

**City of Newburyport
Planning Board
March 16, 2016
Minutes**

The meeting was called to order at 7:03 PM.

1. Roll Call

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

Absent: James Brugger and Bonnie Sontag

2. General Business

- a) The minutes of 3/2/16 were approved. Sue Grolnic made a motion to approve the minutes. Andrew Shapiro seconded the motion and five members voted in favor. Doug Locy abstained.

b) 2 Parker Street – Approval Not Required

Chairman McCarthy said the ANR, approved twice before, had slightly shifted lot lines again.

Don Walters made a motion to endorse the lot release. 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) ***Diamond Sinacori, LLC
151 High Street
Major Site Plan Review (2016-SPR-01)
(Continued from 2/17/16)***

Attorney Lisa Mead, BBMT, 30 Green Street, #1, said the Zoning Board of Appeals wanted the Planning Board's decision on design issues before they made their decision. Renderings and plans of the front door and dormer design details were shown. Stephen Tise, principal, Tise Design Associates architects, 246 Walnut Street, Newton, said dormers that cut into the roof were clad in zinc with wood fascia. Elevations looking straight on showed the visible portion, dimensions, glazing, sides, and a fascia of lead coated zinc. The Historical Commission

Planning Board
March 16, 2016

requested mullioned patio doors that led out to balconies. Additional research located a photograph of Victorian double front doors with glass panes and solid raised panels below. The replica proposed was a double leaf door 3 inches wider using the same wood as the window sashes with double glass lights. Small paned windows were on the sides and above. The replaced fire escapes were historic replications of cast black steel. Balcony railings 42 inches high, per code, were historically accurate representations of foundry flat cast welded steel. Deed restrictions would curtail what residents could leave out on the balconies. A 38-inch picket fence-styled black metal railing system encircled the building. Members said the door was a big improvement. Mr. Tise said the buildings windows would have simulated divider lights with a spacer bar. Attorney Mead demonstrated the location of a bike room in the garage on the basement drawing. Limited space prevented placement of an outdoor bike rack. She requested the board not require one. A small historic marker was a plaque on a pedestal at the corner; there was no language for it yet. She suggested a condition to show a proposed design in advance of installation. Chairman McCarthy asked if the Historical Commission commented on a historical marker? Attorney Mead said they did not. She would request their input. Chairman McCarthy said a drawing of the proposed plaque should be brought to the Planning Director for approval. Attorney Mead said the recycling and trash area were now in front of the bike room at the bottom of the ramp in the garage. Arrangements made with the trash hauler included backing down the ramp with a reload bin to collect trash from the garage, then pulling forward onto High Street.

Mr. Tise and Attorney Mead met with Planning Director Port, DPS Director Wayne Amaral, DPS Operations Director Anthony Funari and City Engineer Jon-Eric White to review access ramps, sidewalks, and utilities. The applicant was not required to use brick for sidewalks in the Historic District. Sidewalk material could not be determined until building construction began because the choice of material depended on the cost of construction. The DPS requested a notation on the plans stating that either brick or concrete would be used. One member recommended concrete because of the challenges brick presented for the handicapped and elderly. One member was comfortable with either. Chairman McCarthy said sidewalks around the adjacent park were brick and he preferred brick. Installed correctly, brick would not be a hazard. Attorney Mead commented on the large cement area in front of the building. Handicap areas had to be concrete with a textured strip. Mr. Tise said the ramp tip down was concrete to meet ADA standards and most likely the curb cut would be concrete. Four of six board members requested brick. Attorney Mead asked if brick was a requirement or a recommendation? The old brick was slick, time consuming to clean, and could not reasonable be reused. She requested the opportunity to consider the cost impact of brick sidewalks before making a decision and suggested a condition to come back to the board to discuss sidewalks once costs were known. A member suggested brick around the ADA area. Mr. Tise said the cost to make a brick sidewalk sustainable included laying concrete first, designing and installing a drainage layer, then laying the brick. It was expensive. Chairman McCarthy said a majority of board members preferred brick. He agreed to put the burden of proof on the applicant to return to the board and explain why brick could not be used.

