

**City of Newburyport
Planning Board
July 21, 2021
Approved Minutes**

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

1. Roll Call

Planning Board Attendance: Alden Clark, Anne Gardner, Bob Koup, Bonnie Sontag, Rick Taintor, and MJ Verde

Don Walters arrived at 7:42; Beth DeLisle arrived at 8:08

Absent: Leah McGavern

Planning & Development Committee and Committee of the Whole Attendance: Jared Eigerman, Heather Shand, Christine Wallace, and Barry Connell

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.

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)*

Andrew Port said a revised draft was distributed.

Public comment open.

Stephanie Niketic, 93 High Street, Newburyport's zoning has needed updating for decades. After much delay in our zoning recodification project, these amendments clarify the intent of the ordinance in areas that arise frequently to make it easier for staff and boards to interpret. She supported the improved language especially in VI-F Yard setback requirements, which is somewhat of an emergency. She hopes all boards' input are considered.

Public comment closed.

Councilor Wallace is concerned about the 4 ft height for front yard fences and how side yard is defined in item VI-F-6. For example, Merrimac Street has constant, noisy traffic. The height

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requirement doesn't help to shield traffic noise. One side of her corner lot is a private road. Does that count as a corner lot? Is she limited to a privacy fence of 4 ft?

Director Port said the reason to consider a policy regarding fence height and front setbacks is to avoid destroying the streetscape if everyone put up a tall fence. Councilor Wallace has a valid point regarding traffic noise.

Councilor Eigerman agreed with Councilor Wallace, but Merrimac St. is a special case. Fences higher than 4 ft in the south end would change everything. High St. has a lot of traffic today, but he did not support a fence height above 4 ft. A variance would give relief to homeowners, rather than a special permit for Merrimac St. residents.

Jennifer Blanchet said 6 and 7 ft fences on High St. initiated the concern. Unusual circumstances would require a variance, which is for anomalies, as opposed to a higher fence height city-wide.

Councilor Connell said the proposed amendment does not prohibit a vegetative barrier which is effective against sound incursion and was recommended for properties closest to the highway in Ward 6. Since that time a few years ago, we haven't heard from those residents. He assumes vegetative barriers are effective. Something solid should require a variance.

Councilor Wallace said the variance is a good point for a unique situation, as long as residents can do it. Is it still a corner lot if one side is a private road? Director Port said a private road doesn't make a difference for the corner lot definition.

Councilor Eigerman said the first green highlight on page 7, VI-J, "The requirement may be waived upon approval of the zoning administrator after consultation" will satisfy the City solicitor. The other green highlight on page 17 concerns the 25% rule for the Demolition Control District (DCOD). Staff proposed getting a credit when removal of a non-historic addition exposes a historic wall.

Jennifer Blanchet said a recent inquiry concerned an addition on the rear and removing a small non-historic addition on the side that derogated the historic character. The resident could not both put on an addition and remove the non-historic addition while remaining within 25%. We have no way to give someone credit and the project has not gone forward while they figure out what to do. Councilor Eigerman said it makes sense to put this language in.

Rick Taintor said a number of things were skipped over at the last meeting. The sentence on page 5, item VI-F(4) could be clearer if broken into two sentences instead of using "however." Clarify the second sentence by saying, "If greater than 4 ft in height, such equipment shall be screened from view from adjacent lots and public spaces."

Rick Taintor said the last sentence of VI-F(6) seems to say any mechanical equipment can be in the front yard if it's less than 4 ft high. A heat pump condenser could legally be up against the sidewalk. He wants to be more protective and suggested removing, "greater than 4 ft."

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Jennifer Blanchet said, as written, the proposed amendment would allow mechanical equipment within the front yard setback. She agrees with an adjustment. Director Port agrees with the aesthetic concern. Some wards are tight and it's a matter of balancing policy.

Councilor Eigerman saw a heat pump in front yard on Fair St. yesterday and didn't think it belonged there. He agreed with striking the words, "greater than 4 ft in height above existing grade." The ZBA can give relief if needed. Most situations won't need a variance.

Councilor Wallace asked about the definition of front and side yard. There are many long narrow properties bordering private roads off Merrimac St. Ms. Blanchet said the longer frontage is your primary front yard, but that doesn't mean the shorter frontage is not a front yard also. Councilor Wallace agreed with removing the language.

Alden Clark agreed with removing the language. He would add the language "such that it cannot be put anywhere else." That would be a variance.

Jared Eigerman made a motion to accept language changes in VI-F(4), as discussed, with a period after "rear yard," start a new sentence with, "If greater than 4 ft in height such equipment will be screened from view from adjacent lots and public spaces with fencing and/or landscaping" and to accept language changes in VI-F(6) by striking the words, "greater than 4 ft in height above existing grade." Christine Wallace seconded the motion, and all members present voted in favor.

