

**City of Newburyport
Planning Board
March 20, 2013
Minutes**

The meeting was called to order at 7:05 PM.

1. Roll Call

In attendance: Paul Dahn, Sue Grolnic, Noah Luskin, Jim McCarthy, Don Walters and Cindy Zabriskie

Absent: Henry Coe, Bonnie Sontag and Dan Bowie

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

2. General Business

The minutes of 03/6/2013 were approved. Don Walters made a motion to approve the minutes. Cindy Zabriskie seconded the motion and all members voted in favor.

3. Old Business

*Northbridge Communities, LLC
26, 30, and 32 Toppans Lane
Major Site Plan Review
Continued from 3/6/13*

Jeffrey Roelofs, Attorney, representing Northbridge, received written comments from the city engineer, Jon-Eric White, the Fire Department, and Christiansen & Sergei. Minor adjustments in entrance site configuration were made as a result. Confirmation on all the issues addressed was in member packets. Northbridge met with neighbors again and would return with a newly proposed three-lot subdivision for Lot 2 that abuts Toppans Lane.

Steve Sawyer, civil engineer, Design Consultants, described the major comment and revision requested on the entrance. While looking the same, the entrance is opened up to provide safer, more maneuverable entry. The engineer and peer review are satisfied. At the sight line looking down Bashaw Way toward Low Street, the corner of the wall was a bit tight. A car could see over the wall, nevertheless, 24 feet of wall are removed and pulled back to bend inward at a 30 foot radius with landscaping added there. The many comments on drainage were all addressed. Hard piping was added from the courtyard to the lower rain garden.

Director Port had no additional concerns at this point.

Vice Chair McCarthy asked if there were conditions? Director Port said, in addition to added screening, there were only boilerplate conditions at this point.

Public Comment Opened.

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Tom Smith, 36 Toppans Lane, asked if there were vegetation and lighting conditions? Director Port said those issues were addressed in the last meeting. Attorney Roelofs explained they would maintain existing vegetation; lighting notes from the last meeting were on the plan. Mr. Smith thought motion detectors was still an open question. Attorney Roelofs clarified, on the pedestrian side, and suggested Director Port put motion detectors in as a condition.

A member was not averse to a special condition but thought it could be put as a note on the electrical drawing. Attorney Roelofs had no problem with that, as long as it didn't delay the vote, but felt it was cleaner to do a condition.

Public Comment closed.

Don Walters made a motion to approve the Major Site Plan Review. Paul Dahn seconded the motion and all members voted in favor.

During the course of discussion and consideration of this application, the 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.

Jay Caswell
325, 323R, and 329 High Street
Definitive Subdivision
Continued from 3/6/13

Steve Sawyer, Design Consultants' civil engineer, represented Jay Caswell for the Twoomey Drive Definitive Subdivision. A few remaining items were updated on the plan per Christiansen & Sergei comments. The water line has been relocated to city engineer Jon-Eric White's preferred location for water for the future access drive to the Senior Center.

Items addressed from the review letter were: 1) Abutting property owners are listed. 2) Correct scale is in the title block. 3) The front lot line now has a minor jog compared to the previous submission with a straight line. The frontage with the longest distance is declared the front and the change maintains the longest frontage on High Street. 4) Lot 6 has two land areas, the area included in zoning. The smaller of the two is well over the requirement. 5) The plan indicates the buildings to be demolished. 6) Adding a north arrow, a digital submission requirement for the as-built plan, will be done when they provide the as-built. 7) A waiver was requested for the curbing. 8) A handicap ramp, at the very end on the inside of the drive, was added. 9) No streetlamps are proposed. 10) A hydrant marker was added. 11) The turning movement was coordinated with the fire department. Homes are required to install fire suppression systems. 12) A grading easement was added on Lot 5. 13) Water flows to the rear; a grading easement was added to prevent the land owner from berming it up. 14) In a bio retention detail, a raised pea stone filter has been changed to a diaphragm filter. 15) The curb dropped a couple of inches to make sure stormwater flows into the bio retention areas. 16) They will not adopt the recommended rounding at 25 feet, when most are 5-10 feet. Deputy Chief Bradbury agreed the present rounding is more than adequate for a small road. 17) The Planning Office asked for the solid panel fence along the property line of the future Senior Center. There's a proposed

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walkway near this property line. 18) Vegetation along Brooks Court was augmented to leave everything 8 inches in diameter or greater.

Director Port responded that plans show a 6-foot high solid panel cedar fence. The Planning Office wanted a 5-foot cedar fence with a 1-foot lattice. Legal counsel recommended reviewing the trustee documents. Homeowners are responsible for the road maintenance.

