

**City of Newburyport
Planning Board
November 15, 2023**

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

1. Roll Call

Planning Board Attendance: Brian Balcom, Jennifer Bluestein, Alden Clark, Bob Koup, Charlie Palmisano, Jamie Pennington, Heather Rogers and Rick Taintor

Absent: Beth DeLisle

Planning Director Andy Port and note taker Caitlyn Marshall were also present.

2. Joint Public Hearing with the Planning & Development Committee and Committee of the Whole

- a) ODNC00164_10_30_2023 Zoning Amendment – Update Multifamily use definition, and map change at State & High Street: The proposed zoning change would update the definition for Multifamily use to permit a combination of smaller structures rather than mandating a single larger structure, and rezone the following parcels of land from HSR-A to R3: (a) 107 State Street (Assessors Map/Lot 33-43) and (b) 95 High Street (assessors Map/Lot 33-42)*

Rick Taintor opened the meeting with a roll call. Brian Balcom, Jennifer Bluestein, Alden Clark, Bob Koup, Charlie Palmisano, Jamie Pennington, Heather Rogers and Rick Taintor were present. Six of the seven members were present and both associate members were also present. He then opened the joint public hearing on ordinance 164.

The Chair of the Planning and Development committee, Ed Cameron, opened their portion of the meeting. He stated he was joined by Councillor Wright and Councillor Preston (remotely).

In addition, the following City Council members were present, Councillor Donahue, Councillor McCauley, and Councillor Khan.

Rick Taintor stated that the Board has received three written comments in regards to this amendment.

Director Port gave a brief overview of the zoning change. There are two parts to the change. There is a mapping change to High Street and State Street and there is an update to multi-family use definition. The benefit to the change in definition is to do something better at the Global site. The change in definition allows smaller

structures, which is preferable to the city. It allows flexibility of reduced massing of structures for multi-family use. It allows smaller structures rather than one large structure. Director Port then showed images of the Global site. He stated the current High Street zoning protects larger parcels from being subdivided. The Global site is a prominent location. Director Port then went over the deed restriction and zoning. They would like to revert back to R3 zoning. Multi-family use is not as of right anywhere in the City: in districts where it is allowed the Zoning Board of Appeals has to approve it by special permit. There are limited areas for multi-family. The ZBA reviews use for multi-family. The Planning Board has site plan review for 5 or more units.

Director Port then spoke about the future of the Global site. The site would have four units on it. Three units would be in the larger structure and one in a smaller structure. Parking would be kept on site. There would be patio space. There would only be one driveway curb cut off of State Street. There would be a substantial buffer and screening to abutting properties. The architecture would be Victorian era. The landowner stated that they would give \$20,000 to upgrade the pedestrian signal at the intersection. If the zoning passes there is a development agreement already in place. The development agreement is a preemptive contract. There would still need to be an application submitted to the ZBA.

Rick Taintor asked for clarifying questions from members of the boards.

Director Port stated he would not characterize this as “spot zoning.”

Councillor McCauley stated that it could be argued that the underlining zoning was R3 and the abandonment of the site goes back to R3.

Director Port stated the site couldn't be commercial.

Councillor McCauley raised the concern of the unintended consequences of the revised definition in the R3 district and the other areas impacted by this. Are we opening up the loophole again?

Director Port stated this would be allowed in limited areas. There are a fair amount of structures in the district so no one would be able to squeeze in a bunch of multi-family homes. He stated there is not a significant unintended consequence that needs to be looked at.

Councillor Ed Cameron asked a clarifying question. The original language in the list of allowable uses would be changed to one or more buildings on the same lot. Isn't this is two lots?

Director Port stated the lots are two separate assessors parcels but they are owned and used in common so they have merged into one lot. They are treated as one lot for permitting.

Councillor Khan stated the main change to R3 is the multi-family definition. Special permit is still a requirement.

Director Port stated correct. He then stated discretionary review makes him feel more confident. It is not as of right.

Councillor Khan asked Director Port to explain the wording in the definition about common floor-ceiling assemblies and common wall connectors.