Motion approved.

Rick Taintor said there was good discussion about the zoning compliance certificate on page 6. It's a bigger issue than accessory structures. Does it make sense to move it under section X-C Duties of the Zoning Administrator or X-D Permits?

Director Port asked if it was possible to strike the word "accessory" and leave the language under Yard Setback Requirements.

Councilor Eigerman asked whether, when someone requests a zoning compliance letter, Ms. Blanchet issues it under X-C or X-D? Ms. Blanchet said it's a relatively new form. We did not contemplate what section it is issued under. Councilor Eigerman suggested rather than move it to a new section, to reference it under X-C. He proposed language.

Rick Taintor agreed.

Jared Eigerman made a motion to add, "Any accessory structure not requiring a building permit under the state building code shall be eligible for a determination of legality from the zoning administrator under Section X-C, provided...." as discussed and agreed to. Christine Wallace seconded the motion, and all members present voted in favor.

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Rick Taintor noted a direct contradiction between the sentence on page 7, “Accessory buildings or structures used for accessory purposes in all residential districts beyond those permitted in VI-F shall not exceed a height of 20 ft” and in the section referenced. VI-F(10)e on page 6 says, “Accessory buildings must comply with the height requirements for principal buildings.”

Councilor Eigerman read the word “beyond” as “other than.” Ms. Blanchet agreed. She interprets this to mean that there are accessory structures larger than 22 x 24 allowed on a property, but they can’t go in the side yard setback nor exceed a height of 20 ft. The intent is to prevent an accessory structure whose scale competes with the primary structure.

Jared Eigerman made a motion to replace the underlined language with, “other than those permitted within setbacks under section VI-F.” Christine Wallace seconded the motion, and all members present voted in favor.

Moton approved.

Rick Taintor said there’s still a contradiction. VI-F(10)e on page 6 says, “...accessory structures....shall conform to the height, front, side, and rear yard setback requirements....” Can an accessory structure that is not within the setbacks be as high as the principal building?

Councilor Eigerman said the later section says it can only be 20 ft high. He agreed with Mr. Taintor that the word “height” in VI-F(10)e could be deleted. Ms. Blanchet said that clarifies it.

Councilor Eigerman wanted to ensure there is no instance where the allowed height for a setback-compliant accessory structure is lower than 20 ft. He suggested language, “...the rear yard setback requirements provided in section VI-I, in addition to any other requirements applicable to primary buildings.” People need to read VI-I, which says 20 ft, and which VI-F(10)e cross references.

Rick Taintor said his point is that VI-F(10)e says accessory structures have to conform to the height requirements for principal buildings. Isn’t the point of VI-F(10)e that garages have to comply with the setback requirements, and that you go to VI-I for exceptions for small garages?

Councilor Eigerman said no. It’s saying you have to comply with 2 sets of things for accessory structures, both VI-I and anything else that already applies to primary buildings.

Jennifer Blanchet understands it as Mr. Taintor does, but there hasn’t been any confusion with the language. The need to comply with all of the primary structure requirements sets the bar above 20 ft. Then, the second layer with the 20 ft maximum is applied. The minimum standard is further refined in the detail.

Councilor Eigerman suggested the third line of VI-F(10)e could say, “...and rear yard setback requirements both as provided under VI-I and, in addition, under any other requirements applicable to primary buildings in the district where they are located.”

Director Port said we will leave the word height in place.

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MJ Verde said she wants to make sure that a shed of less than 20 ft still needs to meet these requirements. Ms. Blanchet said there is still an exception for small sheds within the side yard setback within a height limit of 15 ft. They are still exempted, as they have been.

Councilor Connell said cross referencing is an opportunity for mischief. It's better to have the exceptions immediately with the controlling language so people can see what is meant. Put I right next to F and not have the cross reference.

Councilor Eigerman said we're stuck with the existing structure of the code. Accepting Councilor Connell's suggestion means re-structuring. If you build a garage or accessory structure, it's understood you have to conform with all sections of the code. Maybe we shouldn't modify the word buildings or structures at all. Let's strike the word "primary" so it's clear you have to comply with everything.

Jennifer Blanchet doesn't see any immediate issues with it and will study it before it's voted on.

Jared Eigerman made a motion to change section VI-F(10)e language beginning with the third line, "...and rear yard setback requirements both as provided under VI-I and, in addition, under any other requirements applicable to buildings in the district where they are located." Christine Wallace seconded the motion and all members voted in favor.

Motion approved.

MJ Verde asked how a parapet wall is defined and can it add 4 ft to the building?

Jennifer Blanchet said a parapet wall is anticipated in many height calculations. A few years back we saw a proposal for 10 ft parapet walls that increased the height. A 4 ft parapet wall is customary. Director Port concurred.

