

**City of Newburyport
Planning Board
April 17, 2013
Minutes**

The meeting was called to order at 7: 08 PM.

1. Roll Call

In attendance: Dan Bowie, Henry Coe, Sue Grolnic, Jim McCarthy, Bonnie Sontag, Don Walters and Cindy Zabriskie

Absent: Paul Dahn and Noah Luskin

Kathryn Newhall-Smith, Planner, Office of Planning and Development was also present.

2. General Business

The minutes of 03/20/2013 were approved. Chairman Bowie made a motion to approve the minutes. Jim McCarthy seconded the motion and four members voted in favor. Chairman Bowie, Henry Coe and Bonnie Sontag abstained.

***2 Forrester Street
Approval Not Required***

Taylor Turbide, Millennium Engineering, Inc, Salisbury, represented Blue Board, LLC.

The lot consists of two parcels and received the necessary permits and variance from the ZBA. Lot 1, currently a two-family structure, will have 600 feet of frontage on Forrester Street. Lot 2, a single-family structure, will have 350 feet of frontage on Forrester Street. Subdivision approval is not required. The Planning Office recommends endorsement of the plan.

Don Walters made a motion to approve the ANR. Bonnie Sontag seconded the motion and all members voted in favor.

3. New Business

***40 Merrimac Street LLC
40 Merrimac Street
Major Site Plan Review***

Chairman Bowie recused himself and turned the meeting over to Vice Chair McCarthy. A member read the notice. Joe Leone, Trustee of 40 Merrimac LLC, distributed his plans.

Douglas Trees, Principal, DTA Architects, Hamilton, MA, cited the prominent location of the building and referenced a four-page narrative describing a use change of 40 Merrimac Street to The Ale House restaurant. The property is one contiguous group of structures that includes an original brick building with a later concrete block addition. Maintaining the existing 6,417 square feet footprint, the original brick building would be treated as an historic restoration.

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The concrete block around the perimeter of the building would be removed and replaced with a glass enclosure to set off the brick building inside. Rooftop dining was planned. The size of the building would increase through a second story addition that extended back from the Davis building. The Green Street view corridor, from the corner of the brick building up Green Street, was not blocked. The proposal was consistent with objectives in the Waterfront Plan dated 2003. There had been discussion with abutters on how to handle the perimeter of the building. HVAC equipment would be on the roof and screened; exhaust pipes would be enclosed in a wood chimney; and a six-foot solid fence with a lattice would screen the dumpsters. Latticework placed on the building would aid in greening a corner on the building.

A walkway behind the building would provide access to the waterfront. Negotiations with the Waterfront Trust to create a seven-foot walkway to the waterfront were ongoing. The sea of asphalt would be minimized by a 28-foot wide path into the parking area. The alley would become a 24-foot wide path joining up with the 28-foot path. Complete, circular access would surround the building. A 15-year history of property maintenance at the Black Cow supported their community character.

On traffic, parking and public access, the latest plans involved negotiations with the Waterfront Trust that Mr. Trees hoped would finalize in the next Trust meeting making it possible to connect the Trust path with the proposed Ale House path all the way to the water, making access highly functional for the public. For traffic and parking, Mr. Trees relied heavily on the Burke NRA Traffic Study showing that a parking problem existed 5% of the time, or 18 days/year, but the rest of the year parking was adequate. Drawing people into the paid parking area all year created the advantage of adding easily \$28,000 a year to Waterfront Trust income.

Issues of health, noise, odors, were completely addressed with the ZBA and neighbors and were in the conditions of the ZBA decision. Finding 3 addressed public parking. The site will need a 3,000 pound grease trap, will be fully sprinklered and fully comply with the energy code.

David Whalen, Principal, Whalen Garden Design, North Hampton, NH, said plantings would be maintained to a maximum height of 12-15 feet to preserve the Green Street view corridor. A lawnscapes with turf would have planting beds bordering the walkways and imbedded into lawn areas. The plant selection contained trees, shrubs and perennials. Five trees were tight-growing, spring blooming Crab Apple with pink flowers across an 8-10 foot spread on the head that never exceeded 12 feet in height, a straight trunk, and minimal fruiting in the fall that would not make a mess. Below the trees would be Hemerocalis, Hyperion, and Spirea, a sub-shrub growing 3 feet high with multiple blooming seasons. The screen for the exterior café included columnar, narrow yew with the Spirea in between that was neat in the winter and flowering in season. The trellis would have an espaliered pair of Bradford Pear trees and fragrant Clematis Paniculata vines. There would be no intrusion on views or over walkways.

