



NEWBURYPORT  
PRESERVATION TRUST

P. O. Box 184, Newburyport, MA 01950  
www.nbtpreservationtrust.org

Linking the past with the present and future



Quarterly Newsletter of the Newburyport Preservation Trust

Spring 2021

# Two challenges seek to invalidate Newburyport's Downtown Overlay District pro-preservation law



Above left is an aerial conception of the proposed addition to the Institution for Savings. This most recent plan was rejected by the Newburyport Planning Board on March 17, and the bank has since appealed the decision to the Massachusetts Land Court. Above right is a photo of the former Fowle's newsstand and soda fountain. The site is the subject of a Zoning Board appeal on May 11 that contends that the city's pro-preservation DOD ordinance is invalid.

## Institution for Savings appeals city decision in court; prospective Fowle's tenant contests DOD ordinance at Zoning Board of Appeals

Newburyport's Downtown Overlay District (DOD) zoning law that preserves the historic integrity of the city's center, is facing a potentially dismantling assault in two separate cases, one in the state's Land Court, and one before the city's Zoning Board of Appeals on May 11 at 7 p.m.

See the link below to the Zoom meeting, and plan to add your thoughts on the issue.

In the Land Court case, the Institution for Savings on State Street is appealing the Newburyport Planning Board's denial of its expansion plan.

In the zoning board appeal of a city ruling, Caswell Restaurant Group, a prospective tenant at the former Fowle's on State Street, a New England Development property, claims that DOD protection does not apply to the c. 1820 building, and that Caswell should not have to seek a variance and special permit to change the front windows and the horizontal banner sign.

A common goal of both appeals, beyond relief from specific conditions, appears to be the invalidation of the city's preservation zoning protections adopted unanimously by the Newburyport City Council in 2014. Both appeals were prepared by local attorney and former Newburyport mayor, Lisa Mead.

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## Bill Harris (1941-2021), a major force in Newburyport's waterfront preservation

William R. Harris, an attorney who for 50 years served the public interest in national security and disaster preparation – and was a major player in the 1970s preservation of public access to Newburyport's waterfront – died April 21, 2021 at age 79. He is survived by his wife, Elizabeth, their three children, four grandchildren, and extended family.

Bill Harris was born in New York City, the son of two professors of psychiatry at Columbia University. He graduated from Harvard College in 1962, and Harvard Law School in 1966.

In 1969, while teaching graduate seminars at Harvard Law School – first working under future U.S. Secretary of State Henry Kissinger – Bill and his wife purchased their home on Lime Street in Newburyport. As related to your editor several years ago, Bill forged a truce with the neighborhood's legendary young hooligans by hiring some of them to do the grunt-work for his home restoration projects.

In 1972 the family moved to California, where Bill began his 30-year career as an international lawyer with the Rand Corporation. But Newburyport, the family's summer destination until they moved back in 2003, was never far out of mind. In the 1970s, averting the urban renewal wrecking ball in favor of a preservation vision was still a new concept. And Bill had his legal expertise – and his considerable personal drive – to contribute to that vision.

Bill Harris (1941-2021) was instrumental in ensuring permanent public access to the Newburyport waterfront. In the 1970s and 1980s he led several winning court battles, with his arguments based on the records of public "ways" laid out in the 17th and 18th centuries.



ZOOM IN  
(<https://zoom.us/j/283447793>)

Zoning Board of Appeals  
Tuesday, May 11, 7 p.m.

Or dial in at: +1-646-558-8656  
Meeting ID: 283 447 793



## A brief history of our pro-preservation zoning ordinances ...

Newburyport's pro-preservation zoning laws in place now – laws that aim to prevent destruction of what's left of the city's authentic period architecture – have only been on the books since 2014, when they were unanimously approved by the City Council.

This often comes as a surprise to visitors or newcomers, many of whom assume that Local Historic District protections were enacted decades ago.

In early 2013 a 5-year citizen initiative to establish a Local Historic District fell short of City Council approval.

