

**City of Newburyport  
Planning Board  
May 20, 2020  
Minutes**

The online meeting was called to order at 7:04 PM.

**1. Roll Call**

Attendance: James Brugger, Beth DeLisle, Anne Gardner, Tania Hartford, Leah McGavern, Bonnie Sontag, Rick Taintor, Mary Jo Verde and Don Walters

Andrew Port, Director of Planning & Development and Katelyn Sullivan, Planner, were also present.

**2. Public Hearings**

- a) Institution for Savings  
93 State Street  
Site Plan Review (2020-SP-02)  
ITIF Special Permit (2020-SP-01)  
DOD Special Permit (2020-SP-09)  
Continued from 5/6/20*

The applicant requested to continue to June 3, 2020. Revised plans have been posted to the website.

Don Walters made a motion to continue the DOD Special Permit (2020-SP-09), ITIF Special Permit (2020-SP-01), and Site Plan Review (2020-SPR-02) applications and public hearings for 93 State Street to June 3, 2020. Rick Taintor seconded the motion and eight members voted in favor. James Brugger 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.*

- b) Vera Ristorante, LLC c/o John A. Santaniello  
31-35 Market Street, Unit 1  
DOD Special Permit (2020-SP-03)*

Members said there is no new information from the applicant. The board's review included the Downtown Overlay District (DOD) ordinance as amended, the Secretary of the Interior Standards for Rehabilitation and any other relevant Secretary of the Interior Standards, the Massachusetts Historical Commission's Form B for West Row dated May 1999, an historical photo showing a windows with nine panes of glass in three columns, a current photo of West Row, a special permit application drawing of the proposed window configuration posted on March 10, and the Newburyport Historical Commission (NHC) Advisory Report dated April 23.

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Glenn Richards, Chair, NHC, said the historic photo is believed to be from the early 20<sup>th</sup> century. The current windows were probably installed sometime during urban renewal to be similar replacement windows, in keeping with the same basic format with nine lights. That is very typical for a commercial storefront. The NHC Advisory Report does not take a stand on whether or not windows should be operable. But when the windows are closed, they should closely resemble the format, appearance, and sight lines present today. There is a historical reference for awnings. The restaurant wants to change the opening to result in a more sizable separation between panes by replacing the lower six lights with either three or four operable sections, depending on whether you are viewing the first bay, which is three panes wide, or the last bay, which is four panes wide. He demonstrated on the screen display of existing and proposed windows the potential problem. The window proposed requires much wider muntins for operability. The NHC advises preserving the historical sightline.

Patricia Peknik, Vice Chair, NHC, said during the board's last meeting various downtown restaurant windows were discussed as possible models for what could be done on West Row. The NHC discussed the Port Tavern, 84 State Street, built in 1940. The building's full vertical windows comport with that building's history. It is a different matter to alter windows in a similar fashion on a building from 1811 that has been preserved. Likewise, Agave is an 1820 building, but the first floor storefront is modern construction from the urban renewal period. It was not problematic to allow that design there. At Ceia, the first floor windows were altered from the 1970s. The intent of the DOD is that new alterations should not imitate whatever the most recent design trends are but be modeled on documentary evidence of the original historic windows. The NHC looked at the earliest evidence of windows from the Newburyport Library Archival Center. Without the DOD, it would be possible to examine other replacement windows downtown, which is what caused the loss of many historic first floor exteriors downtown. The Secretary of the Interior Standards and the National Park Service Brief on Historic Storefronts emphasize restoring storefront windows in a pattern and style that as closely as possible comports with the appearance of the original historic windows. Brief #11 says it is important to consider the relationship of storefront windows with windows on the upper stories and they must be coherent with the surrounding buildings. The DOD says when replacing or restoring an exterior architectural feature that has been altered, the approved design shall be based upon documentation of such exterior architectural feature as it originally existed. The NHC looked to the expertise of a new member who determined that meeting the design criteria with operable windows would not be possible with a wood frame, but a steel frame would provide both the look and functionality desired. Market Square is a public square that cannot be compared to State Street. The design of these windows needs to preserve the aesthetic coherence of the Square and remain true to its historic use as public space.

Joe Morgan, member, NHC, said we have been talking about storefronts and windows almost interchangeably but they have very distinctive features in the Secretary of the Interior Standards. The specific difference of a storefront, unlike windows, is that it is there for commercial aspect to allow a large field of vision to the interior to see the merchandise displayed. If we proposed to replace a storefront feature with more of a window feature, that is an inaccurate response to preservation or rehabilitation.