Richard Nylen, Attorney, Lynch, DeSimone & Nylen, LLP, Boston, MA, addressed the legal questions. With respect to Chapter 91, the walkway described on the eastern side is not required but the walkway in the back of the property satisfied Chapter 91. There was value in enhancing public access to the water and they were encouraged to do this. They moved the walkway off the area adjacent to the restaurant onto the Waterfront Trust land. Ownership of the piece would be

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shared with the Trust and the Ale House would maintain it. Negotiations were ongoing with the Trust but nothing had been signed yet. Previous to this meeting, resident William Harris raised the issue of property ownership. Title Insurance was in hand and Attorney Nylen did not expect the board to resolve whether or not a piece of the landing was given to Newburyport and whether it continued to be a part of the building or belonged to the city. This complex, continuing issue would resolve at another time. The requirements of the site plan approval were met. The peer review letter had asked whether the foundation belonged to Mr. Leone.

Acting Chair McCarthy agreed to let the parties sort out their land ownership issues elsewhere and focused on the site plan review. A member asked whether references to the Green Street view corridor were street level? Mr. Trees stated the view was from the building's roofline up Green Street. The member asked what was behind the solid brick wall? Mr. Trees said it would be faced with the trellis, landscaping and housed the refrigeration units.

Another member asked if the Chapter 91 issues were resolved? Attorney Nylen responded they would apply for the Chapter 91 permits last and the plan submitted to Chapter 91 was the same as the board had, showing the walkway.

A member was concerned that part of the view corridor was obstructed and requested to see additional sketches and drawings of view corridors given to the ZBA. Mr. Trees responded that the amended drawing, approved by the ZBA, was in the board's packet. The ZBA had told the property owner that it was not in their oversight to protect the view. Acting Chair McCarthy said the view corridor called out in the regulation was substantial. A member asked if the refrigeration obstructed the viewscape? Mr. Leone said refrigeration was inside the existing building because they were asked to bring it inside along the back.

Doug Locy, Chair of the Waterfront Trust, referenced A2. Mr. Leone said no view was there now. Mr. Locy said the view was significant. Mr. Leone maintained he increased the view about 90%. A member said a view corridor is not a corridor if any part of it is obstructed; the board wanted the other 10%. Acting Chair McCarthy said there would be more discussion about the view corridor.

The member asked which parts of the plantings would not be naked during winter? Mr. Whalen said there were not many evergreens. The Crab Apple trees were artistically interesting in winter, daylilies died back, the screening evergreens separating the walkway from the private dining area would look the same all year but the Spirea in between would be cut back in winter. The trellis had no evergreens, but was an interesting architectural detail showing the Bradford Pear cut in a candelabra shape. There would be five 36-inch tubs with evergreen Alberta Spruce that would survive over winter. The member asked if the snow removal storage area was on the turf? Mr. Whalen said yes, as well as around the base of the trees. The member asked if the trees could handle that around their base? Mr. Whalen affirmed they would.

A member commented on the use of the word 'recommendations' instead of 'requirements' by the Historic Commission. Mr. Trees said he previously extended the building with the same gambrel shape to duplicate the original building as closely as possible. Subsequent to the

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Historic Commission's request not to do that, recommending instead a clear break, he changed the design and the Commission was satisfied with the change.

When asked about Conservation Commission issues, Planner Newhall-Smith affirmed that the Conservation Commission had reviewed the application and there were no additional requirements.