Steve Sawyer, civil engineer, DCI, 68 Pleasant Street, said water and sewer connections had been coordinated with Water Distribution Manager Dan Lynch and Collection System Superintendent Jamie Tuccolo. The water meter would be inside and one gas meter outside on the building. Electrical details would come with construction. Attorney Mead said the location of

Planning Board
March 16, 2016

HVAC condensers was an issue for the ZBA. Two condensers were moved from the front to the rear, with one on the side. Mr. Tise said condensers were as low as possible and housings included a roof for snow control. Attorney Mead showed cut sheets for exterior lighting and demonstrated fixture locations on the plans. Fixtures were recessed into the side of the building along the ramp, flanking the rear door, and recessed into soffits at the front door. Mr. Tise said the activated light at the top of the driveway was reduced to 2 ½ inches around and integrated into the top of a standard fence post. Attorney Mead said Planning Director Port's request for a two-car length restriction on either side of the driveway was accepted but was an issue for the City Council. Chairman McCarthy preferred enforcement without signs, suggesting a painted indicator at ground level. A member said Director Port supported the Transportation and Safety Advisory Committee's (TSAC) decision not to require parking restrictions. Attorney Mead said ramps on High and Auburn Streets were ADA compliant.

Public comment open.

Tom Kolterjahn, 64 Federal Street, said a repurposed historic building should, at a minimum, install historically consistent brick sidewalks. Cement underneath was not required for sustainability. A state initiative to redo High Street corners in cement was not allowed by the City. He was concerned about driveway ingress and egress on High Street. A more reasonable consideration placed the driveway on Auburn Street for safety and eliminated the need for signs and flashing lights on High Street.

Attorney Mead said the ordinance specified longevity measures. That required something solid underneath to prevent heaving. The traffic report showed an insignificant impact on traffic. There would be no signage and the flashing light was only 2 ½ inches. The study on how to construct underground parking showed the High Street ramp was the only way to preserve the historical integrity of the building. Mr. Tise said the garage slab was only a foot below the existing basement with a ramp drop of 3-3 ½ feet only. Placing the ramp at the rear of the building required a deeper ramp and eliminated three parking spaces. The decision was carefully considered to maximize parking and TSAC had no issues with the decision. Chairman McCarthy said all traffic would come out nose first. The issue was properly vetted with the City.

Stephanie Niketic, 73 High Street, was concerned about a new curb cut on High Street so close to an intersection on a busy road. Two new multi-dwelling curb cuts already made High Street more congested. Traffic studies always favored a project. How far was the curb cut from the intersection and why would an Auburn Street garage entrance need to cut all the way to the back of the building? Was there TSAC approval?

Attorney Mead said the TSAC, headed by DPS Director Mr. Amaral, included the City Marshal, gave approval. Mr. Funari and Mr. White also reviewed the project. The applicant preferred not to limit parking on either side of the ramp but there were no site line issues. A traffic report reviewed all accident data, the amount of traffic coming in and out, and queuing without finding issues. There had been no new curb cuts in this specific area of High Street. The traffic was considerably less than for a school. Ms. Niketic said school traffic was all on Auburn Street. Mr. Tise said there was a centerline offset for subdivision roads, but that was not a requirement for the applicant. The full traffic report, normally used for a 50-unit building, included automatic

Planning Board
March 16, 2016

traffic counts that showed no impact to intersections. The distance to the intersection was about 125 feet. The Auburn Street grade difference required the longer, steeper ramp.

Public comment closed.

Member comments: What was the expected duration of outdoor construction separate from the interior build out? Neighbors would be concerned about noise. Mr. Tise said exterior construction would start between late spring-early summer and finish by fall. Steel and structural work would finish in November. The interior build out would take a year. Chairman McCarthy asked about a photometric? Attorney Mead said it was not a required submittal. The only waiver was an environmental impact report. A member requested to see the covenants in the deed.