Members asked if the proposed change should not be reviewed under the category of windows in the DOD and therefore the DOD window standards do not apply? Mr. Morgan said technically the DOD does not make a distinction between storefronts and windows.

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Public comment open.

Councilor Jared Eigerman, 83 High Street, president, Newburyport City Council, said the word storefront appears in the DOD ordinance only once stating, “when replacing or restoring an historic exterior architectural feature that is missing or has been significantly altered, such as storefronts, the approved design shall be based on accurate documentation of such historic architectural feature.” A strict interpretation of the Secretary of the Interior Standards and the DOD ordinance would probably not allow operable windows at all. But there is a good land use reason for operable windows. The NHC offered a path forward months ago. If the applicant cannot use a design that is sympathetic to the historic fabric and yet is operable, and adheres to what the NHC is asking for, the application should be denied. Otherwise, the DOD does not mean anything.

Stephanie Niketic, 93 High Street, agreed. Her concern is reflected in an email. Aside from not liking the windows proposed, there is a procedural error. The applicant has called the windows not historic without offering evidence for that and has not submitted the required window inventory. Once the window inventory is done, it is the board’s determination whether the existing windows are historic or not. We’ve seen an early 20<sup>th</sup> century picture of the building when it was Thurlow’s hardware store between 1870-1920 and the windows are the same. We’ve heard it can be an in-kind replacement of those windows that were put in in 1972-973 during urban renewal, which is also an important part of Newburyport’s and the nation’s history. The windows are historic. The inventory should be submitted. The DOD regulations are clear that historic windows must be retained and repaired, and if that is not possible, replaced in-kind. If the applicant cannot do this, he should withdraw the application. It is unclear what enlivening the streetscape means here because the Bullnose is usually very lively. Flies come into the Port Tavern when the windows are open. She did not want the historic building altered for the few months windows could be open. The building was already harmed by a previous restaurant that lasted less than a year. Market Square has been in the National Register of Historic Buildings since 1971 and is supposed to be protected by the DOD.

Public comment closed.

Members said it was confusing whether the discussion was about an historic storefront or window. Assuming, as the board had understood, it is a window, the ordinance requires the board to make three determinations: 1) whether windows are historic architectural features, and it seems they are because they are described as such in the survey form, 2) whether the overall condition of each window is good, fair, or poor, and the windows seem to be structurally sound and intact, and 3) to determine the appropriate treatment. The ordinance requires good windows to be preserved. The board has been operating under the assumption that it can allow a different design. At this point, that seems not to be the case and the ordinance does not seem flexible.

Councilor Eigerman said the ordinance has two concepts for an historic window, the historic form and the historic material. While Chair Richards does not have the view that the materials are historic, Ms. Niketic does. The ordinance was written with the intention of relying on a window inventory for the board to determine whether the windows have historic material. Windows dating to 1972-73 are just short of the historic period of 50 years used in the Secretary of the Interior Standards. The windows will be independently historic in a couple of years, so there is wiggle room on materials. But the DOD language on replacement windows requires them to match the historic

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windows in dimensions, configuration, mode of operation, and other general characteristics, but materials need not be duplicated exactly. Those are the confines under windows in section XXVII-F-5.e.iii.

Members said in order to allow replacement windows we would have to find that the existing windows are not in “good” condition. Director Port said the question is whether the windows are historic or character defining. There is not sufficient information to say they are historic, but they are character defining. Members said the ordinance’s definition of an “historic exterior architectural feature” is “any character-defining exterior architectural feature of a historic building or structure. It does not say that the feature has to be historic. And the definition of “character-defining historic exterior architectural feature” is that it “was understood to be contributing to the significance of the relevant historic building or structure at the time of its listing on the State or National Register.” The National Register form for this building looks to the windows and talks about them. Members saw the windows as a historic architectural feature because it is an exterior feature of an historic building. Perhaps the definition is not as exact as the intent was meant to be. Councilor Eigerman said the board’s understanding is correct. The character-defining features are the design elements, not the materials. The pattern is historic. The picture from the early 20<sup>th</sup> Century is the pattern shown on the inventory form, with those character defining features and proportions. Members recalled Planner Katelyn Sullivan’s input that the windows are not the original windows in that they are now double paned insulated, but as a contributing feature, they have the same pattern.

