

**City of Newburyport  
Planning Board  
December 7, 2022**

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

**1. Roll Call**

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

Planning Board Attendance – Remote: Richard Yeager

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

**2. Public Hearings**

- a) *Walt Thompson  
100 State Street  
DOD Special Permit (PBSP-22-10)*

Bonnie Sontag stated that there was a request to continue the application to January 4, 2023.

Don Walters made a motion to approve the application be continued to January 4, 2023. Alden Clark seconded the motion. Nine members 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.*

**3. General Business**

- a) *Request for minor modification – 2 Opportunity Way (MM-22-34)*

Bonnie Sontag stated that in preparation for the application that there were some concerns about the numbers on the square footage. She stated that she and the Vice Chair asked Director Port to show a table of the proposed changes of the square footage before moving forward with the application.

Director Port displayed the table with the breakdown of the approved and proposed square footage in the building. He stated that there is a cap of two marijuana cultivation businesses in the business park.

Bonnie Sontag said that they would use the table as a reference for anyone who had any questions for Jason Eliot.

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Jason Eliot, Director of Facilities and Engineering for Happy Valley, joined the discussion via Zoom. He stated he is also the project manager for this project. Jason referred to site plan C101 that highlighted two changes. One change is a 45-foot by 88-foot addition to the east side of the property for mechanical equipment, specifically the chiller plant and irrigation plant that will be housed in that structure. The second change reflects relocating the generator on the west side of the property, which would be a roughly 20-foot by 40-foot pad for the generator. Those two changes are on the site plan.

Bonnie Sontag asked if these additions are still within the limitation of the square footage.

Jason Eliot stated that was correct. They're not exceeding the previously approved square footage.

Bonnie Sontag asked board members for further comments and questions.

Richard Yeager asked for clarification from the plan that was displayed. He asked if Jason intended to put some plants or shrubbery in front of the generator since it is on a very public side.

Jason said they have not gone back to look at the landscaping plan again. He said if that is something the Board would like to see it would not be a problem. He stated the goal is to do as little changes to the landscaping on that side of the building as possible.

Bonnie Sontag stated that there is already some landscaping on that side of the building.

Rick Taintor asked if the landscaping that was shown on the plan that is abutting the pad was previously approved.

Director Port stated the original plan did not have site plan changes for landscaping.

Alden Clark made a motion to deem the request minor and approve the minor modification request for 2 Opportunity Way. Heather Rogers seconded the motion. Nine members voted in favor.

**Motion Approved.**

***b) Request for minor modification – 21-25 & 27 Hancock (MM-22-35)***

Attorney Adam Costa thanked Bonnie Sontag for her service on the Board. He then stated that there are three agenda items before the Board this evening. The first item on the agenda is the issue of street trees. A condition was included since there is insufficient space in the public right of way to plant additional street trees that the city would have access to trees that would be planted on the applicant's private property adjacent to the street. For the benefit of the city, the applicant will provide an easement for access for the purpose of care and maintenance. Attorney Costa then read the Board's conditions. He stated that in early November a proposed easement was submitted to City Council. They have received some initial feedback from staff. He then

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shared there are some concerns from board members about accepting an easement from a private property owner. Since then the language has been reworked. The easement now specifically says the city has a right to maintain the trees if it so chooses, but it has no such obligation. The owner is waiting on a certificate of occupancy. They have closings that are scheduled for December 15, 2022. Attorney Costa stated the first request is to make an amendment to the condition by adding a sentence to the end of the condition. The sentence would be the one he previously read. If the City Council does not accept the easement, this condition will have no further effect. They will not be able to provide an easement to a city that will not accept it. He then stated that the trees are already planted.

Bonnie Sontag stated that in a preparation meeting she, the Vice Chair, Director Port and the Planner met and they have an alternate suggestion. Instead of the last statement that Attorney Costa suggested, if City Council does not approve the easement that the last statement be removed and incorporate language that stated “prior to the fourth certificate of occupancy.”

Rick Taintor then added further explanation to the suggestion from Bonnie Sontag. He stated that the concern is that sometimes developers do not look at the conditions of approval until they get close to needing a certificate of occupancy. He understands there is a time crunch and this suggestion would give an opportunity to get multiple certificates of occupancy issued. If there is an issue of City Council accepting the easement, they could come back to the Planning Board in a future meeting. He then urged Attorney Costa to impress on future clients to look at the conditions of approval before there is a time issue.

