

**City of Newburyport
Planning Board
March 1, 2017**

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

1. Roll Call

In attendance: James Brugger, Joe Lamb, Jim McCarthy, Leah McGavern, Bonnie Sontag, Andrew Shapiro, Mary Jo Verde, and Don Walters.

Absent: Anne Gardner. Don Walters left at 11:10 PM

Andrew Port, Director of Planning and Development, was also present

2. General Business

a) Request for Modification – 100 Hale Street (2016-SPR-06)

Scott Cameron, Morin Cameron Group, 66 Elm Street, Danvers, gave a project overview. He demonstrated on a plan the project's reduced scale that came about during the permitting process. Loading docks on one side of the building were inside for safety and loading docks on the other side were eliminated. Employee parking moved to the other side of the building and the rear parking lot was scaled back. Overall, there was a 1,500 square foot reduction in paved area and an 18-space reduction in parking that still satisfied zoning. The Conservation Commission approved a minor modification last week to bring the building further inside the property line. The project would now be phased. Rear changes would be implemented first; front changes would occur in a second phase. Director Port said peer review engineers had approved the changes. Chairman McCarthy read the Certificate of Vote.

Bonnie Sontag made a motion to approve the Request for Modification. Andrew Shapiro seconded the motion and all 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. Old Business

- a) New England Development
83 Merrimac Street and 90 Pleasant Street – Gallagher Drive Subdivision
Definitive Subdivision (2014-DEF-02)
Continued from 2/15/17*

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The applicant requested to continue to 5/17/17.

James Brugger made a motion to continue the Definitive Subdivision to May 17th. Andrew Shapiro seconded the motion and all 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.

***b) Evergreen Commons LLC c/o Lisa Mead, Esq.
18 Boyd Drive and 5 Brown Avenue
OSRD Special Permit (2016-SP-03a)
Continued from 2/15/17***

Chairman McCarthy said no substantial new information had been presented. Several staff edits to the Draft Decision and a meeting with the applicant to finalize appropriate changes had occurred, with further iterations based on board feedback. Two written submissions would be discussed after public comments. Attorney Lisa Mead, Mead, Talerman, and Costa, 30 Green Street, asked if the board had received the latest iterations from the architect? She requested to learn the vote before it was officially taken for the opportunity to withdraw.

Public comment open.

David Marino, 7 Boyd Drive, addressed the right to build on the isolated land subject to flooding (ILSF). A board-approved precedent was set in 1985. The EPA and DEP both encouraged the board to go beyond their guidelines to protect the City's water resource. Hundreds of Massachusetts' wells were polluted. The Homeowner's Association (HOA) was only as good as the City was for holding them accountable. The City was not good at holding HOA's accountable. Adding gravel and soils to the bowl would make conditions worse. Facts that had not been part the discussion included that the location had been a gravel pit owned by the same group that had polluted a Beverly gravel pit before coming to Newburyport. The water would not be tested for 6 months while residents could be drinking bad water. New sewer lines on Plum Island had broken. The project's new lines could break also. He cited the MA cities that had sewer line breaks every day. Putting out a fire in the development would result in chemicals going into the soil. Polycyclic Aromatic Hydrocarbons (PAHs) from motor oils and other sources were a risk. Newburyport had protected the historic downtown for 35 years. This water source should have the same protection. He asked the board to deny the project.

Robert Mazzotti, 8 Brown Avenue, was concerned that the board was still discussing something that could endanger the water resource.

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Pamela Procter Lee, 1 Boyd Drive, said five chemicals were left off the list of 250 chemicals. She demonstrated how the five chemicals, some colorless and odorless, polluted and listed their symptoms. The board would not be around when the resource was polluted.

Michael O'Brien, 7 Briggs Avenue said compromises were made: a narrower access road, no parking, and public trails. How would people get to the trail? Where was regard for the safety of kids who had played in the street for 20 years? The traffic study did not consider kids who would eventually have their own cars. There were no sidewalks for people walking at night. Why was an access road needed? Russell Terrace, Phillips Drive, and several others he cited did not have access roads. If the development were smaller was an access road needed?

