

Newburyport Historical Commission

July 27, 2023
Online Meeting
Minutes

1. Call to Order

Chair Glenn Richards called an online meeting of the Newburyport Historical Commission to order at 7:00 p.m.

2. Roll Call

In attendance were members Joe Morgan, Biff Bouse, Andrew Bernhardt, Glenn Richards, Marc Cendron, Chris Sawtelle and alternate member Ed Noymmer. Christopher Fay was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and note taker Gretchen Joy.

3. Demolition Delay Applications

None

4. DOD/DCOD Advisory Review

None

5. General Business

Review of Draft Preservation Restriction

1 and 3 Vernon Street, 10 and 10.5 Auburn Street

Glenn Richards provided an overview of the work to draft a preservation restriction for the Old Gaol property. In 2019, the Zoning Board granted Variances to the applicant, Chuck Griffin, for the adjustment of the lot lines. As a condition of approval, the applicant agreed to place a preservation restriction on the property. Elements of the Gaol, the Keeper's House, the stable building and the stone walls around the courtyard were to be preserved in perpetuity. Some alterations, such as the removal of the iron bars on the Gaol windows, were allowed to make the structures usable. The Historical Commission conditionally approved the document in 2019, but the Massachusetts Historical Commission required that the document be rewritten in the format used for other preservation restrictions placed on Newburyport properties. The applicant engaged attorney Jeffrey Roelofs and Chair Richards was authorized to represent the Historical Commission on the work to revise the document.

Attorney Roelofs said the purpose of the restriction is to ensure that the architectural, historic, and cultural features of the protected properties shall be retained and maintained in substantially their existing condition in perpetuity. The focus of the restriction is the exterior features that are visible from a public way. The intent of the restriction is to enable the Commission to review proposed major alterations to the protected features of the property, not to preclude future change. The Commission shall attempt to work with the property owners to develop mutually satisfactory solutions that are in the best interests of the owners, while balancing those interests with the purposes of the restriction.

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Attorney Roelofs reviewed the restrictions and guidelines that are outlined in Exhibit G. The exhibit identifies the protected features of each property and those that are not protected. The document allows for alterations that are minor in nature or which involve ordinary maintenance and do not affect the architectural or historical integrity of the protected features of the property to be undertaken without Historical Commission review. The document states that major alterations of the protected features that are not expressly allowed in the restriction are not necessarily unacceptable, but require prior review and approval of the Commission. The Commission is to evaluate the impact of the proposed changes on the historic integrity and value of the protected features and may not unreasonably withhold approval.

Attorney Roelofs said the original document was vague with respect to the landscaping in front of the Keeper's House. In 2021, the applicant wished to install plantings and screening in front of the Keeper's House. He interpreted the draft restriction as meaning the area would be kept free of structures or landscape elements that would block views of the structure. Some members of the Commission at that time interpreted the 2019 draft differently and were concerned about the obscuring of the view of the building by a proposed trellis. In the original draft, the landscape was to be left open, with an exception for approved parking and landscape features. The language of the restriction was revised to provide clarity on the elements that are to be protected.

Attorney Roelofs said the open character of the front yard is a protected feature. Trees, signage or large shrubs that would substantially obscure the view of the Keeper's House from Auburn Street or Vernon Street would require review. Low-lying vegetation and seasonal garden features, such as trellises and pergolas, would not be reviewed, provided they are removed seasonally and are not taller than six feet above the first floor of the Keeper's House. The installation of trees in front of the Keeper's House would be exempt, provided they are not installed in such a way that would block more than 50% of the structure from the public ways.

The meeting was opened to comments from the public. Patricia Peknik, 4 Dove Street, urged the Commission to not delay in signing the document in order to protect the building, as a significant amount of time has passed since the ZBA granted a variance for the property. However, a legal document that protects the public interest is needed. The requirement for an open landscape was a part of the variance granted by ZBA. The original draft stated that the Commission shall protect the interest of the property, while the new document focuses on the interests of the owners. The applicant has already received the private benefit through the variance. The language requiring the Commission to apply Secretary of the Interior's Standards has been omitted. She said the document included too many exceptions. The applicant should be required to submit plans for review when a change to the historic property is being considered. Exhibit G should be specific and decisions should not be left open for interpretation by future owners. No historical architectural elements should be exempt from review. The document should include a simple and minimal description of the non-historic features that are not protected. She is concerned by the provision that 50% of the view of the Keeper's House could be obscured. She said the members should ensure the document is not ambiguous, as their time will be required to address issues of enforcement. She

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added that she appreciates work done by the applicant to preserve the property. She said a rigorous preservation restriction would serve to protect his legacy against changes by future owners.

