

**City of Newburyport
Planning Board
January 6, 2016
Minutes**

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

1. Roll Call

In attendance: James Brugger, Sue Grolnic, Doug Locy, Jim McCarthy, Leah McGavern, Andrew Shapiro, Bonnie Sontag, and Don Walters

Absent: Noah Luskin

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

2. General Business

- a) The minutes of 12/16/2015 were approved as amended. James Brugger made a motion to approve the minutes. Leah McGavern seconded the motion and five members voted in favor. Don Walters and Andrew Shapiro abstained.

- b) *Approvals Not Required*

- i. *18-20 Ashland Street (2016-ANR-01)*

Steven Lewis, applicant, was present. Chairman McCarthy said the lot split was straightforward.

Don Walters made a motion to endorse the ANR. Sue Grolnic 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.

- ii. *Belcher St (2016-ANR-02)*

Lisa Mead, BBMT, 30 Green Street, Newburyport presented for the applicant and Everett Chandler, DCI, 68 Pleasant Street, Newburyport. The location off Spofford Street had a Way dating from 1901 and owned by the Newburyport Water Department. The applicant had signed a Purchase & Sale with the City for the Way and an easement allowed passage over the paved portion. The new lot encompassed the discontinued Way. Member comments: Was access to Lot 1 off of the Way? Clarify the frontage along the Way? Attorney Mead said that the ANR application plan showed sufficient frontage on the Way as well as access from the Way. There

would be no access from Belcher Street. A member noted that the house to be built on this parcel and the existing house on the abutting parcel would face in opposite directions.

James Brugger made a motion to endorse the ANR. Don Walters seconded the motion and six members voted in favor. Leah McGavern abstained.

Motion Approved.

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c) Site Plan Review Application Completeness

i. 151 High Street (2016-SPR-01)

Attorney Lisa Mead represented Merrill Diamond. The Kelly school application was submitted and had one waiver. Peer review provided yesterday showed lighting was missing. Hard copies would be submitted tomorrow, the electronic submission was today. Chairman McCarthy requested an indication of the original roof height at the peak.

Don Walters made a motion to approve the Application Complete. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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ii. 23 Hale Street (2016-SPR-02)

Director Port said the materials package was complete.

Don Walters made a motion to approve the Application Completeness. Doug Locy seconded and all members voted in favor.

Motion Approved.

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d) 223 High Street OSRD Special Permit – Request for Extension

Attorney Lisa Mead, on behalf of Brad Kutcher and Mark Wojicki, said when the closing attorney removed the former subdivision lines from the deed he was challenged by two abutters. The matter is now in litigation. Construction would not commence until a resolution was reached. The City had already built the athletic fields, but an extension was needed. The project that began January 14, 2011 needed an extension to January 14, 2017.

Doug Locy made a motion to approve the Request for Extension to January 14, 2017. Sue Grolnic seconded the motion and all members voted in favor.

Motion Approved.

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e) River View Subdivision (Riverview Drive, 1977) – Request for Release of Covenant

Director Port said when the other lots were released this lot was left unaddressed. It was not clear why. Chairman McCarthy said the lot was built; the release was a legal exercise.

Leah McGavern made a motion to grant a Release of Covenant for Lot 3, map and lot 31-17-C. Don Walters seconded the motion and all members voted in favor.

Motion Approved.

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f) Election of Officers

Chairman: Leah McGavern nominated Jim McCarthy. Don Walters seconded the motion and all members voted in favor. Vice Chair: Doug Locy nominated Bonnie Sontag. Jim McCarthy seconded the motion and all members voted in favor. Secretary: Jim McCarthy nominated Andrew Shapiro. Leah McGavern 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) East Row Condominium Trust c/o L&M Properties
14-22 Market Square, 1-2 Elbow Lane, and 1-11 Liberty Street
DOD Special Permit (2015-SP-03)
Continued from 12/16/15***