The process of writing the DOD ordinance included a carefully considered procedure for when windows should or should not be replaced. Replacing a non-operable window with an operable window confused the issue somewhat. If the windows are historic and the applicant wants to replace them, the DOD requires both providing a window inventory and making a case as for why they need to be changed, despite the board’s understanding that operable windows animate the streetscape. There are creative ways to do that. A hinged-awning approach, whether it means eliminating the awnings and hinging from the top if possible, or hinging a third of the way down from the top is one avenue to consider. Other design solutions remain unexplored. Is a window inventory needed before changing windows not of historic materials? Other downtown buildings use open windows. This storefront configuration has been altered and is clearly not historic, but the DOD ordinance holds. Windows should match what existed there from the 1970s.

Applicant John Santaniello said he emailed new plans two days ago showing more glass exactly as the board requested in the last meeting. He included two new photographs that superimposed the new trim with insulating double paned windows. Members said they were not notified anything new had been posted. Ms. Sullivan said the un-reviewed plans arrived late, were just posted, and are available to display tonight. Members asked to be notified directly when material is posted at the last minute. Mr. Santaniello described the time, effort, and money expended to date for the fifth or sixth design. When the board learned he could not afford metal-framed windows two weeks ago, there was agreement to consider a wood design with more glass. The new design does not protrude further than the awnings. Members asked Mr. Santaniello how important operable windows were? As a contributing feature to the historic district, operable windows were the core issue. Mr. Santaniello said he wanted operable windows all along. He did not think changing the windows would make a difference to the historic value of the building. The tone of the board’s meeting two weeks ago was very positive about open windows and more glass and quite different than this evening’s tone.

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Members said the board had a different perspective today. The board was in favor of open windows rather than replicating windows from the 1970s. But, there are reservations about being inconsistent and there are ordinance constraints. The location is part of a whole. Market Square reads as West Row, not State Street. Justifying an exception for these windows could lead to problems down the road because of inconsistency. The very specific DOD analysis on windows prevents allowing wood windows that are operable. That was not understood two weeks ago. Alternatively, members said that over 10 years ago there was no outdoor seating in restaurants. That change made the City much better. In this circumstance, operable windows would do the same. If the applicant is not willing to accept the NHC recommendation for operable windows, and there is no other option, members would have to vote against the proposed design.

Mr. Santaniello said the DOD constraints should have been voiced more strongly months and three or four plans ago. The windows will stay the way they are now. Members accepted the advice to warn other applicants earlier in the process. Members suggested that withdrawing the application without prejudice leaves room to come back and address the situation in another way, and Director Port concurred.

Don Walters made a motion to allow the applicant to withdraw without prejudice the Special Permit Application submitted for 31-35 Market Square, Unit 1 to May 20, 2020 (2020-SP-03). Rick Taintor seconded the motion and all eight members voted in favor. Tania Hartford 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.*

**c) *The Daly Group, LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC  
8, 10, 12, & 18 Colby Farm Lane***

***Site Plan Review and Definitive Subdivision***

- ***Definitive Subdivision (2020-DEF-02)***
- ***Site Plan Review (2020-SP-04)***
- ***VI.C Special Permit (2020-SP-10)***
- ***XIV OSRD Special Permit (2020-SP-11)***

***Continued from 5/6/20***

Attorney Lisa Mead, Mead, Talerman & Costa, 30 Green Street, provided updates from the last meeting. The Conservation Commission closed out the matter last night and will issue an Order of Conditions. A new lot configuration for Lot #1, approved by the Conservation Commission, was submitted. The plan includes some changes in landscaping. She demonstrated on the most recent landscaping plan where the Conservation Commission wanted vegetation that would encourage wildlife and discourage people going into the wetlands. Fencing to the rear of the common area was removed and replaced with shrubs along the sidewalk. In addition, the Conditions acknowledged

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municipal facilities on the street and that resident parking was not allowed in the public parking for the playground. These conditions would be in the deed and HOA documents. Last Friday, the City questioned whether or not it wanted a playground there. Since then, she had spoken with the mayor about the concerns raised by Sustainability Manager Molly Ettenborough concerning heavy trucking traffic. The developer provided a sketch showing a painted crosswalk, a painted 'Yield' on the road, and a solar-powered activated lighted crossing signal. The mayor requested a reduction in the number of public parking spaces resulting in a second ADA space and one other space. Attorney Mead proposed keeping the playground and hoped public safety concerns were satisfactorily addressed. The road narrowed naturally right where the crosswalk is located, contributing to traffic calming. There were peer review comments to review. The applicant needed an agreement with DPS on the road improvement plan in order to address the swale issue. If that agreement was not reached in the next two weeks, she requested the board include a condition that an agreement would be reached prior to the actual construction or occupancy of the last house.