Attorney Costa stated that his first concern was to provide some extra time to the City Council to consider the acceptance of the easement, but not to obligate his client to have to return to the Board if the Council does not accept it. He proposed that the last sentence that they had proposed remain in but be tied to the fourth certificate of occupancy. If the city continues to refuse to accept the easement, the client is no longer obligated to provide the easement.

Attorney Costa’s second concern was there are three closings scheduled for December 15, 2022. These closings are not units on shared land owned by one association. The client is conveying the interest in the property, so when he does that he is conveying away the land that is subject to the easement. There is an added layer of complication once the properties are conveyed away. He stated that the client would no longer control the property that would be subject to the easement.

Bonnie Sontag clarified the two parcels on the street where this easement would be in place would be closed on the fifteenth.

Attorney Costa stated that she was correct.

Jay Caswell, developer, explained the drawing displayed with the trees. He stated there are two condominium associations with a shared interest.

Bonnie Sontag stated the proposal would work for the board’s purposes. Interest would be for both condominium associations. She shared that one unit of the four units hasn’t closed yet,

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which would be the leverage they need to get this issued sorted out. City Council will either approve the easement or they won't, in that case they will need to change the language.

Rick Taintor does not support the sentence that is being proposed. He would rather the easement be accepted prior to the fourth certificate of occupancy.

Attorney Costa said that we have arrived at allowing the City Council to further consider the acceptance of the easement. He does not think that is fair to his client to require that if the City Council does not accept the easement, he and his client will have to come back to the Planning Board and have the same conversation again. He wants an additional sentence added that says if the City Council does not approve the easement on or before the fourth permit of occupancy, this condition will have no further affect.

Rick Taintor asked if the City Council approves the easement on Monday night would his suggested change of prior to the fourth occupancy permit resolve all issues for Attorney Costa.

Attorney Costa answered that it would.

Bonnie Sontag asked Director Port if there should be any wording added for if the City Council accepts the easement, because right now it is stating if the City Council doesn't accept it.

Director Port stated if City Council accepts the easement it will be pushed out quickly.

Bonnie Sontag stated the date could be changed from December 12, 2022 and it could be honored to before the issuance of the fourth certificate of occupancy. The line would read in the event the City Council does not approve the easement or accept it on or before the application of the fourth issuance of occupancy, this condition will have no further affect and be removed.

Rick Taintor said he was not happy with this change. He shared that easements are important. He would like to encourage City Council to accept the easement. He is concerned about future property owners. He would prefer to go ahead without the additional sentence and revisit it.

Don Walters agreed with the applicant's qualification. If the City Council does not act timely, he does not see why the applicant would need to come before the Board again.

Beth DeLisle stated she is curious about the potential time frame for the fourth permit of occupancy.

Jay Caswell said that fourth certificate of occupancy is about six weeks away.

Bonnie Sontag asked for a motion to deem the request minor and approve a minor modification request as amended tonight. If it doesn't pass on this motion the language will be revisited right away.

Don Walters made a motion to deem the modification request minor and to approve the minor modification request. Heather Rogers seconded the motion. Alden Clark recused himself, as he is an abutter to the property. Seven members voted in favor. One member voted against.

**Motion Approved.**

***c) Request for minor modification – 21-25 & 27 Hancock (MM-22-37)***

Bonnie Sontag stated there is another request for minor modification for the same properties. She stated that there was another conversation about this and they would like to propose a discussion about inconsistencies in the layout of the utilities plan and the approved decision and partial as-built plan that was submitted on November 21, 2022.

Attorney Adam Costa stated that Steve Sawyer the project engineer was present to further discuss the inconsistencies that are concerning to the board.

Rick Taintor said he was not sure how much of a concern it is. On the approved plan, the back unit on the right just had a landing and a step, but the as-built plan now has a concrete wall constructed and a raised patio. He asked how discrepancies like this get approved. How does a change in plans like this get done? He wanted to clarify what the actual process is.

Bonnie Sontag stated there is a content issue about the storm water plans.

Director Port stated that the storm water issue was resolved.

Bonnie Sontag stated this is an issue because it is a partial as-built that they had not seen.

Director Port said that this issue may need to go to the Zoning Board of Appeals for a minor modification to reconcile since something was built that was not in the original plans.