Thomas Joy, 51 Pond Street, said it is not in the interest of the Commission to give away oversight of property. He is concerned about the potential lack of oversight over the temporary landscape features and is concerned these would become permanent.

Marc Cendron said the preservation of the property is a remarkable achievement. He believes the current owner would make the appropriate decisions but the future owners must be considered. The Commission is being asked to accept limitations on what its members are allowed to review. These restrictions would limit the responsibility of the Commission. He said the existing draft takes away the purview of the Commission. Its members should not be asked to sign a document that abrogates their authority. The Commission and the system must be trusted.

Biff Bouse said the document allows future owners to make changes over which the Commission would have no control. It should leave less open for interpretation. He would prefer for the Commission to review and approve proposed changes rather than having the decision taken out of its hands.

Joe Morgan said the preservation restriction should allow for the continued stewardship of the four properties involved and provide procedures for the review of future alterations. The language of the draft references the best interest of the owners. It acknowledges the power of the Commission, but then effectively takes it back. It abrogates the power of the Commission. Exemptions have been added and the requirement to follow the Standards of the Secretary of the Interior has been deleted. He said there should be a separate restriction for each of the four properties, as they would have different owners. The document should include paragraphs on the requirement for insurance on the assessed value of the property, the indemnification of Commission members and subordination. He said Exhibit G should be a part of the baseline documentation. The references to protected and non-protected elements abrogate Commission's power. The terms "historic elements" and "non-historic elements" should be used to distinguish between the features that would be reviewed and those that would not. The classification of "protected" is not a part of other preservation restrictions. The existing draft does not adequately respect the role of the Commission. The MHC relies on the local boards, which have the knowledge of the properties, to make the decisions. He said the document reads as if its purpose is to protect the rights of the owner without future interference from the Commission, which is not in the spirit of the restriction.

Glenn Richards agreed that paragraphs about insurance, indemnification and subordination should be included. MHC acknowledged that a single restriction for multiple properties is not uncommon. The applicant would prefer a single restriction that would be recorded on each of the four deeds.

Attorney Roelofs said some of the features that would be protected under the restriction are not historic elements. He said the windows are not a historic element and their review should not be required. He said the Commission does not have a mandate to regulate every element of a building upon which a preservation restriction has been replaced. The standard of review is the impact of an alteration on the significant historic

aspects of the structure. He suggested that a subcommittee be formed that would review Exhibit E and provide a justification for the removal of any exemptions. Glenn Richards agreed that the Commission approval is not needed for window replacement. The Commission has purview over demolition and roofline changes. The preservation restriction should not give the Commission more rights than it has for other properties.

Joe Morgan said the current draft removes NHC involvement, which is not the intent of the preservation restriction. The applicant should be required to present plans to the Commission for a review of the merits of a proposed project against the baseline documents. He said Exhibit G should be eliminated and Exhibit E should provide more solid baseline documentation.

Marc Cendron said the Commission has the responsibility to review, not regulate, proposed changes. The members should have the ability to determine if the alterations would or would not be significant. He does not think Exhibit G is necessary. The document should not limit the changes over which the Commission has the purview to review.

Andrew Bernhardt said the standard that should be applied is the extent to which a proposed change would alter the historic significance of the property. A change to an element that is not historically significant could have a negative impact on the property. Chris Sawtelle agreed that a change to the windows could have an impact on the historic resource.

Glenn Richards, Joe Morgan and Marc Cendron will form a subcommittee to review the draft restriction.

6. Updates from the Chair

Glenn Richards said the appointment of another alternate member will be before City Council on August 14.

7. Minutes

Andrew Bernhardt moved to approve the minutes of the July 13 meeting. Biff Bouse seconded the motion. The motion was approved by a 5-0 vote (Glenn Richards, yes; Biff Bouse, yes; Joe Morgan, yes; Andrew Bernhardt, yes; Ed Noymer, yes; Marc Cendron, abstain; Chris Sawtelle, abstain).

8. Adjournment

Marc Cendron moved to adjourn the meeting at 9:48 p.m. Biff Bouse seconded the motion. The motion was approved by a 7-0 vote (Glenn Richards, yes; Biff Bouse, yes; Joe Morgan, yes; Andrew Bernhardt, yes; Ed Noymer, yes; Marc Cendron, yes; Chris Sawtelle, yes).