Landscape architect, Howard Snyder, Harriman, 19 Kingston Street, Boston, said relatively minor changes had a big impact on the overall project. He demonstrated on the plan the native species and other appropriate plantings adaptive to 25 feet from a wetland on Lot #1, along the fence on both sides, to provide habitat. The hatch pattern on the upper right is a specialized seed mix that only needs mowing twice a year. The Conservation Commission accepted a change in the specialty seed mix that provides more yard space. Lawn areas are separated from the asphalt walkway with plantings that bloom most of the summer and will keep pedestrians on the walkway. A cluster of evergreen conifer shrubs at the corners where the walkway makes a turn will, in a year, provide a round, thicker obstacle to keep pedestrians from cutting corners.

Engineer Matt Hamor, Landplex, 10 George Street, Lowell, addressed two comments from peer reviewer Phil Christiansen. Plans now show additional detail clarifying the use of thrust blocks for the water line and additional notations on the utility plan regarding bends in the water line. The Colby Farm Lane swale comment will be reviewed by the City engineer and incorporated in the City improvement plan. Attorney Mead said one of the City's issues was the lack of a layout document. Mr. Hamor said he completed a layout document for the applicant. Attorney Mead said those were the only two outstanding issues from the last meeting.

Members had seen a chart of City benefits agreed upon in exchange for keeping the playground. Attorney Mead said the additional benefits are that the applicant met with the City and agreed to reclaim and resurface Colby Farm Lane from Low Street down beyond this development, to not just connect the City's sewer main to the project sewer main, but also to replace the clay sewer pipe from Low Street for existing services down Colby Farm Lane, to work on the water mains, construct a publically accessible playground, include affordable housing, and contribute money to build a new barn for the Parks Department. The exact numbers and how everything works out is under the purview of the mayor's office.

Members said they had not voted on the requested waivers for a full traffic report and an environmental and community analysis for the application in general during the completeness vote.

Leah McGavern made a motion to grant the requested waivers to the submittal requirements for Major Site Plan Review for 8, 10, 12 & 18 Colby Farm Lane (2020-SPR-04). Don Walters seconded the motion and eight members voted in favor. Tania Hartford abstained.

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Members asked if the split rail fence annotation for Lot #1 meant the fence traveled only half way down the lot line and stopped where you cross out of the wetland area? Attorney Mead said no, the fence went all the way down. Members requested changing that note because it was ambiguous. The lighting plan for the parking area showed handicap ramps on the right side, but there is no sidewalk. Mr. Hamor said there would be a concrete sidewalk on the right side. Members requested more detail on the sidewalk and parking spaces. Mr. Hamor said Sheet #10 showed details for the handicap ramp, sidewalk, and curb. Members saw detail for bituminous, not concrete. Mr. Hamor said he did not have a specific sidewalk details from the City. He would add that or it could be a condition. Members wanted the concrete notation to be absolutely clear on plans. Mr. Hamor said the ramp detail called out concrete. Members said the detail appeared on the bottom of the ramp and they were referring to the whole sidewalk. Past problems had occurred when the use of concrete was unclear on plans. They asked about the sidewalk on the right side that connected to the sidewalk along the lot line. They could see the sidewalk would be bituminous as it left the roadway. They recommended using the international crosswalk detail rather than the ladder detail because it is more visible. Mr. Hamor said all of the work within the right-of-way would be in a separate detail on the improvement plan for the City. Members asked about the reasons for reducing public parking to three spaces, including one handicap space. Attorney Mead said it was a balance requested by the mayor to address some of Sustainability Manager Molly Ettenborough's concerns about safety. The mayor thought fewer spaces would be less likely to encourage many people to go there. Five spaces could be provided. Members said because it would be public there should be five spaces providing four non-handicap spaces rather than a token two. Members noted the large gap between the parking spaces and the fence to the right and asked for clarification about what was planned for that area. The applicant should address this blank space and the parking when the plan is redrawn. Attorney Mead agreed. Bike rack details are in the landscaping plan.

Public comment open.

Molly Ettenborough, Newburyport Sustainability Manager, said she expressed her concerns about the playground in a May 13 tech review meeting. The City has 26 parks and playgrounds. Colby Farm Lane carries up to 100 cars and trucks five to six days a week. Kids running across the street are a danger because trucks stopping quickly and sight lines are issues. A highly visible crosswalk is good. Sidewalks to take people off the road are good. Who will maintain the playground? She was certain there would be complaints about it. She agreed with more parking to get cars off Colby Farm Lane where the traffic is already bad.

Public comment closed for the night.

