

CITY OF NEWPORT
PLANNING BOARD
Major Subdivision Master Plan Approval

STAFF REPORT

Meeting: June 3, 2019
Certified Complete (conditionally): April 25, 2019
Filed: April 8, 2019 (date of pre-application meeting)

Location: 435 Broadway
Plat/Lot: Plat 6 Lot 11

Applicant/Owner: Edward McPherson (Island Moving Company)/City of Newport

Issue:

The applicant has applied to subdivide a 79,378 square foot-lot to five (5) lots: one (1) 41,939 square-foot lot for a school of limited instruction (Island Moving Company) with continued access from Broadway and four (4) residential lots for development with access from Princeton Street (A: 10,250 square feet, B: 9,058 square feet, and C: 9,124 square feet) and Brook Street Extension (D: 9,003 square feet), respectively, in an R-10. The subdivision is detailed in a Purchase and Sales Agreement with the with the City of Newport (Exhibit A).

Due to the proposed nonresidential use, the subdivision is classified as a major subdivision. Therefore, the application has three approval stages, in order: master plan, preliminary, and final. At the master plan stage, the intent is to “outlin[e] general, rather than detailed, development intentions.” (Rhode Island General Law (RIGL) 45-23-32 (23)). The Board is making determinations as to the quantity, size, and orientation of new lots.

The Newport Subdivision Regulations do not detail the different submission requirements for the master plan and preliminary approval stages. I have prepared a certificate of completeness (Exhibit B) that is conditional upon the Planning Board granting a waiver of the following submission requirements: I.F.2.b.vi. (drainage) and I.F.2.b.xii. (protective covenants) “in the best interest of good planning practice and design” (Newport Subdivision Regulations) and I.F.2.b.x. (outstanding tax liens) as “literal enforcement is impracticable and will extract undue hardship because of peculiar conditions pertaining to the land in question.” (Newport Subdivision Regulations). Drainage plans and protective covenants are best reviewed at preliminary approval, which has the same submission requirements. The City has owned the land since 1991 and considers all tax interests merged.

After the waiver of the aforementioned submission requirements, and upon the conclusion of the public informational meeting and review of received written and oral comment from the public, the Planning Board *shall address each of the general purposes stated in § 45-23-30* [

The general purposes stated in the Land Development and Subdivision Review Enabling Act (RIGL 45-23-30) are as follows:

- (1) *Providing for the orderly, thorough and expeditious review and approval of land developments and subdivisions;*
- (2) *Promoting high quality and appropriate design and construction of land developments and subdivisions;*
- (3) *Promoting the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment;*
- (4) *Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;*
- (5) *Encouraging local design and improvement standards to reflect the intent of the community comprehensive plans with regard to the physical character of the various neighborhoods and districts of the municipality;*
- (6) *Promoting thorough technical review of all proposed land developments and subdivisions by appropriate local officials;*
- (7) *Encouraging local requirements for dedications of public land, impact mitigation, and payment-in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered; and*
- (8) *Encouraging the establishment and consistent application of procedures for local record-keeping on all matters of land development and subdivision review, approval and construction.*

] and make positive findings on the following standard provisions, as part of the proposed project's record prior to approval (or denial):

- (1) *The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;*
 - (2) *The proposed development follows the standards and provisions of the municipality's zoning ordinance;*
 - (3) *There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;*
 - (4) *The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot [RIGL 45-23-32(5): A lot where construction for the use(s) permitted on the site under the local zoning ordinance is considered practicable by the planning board, considering the physical constraints to development of the site as well as the requirements of the pertinent federal, state and local regulations]). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and*
 - (5) *All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.*
- (b) Except for administrative subdivisions, findings of fact must be supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted.*

Analysis: Required findings

RIGL 45-23-30:

1. orderly, thorough and expeditious review and approval

The Certificate of Completeness was issued on April 25, 2019, seventeen (17) days after the date of the required pre-application meeting, within the twenty-five (25) days allowed under RIGL 45-23-40. The Planning Board has ninety (90) days from then (July 28, 2019) to render its decision.

2. high quality and appropriate design and construction

The project has begun preliminary review by the Technical Review Committee (draft minutes attached as Exhibit C). Many of the elements discussed can be made conditions of Master Plan approval or discussed at the Preliminary Approval stage.

