

**City of Newburyport
Planning Board
October 6, 2021**

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

Roll Call

Planning Board Attendance: Alden Clark, Bob Koup, Heather Rogers, Bonnie Sontag, Rick Taintor, and Don Walters

Beth DeLisle joined the meeting at 7:05 PM.

Absent: MJ Verde and Leah McGavern

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

Andrew Port, Director of Planning & Development, 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

Amend Sections V-D (Table of Use Regulations), V-E (List of Allowable Uses), VI-A (Dimensional Controls), and VII-B (Parking Requirements) and related provisions to modify the definitions, requirements, and Special Permit Granting Authority (SPGA) for uses #305 (country clubs / outdoor health and recreational facilities) and # 406 (indoor / health and recreational facilities)

Councilor McCauley, amendment sponsor, said the tennis club would like to expand. There are things that prohibit that. This is an attempt to expand the use of zoning for potential uses relating to outdoor recreation in this area. Select parcels could be used for revenue generation in the future.

Director Port said the Country Club Use adjustment changes ‘country club’ to ‘outdoor recreation.’ The adjustment in the R2 district allows by special permit (SP) both indoor and outdoor uses on the same property. The definitions of the uses are adjusted. The idea is to allow flexibility for a structure with a temporary enclosure, such as a pool with a retractable roof, which accounts for indoor and outdoor recreation. The lot coverage is adjusted to cover the desired expansion. We ensured a parking requirement adjustment for the uses which effectively stays the same.

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Bonnie Sontag asked whether outdoor recreation is by SP in R2 but the indoor is not permitted in R2? Director Port said the indoor facility was granted by variance and is protected. In the R2 district, outdoor does not exist today and would be allowed by changing from NP to SP.

Bonnie Sontag asked if it would potentially be covered and used as an indoor facility. When it's closed and in use wouldn't that fall under indoor? Director Port said both indoor and outdoor uses could be permitted there with this adjustment.

Attorney Lisa Mead, Mead, Talerman, & Costa LLC, 30 Green Street, said the adjusted definition for outdoor facilities includes temporary enclosures for portions of the year. The Newburyport Tennis Club is looking to diversify and expand their uses in the community. They want to include outdoor activities. They've heard from community members that more outdoor facilities would be of interest. The current zoning doesn't allow this. The owners are health professionals, not developers. Until they know they can do this, they have only loose plans to provide a swimming pool, outdoor tennis, pickle ball, and other things to meet the community's needs. In a meeting with Councilor McCauley, Councilor Wallace, and Director Port it was determined that the cleanest approach is to modify the R2 zoning. The lot coverage is modified to 30% from 10%, and parking requirements are based on gross floor area rather than employees and company vehicles.

Laura Goldberg, Newburyport Tennis Club owner, said she and 3 other owners purchased the club several years ago. They have over 700 members, run a variety of indoor programs, have a great partnership with Newburyport Youth Services and now run the NYS tennis program. The need for more outdoor activities became apparent during the pandemic. There is great interest and desire for a swimming pool, and agreement that is a good use for the land, along with bocce ball, pickle ball and types of things that would diversity the club. It's a beneficial use of the land because nothing like this exists in Newburyport. She hopes to collaborate with the YWCA.

Attorney Mead said the goal is to change the zoning to allow for more diversified uses for this parcel by SP. The 2 variances granted for this club were before performance standards were in place. Any proposed project would be subject to a SP and site plan review.

Councilor Eigerman said he's not aware of any problems today with the club historically at this location. He understands the argument to enable their expansion. He hasn't been able to find the variances at the registry of deeds. It would be helpful to know what they say. His concern is unintended consequences. There is an acreage limitation. Most of the R2 district is densely packed housing. He wondered if this is the right zone to allow this use, as opposed to R3. If we rezoned this to R3, the Country Manor at the corner is also different than its neighbors and we might want to rezone that. No one begrudges the club for what they want to do. It's a matter of finding the best, most thoughtful way to do this. He doesn't want to encourage someone to assemble 130,000 sf in R2 for something like this.

Rick Taintor said he was thinking whether it was appropriate to rezone R1 where there are probably more parcels for these uses. We should know how many parcels in R2 are over 130,000 sf before we make this change. Would parking requirements for the site be for the outdoor facility (500 sf of gross floor area) or the indoor facility? Of more concern is the lot coverage of

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30%. That's a little higher than the current R2 coverage of 25% with 40% open space. This has no open space requirement yet it's in a dense residential area. There is no open space requirement for a property in the R2 district.