Attorney Mead said the HOA is required to maintain the playground per the condo association documents. City access is by an easement. The easement access is similar to those granted for the Evergreen project and the Towle building, where public access walkways cross the property. Members asked if any consideration was given to people trying to walk through the wetlands? Attorney Mead said the Conservation Commission considered that and decided not to do any signage. Director Port and Mr. Hamor recalled that conversation also. Mr. Hamor said the sidewalk that would have encouraged people to go into the area was removed. Members asked whether the conditions should include that the open space is not open to the public. Director Port said the open space would be conveyed to the City to provide a better level of protection should an encroachment

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occur on Lot #1. Project owner, David Daly & Jonathan Miller, The Daly Holding Company, Inc., 229 Steadman Street, Lowell, said the open space just outside the playground belongs to the development. Director Port demonstrated the area on the plan displayed as Lot #3. Members had reviewed Ms. Ettenborough's email comments from May 19<sup>th</sup>. What was Park Director Lise Reid's position regarding the need for this park? Director Port said there is a strong need for an accessible playground per the Parks Department, but he could not comment on other City playgrounds. Every feature in this playground is ADA accessible. Members said the playground was important because the seven dwelling units without traditional backyards have no other space for personal recreation. The affordable unit has an accessible ground floor bedroom. The model where everyone shares combined open land and a playground is a good addition to the community.

Members wanted to go through the findings for each permit to ensure all conditions were identified because there were multiple new plans and inconsistencies. Everything needed to be cleaned up before the vote. Director Port agreed. For example, clarification on the preserved open space and roadway improvements in coordination with the City were needed and would typically be included before a vote. In this case, it makes sense to review the draft decision before a vote. Members wanted to ensure everything would be included and in order in the decision so that all could be voted on at the same time. Findings for the OSRD differed from the findings for the Special Permit. Director Port said that was correct.

Don Walters made a motion to determine that the OSRD Application has less detrimental impact on the tract and advances further the interests of the community than the conventional Definitive Subdivision Application. Anne Gardner seconded the motion and eight members voted in favor. Tania Hartford abstained.

Attorney Mead said the subdivision findings would not need reviewing next time because that application would be withdrawn. An ANR plan would be submitted for approval for the reconfiguration of the lots. Members said the OSRD Special Permit criteria had been met, special conditions would be listed, and there are two waivers.

Rick Taintor made a motion to grant the requested waivers of submittal requirements on lot size and frontage reduction as shown on the most recent drawing for Major Site Plan Review for 8, 10, 12 & 18 Colby Farm Lane (2020-SPR-04) and the fire truck turnaround configuration for the XIV OSRD Special Permit (2020-SP-11). Leah McGavern seconded the motion and eight members voted in favor. Tania Hartford abstained.

Members listed the Special Conditions: the deed for the Lot #1 structure covers the no disturb area beyond the lot line, the deed has the same disclosure regarding City facilities on Colby Farm Lane, there will be no residential parking in the public parking spaces in front of the playground, and a condition stating the HOA's responsibilities for the playground, and the easement for City access. Details for finalizing the improvement plan with the City before release of the eighth occupancy permit are not worked out yet. Attorney Mead said it is not unusual for a board to have a condition where the applicant returns with further detail, but a special permit cannot be based on a third party approval because there is no appeal authority. Director Port said the board should decide whether they want to review those final details. Members asked if Director Port could get the DPS to sit down and work out the details with the applicant before next Friday? Attorney Mead said she preferred to leave it open. Although the goal was to have details worked out before next week, if



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that did not happen, the applicant would return with the details. Director Port preferred the board know all details before approving the project. It is within the board's purview to review and resolve those issues before their approval, but it could be done the way Attorney Mead described. Members considered they would have less leverage by approving the project without the details, but they could hold onto the occupancy permit. Attorney Mead said maybe before next week she would be able to provide a detailed list of road improvements to be completed prior to the issuance of the seventh or eighth occupancy permit. Director Port agreed. He wanted to make clear an OSRD special condition included the remaining open space would be conveyed to the City. Members asked when the playground easement would be defined. Director Port said that was up to the mayor and City Council. Attorney Mead said she would provide a draft of the easement to the City, which would be reviewed by the City solicitor before it went to City Council and the Mayor. She would add a condition stating the preserved open space would be conveyed to City prior to eighth occupancy permit.

