

**City of Newburyport  
Planning Board  
April 15, 2015  
Minutes**

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

**1. Roll Call**

In attendance: Sue Grolnic, Noah Luskin, Jim McCarthy, Doug Locy, Bonnie Sontag, and Andrew Shapiro

Absent: James Brugger, Leah McGavern, and Don Walters

Director of Planning and Development Andrew Port was also present.

**2. General Business**

- a) The minutes of 3/18/2015 were approved as amended. Bonnie Sontag made a motion to approve the minutes. Sue Grolnic seconded the motion and all members voted in favor.

**3. New Business**

- a) *Joe Leone*  
*40 Merrimac Street*  
*Request for Extension (2013-SPR-03)*

Chairman McCarthy said a culvert running underneath the structure at the end of Green Street had water flowing through it. The DPS needed to build a new culvert (the same one that ran under Murphy Street) this summer, causing a delay for the applicant.

Doug Locy made a motion to approve the extension. Andrew Shapiro 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) *Pamela Brown and Denise Whitlock*  
*LaValley Lane Covenant and Drainage*  
*Informal Discussion*

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Attorney Lisa Mead, Blatman, Bobrowski, and Mead, 30 Green Street, represented Pamela Brown and Denise Whitlock, 154 Hale Street, on the corner of Hale Street and Lavalley Lane. The Kelleher Pines subdivision included a covenant dated 1979 that required a swale along the rear of lots 7-13. A headwall at the corner of lot 13 connected to a City easement that drained water from the rear of the lots and abutting properties on the east side of Turkey Hill. The owner of lot 13, at 32 LaValley Lane, had built-up and elevated his back yard, filling in the swale and blocking the drop inlet to the easement so that water was forced outside the drainage easement onto Ms. Brown's property and into her house. The property and house did not flood prior to the appearance of the backyard structure.

The covenant was written to the board. The City was the easement holder of drainage that was now blocked. Attorney Mead sought the board's assistance in gaining control of the drainage system. She displayed photos of the blocked headwall and the backyard structure. Chairman McCarthy asked how the City was a party to the covenant? Attorney Mead said the covenant was written out to the board with a number of conditions pertaining to what was to occur and how. The elevated back yard prevented drainage from working properly and the owner of 32 LaValley Lane was not receptive to making changes. Theodore Norton, an independent excavator hired by the aggrieved homeowner, went out to look at the situation said rocks supporting the back yard structure impeded the flow of water. A member asked if the neighbor was aware of the covenant? Attorney Mead did not know, but the information would be on his deed.

Chairman McCarthy said when a subdivision was built today, the developer held the property until a Homeowners Association took responsibility. He asked if the City was a party to the covenant? Attorney Mead said a water problem occurred during the subdivision development that was rectified by requiring the developer to enter a covenant with the board. It was not an 81U covenant. The covenant said the developer would meet specified conditions and the board would have enforcement authority. There was no Homeowners Association. The definitive subdivision plan had no drainage easement across the lot early on, but a later plan signed by the board had the drainage easement across the lots. The DPS and the board had some involvement.

Chairman McCarthy said the issue had gone to the City solicitor. Director Port said he originally thought a formal letter from the board could be issued stating that the neighbor was not in compliance, but the solicitor, who had had access to all the materials, said the role of the board had ended, the drainage issue was now private, and the board should not take a strong role. Director Port recounted the story of another swale on Virginia Lane illustrating when the City was responsible and when the City was not responsible. In this situation, the City's drainage was not impacted and the solicitor said the board could not chase every condition years after the fact.

Chairman McCarthy said if the subdivision developer wrote the covenant to the board, who was the successor and its assignees? Attorney Mead said they would be the people who buy the homes, but the board was the beneficiary of the covenant because there was no Homeowners Association. Associations arose because of situations like this.

Member comments. The problem with the swale not working occurred before water got to the City easement. The easement was for the City's benefit, but the City did not have a role yet. When the swale was cleaned out, it would work again. Attorney Mead said the swale had been

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redirected and blocked from getting to the easement because a neighbor built a structure in the easement. Chairman McCarthy said homeowners were responsible to each other. Had Attorney Mead approached the neighbor? Attorney Mead said yes, to no avail. The people involved were the board and the two property owners. Members said the board of 1975 was a party to the covenant when it was put in place. Now that something has happened, who was the agreement with? The City should remind the homeowner of the covenant that required the swale connect to the easement and say that any homeowner responsible for blocking the swale and easement should stop. If the homeowner did not rectify the situation, the City may have to step away. As a negatively impacted neighbor, that would likely be upsetting. The board needed to go on record for doing something. The board did not want to open the City to responsibility for correcting the situation by signing a letter. Attorney Mead said the covenant did not make the City responsible for fixing the problem; that was the homeowner's responsibility. The board was not the holder of the actual system, but the beneficiary. She wanted the board's help in enforcement.