Public Comment Opened

Killeen Connolly, 10 Brooks Court, questioned the grading change and the building of a gully going into a swale on the southern tip. Mr. Sawyer responded that the design does not top the 100-year event of 6.6 inches of water in 24 hours. The language about maintaining these systems said if they aren't dry in 24 hours they will be replaced. There is no change in the profile of the road. The entire area was raised but no additional grading would be done. Sickly trees will be trimmed. The original plan had this 1.5 foot swale pulled forward.

Bruce Babylon, 323 High Street abutter, had concerns about a currently paved area in the development located within one foot of his kitchen window and 4 feet from a bedroom. Could the pavement remain as long as possible to control dust resulting from the removal of two swimming pools? Would removed hardtop be ground on site? His concern was dust control. Mr. Sawyer responded that the area could be soaked.

Public Comment closed.

Vice Chair McCarthy asked the board go through the list of waivers, voting separately before reviewing additions to the boilerplate. Director Port read the waivers.

A member, referencing the 300-foot issue, reminded the board that members felt the reference was nebulous in the subdivision ordinance. Agreeing to this waiver was making a rule and setting precedent. Director Port suggested adding language noting the waiver was not required, but was based on the fact that it was an incomplete sentence in the topography section of the regulations, which could be modified later. Vice Chair McCarthy confirmed adding the modification to the list of waivers.

The member said a solicitor would review trust documents, but had anyone seen the O & M plan? Is the entrance coming off High Street part of Lot 6? Mr. Sawyer responded that it was a planting easement.

Don Walters made a motion to approve the waivers, as amended by Director Port, and the Definitive Subdivision. Cindy Zabriskie seconded the motion and all members voted in favor.

Director Port read the Conditions: A review of the trust document for the owners Occupation and Maintenance plan by legal counsel; the 5-foot solid cedar fence with a 1-foot lattice, sheet C 1; and dust control measures. Vice Chair McCarthy referenced existing standards. Mr. Sawyer acknowledged that the project, with over an acre of construction, would follow the standards.

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One no vote would be devastating since there are only five members, is a straw vote possible?

Paul Dahn made a motion to approve the Definitive Subdivision with conditions. Don Walters seconded and all members voted in favor.

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4. New Business

40 Merrimac Street LLC

40 Merrimac Street

Major Site Plan Review Completeness Vote

Vice Chair McCarthy reminded the board that they voted the plan not complete previously. Director Port received revised plans from the applicant. His office is comfortable with the materials for the completeness vote. The board should look for more information on signage and more landscaping detail. The traffic impact went before the Waterfront Trust. The applicant can take advantage of municipal parking in the surrounding lots for patron parking. More in-depth analysis could be requested if the board wants it. The Fire Department still needs to confirm safe access to the site. These will all be addressed at the public hearing.

Attorney Lisa Mead, Blatman, Bobrowski and Mead, asked if a new standard existed for Major Site Plan Review Completeness Applications since required stormwater, photovoltaic, community impact, and traffic analysis and reviews were missing from the packet. Director Port said his office determined there was enough in the packet to go forward; not much would change with stormwater or other reviews on this particular application, except there would be more required on traffic. For better or worse, zoning permits the applicant to take advantage of municipal parking and it was a question of whether the municipal lot is adequate for the applicant's needs. Vice Chair McCarthy, acknowledging Attorney Mead's concern, requested a traffic analysis to address parking lot flow.

Director Port said regardless of the package contents now, the board has the discretion to request additional information at any time, including now. Vice Chair McCarthy asked if the board wanted more information prior to the completeness vote. A member deferred to the Planning Office on the need for a photovoltaic review and asked if there were other checklist items the board omitted requiring? In this case, Director Port responded, the parking lot was already there and, if anything, the plan increases the open space. A conversation with the Waterfront Trust on lighting resulted in notations about fixtures on the plans. Newburyport lamps were requested for a consistent aesthetic.

A member noted the project's high visibility downtown, adjacent to the water, where there would be sensitivity to any issues with pollution. The member agreed with Director Port on parking and agreed that traffic flow was a concern. Two other members concurred and were ready to approve. Vice Chair McCarthy stated the risk of going forward would be difficulty getting

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additional information from the applicant when it was needed if it wasn't requested now. Director Port explained the current window was 45 days. The applicant could request a continuance. Vice Chair stated that the board vote was whether the plan was complete or not.

Don Walters made a motion to approve the Major Site Plan as Complete. Paul Dahn seconded the motion and all members voted in favor.

Public Comment Opened

Attorney Bill Harris, 56 Lime Street, was thanked for submitting a traffic, parking, and displacement document prior to the formal discussion. Mr. Harris said there were three lawyers in the room today and the meeting should be opened with reading the notice. Director Port explained his office sent a notice out, but pulled it from the paper because the notice Mr. Harris received was premature.