Members said, in reference to the V.I.C Special Permit, peer review recommended a condition regarding the special permit waiver on the City requirement to have a certain fire truck turnaround configuration. But should that be part of the OSRD Special Permit? Why was a V.I.C Special Permit needed when an OSRD Special Permit allowed 12 dwellings on one lot? Director Port said the OSRD allowed the multi-family dwelling but not two structures on one lot. Members thought it did for a condominium form of ownership. Attorney Mead said a V.I.C Special Permit had been required in the past and that is why it was submitted. She preferred to have both the permits issued. Members thought both permits seemed unnecessary and messier. Director Port said that was good point, but for the title and a clean record it was best to have all bases covered. Members said the waiver was covered in the OSRD Special Permit also.

Rick Taintor made a motion to grant the requested waiver of submittal requirements on the fire truck turnaround configuration for the Major Site Plan Review for 8, 10, 12 & 18 Colby Farm Lane (2020-SPR-04) and V.I.C Special Permit (2020-SP-10). Leah McGavern seconded the motion and eight members voted in favor. Tania Hartford abstained.

Conditions were reviewed for the V.I.C Special Permit. The only one requiring a special condition, as the board had always done in the past, was the affordable housing condition. The "and/or conveyed to the City" language for the open space was not needed because that had already been agreed upon. The public benefits listed by Attorney Mead tonight and agreed to by the Mayor should be included in the V.I.C. Director Port agreed and said the same special conditions carry over to the V.I.C Special Permit from the OSRD Special Permit.

Members had reviewed the Major Site Plan Review findings. No other issues came up. The applicant has to provide all updated plans in preparation for a vote. Director Port would provide a draft in time for the next meeting. Members needed a new plan set sometime next week. The handicap ramp at the crosswalk should not be on the landscaping plans because the crosswalk is at the same level as the handicap ramp and there is no sidewalk to connect it to. Extend the landing area markings from the parking space out to the edge of the crosswalk. Attorney Mead and Mr. Hamor agreed. The cross hatching should continue to show that it is part of the pathway.

Rick Taintor made a motion to close the public hearing for the Definitive Subdivision Application, the Site Plan Review Application, the V.I.C Application and the OSRD Application for 8, 10, 12 &

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18 Colby Farm Lane with detailed findings and conditions to be reviewed by the Planning Board in the form of a draft decision prepared by the Office of Planning and Development and updated plan sheets to be submitted by the applicant, to be reviewed by the Planning Board at the next meeting on June 3rd. Don Walters seconded the motion and eight members voted in favor. Tania Hartford abstained.

**Motions 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.*

- d) Sports Medicine North Orthopedic Surgery, Inc.**  
**20 Henry Graf, Jr. Road**  
**Application Completeness Vote**  
**Major Site Plan Review (2020-SPR-05)**  
**Special Permit (2020-SP-13)**

Don Walters made a motion to grant the requested waiver of submittal requirements and find the application for Major Site Plan Review for 20 Henry Graf Jr. Road complete (2020-SPR-05). Mary Jo Verde seconded the motion and all members voted in favor.

Brad McKenzie, McKenzie Engineering Group, Inc., 150 Longwater Drive, Norwell, proposed a 20,000 square foot medical use office building with asphalt parking area, access driveway, and related infrastructure on the last undeveloped parcel in the business park. The two-acre parcel in the I1 zone was a contractors yard. Existing conditions include frontage on Henry Graf Road, a 20-foot wide easement off Graf Road, and a man-made wetland ditch. The lot contains some wetland characteristics and has been flagged by Hugh's Environmental as bordering wetland. The lot is devoid of vegetation and bounded by vegetated wetlands on all sides. The wetland boundaries elevation is 13-14. The project was well received by Conservation Commission who requested returning with minor revisions.

The soil is not very permeable, has high groundwater conditions, and is not conducive to stormwater infiltration. Fill was found down to four or five feet, and there are silt and clay layers. He demonstrated the proposed layout on the screen display of a materials plan. The land will comply with dimensional requirements. The 24-foot gravel access drive aligns with the existing curb cut. The exit will have a stop sign and guardrails. Parking lot aisles 24 feet wide comply with the ordinance. Deputy Chief Bradbury had concerns about negotiating a ladder truck on the site. A revised plan satisfied him. A cement concrete sidewalk skirts the building on three sides. One plan change since the original March 18 filing, pursuant to comments from City department heads, is larger, more landscaped islands to accommodate trees and more plantings in the drainage ditch. LED, 18-foot high pole lights around the perimeter comply with the ordinance and meet dark sky requirements. The site's southwest corner has a dumpster enclosed by a gate. A modular block retaining wall on the northwest and southwest portions minimize the impact to bordering wetlands. He demonstrated on the grading and drainage plan a design goal to minimize earthwork. Groundwater elevation dictates the stormwater design. At elevation 18 the site slopes away from