William Mattos, principal, L&M Properties, 21 Pleasant Street, Suite 232, Newburyport, and property manager for East Row Condominiums, said many additions and subtractions affected the building since it was built in 1811 and redeveloped in the 1970s. There was a history of water leakage in various areas. The trust had remediated some leaks, but two major leaks remained, one on Liberty Street and one on Market Square. The trust hired Simson, Gumpertz & Heger (SGH), 41 Seyon Street, Building 1, Suite 500, Waltham, a top engineering firm for building envelope issues. SGH presented three solutions that met the trust's request for long-lasting durability: 1) Rebuilding the entire brick façade including through wall flashing for \$246,000 plus, 2) install only through wall flashing in the back of the building for \$170,000 plus, or 3) use an overclad system at a cost of \$120,000. The trust voted for the overclad, the building permit was denied, and the trust reapplied through the Newburyport Historical Commission. The overclad system consisted of different strata of adhesions with a stucco or fake brick look. The trust chose fake brick, but the Newburyport Historical Commission selected tan stucco. Mr. Mattos requested a Special Permit for the overclad in tan stucco. Director Port had spoken with Sarah White, Chair of the Historical Commission, who said stucco would be less visible due to being installed on the buildings rear side.

Member comments: What were the sources of the leaks? Matthew Carlton, architect, SGH, said between the roof level and the masonry water traveled down steel beams onto the floor of commercial spaces below. There was no built in reservoir to catch the water. The steel required work and the first option was a financial hardship. Were all three options of equal integrity? Mr. Mattos said yes. Would any brick be replaced? Mr. Carlton said yes. What was the extent of the overclad coverage? Mr. Mattos demonstrated on the photographs. What was the ability to match the finish? Mr. Carlton said the finish could be matched and the downspout would hide the termination point. Could the brick be matched in a brick replacement? Mr. Carlton said it would take great effort, but yes. Chairman McCarthy asked if any other architectural features would change? Mr. Mattos and Mr. Carlton said no. Would the overclad be flush to the window trim? Mr. Carlton said yes. Did other buildings in this district that have any overclad? Director Port said no. Was there an understanding of the failure mechanism that caused the leaks? Why would leaks not occur in the future? Mr. Carlton said the unique section of wall had a transition of steel supporting the roof deck. The porous brick absorbed moisture. A cavity for moisture occurred where the steel bypassed. With no reservoir, the steel acted like a river. SGH would replicate the leakage event to ensure work occurred in the right place. Would the overclad protect the brick it covered? Mr. Carlton said the overclad's adhesive qualities would bring water in and out of the building, but he was unsure of the structural stability of the wall. He did not know if the brick would be protected. Mr. Mattos said a small section of the south part of the wall, not included in the photo, had no steel. The engineering to date was a considerable expense. What about new brick? Mr. Mattos said new brick would not match well and the Historical Commission rejected the idea. Members said despite the technology to simulate older brick, the creativity to make faux brick look good did not exist.

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Public comment open.

Attorney Jeffrey Roelofs, 30 Green Street, Newburyport, represented East Row Condominium resident Deirdre Farrell who was unable to attend. The Planning Board's obligation to review all options and clarify the ordinance would determine if enough research had been done. He maintained the leakage could be fixed while preserving the bricks at a cost less than a new wall to cover the old brick. Ms. Farrell's unit would be adversely affected by overclad. The repair would be visible from Water Street and the big parking lot across the street as you departed. Ordinance definitions on page 4 defined historic masonry as something the City wanted to protect. Alterations must meet all criteria for a Special Permit. The board was required to consider applicable federal guidelines as well. The ordinance's intent was to prevent demolition of buildings and architectural features. An overclad system would demolish original brick. Ms. Farrell wanted to retain the existing brick aesthetic as required by ordinance. Any alternative that repaired leakage while preserving the historic brick had to be pursued, if reasonably feasible. If not, materials should be replaced in kind, if reasonably feasible. Alterations should be compatible with the character of the building and the overclad was incompatible. The Historical Commission ruled out a complete rebuild because of the expense, but held no review of the alternatives thereby giving their advisory report limited weight. If historic masonry could be preserved there was an obligation to do so. The board had the right to seek peer review on cost estimates. Out of six alternatives identified the consultant provided cost estimates for only three because the others options were not permanent. Generally speaking, nothing is permanent. Historic buildings had ongoing maintenance expenses. The ordinance did not indicate that the lowest maintenance option was desirable. He believed the experts could recommend a higher maintenance and better solution, but he was unsuccessful in convincing them to explore the alternatives further. He regretted a delay and did not want the trustees to incur unnecessary expense, but the project should not go forward without a peer review of the reports and a site visit. If the applicant refused peer review, the Special Permit should be denied.