Public comment closed.

Board members reviewed the Draft Findings and Special Conditions of 2/26/17.

Page 1 comments: Given discussions about the ILSF, 'yield 38 houses' was amended to 'yield no more than 38 houses,' throughout the document. In the same paragraph, language was amended to reflect that the board had not approved the conventional yield plan.

Page 2 comments: The language demonstrated a connection between the low water areas and the quality of water going to the well. Homeowner behavior could not be relied upon which meant the design had to be good. Best management Practices (BMPs) and ILSF were added to the acronym list. 'Best choice design' was amended with 'of those alternatives submitted by the applicant.'

Pages 2-4, Special Permit Criteria: Traffic calming concerns were addressed by reducing road width. Speed bumps had been approved on the original Boyd Drive but were never installed. Could they be added to the longest stretch on Boyd Drive? Director Port said he would ask DPS for their input on traffic calming measures. The traffic engineer had not mentioned speed bumps. Members said Boyd Drive did not have any sidewalks. Should that be addressed now?

Page 3 comments: The language 'most acceptable method of constructing a new residential neighborhood' was amended with 'of those alternatives submitted by the applicant.' The plan proposed taking out all the old paths and putting in new ones that connected to other parts of the City trails network. Where would the public park? This was more of a neighborhood benefit and north end area amenity. People would not bring cars if there was no place to park or they could park at the Park and Ride at the trailhead. How would people get from the road to the trail? Were there easements or any access from the circle if cars parked there? Director Port said that was not worked out yet. MA DOT had not yet approved the connection. Chairman McCarthy said that could be worked out at the definitive stage.

Pages 4-6 noted the use of soils testing, water testing, and well testing. Regarding water supply, was it appropriate for the building commissioner, DPS director, and health director all to make decisions rather than one entity? When an individual was listed, what entity was responsible? The DPS director reviewed and the building commissioner had the authority to stop construction, not as the deciding person, but the action person. Language was changed to reflect that the DPS would have a representative on site when testing was performed. One member would have more confidence if the Board of Health could shut down anything. Chairman McCarthy said if anything was found in the water, he believed there would be a quick consensus across entities.

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Page 5 comments: The boundary wells' contaminant testing raised consistency issues and questions about concentrations that should trigger an event. It was advisable not to wait until a change in contaminant levels reached the EPA's standard to act. Chairman McCarthy said there were 12 locations for testing. DPS performed the testing of 250 chemicals on their own. The baseline for chemicals at the boundary had been set. The last bullet on page 4 applied to all testing. Members said action should be taken when levels started creeping up from the baseline. Language for the last sentence on page 4 was changed from material or significant to '20% change from the baseline.' How would an issue be resolved? Chairman McCarthy said the applicant was required to review all the testing data and make a report recommending what additional chemicals should be tested for, including what was found in the dirt disturbance testing and elsewhere. During construction, work would be suspended until the issue was resolved. The boundary wells would not be monitored after construction, but the City continued to monitor the water supply. Members said that concentrations did not tell the whole story, which would be the long-term health effects from frequency of ingestion. A 3D model was needed to show how long it took a drop of pollutant to reach the well. The board would have to go back to the applicant for that. Chairman McCarthy said the testing protocol applied regardless of what was built. The board was concerned about post construction testing if the baseline did not change throughout the construction phase. The DPS should continue testing the boundary wells on a regular basis after construction. Chairman McCarthy wanted the DPS expert at AECOM to specify that was needed. Members asked if the board should add the five chemicals mentioned during public comments? One of the chemicals was already on the list. Director Port said he asked the Water Department for modifications to the conditions and received no feedback. He preferred to defer to their judgment rather than add chemicals without the benefit of their input. Chairman McCarthy said the applicant testified there were limited chemicals tested in several locations. AECOM, the City's peer review, came up with a testing protocol of 44 chemicals and added soils testing in a later meeting. Director Port said the City never received additional feedback on other chemicals. The 12 locations were spread evenly around the site as a result of a Water and Sewer Department meeting, who set the soils testing requirement. Chairman McCarthy asked whether the easement was in effect post construction for the DPS to go back in and test? A definitive testing process was needed for which the applicant was responsible. Afterward, the DPS was responsible and the 12 locations for the monitoring wells needed to be accessible to them. That was the reason not to have private roads. Should the board be more specific about which wells were meant in the second bullet on page 5? Should the DPS have access to wells in the open space? Where should language on post construction testing be placed? An easement with access to the open area was needed. Attorney Mead said the City would own that land. The testing protocol was the 44 chemicals. 'During construction' was added to all underlined headings on page 5. Members said the testing protocol should be flexible. The EPA added new substances over time. Chairman McCarthy changed the testing protocol definition so that contaminate testing was dynamic and included any new substances added by EPA and MA DEP.