Director Port stated that this provision prevents someone putting in a breezeway to connect two structures as one. That provision is not changing.

Councillor Khan referred to the rendering in the developer's agreement. She asked for clarification on the second unit's entrance.

Director Port stated the footprint is fixed in by this plan. The building can't move closer to the lot lines. The rendering does not have fine grain level of detail.

Councillor Khan asked if the questions that were emailed are going to be answered.

Councillor Ed Cameron stated those will be answered after the public comment.

Director Port stated that Lisa Mead and Scott Brown were present and could speak in more detail to the development of the site.

Attorney Lisa Mead stated she and Scott Brown represent Clipper City Development LLC. She then stated that over the last year since Global has put this site up for sale, six to eight people have approached them. This site is limited on what what can be built. She then went over the setbacks and limitations in the existing zoning. There have been many challenges for this site and many people have walked away because of the process. A zoning change has to happen for something to happen on this lot. She then reviewed the R3 district and where a multi-family could be developed. She concluded with the development agreement is important so everyone is comfortable with what goes on this lot.

Scott Brown stated he looked at ten site plan options before coming to what they see tonight. There are many site constraints, such as grade issues. There are six feet of grade change. They have met with abutters multiple times. The abutters have a profound influence on the plan. They suggested the two building concept. There was a strong desire to push this building towards State Street and away from 93 High Street to preserve the natural ridge there. He then stated this plan has quite a few retaining walls. The proposed height is four to six feet lower than abutting structures.

Public Comment opened.

Stephanie Niketic of 93 High Street stated that she lives next door to abandoned gas station. She then stated that all the abutters understood an R3 zoning change would need to happen. She then spoke to two comments, one from Jared Eigerman on zoning, and one from Jared Niketic on the site plan. The ZBA can always ask for peer review, even though she is not sure she has seen them do it. The development agreement came in late and had some surprises. If this development agreement deal falls through, the site could become many things besides this. She shared her concerns about if they change to R3 and this project doesn't happen and a new buyer comes along and wants to do something entirely different. She then stated it is also difficult for something this important (development agreement) to come in so late. She suggested the board continue to the next meeting so everyone has a chance to look at the development agreement. She then thanked Scott Brown and his client for their time talking to abutters. The city should make sure it is done right.

Marge Kaczala of 109 State Street stated she is the other abutter. She thanked Scott Brown for consulting with abutters. She is all for putting residentially uses on that corner. She stated she had questions about the plan falling through when it is zoned R3. She urged the board to protect that corner and make sure it goes through. She also shared her concern about the unintended consequences of changing zoning.

Lowell Barrett of 112 High Street thanked the presenters. He then shared his concerns about the set back on the High Street side. He stated he is a civil engineer. That road is not legal width and is a tight area. If the structure is too close to High Street, that would create issues. He was also concerned with the double building idea. The lot size is one third of a normal lot. When you look at that building compared to other buildings in neighborhood, it is much bigger. If you go down High Street setbacks are far back.

Public Comment closed.

Charlie Palmisano stated he was wondering if the representative for the developer could go through the project to alleviate concerns. What are the restrictions if there was another developer?

Attorney Lisa Mead stated Scott Brown has been working with the developer for four to five months on this project. She herself has been working on this project for three to four months. The developer only has a purchase and sale agreement and has already spent tens of thousands of dollars. The developer is invested. The architect has worked with neighbors.

Councillor Connie Preston stated she had a question about the timeline. She was feeling a sense of urgency on this.

Attorney Lisa Mead stated the developer is under a purchase and sale agreement. She stated if zoning doesn't pass she doesn't know if Global is going to move forward or do something else. If it doesn't pass, the developer is going to stop spending money and Global is going to do something else.

Councillor Connie Preston stated this is a zoning change at a prominent location in the city. She feels an obligation that they have an ample opportunity for public to comment. The development agreement was just signed yesterday. She is hesitant to move this forward tonight in particular. Is there a deadline? She stated she does want to see this happen, but wants ample opportunity for residents to weigh in.

Attorney Lisa Mead stated the deadline would be end of January 2024.

Director Port suggested that the City Council would likely carry this over to the next session.