Attorney Mead said the gross floor area of 41,000 sf requires 82 parking spaces which is overkill. We originally proposed 1,000 sf per parking space, which you could do cumulatively, but we proposed for the outdoor one space per 500 sf and for the indoor one space per 100 sf. The country club has no open space requirement currently and a reasonable open space requirement could be added. She demonstrated on a map the 13 R2 parcels with 130,000 sf. Eight are owned by the City or are public housing or healthcare. She considered it low risk that any of the R2 properties would be able to put in a 130,000 sf outdoor facility. She has no objection if the club is zoned R3 with a modified dimensional and use table.

Councilor Eigerman said the R1 already allows outdoor recreation by SP. That theoretically lowers the value of the property just as changing it to R3 would raise it. Another tact would focus on changing the dimensional and parking requirements but keep it in the R2. The club actually has more than 130,000 sf. It doesn't meet our definition of usable open space, which is probably written as an accessory to residential uses. Cambridge only requires parking for the indoor component for a golf course, which may not be wise.

Councilor McCauley said he didn't have any preference for R2 or R3. He is in favor of expanding the lot coverage because that would get the tennis club where it wants to go. The requirement for the indoor component may be the path forward to codify the parking requirements up front. There is no on-street parking.

Rick Taintor said the existing ordinance is for a country club. Do we want to be opening that up if we're changing the use to outdoor recreation facility? We should think about how the definition change would affect these other districts. For example, we could consider revisiting the use allowance in R1 and make it available for any 130,000 sf lot in the west end. That would allow it in the industrial zones.

Attorney Lisa Mead said the owners would not be opposed to increasing the lot coverage requirement.

Don Walters wanted to know what the far reaching impacts are by changing the use from a country club to outdoor health and recreation facility. He's uncomfortable with the definition of temporary enclosure. If there is a swimming pool, there should be a separate parking requirement because of the density of use compared to a tennis court.

Bonnie Sontag supported Mr. Walters comment on parking. Density of use for a pool versus density of use for other activities either currently or proposed needs to be revisited.

Councilor Shand agreed with Councilor Eigerman about the unlikelihood of country clubs springing up in the industrial park due to current land values and agreed with revisiting the parking. Are the original variances available? Director Port said yes. There may not be a lot of specificity in these early variances, but he would send them out.

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Councilor Wallace said the public would be interested in learning about this. Can it be put on the Planning & Development website? Director Port agreed.

Councilor Eigerman suggested Attorney Mead and Director Port to tweak the proposal to respond to the comments. We know the minimum lot size needs to be increased. Director Port should advise this group whether we want to allow outdoor health recreational facilities in R1, and/or the industrial park or neither. There isn't any on street parking if the parking requirement doesn't work, so it's important to get this right.

Director Port said there a zoning hearing on 10/20/21 relative to the zoning districts. He's comfortable with the R2 designation and removing the SP for R1 and the business park.

Councilor McCauley asked if it was acceptable to everyone to raise the requirement to 200,000 sf, reduce coverage to 20%, and still get the racquet club to their 40,000 sf.

Alden Clark asked if a swimming pool is included in the lot coverage percentage? Director Port said lot coverage refers to building coverage and does not refer to impervious surfaces.

Jennifer Blanchet said the definition of lot coverage exempts tennis courts and open swimming pools. A goal is to clarify what is included in open space. She agreed with comment to further define "temporary enclosure."

Rick Taintor said the footnote to the Use Table says you can have an indoor facility and outdoor facility on one parcel of land. Are the dimensional requirements 30% coverage for each or does the whole lot fall under the 30% lot coverage?

Attorney Mead said it would be for the cumulative or most onerous requirement that would apply to the lot. The Ipswich Country Club has 62 parking spaces for the outdoor pool and 6 tennis courts. We have 82 spaces for 6 courts. Refinement on parking is a valid point.

Public comment open.

Public comment closed.

Jared Eigerman made a motion to continue the proposal to Amend Sections-V-D (Tables of Use Regulations) V-E (List of Allowable Uses), VI-A (Dimensional Controls) and VII-B (Parking Requirements) and related provisions to modify the definitions, requirements, and Special Permit Granting Authority (SPGA) for uses # 305 (county clubs / outdoor health and recreational facilities) and # 406 (indoor / health and recreational facilities) to November 3, 2021. Christine Wallace seconded the motion, and all members present voted in favor.

Don Walters made a motion to continue the proposal to made a motion not / to recommend the proposal to Amend Sections-V-D (Tables of Use Regulations) V-E (List of Allowable Uses), VI-A (Dimensional Controls) and VII-B (Parking Requirements) and related provisions to modify the definitions, requirements, and Special Permit Granting Authority (SPGA) for uses # 305

(county clubs / outdoor health and recreational facilities) and # 406 (indoor / health and recreational facilities) to November 3, 2021. Alden Clarke seconded the motion, and all members present voted in favor.