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building to catch basins that will also capture roof runoff. Stormwater goes through a treatment stream to a proprietary stormwater device to two stormwater detention facilities. From detention basin #2, stormwater goes to a swale behind building to detention basin #1. An outlet control feature manages the rate of flow. The design complies with stormwater regulations. There is an operations and maintenance plan and ongoing maintenance in perpetuity for post-development. Peer review recommended approval after requested revisions were made to the post-development model. The utility plan will need adjustment, as construction documents are refined. The water department reviewed two water connections, one for drinking and one for fire protection. Proposed trees, shrubs, and surface treatments for the landscaping plan are identified in the legend. A low mow fescue, regularly mowed, spreads five feet out from around the parking area and changes to a showy wildflower mix mowed once a year. The stormwater management area is seeded with a New England conservation mix mowed 3-4 times a year. The plan stabilizes the site by providing better erosion control and improving water quality in the bordering wetlands. There are no sidewalks on the new plans. City Engineer Jon Eric White recommended against the originally proposed sidewalk between the drainage ditch and roadway to avoid improper alignment with future sections of sidewalk. He preferred a comprehensive sidewalk plan to a piece-meal sidewalk at this time. He said a sidewalk connecting to Mulliken Way and Pond Street should probably go on the other side of the road where there are fewer drainage ditches. Mr. White wanted the entrance way re-graded. The Conservation Commission supported extending the drainage culvert by it 10 feet to increase storage to compensate for the small amount of added fill for re-grading. A supplemental memo details how the project meets all special permit criteria.

Architect Pieter Van Slyck, Conserv Group, Inc., 110 State Road, Sagamore Beach, demonstrated on the elevations displayed a two-story structure with two elevators. A portion of the first floor will be for a diagnostic tenant complimentary to the medical practice on the second floor.

Public comment open.

Public comment closed for the evening.

Members said the stormwater system is designed for the 100-year flood. The City has a Resiliency Plan that describes roadway and culvert designs. Did this come up with Mr. White? Mr. McKenzie said no, other than the engineering department is inventorying all culverts in the area in preparation for a hydrologic study. Director Port said there had been a number of studies about flooding in the business park and an ongoing effort to improve the swales over time. Members asked if trees in the landscape plan are all resistant to high water tables and possible flooding. Mr. McKenzie said yes. Members asked if the City had a sidewalk fund that projects like this contributed to for when the comprehensive sidewalk plan exists. Director Port said that had not been raised by the DPS. Mr. White said due to drainage issues, sidewalks are better on the other side of the street. Members asked if the plan met the requirement for a certain number of trees per parking space? Director Port thought this was addressed and resulted in the tree count change. Mr. Van Slyck said the islands were enlarged to accommodate red maples, but he could not speak to whether the appropriate number of trees per parking space was reflected in the plan. Members asked whether all grass, which is not the most ecologically considerate planting, could be replaced with wildflowers to absorb water better and avoid fertilizer use. More plantings could soften the building, especially around the entrance to make it more attractive along Graf Road without interfering with sightlines.

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Mr. McKenzie said he could put in low-lying shrubs. The wildflower mix will be two-three feet high. Grass borders the parking lot so wildflowers will not droop onto the lot. The plan exceeds the number of trees required per parking space with trees in the islands and bordering the lot.

Director Port recommended that signage be included in the review prior to approval. Members wanted signage plans and would wait for the Conservation Commission final approval on June 2. Director Port said everything is resolved from an engineering perspective. Site plan issues have been all addressed. Mr. McKenzie said modifications for the Conservation Commission would be submitted next week. They want 150 square feet of storage area for water and more information on the invasive control plan. The area will be beautified and invasives, including the phragmites, will try to be eradicated. Members said there is a lot of parking for the building. Could a couple more spots be removed and replaced with more islands to reduce some impervious surface? Mr. McKenzie said inherent to this use is a shortage of parking. By law there is one space per two employees, which is a little light. We do not want cars spilling into the street. Patients use walkers, have casts, and are often elderly. Medical uses traditionally need more parking than a regular office. The applicant would appreciate no reduction in parking. Members said the plan should add five bike racks against the east side of the building. Someday the zoning will be updated with our Complete Streets Policy. Mr. McKenzie agreed. Members said the first parking aisle is very wide with a lot of pavement. Mr. McKenzie said the aisle accommodated two-way traffic. Members asked Mr. McKenzie to take another look.