Leah McGavern made a motion to approve the Major Site Plan Review with one waiver and four conditions to include a justification for not installing a brick sidewalk, submission of the historical marker to Director Port for approval, the 3 inches square flashing light on a post, and condo document balcony restrictions to the Planning Director. Doug Locy seconded the motion and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

4. New Business

- a) ***Berkeley Investments, Inc.***
260, 268, 270, 274 and 276 Merrimac Street
Special Permit Modification (2007-SP-03c)
Site Plan Modification (2007-SPR-03c)

Chairman McCarthy said the ANR was a late file and there would be a two-part modification with two separate votes. Attorney Lisa Mead, on behalf of First Republic and Millennium Engineering, said in 2008 a subdivision was done for financing. The problem was garages located just over an internal lot line. An adjustment would clean up the subdivision's internal lot lines and not affect the site plan.

Doug Locy made a motion to endorse the ANR. Don Walters 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

Planning Board
March 16, 2016

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.

Chris York, Millennium Engineering, Amesbury, introduced the request for modifications. Attorney Mead said the minor modifications came to light during the start of construction and would not substantially change the project that was well underway. The first request was to use asphalt unit pavers at residential enclave driveways and tumbled pavers in certain other areas. Strips fronting the garages and units would change to asphalt pavers for maintenance such as snow removal. The change would not affect drainage and was an aesthetic issue. Chairman McCarthy said he communicated with the Conservation Commission who said there was no impact. Attorney Mead would let the Conservation Commission know what the board decided. There was still an outstanding Order of Condition.

The second request was a reduction in the 3 ½-4 inch caliper trees to 2-3 inches. The species was not available in the approved size. The landscaping contractor said trees grew faster in the smaller size. The carefully selected tree species was not changing. Chairman McCarthy had communicated with the Tree Commissioner who said the standard caliper for street trees was 2 inches, when branch structure was substantial enough to gauge a tree's health. Trees smaller than 2 inches were less likely to survive. The requested size was in an acceptable range. A greater concern was tree maintenance. Attorney Mead suggested including replacement trees as a requirement. Members wanted more professional input on tree sizes. Chairman McCarthy said considerable energy was applied to effect zoning changes that supported the development, including an overlay on top of two different zones. Lengthy testimony, much of which was incorrect, had been considered. Given the history and great strides taken by the City to allow the project in this location, the caliper reduction was acceptable. Member comments: The 2-inch caliper tree would have a better chance of surviving than a larger size. Alternatively, the board could require a larger tree replacement if a tree died. There should be a 'two-summer' replacement condition. Attorney Mead said a 2½-year replacement condition would work.

The third request was to replace sloped granite curbing in the commercial parking lot islands with asphalt berm. A member said Director Port did not support the idea because asphalt was less sturdy than granite. Two members did not support asphalt curbing. Chairman McCarthy said granite curbing was part of the original provision for the semi-public space, where parking for access to the soccer fields was allowed. Proximity to the river was an issue. He was not in favor of the change. Attorney Mead said the lot was private and maintained by the applicant.

The fourth request was to replace vertical granite curbing, shown in pink-shaded areas on the plan, with sloped granite that would be maintained by the applicant. All other areas were sloped granite already. Two members and Chairman McCarthy preferred sloped granite. The walkway was sloped granite. Attorney Mead said the fifth and last modification concerned the original request to remove the porch on Lot 1. The applicant wanted to finish the porch and leave it in place. There would be no change to what was built. In closing, Attorney Mead referenced the memo that itemized reasons the proposed modifications complied with the site plan. Chairman McCarthy asked if the waivers were from the original request?

Public comment opened.