Attorney Adam Costa disagreed whether the nature of this sort of a change triggers a need for a modification even if it is minor modification from the Zoning Board. Patios do not qualify as structures. If it needs a minor modification they will submit an application for a minor modification.

Attorney Costa then stated that there were conditions for all three approvals, two special permits as well as the subdivision decision, to the need for a covenant. He then read the condition. He then stated he has two requests; the first is a modification of that condition to allow for the applicant to provide a different form of surety to the board. He would like to submit a different form of surety to obtain a release of covenant. There is typically a bond or cash account that provides the city sufficient funds. He then provided an initial estimate of what his client had left and the costs of those items. That list was sent out to the consulting engineer who sent an email dated December 2, 2022 with his estimated costs of the work required to complete the plan. Grading and drainage issues will cost approximately \$25,000. As-built plan could cost as much as \$10,000, so an additional \$35,000 was added onto the original estimate of \$58,500. That total is now \$93,500, which rounded up to \$100,000. Attorney Costa requested his client provide that form of surety for \$100,000. He would like to amend these conditions to allow this to be provided and release the covenant.

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Don Walters asked for clarification if the covenant was in the subdivision ruling or special permit.

Bonnie Sontag stated that in addition to the language that's in there, the covenant should be released and occupancy permits shall be issued upon providing a bond in the amount of \$100,000.

Attorney Costa asked for a bond or cash account to provide flexibility. He said if his client prefers to write a check for \$100,000 he is sure the city might prefer to receive the check for \$100,000.

Don Walters then commented that is why he previously asked for clarification. He stated that under MGL where it's a subdivision, the applicant has a sole right to provide either cash or credit/surety bond. In his opinion the board is setting precedent. He said a surety bond is not as good as cash. He shared his word of caution.

Bonnie Sontag questioned if this is standard operating procedure and if bonds have been accepted all along.

Director Port agrees to the point Don Walters was making. Cash is preferable from the city's perspective.

Bonnie Sontag asked if they should really be worried that this is going to be a problem.

Don Walters stated that special permits outside of subdivision control should provide cash or escrow account controlled by the city.

Attorney Costa said that they specifically requested a cash account or a bond. He stated he spoke with his client and the bond can be taken off the table. His client's intention is to write a check to the City for the funds to be held in cash and be released upon the completion of the improvements.

Don Walters asked a question to Attorney Costa. He asked in the case of the subdivision approval decision, should language be more specific in the special permit decision?

Attorney Costa stated Don Walters' comments were correct. Choice of surety for a subdivision is solely the applicant's. He did not have a preference if it was amended to state the form of surety is a cash account.

Director Port said the language needed to be consistent.

Bonnie Sontag asked for a motion to determine the modification minor and to approve the minor modification as amended.

Rick Taintor made a motion to approve the minor modification request. Heather Rogers seconded the motion. Alden Clark recused himself, as he is an abutter to the property. Eight members voted in favor.

**Motion Approved.**

***d) Request for release of covenant – 21-25 & 27 Hancock (2021-DEF-01)***

Attorney Costa said he had a form of release of covenant that he prepared. He asked the Board release to his client the release of covenant once the client provides the alternative form of surety. The client will provide a check for \$100,000 and in exchange the Board will release the covenant.

Director Port then stated the draft language needed to be changed. It stated the work has been fully completed but that is not the current status.

Attorney Adam Costa then said they could include language that says, “have been completed or alternative form of surety provided to the satisfaction of the Board for all applicable lots.”

Rick Taintor asked if the motion should reference the \$100,000 and say something like “upon receipt of surety.” Director Port agreed that the motion should include this language.

Bonnie Sontag asked for a motion to approve the request for release of covenant upon receipt of surety and revised language, and authorize the Chair to sign the release of covenant.

Rick Taintor made a motion to approve the release of covenant. Don Walters seconded the motion. Alden Clark recused himself, as he is an abutter to the property. Eight members voted in favor.

**Motion Approved.**

***e) Request for minor modification – 3 Doyle Drive (MM-22-31)***

Judith Burke, property owner of 3 Doyle Drive, and Noel Torrissi, contractor, greeted the board. Noel Torrissi stated the owner has an existing deck that is 12 feet by 21 feet. The owner would like to put a three season porch on top of part of the deck, 12 feet by 15 feet. He stated there are footings in the ground. No excavating would need to be done.

Don Walters asked if an engineer has confirmed the footings that are currently there. With the addition of this structure the deck will not need to support has a roof and more loading.