Rick Taintor said at the bottom page 7, VI-J is standard language that creates visibility across a corner lot. Eliminating the line connecting the side lines of the intersecting streets also removes defining the sight triangle. Proposed language says only along the property lines for a distance of 20 ft is it prohibited to have something between 3-7 ft above grade, which indicates that you can exceed that where the sight triangle used to be. Existing language is good. Ms. Blanchet said that issue is addressed by the rounded corner in the following statement.

Rick Taintor said the issue is that you're defining two linear pieces by eliminating the connecting lines that make the triangle. Ms. Blanchet agreed. Proposed language did not intend to remove the interior triangle.

Rick Taintor said the edits in the first 2 lines should be removed to read, "...between the property lines of intersecting streets and a line joining points on such lines 20 ft from their point of intersection, or in the case of a rounded corner the point of intersection of the tangents." Ms. Blanchet supported keeping the substance in the first 2 lines of that section.

Councilor Eigerman made a motion to revert to the original language on the first two lines. Christine Wallace seconded the motion, and all members present voted in favor.

Motion approved.

Rick Taintor said language at the end of the second paragraph on page 10 that begins, “Requests for waivers of any submission requirements...” indicates someone has to come to the Planning Board to request a waiver before actually submitting the application. This means an additional meeting. Is that the intent?

Director Port said when an application submission is missing materials, the Planning Office doesn't submit it to the Board because it's incomplete. That ensures no one wastes time on incomplete materials. The clock starts ticking as soon as the application is complete.

Councilor Eigerman suggested, instead of “...in advance of formal submission...,” at the end of the paragraph, it should say, “...before the application may be considered complete or eligible for consideration.” The applicant would go before the Board to request any waivers for the application to be complete.

Rick Taintor said that's like what the Board does now, but we don't want to prepare a written approval during a meeting. He suggested, “approved by the applicable staff or Board,” with Councilor Eigerman's wording from thereon. Councilor Eigerman “in writing” could mean the minutes.

Rick Taintor would have to see the revised language concerning a written approval before an application is formally submitted.

Councilor Eigerman made a motion to change the last sentence to read, “request for a waiver of any particular submission requirements, or list of attachments, must be requested of and approved in writing by the applicable staff or board before the relevant application shall be considered complete or eligible for consideration.” Christine Wallace seconded the motion and all members present voted in favor.

Motion approved.

Rick Taintor asked about XI-J on page 11. Does the Board need to hold a hearing in order to make a recommendation to the City Council to get from the first paragraph to the second paragraph? Can the Planning Board hold up a certificate of occupancy if it thinks an application is in conflict with the performance standards without going through this process? If an application for a building permit and/or certificate of occupancy (CO) is potentially in conflict, the City Council, with the advice of the Board, can refer to expert consultants. That implies the board can hold up a CO, but the process is confusing.

Director Port said it tries to clarify that there is a process for an investigation to address compliance between the parties. It hasn't been used much. Ms. Blanchet said this type of issue is dealt with through commissioning prior to the CO, without the Planning Board intervening.

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Councilor Eigerman didn't read this language as giving the Planning Board any authority to stop a CO. The only officers are the building inspector and zoning enforcement. The Board advises.

Bonnie Sontag said it's dealt with by staff. She'd leave it with the edits.

Councilor Eigerman and Director Port agreed the language codifies the City Council's ability to hire an expert – which they already have the ability to do. Councilor Eigerman said the provision isn't wholly necessary in the ordinance, but it points out that there's a process. He suggested leaving it as is and bringing it before the City Council to think about on a policy basis. The Council may not even want to be involved.

Rick Taintor made a motion to recommend to the City Council adoption of the 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), with the further amendments adopted by the Planning & Development Committee this evening. Alden Clarke seconded the motion, and seven members present voted in favor. Bob Koup abstained.

Motion Approved.

Jared Eigerman made a motion to recommend to the City Council adoption of the 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), with the further amendments adopted by the Planning & Development Committee this evening.

Motion approved.

Jared Eigerman made a motion to close the public hearing for the 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). Christine Wallace 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) *Bill and Sally Green*
40 Middle Street
Special Permit for Non-Conformities (2021-SP-05)

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Bonnie Sontag opened the public hearing. The Planning Board is the SPGA for this type of permit.

David Keery, Keery Design, 2 Liberty Street, displayed a photo of the single-family residence across from Middle St. Foods. He demonstrated on the site plan the non-conforming front set back of 15 ft. that should be 20 ft for R3 in the DOD, the side setback for the garage of 1.6 ft, and the rear setback of 5.9 ft that should be 20 ft.