Tom Kolterjahn, 64 Federal Street, Co-president, Newburyport Preservation Trust, said unused items salvaged from the 1690 House were given to the Trust. The architect at the public hearing said he would provide a list of items and voluntarily agreed to use the side-paneled 1760-70 staircase. Mr. Kolterjahn was unsure what happened when another architect took over, but plans changed and the house was to be more open inside. The Trust then received the 18th century paneling and crown molding and thought they were done. Today, the project manager said the staircase would not be used and asked if the Trust wanted it. The Trust wanted the applicant to leave the valuable staircase in place, undisturbed. Attorney Mead said the Preservation Restriction concerned the outside of the house only. A member said the staircase, if removed, would lose all of its considerable value. Attorney Mead agreed to coordinate a dialogue with the architect, Sarah White, Chair of the Historical Commission, and Berkeley Investments.

Public comment closed.

Chairman McCarthy said everything was approved was except replacing granite on parking lot islands. Attorney Mead said all issues and conditions pertained to both votes. The list of waivers included a traffic impact report, an environmental study, a full set of architectural plans, and stormwater. A certification was provided that proposed changes would not impact stormwater.

Don Walters made a motion to approve the Special Permit Modifications. Leah McGavern seconded the motion and all members voted in favor.

Andrew Shapiro made a motion to approve the Major Site Plan Modifications. 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.

***b) David Hamel and Karen Damon c/o Mark Griffin, Esq.
496 Merrimac Street
Informal Discussion***

Attorney Mark Griffin, 11 Market Square, Suite 8, on behalf of the owners, said the proposal requested a Section VI.C Special Permit to build a second residential lot accessed from Merrimac Street and set further back on the lot. The Merrimac River was just north of the property located in an R1 zone. The almost 30,000 square feet lot was very long and large for a single-family home. The Historical Commission, believing the structure to be older than 1750, had scheduled a site visit this Sunday pursuant to the request for a Preservation Restriction. The applicant would sell the front house and live in the new house in the back. A conceptual rendering of the proposed new home was shown. The driveway was 270 feet by 76 feet.

Member comments: The proposed structure's proximity to the river created potential flood issues. Attorney Griffin said the northern tip of the lot could be in the flood zone. Describe the back lot line? Attorney Griffin said there was simply land; the lot did not meet the river, but was close. Members said the house might need sprinklering. Attorney Griffin was aware of the need for a turnaround sufficient for fire trucks. V.I.C applications that were front-to-back were more challenging than side-by-sides; was ZBA approval needed? Attorney Griffin said a second single-family home did not require ZBA approval. Chairman McCarthy requested a larger picture of the streetscape to ascertain the rhythm of small historic houses along the street. The viewscape from across the street was a consideration. Reviewing a complete plan for the front house was necessary before any decision could be reached for building a rear house. A member said it was common to build a rear house on a long lot. Another member disagreed and said a ZBA ruling on frontage was needed. Chairman McCarthy needed to know if rear houses existed in the adjacent areas. Attorney Griffin said the rear house on Marshview Way would have a direct view of the proposed structure. Chairman McCarthy said Section V.I.C required a rear house to be subservient to the front house. This front house should be preserved as a small historic house without additions. Members asked about trees on the lot? Ms. Damon said aside from three large trees on the right side, the lot was open. The applicant should speak with the Conservation Commission about a buffer zone for wetlands.

Stephanie Niketic, 93 High Street, said it seemed there was enough distance between the front and back houses. She favored Section V.I.C generally.

Chairman McCarthy requested another informal discussion to better understand: 1) the historical context of the neighborhood, 2) whether there was a row of back houses, 3) the location of big trees, and 4) the location of other small houses. He would need solid architectural plans for the front house, beyond conceptual renderings, and did not want the front façade destroyed. Attorney Griffin said there was an application for an exterior Preservation Restriction. A member asked what public benefit was there other than restoring the house? Members wanted a site walk for wetlands, Conservation Commission comments, and a definitive answer on zoning requirements. Attorney Griffin said the code administrator had denied the building permit, which meant the applicant did not need approval. He invited the board to join the Historical Commission at 10:30 AM Sunday, March 20th for a site walk. Members observed that without a restriction on what could be added to the front house, the 80% restriction for the rear house had no value. Chairman McCarthy agreed. The lack of a restriction would defeat the purpose of Section V.I.C. He needed Historical Commission input regarding additions. He had reservations and needed convincing.