3. Protection of existing natural and built environment and mitigation of all significant negative impacts

The landscape will be largely maintained, particularly the elements visible from Broadway. The applicant has applied for a demolition permit to demolish structures owned and maintained by the City that are in a deteriorated condition. Remediating these structures could be seen to protect the existing natural and built environment. No significant negative impacts have been identified.

4. Well-integrated with the surrounding neighborhoods (natural and built) and concentrate development in areas which support intensive use by reason of natural characteristics and existing infrastructure

The proposed residential lots are much larger than existing, developed lots, but very close to the minimum lot size allowed by zoning ordinance. Development is concentrated along Broadway, a wide urban arterial.

5. Encouraging standards to reflect the intent of the comprehensive plan with regard to the physical character of the neighborhood and district

The Subdivision Regulations were adopted in accordance with this section.

6. Promoting technical review by appropriate local officials.

See finding 2. Additionally, the Town of Middletown and Newport Tree and Open Space Commission were notified of this project, as required by RIGL 45-23-40 (3)(i).

7. Encouraging local requirements for dedications of public land, impact mitigation, and payment-in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered

Dedication of public land is most appropriate for the area inside the driveway loop along Broadway, but must be based on clear documentation of need. Impact of redevelopment in an unsensitive area is minimal.

8. Establishment and consistent application of procedures for local record-keeping of review, approval, and construction

All records of the review, approval, and construction will be maintained by the City Planner and documents will be recorded as required in accordance with the *Land Development and Subdivision Review Enabling Act*, *Newport Subdivision Regulations*, and Rhode Island Record Retention Schedule.

RIGL 45-23-60

1. Proposed development is consistent with the comprehensive plan and/or has satisfactorily addressed issues where there may be inconsistencies

Island Moving Company is a cultural and educational institution within Newport. The *Comprehensive Plan* identifies Island Moving Company in its list of Cultural Organizations and Agencies (p. 10-10). It is my professional opinion that a finding of fact that the proposed development is “consistent with the comprehensive...plan” should consider the following provisions of the Comprehensive Plan:

Goal LU-1 – To provide a balanced city consisting of residential, commercial and employment uses consistent with the character, environmental resources and vision of the community

Policy LU-1.6 – The City shall encourage the upgrading, beautification, revitalization, and environmentally appropriate reuse of commercial areas.

Policy LU-1.7 – The City shall protect the existing character of residential neighborhoods while encouraging local neighborhood business.

Goal ED-1 – To develop a robust and diverse economy, providing suitable employment opportunities for residents, and a stable tax base

Policy ED-1.1 – The City shall support key economic drivers while also seeking to attract and grow its technology sector and businesses that represent new and innovative concepts and technologies.

Policy ED-1.3 – The City shall work closely with local, regional and state educational institutions, leadership and practitioners to strengthen vital networks and associations between employers, workforce training, academic programs and curricula.

Policy ED-1.5 – The City shall build upon thriving sectors to develop of [sic] a more substantial year-round tourism economy.

Policy ED-1.8 – The City shall remain actively engaged in regional and statewide initiatives, collaboration programs and other actions necessary to attract and retain key employers.

Policy ED-3.6 – The City shall use energy efficiency, conservation and renewables as strategic economic assets.

Goal H-1 – To preserve and protect existing housing resources in the community.

Policy H-1.3 – The City shall continue to promote the repair, revitalization, or rehabilitation of residential structures and neighborhoods.

Goal H-2 – To preserve and enhance existing moderate workforce and low moderate income (LMI) housing.

Policy H-2.5 – The City shall work with neighboring towns, state and federal governmental agencies and other public and private organizations to take full advantage of funding opportunities and initiatives in support of workforce and LMI housing.

Goal H-3 – To reduce the percentage of seasonally vacant homes and increase neighborhood stability and vitality.

Goal H-4 – To expand housing to address Newport’s senior population.

Policy H-4.1 – The City shall support market based efforts to accommodate the City’s aging population, both in terms of new housing options and assistance to allow aging homeowners to remain in their homes.

Goal CFS-4 – To provide the best education system for the community.

Goal T-1 – To provide a comprehensive, multimodal transportation system for all users.

Policy T-1.5 – The City shall incorporate measures to support older citizens and people with special needs when planning and designing streets, parking areas, and facilities.

Policy T-1.6 – The City shall advocate for the special populations in its efforts to plan, program, design, and implement a comprehensive transportation and circulation system, including people who are older, have physical and/or mental challenges, and/or limited income.

