team when they come before the Board in the first public hearing.

The Planning Board will hold a Site Plan Review application completeness review at its next scheduled meeting on August 17. The first public hearing will also be scheduled for that meeting and will go forward depending on the outcome of the completeness review.

e) Approval of Minutes

Rick Taintor made a motion to approve the minutes of 6/15/22. Alden Clark seconded the motion. Six members voted in favor. Richard Yeager abstained.

Rick Taintor made a motion to approve the minutes of 6/22/22. Heather Rogers seconded the motion. Five members voted in favor. Alden Clark and Richard Yeager abstained.

Alden Clark made a motion to adopt the minutes of 7/6/22. Heather Rogers seconded the motion. Six members voted in favor. Richard Yeager abstained.

f) Updates

Director Port stated that the Board would be participating in a joint public hearing on 8/17 with the City Council Planning & Development Committee regarding minor zoning changes for the site of the proposed West End Firehouse.

The proposed Short Term Rental Units amendment will be reviewed in the Planning & Development Committee during the first or second week of August with anticipation of full Council action by the end of August.

Rick Taintor stated that the Planning Board ad hoc committee on Waterfront West has met once and is making good progress.

5. Adjournment

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

Motion Approved.

Meeting adjourned at 9:15 PM

Respectfully submitted – Bonnie Sontag, Rick Taintor, Beth DeLisle