Added to page 4 under Public Water Supply Protection, in the second bullet point, language would read, '...or b) any significant change in chemical concentrations which in the reasonable opinion of the DPS director could cause a threat to the public water supply, then...'

Added to page 5: The headings 'Installation of Boundary Monitoring Wells', 'Baseline Testing at Boundary Monitoring Wells' and 'Baseline Site Protocol Testing' were amended with 'Prior to Construction.' Under the heading 'Baseline Testing at Boundary Monitoring Wells,' the

phrase chemical specifications was changed to ‘chemical and location specifications.’ ‘...Table 1 and 2’ was amended with ‘and any chemicals recently added to the applicable DEP or EPA lists which the DPS or its designated consultant reasonably determine to be necessary (the “Testing Protocol”). Under the heading ‘Baseline Site Protocol Testing’ language was deleted and replaced with ‘the “Testing Protocol.”’

Page 6 comments: Under ‘Protocol Testing During & After Construction’, the sentence ‘Following the last round of testing’ was amended with ‘by the applicant during construction.’ The board considered its interest in monitoring in a way that had not been done before because of the development. Could the board recommend that DPS test the boundary wells? There was no authority to compel the DPS, but had the authority to compel the HOA. A new bulleted heading was added as follows: ‘Easements to Monitoring Wells Prior to Construction: Prior to any construction activities on the site the applicant and/or owner shall provide the City with copies of fully executed and recorded easements granting access to the DPS Water Division for the purpose of accessing any and all monitoring wells within the designated Open Space areas for the purpose of monitoring groundwater quality and soil conditions during and after construction. The terms of said easements shall be subject to review and approval by the Planning Board as part of the OSRD-DSP process. The City shall indemnify and hold harmless the Applicant as part of the easements as well as provide the applicant an annual Certificate of Insurance naming the Applicant, its assigns, or devisees as a loss payee thereon. Any testing results received by the City shall be provided contemporaneously to the Applicant, its assigns or devisees.’ Chairman McCarthy wanted the DPS to have control of streets and sewers, responsibility for what was put on the roads, and for the water quality. Members suggested consistency with what was done for Russell Street Extension roads. Insurance related to environmental problems that contaminated the well and was applicable during construction only. A payment and performance bond was better than insurance and would influence how one member voted. Members did not think \$2 million of insurance was enough and suggested \$5-10 million. Chairman McCarthy said there was surety for roads to protect the City if the applicant failed to complete them. The applicant was willing to put up bonded money to fix Boyd Drive. The insurance was related to their site disturbance only. He said \$2 million was based on the applicant’s research, which found between \$2-10 million used. He was comfortable with \$2 million. Under ‘Insurance Policy During Construction,’ language was changed last from ‘when last house is sold’ to ‘when last house is built.’

Page 7 comments: Members discussed their interest in requiring the single lawn care professional to keep records and to add the use of de-icing chemicals to the prohibited list. What about the use of pesticides and herbicides in a small residential garden? Lots were small; the concern was more about concentration, quantity of gardens, and use over time. There was interest in adding language elsewhere in the document for an HOA insurance policy that functioned like an umbrella policy, in order to strengthen the enforcement aspect.