The proposed 3 ft forward extension of the garage is a 3 ft x 18 ft garage addition to support a second story. Architectural plans are modified to remove a couple of windows at the request of the Green's neighbors on that side. The second floor bedroom for visiting children and grandchildren has a separate interior stairway. He displayed existing and proposed front, rear, and side elevations. The garage has a 3 ft structural awning. The addition carries the eave line and detailing of the existing house. Years ago, he and his brother converted this house from a 2-family to a single-family and created the second story ell slightly lower than the main roofline of the house. The garage continues the same height as the ell. The second story is scaled in detail to respect the existing structure.

Don Walters asked how much of the addition's side can be seen from Middle Street? Mr. Keery said the view is the same as shown on the elevation. Next to that is a brick house, and next to that a rear parking lot.

MJ Verde is concerned that the space above the garage could become a separate property to be leased, increasing the number of parked cars. Director Port said that depends on whether it was a compliant 2-family use. Ms. Blanchet suggested it might require a variance to revert to a 2-family to avoid violating existing zoning.

MJ Verde said this is the kind of infill the Board is trying to avoid because it's so large compared to the house next door and therefore not desirable.

Bonnie Sontag thought similarly but continuing the roofline of the house instead of projecting beyond that and given that the garage is already there, and the neighbor's concerns are accommodated, she's comfortable. There are no additional cars now. She asked about the addition's size.

David Keery said the backside of the ell has a lower roof. Bringing down the second floor addition's roofline would have created a collision of roofs. The ridge is low like the ell in the back. The lower ridge and eave line around the building seemed the most pleasing.

Rick Taintor was not concerned about size. The house is special and unique, and surrounded by much larger building footprints except for the immediate neighbor in the brick building. Unique among Middle Street buildings this house is set back. His only concern is how close it is to the neighbor's back yard, but they are not in opposition so he's comfortable with the scale.

Alden Clark agreed with Mr. Taintor. The setback mitigates the size.

Beth DeLisle agreed that the setback keeps the proposed from overwhelming the house and other houses in the neighborhood. Did the brick house owner send a letter of support? Mr. Keery said yes, after the window alteration.

Bob Koup agreed that the setback supported the scale, given the previous discussion on dimensional requirements and because neighboring property owners are okay. Are there other impacts given its proximity to the brick house?

David Keery said the impact most discussed was privacy. The neighbor has a hot tub in their back yard. As this is a lesser-used room, removing the windows satisfied them.

Bonnie Sontag reviewed the findings, including no additional new non-conformity.

Public comment open.

Sally Green, 40 Middle Street, said they love the house because it is historic. They want to maintain the look and feel of the existing house and feel the same about the addition. She assured the Board they care deeply about the house and hope to use it with the whole family.

Public comment closed.

Beth DeLisle made a motion to approve the Special Permit for Non-Conformities at 40 Middle Street (2021-SP-05). Alden Clark seconded the motion, and 7 members present voted in favor. MJ Verde voted against.

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 extension – 75 Parker Street (2018-SPR-03)

Bonnie Sontag said the pandemic delayed starting the project within the 2 year timeframe relative to the site plan approval date. The applicant wants an extension of 2 years. Director Port said the time extension is for an existing permit.

Lisa Gallagher, property owner, said Covid changed all the estimates, necessitating reaching out to other contractors. They are in conversation with 2 different contractors and in a queue related to a shortage of materials and people.

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Don Walters asked if there is an executive decision to extend the time limit on all permits due to Covid. Director Port said the office assumes people will need more time. It's more efficient to grant decisions on an individual basis because permits all have different dates. The time consuming task of calculating all those dates seemed like overkill.

Don Walters suggested making the permit effective until July 1, 2023, versus 2 years. Director Port agreed.

Don Walters made a motion to approve the request for extension – 75 Parker Street (2018-SPR-03) to Aug 1, 2023. MJ Verde 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 of Minutes

Don Walters made a motion to approve the minutes of 7/7/21. Rick Taintor seconded the motion, and 6 members present voted in favor. Bob Koup and MJ Verde abstained.

Motion Approved.

c) Other updates from the Chair or Planning Director

Bonnie Sontag introduced Bob Koup, a professional architect with a lot of experience in mixed-use in urban environments. MJ Verde will leave the Board after serving for 5 years but stay on until she's replaced. The Board is still looking for a candidate with a real estate or developer perspective.

d) Executive Session (Pursuant to M.G.L. C. 30A Section 21, to discuss strategy with respect to litigation in the matter of Institution for Savings v. City of Newburyport Planning Board (93 State Street), as an open meeting may have a detrimental effect on the litigating position of the public body.)

Bonnie Sontag said the meeting would be adjourned after the executive session.

Don Walters made a motion to go into executive session. Beth DeLisle seconded the motion, and all members present voted in favor.

Motion approved.

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Respectfully submitted -- Linda Guthrie