Mac Lard, restoration mason, Colonial Brick Works, 3 Dewey Street, Amesbury, recommended Bill Finch for peer review. Mr. Lard repointed and examined flashings on the Customs House and repointed and water proofed the Art Association correctly. Several clients on State Street with similar situations as this applicant were interested in this outcome. In his opinion, the SGH report was good. He would choose the option to repoint in a pigeon-pointed way. He walked the site and probed the building in 10-20 locations with the following observations: past repointing was not done to a correct depth, the through wall flashing went into the building only an inch and needed to go in further, soft spots could be found in the mortar joints (a method to determine what needs replacing), HVAC units had caulking only around them, where flashing had worked its way out of the building in many spots was covered with caulking only, and there was no flashing over any electrical boxes. The oldest bricks were in the back of the building and all new reproduction bricks were in the front. He unequivocally recommended trying to save the old brick. The overclad would be 30% more expensive than repointing in conjunction with flashing.

Members asked if lime mortar was used? Mr. Lard said yes; he repointed a building with similar brick. Chairman McCarthy asked if the overclad could be removed to do it correctly at a later date? Mr. Lard said no; stucco would last about 10 years and would fail within 20 years. How

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did the proposed solution deal with steel beams carrying the water? Mr. Lard said the places with steel beams still had four full inches of brick, but there was no flashing at all. Director Port asked if the flashing and repointing would keep the areas from leaking for a longer term? Mr. Lard said yes; pinholes all over the building kept the wall absorbing water like a sponge. Even an overclad system would leak with the kind of rain the City had a few years ago. Director Port asked if the repointing was less permanent than the overclad? Mr. Lard said no.

Tom Kolterjahn, 64 Federal Street, co-president, Newburyport Preservation Trust, said the trust opposed covering historic brick with stucco because it trapped moisture and rotted the brick. Condemning the historic brick would be detrimental to the building. This was only the first case for the board. Buildings that had installed steel I-beams, sandblasted the brick, and generally did not do a good job in the 1970s would be future applicants for brick repair. He had called SGH, explained the situation, and learned the overclad product was not designed for 200 year-old brick. He read the full engineering report. The sixth option was repointing the historic brick using lime mortar. He urged the board not to allow the brick to be covered.

Mr. Carlton said two points being missed were that the building was already a jumble of bricks and construction techniques with steel beams and the steel bypasses were corroded. Corroding had to be stopped. Repointing would not keep prevent leaking in five years. That had been tried a many times. The SGH stucco system was not typical because of the elastomeric coating applied to the brick and the drainage plain in the back. Corroded metal expanded and was pushing on the brick, creating more problems.

Ed Allcock, attorney, MEEB, 45 Braintree Office Park, Braintree, counsel for the East Row Condominium Association, said the trust spent over \$25,000 for a report on the most economical solutions. Condo owners could sue as a result of the leaks. Proceeding with through wall flashing would be another \$25,000 at least. The problem was the angled steel. Attorney Roelofs' client was a trustee who voted for the overclad. A problem arose when the Historical Commission preferred stucco to fake brick and the issue became political. He understood the overclad to be economically feasible. Trust members who experienced leaks in their units were present.

Lisa Mead, BBMT, 30 Green Street, Newburyport, on behalf of Lisa Ritchie, said leaks had worsened over the last two years and merchandise had been ruined. It took considerable time to convince the trust to hire appropriate experts for the problem. The ordinance was important. The issue was addressed under the historic masonry section, not demolition. In considering what was reasonably feasible, the leaks affected the structural soundness of the building. Beyond the repointing, steel corrosion created larger problems. Many attempts had been made to fix the problem over the years. She asked the board not to worry about setting a precedent and to treat the building as a unique application.

Attorney Roelofs said the trustee's consultant identified three solutions but only one totally destroyed the brick and that was the one chosen. The other option was not too expensive. Did the board want to explore the other options further?

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Carol Gibson, owner, 19 Market Square, said \$150,000 was a lot of money for 20 units to absorb, yet 18 people agreed with it. Dierdre Farrell, who did not live there anymore, was concerned about resale value only.