Noel Torrissi stated that was not done by an engineer. He said he could have that looked at by an engineer. He said the footings meet Massachusetts’s code.

Don Walters said he would hate to see a situation happen if an engineer did not approve this.

Judith Burke stated the house is a new home. The existing deck is bolted into the house.

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Director Port agreed with Don Walters's point. A building permit would need to be submitted to the Building Department.

Bob Koup asked if the Building Department would be looking for an engineer's review.

Director Port asked if the Board had enough information from the applicant.

Jamie Pennington asked if a building permit application has been filed for this. He thinks it may require a Zoning Board review as well. He asked if this is the only relief that is required.

Director Port stated this Board is the only relief that is required.

Bonnie Sontag shared she was looking for more than just a hand drawn illustration. There are no visuals or elevations to show what this three-season porch is going to look like.

Richard Yeager requested more defined drawings to understand the architecture being submitted.

Alden Clark agreed with Richard Yeager.

Bonnie Sontag stated the Board wanted more visualization to show them and the abutters what this three-season porch will look like. She was also curious about the language in the letter given to the abutters saying they had been informed and asked to sign. She encouraged a new document to be signed by the abutters stating that they approve of the proposed structure.

Bonnie Sontag asked for a continuation of this application to January 4, 2023 if the applicant had the proper visuals and engineering information.

Alden Clark made a motion to approve the continuation of the application on January 4, 2023. Don Walters seconded the motion. Nine members voted in favor.

**Motion Approved.**

***f) Approval of minutes***

- 11/2/22

Alden Clark made a motion to approve the minutes as amended. Beth DeLisle seconded the motion. Nine members voted in favor.

***g) Other updates from the Chair or Planning Director***

- Discussion of special conditions, department obligations, and input

Director Port discussed the issue of applicants that ask the Board to rush the approval process. He referenced the Hancock Street tree situation. Many times there is coordination with other departments. He urged the Board to have more continuances and extend out hearings. He asked



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the Board not make assumptions of what other boards can do. He asked when drafting special conditions to make sure it is not being put on someone else. This will provide a better result.

Bonnie Sontag stated there was history that went back several years that the Zoning Board and Planning Board have been told what to do by the applicant. She felt that they have corrected that. Her message is that just because an applicant has a deadline the Board does not need to compromise their standards.

Rick Taintor stated there are two different issues, one being before and the other being after the permitting process. He wondered if there was a way through Open Gov to send reminders to applicants of deadlines so applicants are not pressuring the board to meet deadlines.

Director Port agreed with Bonnie Sontag and Rick Taintor. Applicants create a scramble for many departments because they are in a hurry. They are waiting for Open Gov to add more features.

Rick Taintor asked if there is a list of open special permit applications.

Director Port stated that open applications are in the system. They are monitoring those conditions and signoffs. It is not realistic to check in with everyone each week.

Rick Taintor stated there is a vacancy after December 31, 2022. At the January 4, 2023 meeting there will be an election for the Chair, Vice Chair and Clerk positions.

Director Port stated there is an amendment for the Planning Board membership in January. There will be language that states the Board will go from nine members to seven members with two alternates. Also in January the Board will be revisiting short-term rental units.

Rick Taintor shared information on the change in membership from nine members to seven members with two alternates. Six votes will not be needed for special permits, five votes will be needed. Board members should think about if they would rather be an associate member rather than a regular member, and if so they would need to submit their resignation.

Bonnie Sontag clarified that the language says upon resignation or term expiration, so someone on the board can resign and become an associate member.

Heather Rogers asked for clarification about associate member duties.

Rick Taintor clarified associate members vote only when they need to vote due to an absence for special permits votes only. They can participate in the discussion entirely.

Bonnie Sontag stated that associate members can participate in discussions but may not be called upon to vote.

Alden Clark asked for clarification if the Board is not looking for an alternate member until the board goes down to 7.

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Richard Yeager shared this situation is similar to the Boston Landmarks Commission.

Rick Taintor clarified that 2-8 Market Street is on the agenda for January 4, 2023 to revisit parking as a modification. Doyle Drive will also be on the agenda on January 4, 2023, as well as 100 State Street.

**4. Adjournment**

Bonnie Sontag made a motion to adjourn. Don Walters seconded the motion, and all members voted in favor.

**Motion Approved.**

Meeting adjourned at 8:45 PM

Respectfully submitted – Caitlyn Marshall