5. Continuation of Old Business

- a) One Boston Way, LLC*
1 Boston Way
Smart Growth Plan Approval (2016-SGD-01)
(Continued from 3/2/16)

Planning Board
March 16, 2016

Bob Uhlig, president, Halvorson Design, 25 Kingston Street, Boston, demonstrated species, size, and location of plant material, light fixtures, and circulation on the plan. Street trees on Parker Street and Boston Way were 4-4 ½-inch caliper Hackberry, an urban tree with an upright form. The ordinance called for 3½-inch caliper trees. Lighting and trees occurred at intervals similar to an urban street. The inside edge had River Birch, with more at the entry. Two different maples were used, an upright and a native Red Maple along the Rail Trail area. A mixed bed between the broad sidewalk and parking lot had evergreen and deciduous plantings for a good year round look, and 35-40 foot light fixtures to bring the scale down. Planting improvements on the edge of the Rail Trail all the way up to the station would replace invasive species. The National Grid right-of-way had tree plantings as close to it as possible, but lights had to fall outside that area. The parking lot's edge had a taller fixture; closer to the building, fixtures were 12 feet high. A 12-foot pedestrian fixture threw light symmetrically around the pole and was consistent with ordinance. The 20-foot high shoebox light cast an oval light pattern that illuminated travel surfaces in the parking lot. Both fixtures were LED, cut-off, with light projecting downward. Adjustments were made to circulation by creating an island near the MBTA platform where pedestrians traveled down the Rail Trail or down into the parking lot. The change preserved the existing tree canopy. The scale of the entry plaza was reduced with plantings added to break up circulation.

Member comments: Why was the landscaped area that buffered Parker Street and the sidewalk removed? Mr. Uhlig said trees were moved back from the walking/bike path the City requested in order to keep site lines clear for safety. Scott Cameron, civil engineer and principal, The Morin-Cameron Group, Inc., 447 Boston St, Route 1, Topsfield, said conversations with the City engineer resulted in a 10 foot wide walkway, providing a double wide corridor that would adjoin a future City sidewalk. Chairman McCarthy said Director Port sent out a reference to the regulation that documented the applicant's responsibility for 250 linear feet of sidewalk. Mr. Cameron said 250 feet of sidewalk going nowhere did not make sense. Chairman McCarthy said the board did not expect the applicant to do otherwise and the City should commit in writing for any sidewalk left open ended. Mr. Cameron said the 10 foot wide shared use walkway was offered instead of a 5-foot wide sidewalk for this one section. Members said there was no ambiguity about the requirement for 250 feet of sidewalk. Chairman McCarthy said the length of sidewalk in each direction was negotiable, but it needed to be the equivalent of 250 linear feet. Mr. Cameron said it would require engineering and going out to bid. The wider walkway was a compromise to keep the project moving forward. Chairman McCarthy said the project should not be stalled for the City and the responsibility for the sidewalk distance was in the regulation. The sidewalk changes recommended by the City's Senior Project Manager, Geordie Vining were good. What buffer plantings were between the parking lot and the MBTA? Mr. Uhlig said larger scale canopy trees, Serviceberry to add color, and a lower shrub layer of Inkberry 3-5 feet high. What were the two rectangular block forms in the little park? Mr. Uhlig said the MBTA infrastructure included an electrical meter cabinet and a maintenance shed for salt that would be accessed on a regularly. The area would be planted with ground cover surrounded by shrubs to screen the two unattractive structures because they were in a prominent location. Members said the location of the MBTA structures was unfortunate. Mr. Cameron said the hope was to consolidate them into one area. Lou Minicucci, manager, One Boston Way, LLC, said plans to improve the area were a considerable amount of work and required an MBTA approval that not guaranteed. Chairman McCarthy asked why the rain gardens were built into a cement structure?