Public comment closed.

Member comments: Two issues were on the table: 1) Was there a more correct, better process for fixing the problem and, 2) what role did the board have in maintaining the requirements for the historic district? On the first issue, it would be necessary to hear from an expert who had no stake. On the second issue, the board had a duty to fully clarify and follow the rules for the district. Without further deliberation on both issues there could be no decision tonight. A motion was made to invoke peer review with an acknowledgement that it could take another month. The motion was seconded. Director Port was in agreement and said there was good information in the engineering firm's report. He did not understand why SGH would dismiss sound solutions that were as permanent and as good as the overclad. He was not opposed to further investigation.

Members said the clad system might not be a good solution for stopping the leaks if it did not preserve the brick. Each brick was an architectural feature the board was obligated to protect and the clad was not removable. The view was highly visible. The board should investigate the other options. Peer review was a regular part of the process. The issues were not just masonry or structural engineering. Balancing all objectives, the board's greater responsibility was to the City to uphold the ordinance and preserve the historic structure. The Historical Commission's agreement to overclad was surprising if sealing the brick accelerated its destruction. The board empathized with the unfortunate duration of the process to date and agreed the matter should be acted on quickly and with prudence, in concert with the responsibility to preserve the historic character of the town. Director Port said a good technical rationale for how the board approached the decision was needed. A peer review would examine original cost estimates from SGH to see how they directly applied to the options presented and address the issue of the steel beam corrosion. Chairman McCarthy understood the practical realities of finding a solution. If the clad system were ever removed that would be the end of the oldest bricks. Generally speaking, there is no such thing as a waterproof building.

Director Port said the City would invoke peer review and hire an expert who could be available in a timely manner. Cost proposals would be included and paid for by the applicant. Members said the report's recommendation was problematic because there was no consideration for the City's unique situation. Director Port said flashing seemed to be needed under any scenario. Peer review would address all issues raised by the board, including the cost of work to be done. Chairman McCarthy asked about providing the consultant with scope. Director Port would draft language that addressed the relative cost, specifically a peer review of the numbers. Attorney Mead said the ZBA had previously undertaken this effort, which took two months. At issue was the amount of time needed to find the right person. Two members suggested not allowing the cladding under any circumstances in order to preserve the brick and to achieve a quicker resolution. Chairman McCarthy said an advisor would evaluate the proposal. While it might not be expeditious, the process would drive a conclusion. If the board voted no on the Special Permit, where would the applicant go from there? A member agreed. Director Port said a base

argument was to consider the integrity of the building. Liability for the structural integrity of the building was up to the board of trustees.

Sue Grolnic made a motion for peer review. Don Walters seconded the motion and six members voted in favor. Doug Locy voted in opposition.

Motion Approved.

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Director Port said there was no guarantee that everyone solicited would submit a proposal. There would be an expedited process for public procurement.

Don Walters made a motion to continue the DOD Special Permit to February 3rd. Leah McGavern seconded and all members voted in favor.

Motion Approved.

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4. New Business

***a) One Boston Way, LLC
1 Boston Way
Informal Discussion***

Chairman McCarthy said the discussion was not a public hearing. He wanted to vote on the waivers at the next meeting rather than start the clock on a decision tonight. Director Port explained the 40R ordinance required the submission of a number of materials that, once submitted, started the clock on 120 days for a decision to be reached. The board discussed delaying two waivers at the last meeting for the stormwater report and stormwater maintenance. A second set of waivers was included tonight. Residents would focus upon the first 40R building. A 3D rendering showing the grade change and its relationship to the surroundings was important. He recommended establishing a timeline when waived items would be submitted. Chairman McCarthy said the board wanted to understand what the waiver list was about.