Page 9 comments: Under ‘Enforceability,’ language was added ‘...to adequately enforce, through liens or otherwise, all provisions of the HOA documents...’ Under the heading ‘Applicant Responsibility During Construction,’ ‘is sold’ was changed to ‘is built.’ Under the heading ‘Roadway Width - Connection to Brown Avenue’ the last sentence was removed. Under the heading ‘Maintenance of Roads within the Subdivision,’ language was added to the first sentence ‘...(including those on residential lots)...’

Page 10 comments: The DPS would look at other roadways that could be affected by construction vehicles. The occupancy permit would be withheld until repairs were made.

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Baseline photographs would be needed. Members were interested in some form of traffic mitigation and upgrades to all of Boyd Drive and Brown Avenue as a benefit to the neighborhood. If Boyd Drive were the only road named, construction vehicles would use all the other roads to avoid paying for damage on Boyd Drive. Under the heading 'Upgrades to Boyd Drive' sentences were added at the end to read 'Additionally, prior to construction, the DPS shall inspect all roadways providing access to the site from Ferry Road and prepare baseline documentation of the existing road conditions. Prior to issuance of the last Occupancy Permit within the OSRD, the Applicant shall meet with the Planning Board to determine (based upon documentation from the DPS) what repairs are needed within these roadways as a result of ongoing construction activities and heavy vehicles using these roadways during that time (normal wear and tear excluded). The Planning Board shall confirm the nature and extent of this work to the Applicant in writing. The final Certificate of Occupancy in the OSRD shall be withheld until such time as the Applicant has completed all such repairs to the satisfaction of the Planning Board.'

Page 12 comments: Under the heading 'Architectural Design & Structural Elements,' the first two sentences were revised to read, 'As part of the OSRD-DSP permitting process, the Applicant shall provide the most recent version of all elevations for all proposed house styles within the OSRD for review and approval. Houses built on lots 1-3 shall be consistent with the size, scale, and massing of existing houses along Boyd Drive.'

Page 13 comments: Could HOA seed money be spent on anything after the subdivision was built, such as a fireworks display? Director Port said HOA documents would specify the use for the seed money at the time that the board reviewed the HOA documents. Should there be language to address funding in perpetuity and funding for any DPS work that should have been done by the HOA? Chairman McCarthy said work could be charged back to the applicant. Director Port proposed language relating to a separate account for to fund DPS consultants under Account Balance: 'Consultants hired by the DPS to meet the requirements of this document should be paid for by the applicant.' Under the heading 'Account Balance' the first sentence was revised to read, 'The proposed construction will require regular inspection by the Office of Planning & Development, the Planning Board's consultant engineers, and the DPS in order to ensure compliance with this decision.' Under the heading 'Initial Funding for HOA Activities' the language 'written confirmation to the Planning Office' was added. Members increased the stormwater management systems maintenance from \$3,000 to \$6,000. 'Hours of Construction' was revised to 7 AM - 7 PM Monday - Thursday, 7 AM - 5 PM Friday, and 9 AM - 5 PM Saturday. Construction vehicles should not drive down Boyd Drive or access the site anywhere until 7 AM. Members said there was a specific tool that could be used for performance specifications for sewers to protect the water supply. Director Port would ask the DPS if they wanted to alter the boilerplate language in consideration of the water quality.

Chairman McCarthy asked what items were deal breakers? Members raised concerns for Boyd Drive as a contiguous, upgraded roadway; the Saturday hours; the amount of insurance; the HOA umbrella policy; post-construction testing in the boundary wells; definitive language for incremental increases in substances during well testing; and how escalating levels would be resolved. New language should convey that any statistically significant change in the amount of chemicals, as determined by the DPS, would require City entities to be notified.