Goal OSR-1 – To provide a range of appropriate open space and outdoor recreational amenities for use by residents and visitors.

Goal HC-1 – To identify, protect, and enhance the City’s cultural and historical resources.

Policy HC-1.2 – The City should consider historic and cultural resources when making operational decisions to successfully enhance and protect historic and cultural resources.

Policy HC-1.3 – The City shall advocate for appropriate private sector actions which protect and enhance the community’s historic and cultural resources.

Policy HC-1.7 – The City shall work in tandem with cultural institutions to create economic benefit for the entire community.

Policy HC-1.9 – The City shall create and implement innovative programs and practices to assure the equitable allocation of culture and arts resources throughout the City with respect to geography income, age, and other constituent attributes.

Policy HC-1.10 – The City shall capitalize on its architectural character and cultural heritage to promote economic growth.

Goal HC-3 – To foster a climate that supports the continuation of Newport as a home for the artisan and creative artist.

Policy H-3.1 – The City shall foster and work with other organizations in their efforts to enhance the city’s museums, libraries, art, theater, musical and cultural institutions.

Policy H-3.2 – The City shall promote the development and growth of Newport’s arts and cultural resources.

Policy H-3.3 – The City shall support the efforts to retain and attract artists and craftspeople to live and work in Newport.

Goal EN-1 – To make Newport a leader in energy conservation and renewable energy use.

Policy EN-1.2 – The City shall continue to promote and support programs, agencies and funding sources that provide guidance and financial assistance for the development and renovation of energy-efficient buildings and for the development of appropriate renewable energy resources in the community.

In developing its finding of fact regarding consistency with the Comprehensive Plan and/or satisfactorily addressing issues where there may be inconsistencies, the Planning Board should perform investigations as to:

- The application:
 - How this might support the development and growth of Island Moving Company and other cultural resources, or not
 - How the economic success of Island Moving Company will benefit the community

- Whether or not this fosters a climate that supports the continuation of Newport as a home for the artisan and creative artist and supports efforts to retain and attract artists and craftspeople to live and work in Newport
- How this supports the equitable allocation of cultural and arts resources throughout the City with respect to geography, income, age, and other constituent attributes
- Whether or not the City has worked in tandem with Island Moving Company to create economic benefit for the entire community
- Whether or not the City has fostered and worked with Island Moving Company in their efforts to enhance their work
- Whether or not the City has sufficiently considered cultural resources in enabling this project
- Whether or not the City has worked with the applicant take full advantage of funding opportunities and initiatives in support of workforce and LMI housing
- How it will enhance existing moderate workforce and low moderate income (LMI) housing, support senior housing, and/or reduce the percentage of seasonally vacant homes, or not
- The proposed subdivision plan:
 - How it will protect existing housing resources, or not
 - How it will encourage the upgrading, beautification, revitalization, and environmentally appropriate reuse of Broadway and provides revitalization of the off-Broadway neighborhood while promoting neighborhood business, or not
 - How it will increase off-Broadway neighborhood stability and vitality, or not
 - Whether or not it supports a comprehensive, multimodal transportation system for all users, specifically supporting older citizens, people with special needs, and/or limited income
 - How it supports energy conservation and/or renewable energy production, or not
- If there are open space opportunities at this location
- Whether the proposed subdivision works toward providing a balanced city consisting of residential, commercial, and employment uses consistent with the character, environmental resources and vision for the community

2. Compliance with the standards and provisions of the zoning ordinance

The applicant will be seeking relief from the Zoning Board of Review with regard to frontage of lots A-C and minimum lot size of lots B-D. The Planning Board should make any approval conditional upon the granting of the necessary relief from the provisions of the Newport Zoning Ordinance by the Newport Zoning Board of Review.

3. No significant environmental impacts

The applicant is seeking a demolition permit for the existing structures on the lot and will comply with all environmental requirements for demolition. The applicant has begun preliminary review with the Technical Review Committee and is intending to apply for Development Plan Review for the construction of the school of limited instruction.

4. No creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.

There was some concern from the Technical Review Committee about constructability of the residential lots, given their limited access to rights-of-way. This can be further refined at the Preliminary Approval stage.

5. Adequate and permanent physical access to a public street
See above.

Staff: Peter Friedrichs, City Planner

Date: June 3, 2019