Director Port said a letter might be considered, but that would be the extent of the City's involvement. Members proposed language to clearly state the limits of the City's involvement and the responsibilities of the homeowners to work things out with each other. Chairman McCarthy asked the number of people to whom the covenant applied? Attorney Mead said lots 7-13, seven people. Chairman McCarthy said all the homes in the subdivision needed to know they were a party to the covenant. He asked Attorney Mead to send her own letter to the neighbor saying that she came before the board and the covenant stands.

Bonnie Sontag made a motion to write and send the letter as described. Doug Locy seconded the motion and all members approved.

**Motion Approved.**

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**c) First Republic Corp. of America  
260, 268-270, 274, and 276 Merrimac Street  
Request for Extension (2007-SP-03)**

Eric Ekman, Berkley Investments, 121 High Street, Boston, and Attorney Lisa Mead spoke on behalf of First Republic Corp of America. Several years ago the board issued a permit for the Towle development. A downturn in the economy after project work began created financing issues. First Republic had changed leadership and was ready to go forward again, with changes. Attorney Mead, engaged in September, removed the enforcement order with the Conservation Commission, and the team met with the mayor, Parks Department, Ward Councilor Charles Tontar, and others. Everyone seemed supportive of the modifications. The Special Permit expired June 2015. A six-month extension was requested. Every effort was being made to make the May 6<sup>th</sup> deadline for a modified application to the board.

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Chairman McCarthy said the new architect, new landscape architect, and others made a good team. Attorney Mead said she reviewed the permits and the overlay district. The language was identical in the Chapter 91, Order of Conditions, Site Plan Review and all other documents, which meant every single permit had to be amended. The effort would take time; she wanted to be efficient and effective. The condos were being redesigned and most of the pilings would be reused. A variance from the ZBA was needed to take the barn down because it could no longer be relocated. A Recreation Department building would be constructed in its place. The 1690 house had been open to the elements but it was still in good enough shape.

Director Port recommended approving the extension. He had been in the barn with professionals who said it needed to come down. There was no plan for operating a recreation building yet.

Bonnie Sontag made a motion to approve the extension. Noah Luskin seconded the motion and all voted in favor.

**Motion Approved.**

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**d) Brad Kutcher, Bradku Construction  
8 Oakland Street  
Section VI.C Special Permit (2015-SP-01)**

Chairman McCarthy recused himself. Vice Chair Sontag read the notice. She recognized there was no quorum. The meeting was recorded and members not present would listen and vote at the next meeting.

Nicholas Cracknell, 13 Picard Street, Amesbury, represented Brad Kutcher. One of two owners, Ann Miller, was also present. Since early February 2015, a ZBA variance to reestablish a two-family use had been granted, as well as a variance for the lot area, a letter of support from the Historical Commission received, and the framework for the preservation restriction was established. The rules of engagement were clarified with 20 stipulations outlining the developer's collaboration with neighbors. The new dwelling had 230 feet of frontage, 6,500 square feet of side yard, was 24 feet wide, 38 feet long, and had 2 2/3 stories with a gambrel cedar shake roof. Dormers had no siding because the window filled up the dormer. The non-conforming accessory structure would be removed and replaced by a lower profile two-car detached garage. Parking would be removed from the front of the structures and moved to the side. A fence would divide the middle of the lot.

Benefits were historic preservation on the 1850 structure, maintaining open space, and removing the non-conformities on the lot. The appearance would be of two separate single-family homes on two separate single-family lots with separate frontage and access. There were restrictive covenants on use. The local project team was familiar with Section VI.C and infill in

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Newburyport, and had visited 28 other properties in the neighborhood, including 10 direct abutters on Walnut and Oakland Streets. All direct abutters were involved and supportive.

Members were in support. What was a half story? Mr. Cracknell said the angle of a gambrel roof prevented a full roof; a partial story was under the roof. Members were concerned that neighbors would feel the new dwelling was out of character due to its bulkiness, particularly Walnut Street neighbors. Mr. Kutcher said the foundation would be 18-20 inches out of the ground. The gambrel roof would not be large because the house was only 24 feet wide. Director Port said the preservation restriction should be approved before occupancy. Members asked about improvements and repairs on the Coffin House. Mr. Cracknell said there were not many.