But in fall 2013, city-wide rank-and-file voters had their say, and elected a slate of pro-preservation City Councillors. In April 2014 the new City Council drafted and unanimously approved new zoning laws: (1) the Demolition Control Overlay District (DCOD), intended to protect contributing structures within the city's National Register Historic District; and (2) the Downtown Overlay District (DOD), which applies to the city center.

Since 2014 it has been an ongoing effort to close loopholes. Now the very existence of the laws faces challenge. ■

### Does this qualify as "demolition by neglect"?

Above is the distinctive Art Deco sign above the entrance to the former Fowle's newsstand and soda fountain on State Street. The owner of the building, New England Development, has allowed the sign to deteriorate for years.

### Assault on preservation ...

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If this attack on the existential validity of zoning regulation is successful in court, it is possible this case will be cited for years to come, statewide, to legitimize destruction of historic properties and public memory – the will-of-the-people be damned. If this attack succeeds, next could be the DCOD, the Demolition Control Overlay District, which protects contributing structures in the city's National Register Historic District.

The Institution for Savings appeal is a 162-page PDF available to read at the [www.masscourts.org](http://www.masscourts.org) site [here](#). The bank contends that (1) the DOD has been invalid all along, and (2) the Planning Board's decision was "arbitrary and capricious." It remains to be seen how aggressively the city will defend its decision, the DOD, and its own Planning Board in this case.

The Caswell Restaurant Group appeal is a 30-page PDF at the city's website [here](#). This appeal contends that the DOD should not apply to *any* building or use in place before the law was enacted in 2014, and therefore any and all alterations should be allowed. The plan to remove the Art Deco sign is not referenced in the text, only buried on a form.

**Make your voice heard.** Join us via Zoom at the ZBA public hearing on May 11, 7 p.m. ■

## The Fowle's issue: It's also about people ... and public memory

Of foremost importance in the zoning board appeal of a prospective restaurant tenant to change windows and remove the Art Deco sign from the former Fowle's is the assault on the validity of the city's pro-preservation Demolition Overlay District zoning law. Without the DOD in place, it will be open-season for who-knows-what.

There will, of course, be advocacy for preserving the windows that sit above a veneered granite base, and for saving the distinctive 1941 Art Deco horizontal banner sign made of Vitrolite, an early-20th-century pigmented structural glass.

But there is something else at stake besides the fine print of the law or the subjective aesthetics of a deteriorated sign. Historic preservation is also about *people ... and public memory*.

There are generations of people in Newburyport – as old as 100 and as young as 12 – for whom Fowle's holds indelible memories as not only a central gathering place (the soda fountain), but also as a valued hub of information (the newsstand). For many, the sign has a symbolic meaning beyond aesthetics.

For more insight on public memory we might look at the pro-and-con arguments in recent years about the Citgo sign in Boston's Kenmore Square. It's just a corporate sign, but the suggestion of its removal caused an uproar. Thanks to Boston's Landmarks Commission and mayor, it remains.

Speaking of public memory, let's also *preserve* the legacy of Nicholas Arakelian (1890-1980), longtime proprietor of Fowle's, whose philanthropy still benefits our citizens today through his foundation in memory of his wife, the Mary Alice Arakelian Foundation.

Let's remember that *people and public memory* inform the "stuff" that cultures seek to preserve. ■



At left is Bill Harris in 1975, in the early years of Newburyport's rise from decades of economic malaise. Thanks to the efforts of Bill and many other visionaries, the preservation-based renaissance they made possible continues today.

### Bill Harris (1941-2021) ...

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Bill Harris was one of the founders of the Friends of the Newburyport Waterfront in 1972. For the next decade he led the group's court challenges against the city, the Newburyport Redevelopment Authority, and development interests to keep open the public "ways" established as early as 1671.

Our Waterfront Park today is only part of his legacy, which on a national level includes arms treaties, intelligence legislation, disaster policy, infrastructure planning, and more.

For his decades of preservation advocacy, Bill Harris was the recipient of NPT's Preservation Leadership Award in 2013. ■