Rick Taintor stated the development agreement is with someone who is not the owner of the property. This developer is bound to concept plan if zoning passes. Neighbors are concerned that is not a confirmed contingency.

Director Port stated it is atypical for the zoning to have certain requirements for one lot and not the others. All this detail up front is not typical. There is a fair amount of upfront information here. ZBA can get consultants as needed.

Attorney Lisa Mead stated that all the engineering that has gone into this has cost around \$50,000. Their goal is to be in front of the Zoning Board in February. They want to close and start building this summer.

Charlie Palmisano asked to review the edits to zoning. The changes should be accommodating to the city of Newburyport rather than the particular buyer. He is in favor of the site.

Rick Taintor stated that an issue that has come up in some comments is concern about retail sales and services. Is it possible to limit this to residential use?

Director Port stated that is possible to have particular restriction. If this deal were not to come through and R3 is in place he would be against retail or traffic issue. It would not be an appropriate use. The ZBA would take that into account.

Jennifer Blanchet, Zoning administrator, stated that they have looked at R3 in other places in the city. R3 does not have the lot sizes for new multi-family. Most of the lots are already developed. Undersized lots would have to go through multiple special permit processes. There are a lot of limitations if this development agreement falls through.

Bob Koup asked to go back to an earlier discussion. Can aspects of the development agreement be incorporated into zoning for this particular site?

Director Port stated that could be mechanically done. Does this parcel need special treatment?

Bob Koup stated this site has unusual prominence in the R3 district.

Councillor Mark Wright suggested they be careful about singling out a particular parcel. It could be spot zoning if brought to a court. Keep R3 as broad as it can be. Specific constraints could be found as spot zoning.

Councillor Khan stated specifics are not going to serve us better in the R3 district.

Attorney Lisa Mead stated she does not disagree that you have to be careful if you are going to single out one parcel with restrictions. They do not want retail service or sales in this location. In regards to R3 on High Street, it is a bad idea to have retail sales or services. She suggested any R3 parcels on High Street should not have retail sales or services. You can accomplish this without singling out the parcel.

Director Port stated he did not disagree with that.

Rick Taintor stated that he is worried about changing the R3 zoning to prohibit retail uses because the City hasn't notified property owners that the zoning requirements for their properties would be changed. He stated he doesn't have concern about spot zoning. Any restriction you put on it to make it consistent with surrounding properties would not be spot zoning. He does not want to expand restrictions to other properties that have not been notified.

Heather Rogers asked what the actual address is of that site now that two parcels merged.

Director Port stated the site currently has two addresses now: one on High Street and one on State Street.

Attorney Lisa Mead stated the address would be up to the assessors.

Heather Rogers suggested there not be commercial on High Street.

Attorney Lisa Mead stated if they changed that and did not notify property owners on High Street they would not have been properly notified.

Brian Balcom asked if the site had a clean bill of health.

Rick Taintor stated there is an activity and use limitation on it. There is also a deed restriction for excavation.

Director Port stated they didn't find contaminants, it is based on liability.

Councillor McCauley stated he is unsure of how they signed the development agreement with an entity that doesn't control the property. They are rushing to adapt zoning to this. Many of the concerns expressed today are in regards to the development agreement. The zoning approval is contingent on completion of purchase and sale, and the removal of AUL. He suggested they consider some amendments that are supportive of the development agreement, but list out some concerns from public comment and Planning Board comment.

Councillor Mark Wright asked if the development agreement was reviewed by the City's legal counsel.

Director Port stated yes. The development agreement has been reviewed by Attorney Karis North. She is up to speed on what is happening here.

Councillor Mark Wright asked about the City Council process and timeline. They have the ability to move this into the next session? Would this keep us on the timeline and have sufficient time for additional public comment?

Rick Taintor asked for clarification on how many days City Council has from when they close the hearing, sixty or ninety days?

Director Port stated ninety days.

Rick Taintor suggested they close the hearing tonight to meet the January 31, 2024 deadline.

Councillor Ed Cameron stated there is one more City Council meeting in November and one meeting in December. There has been a lot of new information in the last couple of days. The unintended consequences need to be thought through. He also wants the Planning Board to include a discussion of Section VI-C in the report.