Louis Minicucci, president, MINCO Development Corporation, 231 Sutton Street, North Andover and a regional office at 166 Route 1, Newburyport, introduced Kyle Gambone, Project Management and Karen Pollastrino, Planning & Permitting, from his office and business partner

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Norino Mirra, and his son. MINCO and the MBTA were anxious to close on the project already on the MBTA's books for fiscal year ending in June. Mr. Minicucci, prepared for and preferring a March 2016 closing, was working with local banks on \$16-20 million in funding. He presented a drawing that included fenestration and use of different materials, with in and outs on the building to break things up, giving an overall mixed-use rather than residential look. The footprint of 22,000 square feet was a five-story work/live building that integrated elements of the train station for easy accessibility. The site layout showed a critical component -- a 50-foot wide electrical easement that needed to remain open and maintained. It was currently a parking lot and would continue to be used that way. The power line created constraints that forced the building to be sited a certain way. First Floor commercial office space of 2,500 square feet had 24-hour shared office space. Four live/work units had direct access to the parking lot and train. He envisioned sole practitioner businesses with clients coming in and saw no demand for retail uses. The building would also have a presence on Parker Street across from the bike path. The 2.01-acre site had 84 units and 130 parking spaces, with about 50 underneath. The parking requirement was reduced to 1.3 cars per unit to allow sufficient parking for the office spaces.

Member comments: Most if not all waivers on the second list could be delayed to a specific date. The primary focus was a 3D massing perspective for the public hearing. Mr. Minicucci asked if the public hearing had been advertised? Director Port said the earliest the public hearing could be noticed was for a February 3rd meeting. Mr. Minicucci said the 3D perspective would be ready and plans would fully comply with state laws for stormwater management. He wanted to be certain the footprint would not change or be re-sited before proceeding. Director Port asked about material samples. Mr. Minicucci said mock-ups would come first. More important was determining the building footprint and a gas/utilities plan. It was unknown where utilities would go and no confidence that information would be available by the next meeting. When the overall mass was approved, he would focus on photometry, signage, and other things quickly. The affordable housing component would need DHCD approval. He agreed to meeting due dates for waived items. Chairman McCarthy asked if the consultant had ensured the list of waivers was conclusive? Director Port said he did that himself.

Mr. Minicucci wanted a sense that the City liked the direction things were going before he closed on the project. Director Port said in order to keep the process moving forward the board should approve all waivers tonight to vote the application complete and then set a meeting date for location and dimension of utilities, signage, and other waived items. The board could require DHCD sign off on affordable housing by the last February meeting, unless the applicant needed an extension. Chairman McCarthy wanted 3D perspectives a few days before the February 3rd meeting. Members asked what material the grey element in the drawing represented. Mr. Minicucci said with the focus on building siting, he was not able to discuss materials yet. Chairman McCarthy wanted to give MINCO a comfort level that the building was in the right place given constraints. A substantive portion of the February 3rd meeting would review the architecture and how the rail trail connected to the building. He wanted a nice entryway and presentation to the building itself. Mr. Minicucci said Robert Uhlig, president, Halvorson Design Partnership, 25 Kingston Street, Boston, would focus on the entrance across from the rail trail in the landscaping plan.

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Director Port said a vote for completeness tonight allowed for noticing the February 3rd meeting, but waiting for 3D drawings could push the date out. Chairman McCarthy suggested a motion contingent on having 3D drawings for February 3rd with other waived items a month out. Mr. Minicucci agreed to provide 3D drawings by January 27th. Director Port said the other items would be scheduled for the March 3rd meeting. Chairman McCarthy requested perspectives from Parker Street, the rail trail, and the back corner of Boston Way on March 1st, before the meeting. Hopefully, the consultant's workload would accommodate this schedule without any delay.

Doug Locy made that motion to approve the Application Completeness contingent on receiving a 3D model by January 27th, and other waived items by March 1st. James Brugger seconded the motion and all members voted in favor.

Motion Approved.

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The February 3rd meeting would focus on building placement and architecture. The board requested a robust presentation of elevations. Mr. Minicucci said he would have a video, landscape architect, and civil engineer present at the meeting. Members also asked for a letter from the MBTA acknowledging that MINCO had permission to landscape their right of way. Mr. Minicucci agreed. Some shabby buildings were on the site as well as a sign to be relocated.

4. Planning Office/Subcommittees/Discussion

a) Updates

Director Port said the Hillside Center for Sustainability was before the ZBA on January 20th and he needed to be there.

6. Adjournment

Sue Grolnic made a motion to adjourn. James Brugger seconded the motion and all members voted in favor.

The meeting adjourned at 9:59 PM.

Respectfully submitted -- Linda Guthrie