Doug Locy made a motion to continue the Section VI.C. to May 6<sup>th</sup>. Sue Grolnic seconded the motion and all voted in favor.

**Motion Approved.**

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- e) 13 North Adams LLC  
26 Toppans Lane  
Definitive Subdivision (2015-DEF-01)  
Section XXIII Special Permit (2015-SP-02)***

Chairman McCarthy read the notice. Steve Sawyer, Design Consultants, Inc., 68 Pleasant Street, said the demolition delay expired and the house could not be salvaged. The development team would demolish the house soon and subdivide the Rindler property for two homes. The front lot was 20,005 square feet, the rear lot almost 36,000 square feet, and like most lots on Toppans Lane, larger than normal. Constructing a 22-foot wide way would provide access and frontage to the rear lot. In lieu of a swale, low impact drainage techniques with a 2-3 foot wide ribbon of river stones over perforated pipe would act as a drainage strip, delivering water to the rain garden detention areas. All features would be privately maintained in perpetuity. The general house footprint would be 3,200-4,200 square feet, similar to the cottage style homes by James Bourque, and priced around \$1.5-2 million. Mr. Sawyer was reviewing Phil Christiansen's comments.

Members wanted to see something about the structures to assess the mass. The lay out was good topographically for the neighborhood. The houses must fit into the neighborhood and consideration for design should start with the neighborhood. Chairman McCarthy was interested in a condition that prevented garage doors from being the primary feature or seen first. Members wanted elevations of the buildings. Mr. Sawyer said outstanding items with Christiansen and Sergei would be addressed by next Tuesday.

Public comment opened.

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Virginia Eramo, 20R Toppans Lane, was an abutter with concerns. The developer had not introduced himself to her. There were no plans for the homes. She was concerned about the retention ponds and a mosquito problem. Mr. Sawyer explained that stormwater requirements mandated water be held on site instead of increasing the flow to neighbors. Retention areas were as small as possible, planted similarly to gardens, and did not look like ponds. They agreed to exchange emails to review home styles.

Tom Eramo, 20R Toppans Lane, favored development except for concerns raised by his wife.

Tom Smith, 36 Toppans Lane, said it was a poor place to put a road that would increase the possibility of adding more houses when the three year deed restriction expired. What limited the lot to two houses? Director Port suggested adding a condition on the permit specifying two houses were the extent of development.

Public comment closed.

A member asked why the road had no serpentine? Mr. Sawyer said it was a small right of way but he could make a minor curve. Mr. Smith said a curve would allow the homes' front doors to face Toppans Lane, with driveways on the side, like the rest of that side of the street. Houses were mostly clapboard. Chairman McCarthy liked the idea of front doors facing the street. Mr. Sawyer said Donahue Lane would be the address, with mailboxes on Toppans Lane.

Doug Locy moved to continue to May 6. Andrew Shapiro seconded the motion and all voted in favor.

**Motion Approved.**

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***f) City of Newburyport, Office of Planning and Development  
27R Water Street, Harbormaster Visiting Boater Facility  
SPR Completeness Vote (2015-SPR-01)***

Chairman McCarthy said there were many documents. The project was by right, due to changed zoning, and would come under Site Plan Review. The waiver requests were from fees, stormwater calculations, and the site plan review checklist. There should be some plan for stormwater, although a peer review was not needed. Members said the public hearing would bring out a lot of people with concerns. Director Port said concerns were primarily about the size of the building. Chairman McCarthy said only one part of the building was taller than the rest, but the roof was fairly large. Would the runoff dump onto the boardwalk? Director Port said his office was trying to work in a cistern for rainwater collection as well as solar panels embedded between the roof seams. They could be ready for a public hearing on May 20<sup>th</sup>. What sort of technical submission was needed for stormwater? Chairman McCarthy said a design, but CSI would not need to review it.

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Doug Locy made a motion to approve Application Completeness. Bonnie Sontag seconded the motion and all voted in favor.

**Motion Approved.**

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**5. Planning Office/Subcommittees/Discussion**

***a) 40R***

Chairman McCarthy met recently with MINCO regarding a general schedule moving forward taking into consideration 40R district adoption and project approval process.

***b) Updates***

Considerable time was spent on the Colby property deal.

**6. Adjournment**

Bonnie Sontag made a motion to adjourn. Doug Locy seconded the motion and all members voted in favor.

The meeting adjourned at 9:17 PM.

Respectfully submitted -- Linda Guthrie