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Attorney Mead commented on proposed language changes. She proposed language for page 4, 'in the event the test results show any significant change in chemical concentrations which in the reasonable determination of the DPS director pose a threat to the public water supply, the building commissioner may suspend construction until the matter is resolved.' Changes on page 5 regarding the flexibility to test for newly identified substances by the EPA and DEP could result in testing for chemicals that were not appropriate. She preferred to rely on the discretion of the DPS consultant and language to that effect should be added under Baseline Testing at Boundary Monitoring Wells, Baseline Site Protocol Testing, and Protocol Testing. A new bullet point should be added for DPS testing of soils and wells. On Page 7, she preferred not to prohibit de-icing chemicals because some were acceptable. There was a single landscaper for snow plowing and driveways. Language should be added for driveways and sidewalks whose maintenance protocol is approved by the DPS after the roads were public. Homeowners would still need to get driveway and sidewalk maintenance approved. She had no problem with keeping maintenance/chemical records. On Page 9, under Enforcement, she proposed that the City have the right to lien the HOA if the City used their funds to cover HOA responsibilities, instead of an umbrella policy. Members said if the HOA declared bankruptcy, federal statute would prevail rather than state statute. If homeowners did not pay dues, the HOA would be in trouble. A lien had no benefit when a homeowner was not selling the property. Attorney Mead said, under Roadway Width, the sentence the board deleted was important because the board was asking the developer to build below standards, which could be challenged by the City Council. The board should be willing to stand up in support of making the roads public at the City Council. Chairman McCarthy agreed to add 'the Planning Board requires' that the roadway connecting the southern loop to Brown Avenue shall be 22 feet wide. On page 10, under Upgrades to Boyd Drive, Attorney Mead added 'following a baseline survey by DPS.' On page 12, Architectural Design & Structural Elements, should be supplied before the Definitive Plan process closes. In terms of consistency in size and architectural style, there was considerable diversity on Boyd Drive. Chairman McCarthy agreed there was an eclectic mix and the houses were larger. Language was changed to 'shall be a consistent size, scale and massing.'

An unresolved issue for two board members was the use of insurance instead of a performance bond. Another member's hesitation concerned questions on stormwater management because the project was located in a Water Resource Protection District (WRPD). Those issues could not be addressed until the Definitive Plan stage. Chairman McCarthy said water quality was the primary issue. The plan was the one the board would get at this stage. He believed the golf course was a more detrimental use for the land than a subdivision. The applicant had addressed all four of the board's primary criteria. Attorney Mead said a performance bond, given when something was being built and completed, would not protect the well and was not the appropriate vehicle for insuring against well contamination. She requested to close the public hearing and take a vote.

Andrew Shapiro made a motion to approve the OSRD Special Permit under the conditions as read and corrected. James Brugger seconded the motion and six members voted in favor. Don Walters and Joe Lamb voted to disapprove.

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.

- c) ***Evergreen Commons, LLC***
18 Boyd Drive and 5 Brown Avenue
Preliminary Subdivision Plan (2017-PSP-01)
Continued from 2/1/17

Attorney Mead had received comments from CSI. Steve Sawyer, engineer, Design Consultants, Inc., 120 Middlesex Avenue, Somerville, resolved the issues with CSI. The board's 45-day period would end Friday. Members were not satisfied with the water protection plan.

Leah McGavern made a motion to disapprove the Preliminary Subdivision. Mary Jo Verde seconded the motion and all 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.