Planning Board
March 16, 2016

Mr. Uhlig said the gardens were tiered to follow the grade so that excess stormwater not infiltrated could cascade down to the next tier. Mr. Cameron said challenging soil conditions required a mitigation system for roof runoff. Some water was handled on site and excess water redirected to slow down the retention time.

Chairman McCarthy said the TSAC required mitigation for safety concerns at the exit on Parker Street. Drivers who looked left while turning right only 30 feet from the Rail Trail created a hazard. Cars coming down Parker Street could not be seen because of the MBTA shed, also the source of other problems. Safety issues were visual obstructions both ways and the proximity to the Rail Trail. Christiansen & Sergi, Inc. (CSI) suggested a flashing light. Chairman McCarthy visited the location twice and confirmed that additional traffic turning out of the driveway would be a safety hazard. Mr. Uhlig pointed out improvements in visibility. Chairman McCarthy said the radius proposed would help but did not provide a complete solution. Mr. Cameron said the site line was greater than 40-55 feet in each direction. Chairman McCarthy said site lines did not mitigate the ergonomic dynamic of looking left while turning right. Mr. Cameron would study the issue and work with CSI. Chairman McCarthy thought a design change could offer mitigation. Another site line problem he identified was that cyclists on the Rail Trail could not see whether the yellow light to cross was flashing or not. CSI's initial round of comments did not identify any large issues and was relatively complimentary.

Public comment opened.

Attorney Mark Griffin, 11 Market Square, Suite 8, represented Ralph Castagna on the outstanding issue of the protective covenants. He said the covenants, if enforced, would alter the height of the building, but it was not the board's responsibility to enforce the covenant. Chairman McCarthy said the board had received all correspondence and could imagine several ways to work things out. The two parties needed to decide the route to take. The Planning Board could be used as a forum if the applicant wanted that. The board had specific interests and did not want any changes in the project brokered without involving them. The decision deadline was May 5th and he did not anticipate delaying the process based on the covenant resolution. Mr. Minicucci liked the offer of using the board as a forum. He had been involved in the project for three years in good faith, working closely with the City on the 40R and the Mass Grant. He had compromised every step of the way. His commitment to the state was to leverage their \$16 million initial investment. He would be using local banks and insurance companies and hoped to do well by the abutters. It was late in the process to receive abutter's concerns. Two title insurance companies agreed the project could proceed, but there was certain information that could cloud the title. Chairman McCarthy said the board's forum would be a public hearing at which both parties should be ready to deal. If not, a hearing did not make any sense. Mr. Minicucci had been responsive and prepared, enabling the board to make good progress. The City owed Mr. Minicucci a list of outstanding items, including signage. Mr. Minicucci said litigation was the easy route for the party that was ready to win. The consequences were big for either party. He preferred to avoid a fight, but was not likely to stop the project to redesign. Perhaps his only alternative was going to court. The project was installing 720 linear feet of sidewalks, repaving Parker Street and Boston Way, and wanted to move and rebuild the MBTA shed, if that was possible. As a good corporate citizen he had created parking across the street for residents using the Rail Trail.

Planning Board
March 16, 2016

Mark and Teresa Richey, 40 Parker Street, were supportive of the project and acknowledged its benefits for the City. As business owners their concern was compatibility. They had talked with Mr. Minicucci and were comfortable that they could work together. They did not want to deal directly with any tenant complaints.

Public comment closed.

Members said the board should be able to vote at the next meeting if outstanding items were provided. Chairman McCarthy said he and Planning Director Port would go through the narrative to make sure all bases were covered. He requested an up-to-date set of plans for all modifications shown tonight.

Leah McGavern made a motion to continue the Smart Growth Plan approval to April 6th. Don Walters 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.

6. Adjournment

Don Walters made a motion to adjourn. Leah McGavern seconded the motion and all members voted in favor.

The meeting adjourned at 10:12 PM.

Respectfully submitted -- Linda Guthrie