Robert Fuller, abutter, wanted to be heard. Vice Chair McCarthy said the public hearing was not formally opened yet and encouraged Mr. Fuller to review the project folder in the Planning Office. Providing input at this point required a written submission for the record, as Attorney Harris has done. Mr. Fuller could provide written comments before April 17th.

Attorney Mead had serious concerns about the Site Plan Review process, stating everyone needs to know what it needs to include. She felt the board had changed the list of requirements for a major site plan review.

Director Port and Vice Chair McCarthy both stated there were some differences in this project and they relied on the Planning Office staff to check satisfying the requirements. Attorney Mead said information was at the board's discretion, not the Planning Office's. Vice Chair McCarthy stated the board's familiarity with the project and encouraged the public's input because the project would significantly affect the city in numerous of ways.

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5. Planning Office/Subcommittees/Discussion

Zoning on Storey Ave.

Director Port met with some people on zoning changes for Storey Avenue. He believed his office should consider their issues as part of any zoning changes going forward. The issues were changing the two residential lots to business district lots. It also made sense to change the strip mall character of Storey Avenue to more of a historic New England character. A member thought there were another couple of houses further up Storey Avenue that should be included in the zoning change. Director Port agreed, adding this was one step in an opportunity to improve the entire corridor. Other zoning housekeeping items included correcting typos, old references, and old standards no longer in use.

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Medical Marijuana Zoning

On medical marijuana, a consideration existed about whether to zone for it now, in advance of state regulations on guidelines for those facilities, or create a temporary moratorium to give the city a greater window for evaluation. Director Port recommended spending six months to a year evaluating the regulation and determining where Newburyport's zoned use would be. Wakefield took the decision to ban those uses and the Attorney General's office said they had to allow it somewhere. A member said if the moratorium was a year, and the state regulations came out during that time, then residents would have the right to grow it themselves. Director Port mentioned the hardship cultivation license. The member thought moratoriums could sometimes lead to chaos, but maybe there was a shorter window. Director Port thought regulations could appear in May. The city either adopts the local regulation now or after the regulations come out – six months is probably an adequate evaluation window.

Design Review

Director Port was drafting architectural design review standards for the downtown, primarily for new buildings or façade changes to existing buildings, to bring before the board.

Sub-Division Regulations

A member asked if the subdivision regulations could be changed in one meeting? Director Port said as long as it was advertised. Vice Chair McCarthy agreed the board should change in the subdivision regulation in one meeting. If the market maintained its current direction, there would be more subdivisions. Director Port offered to create a draft revision.

Section VI.C and Affordable Housing Public Benefit

The Section VI.C special permit needed discussion around whether: 1) Applicants can do only affordable housing with no other benefit. 2) What a reasonable contribution was. 3) Creating a formula or table to make it clear for both the board and applicants. Director Port argued against using a formula for projects with multiple components, but thought a formula would at least provide guidance for other projects. He had drafted some language to that effect. Vice Chair McCarthy suggested asking for a letter from the Affordable Housing Trust to avoid this board negotiating with the applicant. Director Port countered that this board was making the final call. We want to address comments about the board being arbitrary. Clarifying the public benefit will help. A member was interested in the Affordable Housing Trust's input on the formula idea. Director Port had yet to receive clarification on what the Trust thought an appropriate threshold for contributions was and wanted any method for determining contributions to be simple and clear, such as a dollar amount per market rate unit being constructed. Above 10 units, a developer should be required to put an affordable unit in the project. Not \$100,000 per market rate unit, but something higher than \$5-10,000. Vice Chair McCarthy said it was relative to the value created for the project. Most Section VI.Cs have been to create two lots. The applicant gains access to the lot without going through a definitive subdivision process. Director Port will email the language he drafted to the Affordable Housing Trust.

Other Zoning

On the Business Park issue, the city wanted to expand and diversify the park's uses, where at present the park does not allow a corporate headquarters. A member suggested starting with a clean slate to open up the park to anything that made good sense to the Planning Office.

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Providing a definition for deeded half houses is another issue. Are they two, separate single-family homes or are they two-family structures? The building commissioner treated them as two-family homes but under zoning that may not be the best way to keep it. Director Port had drafted language to address definition changes.

255 Low Street

Vice Chair McCarthy has asked the Planning Office to look at 255 Low Street, approved in 2007 with a minor modification in 2010. It had been a long time since the approval and there could be ambiguities between the developer and the Planning Office that were better identified before they finished. There was landscaping but they were putting a fence in front of it. Director Port agreed to provide some monitoring on the project.

6. Adjournment

Paul Dahn made a motion to adjourn. Don Walters seconded the motion and the motion was approved unanimously. The meeting adjourned at 8:46 PM.

Respectfully submitted,

Linda Guthrie,
Note Taker