4. New Business

- a) ***George Carey***
1 Market Square - Firehouse
DOD Special Permit
Continued from 2/1/17

Andrew Shapiro read the notice. Jeff Roelofs, attorney, 30 Green Street, on behalf of Attorney Mark Griffin, said the Waterfront Trust approved the plan. The Newburyport Historical Commission (NHC) review preferred no signs mounted or painted onto the brick exterior. Two signs were dropped from the proposal for tonight. The applicant would return for a minor modification with a specific signage proposal in order to gain approval for the rest of the project. George Carey, owner of Sea Level Oyster Bar, said he hoped renovations to space he was leasing from the Firehouse could be completed in the spring for a summer opening. The 244-seat capacity would remain exactly the same. Downstairs bathroom renovations would start March 13th. Alterations to the building's rear would provide accessibility from the Waterfront Park. Dan Ricciarelli, architect, Seger Architects, Inc., 10 Derby Square, Salem said front renovations included replacing solid awnings and adding functional garage doors. The building's rear tent would be removed and the first floor glass wall expanded 7 ½ feet outward with all glass doors. Mr. Carey said the theater's space above would not change other than becoming a four-season space, increasing the viability of both spaces. A permanent steel pergola with two hip canvas

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awnings would extend the al fresco dining season by using clear plastic curtains on the deck within the same envelope and footprint. Awnings would not block views. Plantings would be updated. Two thirds of the deck would be raised level with the restaurant floor for an improved rear entrance. The steel awnings were identical to others in Newburyport. The small addition required pouring a foundation. Canvas valances would hide rollers for the plastic curtains. Garage doors were black aluminum with clear glass. Of the four openings, two would stay the same and two would get the garage doors. He showed an historic photo of the firehouse garage doors that were a close match to new ones proposed. There would be a new bar. The front entrance remained the same. An interior wall would be removed to open up a view corridor.

Director Port said the Planning Office recommended approval and with the two missing signs submitted later. Mr. Ricciarelli said when installing a new sign over the entrance, probably with black letters, they would re-use the existing holes in the granite used by the current sign. The idea was to better define the entrance, which was ill defined now. The marquis sign would be wooden. The team would work with a preservation architect. Attorney Roelofs said an NHC condition specified no new holes in the mortar, but ideally, cable stays would be used to hold the sign, requiring a new hole in the grout, not the brick, but deviating from the NHC condition. An effort would be made to use the existing brackets and work with the current gooseneck lighting. Additionally, the building would be up-lighted from a tree or the sidewalk. Mr. Ricciarelli corrected previous statements and said only one sign for the rear would be submitted later.

Board member comments: The sign letters should be black.

Public comment open.

Tom Kolterjahn, 64 Federal Street, co-president Newburyport Preservation Trust, had one concern. Mr. Carey wanted to remove the paint on the interior historic brick by sandblasting. Historic brick cannot be sandblasted. Mr. Carey agreed to explore non-abrasive ways to remove the paint. Members considered requiring non-abrasive, non-mechanical methods in order to preserve the brick. Attorney Roelofs said the methods used would be in accordance with the guide *Assessing Cleaning and Water Repellant Methods for Historic Masonry Brick*. Members agreed on a condition to use existing masonry holes, except as necessary to anchor cable stays.

Public comment closed.

The board reviewed all recommendations in the NHC Report.

Leah McGavern made a motion to approve the DOD Special Permit with the agreed upon conditions. Joe Lamb seconded the motion and all members voted in favor.

Motion Approved.

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5. Planning Office/Subcommittees/Discussion

- a) Special Permit and Site Plan Approval – Filing Requirements – Clarification and Waiver Request for Parking Garage at 90 Pleasant Street*

Chairman McCarthy read the list of submittals and the fee waiver request for the application.

Bonnie Sontag made a motion to approve the submittals and waiver request. Mary Jo Verde seconded the motion and all members voted in favor.

Motion Approved.

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5. General Business (continued)

- a) The minutes of 2/1/17 were approved as amended. Joe Lamb made a motion to approve the minutes. Leah McGavern seconded the motion and all members voted in favor.*
- b) The minutes of 2/15/17 were approved as amended. Bonnie Sontag made a motion to approve the minutes. James Brugger seconded the motion and all members voted in favor.*

Motions Approved.

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6. Adjournment

Andrew Shapiro made a motion to adjourn. Bonnie Sontag seconded the motion and all members voted in favor.

The meeting adjourned at 12:04 PM.

Respectfully submitted -- Linda Guthrie