Motion Approved.

Jared Eigerman made a motion to adjourn. Heather Shand seconded the motion and all members voted in favor.

Motion Approved

3. Other Business

Request for lot releases – Evergreen Commons, Lots 22 and 25

Attorney Mead said the City still holds occupancy permits for 3 lots. The topcoat on the end of Duffy and Gaboree and some extension of sidewalk still remains to be done. Phil Christiansen and Jaime Tuccolo went to the site and concurred with the remaining amount needed to finish the infrastructure. The request is to release lots 22 and 25. The tripartite agreement will replace the covenant for \$36,900 to ensure the completion of the public infrastructure. The sale of lot 22 has closed but the covenant is not released.

Bonnie Sontag asked how the tripartite agreement works as security on this lot release?

Attorney Mead the tripartite agreement is between the developer, the Lowell 5 Cents Savings Bank, and the Planning Board. They will be a signatory on this document and will have to maintain a bank account of \$36,900. The Planning Board will have to sign off of that before it can be released.

Don Walters asked if that was explicitly stated in the tripartite agreement. Director Port said the provisions call for completion of the work within 6 months and the provisions say the City can pull those funds from the bank.

Don Walters asked if it is similar to an on demand letter of credit.

Attorney Mead read from the agreement, “If there’s a default then the Board shall notify the applicant and the surety accordingly, and the Security shall be paid by the Surety to the City.”

Don Walters asked if the \$73,000 in Phil Christiansen’s letter covers the amount for the sidewalks and the topcoating? Director Port said yes.

Beth DeLisle said the tripartite agreements 3rd whereas clause, second line, is missing the word agreement after Surety. Attorney Mead agreed.

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Beth DeLisle said the last line in paragraph E should be “the remaining security.” Are we comfortable with the provision in paragraph B or should there be a specified time frame? Director Port agreed.

Attorney Mead suggested the language, “the applicant has 60 additional days to complete such work and advise the board accordingly.”

Rick Taintor made a motion to approve the draft motion the request for Release of Covenant for Evergreen Commons Lots 22 and 25, acceptance of tripartite agreement as amended, and authorize the Planning Board Chair to sign the related documents. Beth DeLisle seconded the motion, and seven members present voted in favor. Heather Rogers abstained.

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.

Correspondence

Letter from William Brown re: accessibility issues at Evergreen

Bonnie Sontag said this concerns ADA accessibility. We are consulting with our ADA coordinator and KP Law. Director Port said there’s a 30-page letter about accessibility throughout the project. The City’s legal counsel and ADA coordinator are reviewing, and we are waiting to hear.

William Brown, 10 Duffy Drive, said he met with the executive director of the MA Access Board who oversees accessibility matters. The summary of that meeting is in the documents he provided. Evergreen claims that this is a private property, and it doesn’t need to comply with ADA. That is not true in terms of access to the paths and the playground.

Howard Hall, Evergreen Commons LLC, appreciated the board’s position on looking at the compliance matters. His experts explained that it’s private property that provides public access.

Attorney Mead said the applicant had a co-consultant on the project. The visit by the director was in February. There were a number of changes that occurred in the open space over the summer, some of which had to do with the layout and the walkways. She is confident the project is built in accordance with the law.

Bonnie Sontag would leave the matter in director Port’s hands.

Discussion of revised STRU amendment

Bonnie Sontag said the Aug 30, 2021, revised STRU zoning amendment was resubmitted by Councilors Tontar and McCauley. A joint public hearing with the City Council occurs on Oct 20.

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Some of our recommendations last fall were incorporated in the latest version and some were not. KP Law reviewed everything for legal standing. The draft reflects their recommendations. She suggested working with the councilors rather than making recommendations for changes that affect other sections of the zoning code. Tonight's discussion will clarify the intent and the various pieces and where there may be differences of opinion before October 20th.

Rick Taintor said this is a different approach than last year. It's clear the sponsor doesn't want to go that route of incorporating all the Board's suggestions. We should limit our comments to those things which are problematic. He is concerned about the continuing overlap between STRU and the definition of lodging house and B & B. There are different use provisions for each of those uses. STRU is more permissive than existing regulations for lodging houses and B&Bs. It's unclear which regulation applies. For example, if you're in R3, you can do a B&B by SP, but an STRU is allowed by right.

Bonnie Sontag said these details are important. The STRU is by right and the provisions will be used by the zoning administrator for all her determinations. In the use table you note they are either permitted or not permitted.

Don Walters said 2 of the residents' primary resident's concerns were noise and parking. The noise is not necessarily covered by zoning, but it's in the licensing section. Section G on parking has missing language where it says, "STRUs shall a plan to provide..."