Rick Taintor raised the issue of the potential of two residential buildings.

Councillor Ed Cameron stated asked about the correlation between what they are doing and VI-C.

Rick Taintor stated the preference would be to have the Planning Board be special permit because of VI-C. There is no conflict between this and VI-C. He suggested they make language amendment to resolve any issue. Without language there would have been a conflict with VI-C.

Alden Clark made a motion to close the public hearing. Charlie Palmisano seconded the motion. All members voted in favor.

Councillor Wright made a motion to close their portion of the public hearing. Councillor Preston seconded the motion. All members voted in favor.

Rick Taintor asked if there was any information the board would like incorporated in the report.

Charlie Palmisano made a motion to recommend the version as amended this evening. Alden Clark seconded the motion.

Brian Balcom suggested discussion about simulating R3 and what would happen to other parcels. He stated to include the limited scope of potential impacts.

Bob Koup suggested including metrics that were discussed this evening.

All members voted in favor of the motion.

Councillor Wright made a motion to adjourn. Councillor Preston seconded the motion. All members voted in favor.

Motion Approved.

3. Public Hearings

- a) **Kim Turner, City of Newburyport**
388 High Street a/k/a 447 Merrimac Street/Lower Atkinson Common
Application completeness vote
Request for waivers
Site Plan Review (SPR-23-2)
Continued from 9/20/2023

Alden Clark made a motion to continue the hearing to the December 6, 2023 meeting. Charlie Palmisano seconded the motion. All members voted in favor.

Motion Approved.

4. General Business

- a) **Request for final release of security – The Reserve at Bashaw Farm (2019-DEF-01)**

Alden Clark made a motion to continue the hearing to the December 6, 2023 meeting. Heather Rogers seconded the motion. All members voted in favor.

- b) **CPC Representative**

Jennifer Bluestein stated she is interested in the representative position.

c) Approval of minutes

- **11/1/23**

Approval of minutes will be continued to the next meeting on December 6, 2023.

d) Discussion

- **Storey Avenue Rezoning**
- **MBTA Communities**

Director Port stated he spoke to the Massachusetts Housing partnership in regards to economic feasibility analysis. He spoke about why he thinks 25% affordable housing is something to maintain. Being forced to reduce to 10% affordable housing is not good for Newburyport.

Rick Taintor stated 10% affordable housing would be for as of right projects. He suggested drafting zoning to give a density bonus for up to 25% affordable housing.

Charlie Palmisano asked if the Minco project at Haley's was part of the calculations.

Rick Taintor stated it is part of the 40R base.

Jamie Pennington asked what the AMI threshold is.

Director Port stated MBTA is at 80%.

Rick Taintor asked what the status of consultant selection is for Storey Ave.

Director Port stated that is just getting started and they would like to close the loop by the end of the year.

Rick Taintor asked if there would be two consultants for the Storey Ave project.

Director Port stated the consultant for infrastructure should be the company that Newburyport already works with for water and sewer. He is more interested in visualization consultants for a before and after visual.

Jamie Pennington suggested using BAC student interns.

Heather Rogers stated she was confused on rezoning. She asked if once zoning is allocated do we have to wait for each building to transfer ownership?

Director Port stated yes. The state requires Newburyport to adopt the MBTA multifamily zoning by December 31, 2024.

Rick Taintor asked if grant funding was allocated into three buckets.

Director Port stated they could move that. He then spoke about infrastructure.

Charlie Palmisano raised a concern about schools.

Director Port stated indefinite growth isn't sustainable.

e) Other updates from the Chair or Planning Director

Director Port spoke about what remote meetings may look like moving forward. He then discussed Citizen Planner Training Collaborative. He stated that they have specific training topics. They could come to Newburyport and board members could choose a topic to be trained on.

5. Adjournment

Alden Clark made a motion to adjourn. Heather Rogers seconded the motion. All members voted in favor.

Motion Approved.

Meeting adjourned at 9:24 PM

Respectfully submitted – Caitlyn Marshall