Members identified two corrections in the special permit for use. A vote would occur after reviewing the draft decision. Director Port described the typical two-post signage design in the park. Mr. McKenzie said the process had gone on for several months. The Building Department would not review the plans until all approvals are done and the appeal period has lapsed. He could have the final revised by next Wednesday.

Rick Taintor made a motion to continue the 20 Henry Graf Jr. Road applications for Major Site Plan Review (2020-SPR-O5) and Special Permit (2020-SP-13) to June 3, 2020. 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.*

**3. Other Business**

- a) *Minor Site Plan Review – 0 Parker Street (2019-SPR-07)  
Continued from 1/15/20*

The applicant requested to continue to 7/1/20.

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Anne Gardner made a motion to continue the application for Minor Site Plan Review for 0 Parker Street to July 1, 2020 (2019-SPR-07). 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.*

**b) Request for Lot Release – Shandel Estates Lot 28 (1977)**

Attorney Mark Griffin, Finneran & Nicholson, 30 Green Street, represented Patricia and Scott Tintor, owners. Lot #28 has long been completed. There were covenants on all lots and all lots are in Newburyport except this one, which is in Newbury. A specific provision of one covenant specified that Lot #28 should be open space and recreation for the town of Newbury. The City of Newburyport Planning Board had no jurisdiction to place any restriction on the property. The lot does not serve the purpose for which it was reserved. The town of Newbury has written a letter saying it has no interest in using the lot for open space and recreation. Director Port said he looked back through the minutes of that meeting, but there was no explanation of what the board was thinking. Attorney Griffin said his client would donate \$10,000 to the Newburyport Parks Department.

Don Walters made a motion to release Lot #28 of the Shandel Estates Subdivision from the provisions of Covenants with the \$10,000 donation as discussed and amended. Rick Taintor 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.*

**c) Request for minor modification – 266J Merrimac Street (2007-SPR-04 and 2007-SP-03)**

Realtor Jennifer Frizzell, Advisors Living, 745 Boylston Street, represented the developer and owner Christina Horne who closed on the home April 15. At the time of purchase, Ms. Horne made a request for a 19-inch increase on the rear fence to provide more privacy. She asked the developer to do that if the City approved it. Director Port said the property did not face the water and basically faced a parking lot. Ms. Frizzell said the same fence type would be used to replace the entire section from post to post. Members asked if the fence could curve down where it met the lower fence? Ms. Frizzell said the other fence is a little taller, but the two sections will be very close.

Rick Taintor made a motion to deem request minor and approve the Minor Modification for 266J Merrimac Street (2007-SPR-04 and 2007-SP-03) with a new design that matches the fence it is replacing, as discussed and amended. Tania Hartford 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.*

**d) Approval Not Required – The Reserve at Bashaw Farm (2019-DEF-01 and 2019-SP-08)**

Attorney Lisa Mead, Mead, Talerman, and Costa, LLC, 30 Green Street, said the request concerns the release of Special Condition #17 for Lots #3, #5, #7, and #11 that are now under contract. The board already allowed a release of building permits for Lots #1, #4, #10, #14, and #15 because all those lots were accessible to the fire department during construction. The developer has installed the water line, fire hydrants, sewer mains, stormwater systems, and done the base code for the road. National Grid, who has known about this project since August, has said they cannot complete the utilities under the road for six months, which presents a problem for starting construction on houses under contract. The applicant requests building permits released to begin construction on the rest of the units while waiting for the National Grid to complete their work. Lots #2, #13, and #12 are, as of today, also under contract and Lots #6, #8 and #9 are soon to come. The applicant submitted an email from Deputy Chief Bradbury who said the road was sufficiently constructed for fire truck access.

Tania Hartford made a motion to deem requests minor and approve release of remaining lots as they come up for the Minor Modification to the Subdivision Decision (2019-DEF-01) and the Special Permit Decision (2019-SP-08), as discussed and amended. Rick Taintor 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. Planning Office/Subcommittees/Discussion**

**a) Approval of Minutes**

The minutes of 5/6/20 were approved as amended. Rick Taintor made a motion to approve the minutes. Don Walters seconded the motion and eight members voted in favor. Tania Hartford abstained.

**Motion Approved.**

*b) Updates from the Chair or Planning Director*

Director Port discussed Evergreen Commons regarding a process to ensure all conditions are met and the new owners' confusion on responsibility for compliance.

**5. Adjournment**

Anne Gardner made a motion to adjourn. Mary Jo Verde seconded the motion and all members voted in favor.

**Motion Approved.**

The meeting adjourned at 11:08 PM

Respectfully submitted -- Linda Guthrie