Bonnie Sontag suggested, "an operator shall provide on or off site..."

Don Walters questioned how off site means not on the street. the licensing is a separate section. The Licensing Committee could make the licensing exempt from this zoning requirement. Director Port said the Licensing Committee cannot exempt anyone from the parking requirement. The STRU owner has to confirm whether they are providing off street or offsite parking. His assumption is that the councilors understood what Mr. Taintor meant and did not want to deal with it.

Director Port suggested asking Councilor McCauley for the overview to be provided at the beginning of the 10/20/21 meeting and to try to get consensus on policy level detail before we get into the details.

Bob Koup said there are a number of examples of well-run STRUs in the City and there are STRUs that are not managed reasonably. R2 residential properties are close together and the issues are sensitive. The parking regulations are clear. The language that concerns him and opens it up for possible abuse is, "you qualify as an owner occupant if you reside at that location for 180 days a year," but you can rent an owner adjacent unit for as many days a year as you want. There are 3rd party brokers with STRUs that feel more like commercial property. Those are the ones that need attention. For residential districts like R2 there should be language that requires an owner to be present when an owner adjacent unit is rented. The language has to be tighter for sensitive neighborhoods.

Bonnie Sontag said the idea behind allowing the owner to rent their entire residence while they are away, allowing them to make the money to pay for the vacation, and allowing for vacation

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home shares. Mr. Koup is suggesting a requirement that an owner be in their primary home while their adjacent unit is rented.

Rick Taintor said the B&B should be at least as permissive as the STRU. It makes sense to allow B&Bs in the R1 district because they are less impactful, particularly if someone is renting an entire house as an STRU. It doesn't make sense to allow STRUs by right while a less impactful B&B is either prohibited or is by SP in the same district. It makes sense to allow a B&B in the R1 district.

Bonnie Sontag said the amendment before us only deals with STRUs. Maybe once we determine where STRUs are allowed, we can make another adjustment later. Why are STRUs not permitted in R1, conservation area and WMU? Any rationale given for not permitting in R1 you could make equally reasonable rationales for R2 and R3.

Alden Clark asked why the west end is distinctively different from the north end. Mr. Taintor said parking and noise are much easier to deal with on a large lot than a small lot, and on a wide street versus a narrow street.

Don Walters agreed with Mr. Taintor.

Alden Clark was still concerned about the overlap. It can muddy the waters if an owner wants to declare themselves a B&B as opposed to a STRU. But we can't really address that here.

Bonnie Sontag asked if it made sense to leave the overlap and district issues alone and address them afterward?

Jennifer Blanchet said yes. Where it's a concern, we should look more in depth at the challenges might be where specific concerns have been raised but perhaps not right now.

Beth DeLisle said section 4F says that no operator may offer more than one STRU at a time. If a B&B fits into both categories, are they only able to rent one room at a time? Ms. Blanchet said, there are enough distinctions in the definition, such as room count, to make it so that most B&Bs do not qualify. But the issue can be looked at more closely on the heels of what is decided.

Beth DeLisle said a management company could have only one STRU unit at a time? Director Port said he heard that was intentional.

Bonnie Sontag thought that in that situation, the property owner was the renter. Ms. Blanchet said the councilors are not looking to prohibit management companies. This is to prevent an individual from buying up 10 properties and using them as AirBnBs.

Bob Koup said the spirit of the proposal is that owners are renting out a portion of their house and looking at who's renting. Management companies are pushing the process apart from the owners from a distance. That's when things become less certain and where there are potential issues.

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Bonnie Sontag suggested using the word owner/operator instead of owner so that the properties are managed by operators as if they owned the property, but there will never be investment properties without a residential relationship to the property. That needs to be clarified.

Bob Koup confirmed that Chair Sontag meant an owner's management company could act in the capacity of an owner in a rental situation. It's hard to imagine a management company who would require the owner to be home while the owner's adjacent unit is rented.

Bonnie Sontag supported that idea but was not confident that language could be incorporated until later.

Don Walters said Mr. Koup has a good point, but this Board is looking at zoning and his point, if incorporated into the licensing, would be a challenge to enforce.

Bonnie Sontag said the meeting on 10/20/21 will include a lot of public discussion and would likely be a long meeting. The Planning Board will make a recommendation at the end of the meeting with amendments we think are important. There is general agreement that neither the zoning nor the licensing proposal will go forward independent of the other.

Approval of Minutes

The minutes of 9/15/21 are deferred to the next meeting.

Other updates from the Chair or Planning Director

Heather Rogers was introduced as the newest member of the Planning Board. Leah McGavern has resigned, effective immediately.

5. Adjournment

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

Motion Approved.

Meeting adjourned at 9:15 PM

Respectfully submitted -- Linda Guthrie