Acting Chair McCarthy said the applicant did a great job of not letting the back building out shine the front building and asked for a more detailed description of contrast. Mr. Trees said the brick building had multiple coats of paint; depending on the outcome of experiments to remove paint in a way that assured preservation of the brick, they would like to restore the original brick color. There was no guarantee at this point that the paint could be removed. Clapboards would be beige tones with double-hung windows to match the scale of windows in the brick building. Inquiring further about differentiation between the buildings, Acting Chair McCarthy asked if the same brand of windows would be used across both buildings? Mr. Trees said, in acting on the Historic Commission's request to make a clear break, he differentiated the window design. The older brick building's windows were set into the brick and the building extension windows would sit on the frame's surface. Acting Chair McCarthy asked if the chimney on the new building was all wood or could it have a brick veneer? A wood chimney would look odd, especially if the old brick chimney was removed from the older building. He added that the wall covered with Bradford pears had no fenestration and no articulation of the building on its entire left third. The blankness of the wall's north side would be very visible, could be seen from the river where the rail trail would come through, and created an issue.

A member asked how the air conditioning units on the roof would be shielded? Mr. Trees said the units were 3.5 feet tall, enclosed by a rail and could not be seen from the ground.

Public comment opened.

Doug Locy, Chair, Waterfront Trust, 17 Alberta Avenue, said a plan came before the Trust about six months ago. The walkway was in back now. The objective of the Trust was to give a more park-like feel to the land. The Trust had worked with Mr. Leone to create conditions for extending the walkway to achieve a way to the water that included lighting to improve the entire view corridor. The Trust saw this as the beginning of an enhancement. Although there were still some issues, they were nearing closure on conditions to incorporate into the site plan. A Waterfront Trust sign would be at the walkway entrance. Mr. Leone's project and landscaping on Trust land was at great cost and went a long way to help the Trust improve the view of Riverside Park as an open area. Acting Chair McCarthy asked if there was an agreement on a light fixture? Mr. Locy said the wooden pole would be removed, the island would be cut in half, and they wanted to replace all the wooden poles and use the fixture prevalent on the waterfront.

Leon Freedman, Reservation Terrace, Plum Island, was concerned about parking. At the last meeting he attended misinformation was given about the number of parking spots required for a 442-seat restaurant. He urged the board to consider the parking impact of restaurant patrons, employees and deliveries. Proper parking accommodations required 250-300 parking spots. The board had not been provided concrete plans for parking and it was not okay to accept the

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applicant's misinformation regarding parking. Parking was limited now, where was concern for people who couldn't park downtown because 300 spaces were in use by the restaurant?

Joseph Brown, 6 Cutting Drive, member, Waterfront Trust, attended the Trust's last meeting for the project also, where deputy Chief Bradbury said applicant had no responsibility to plan for parking. The ZBA was told the same. Who had responsibility? Mr. Brown's conversation with several police officers revealed that the Green and Merrimac Street intersection was a problem today, with a myriad of accidents between Titcomb Street, Market Square and Green Street. Somebody must address traffic control and parking. Michael's Harborside, a comparably sized restaurant, had horrendous parking issues on Friday and Saturday nights. The project would cause substantial changes in the traffic pattern. As yet, no traffic engineer had performed an analysis to address safety on public streets. He didn't know how the plan to use Trust property came about, as the Trust had not voted on it. To learn of a plan to plant on Trust property by attending this meeting didn't make sense.

Attorney William Harris, 56 Lime Street, spoke on behalf of the Newburyport Chapter 91 Committee. Their concern was that the project would render Waterfront Trustees unable to perform their fiduciary duties. The applicant stated the building was from 1850, but Attorney Harris traced it back to 1801. That building was not there when Somerby's Landing was established in 1750. The five feet on the west side does not fulfill their Chapter 91 responsibility. Adding the seven feet on the east side together with five feet on the west side satisfied, but not separately because the standard expectation was 10 feet. It would be the first time for relatively safe access down Brown's Wharf Way. Somerby's Landing covered all this area. In 1889 the city obtained state statutes to discontinue the Landing. When the city converted all of Somerby's Landing into Riverside Park, it was 110 feet. The court ruled that Somerby's Landing was held in an irrevocable trust. There was only a narrow 44-foot wide park because the NRA didn't take more. He was concerned that the building did not have a Chapter 91 license. His position, that the building was clearly owned by the city, meant the applicant didn't have the right to build there. Even if the applicant owned all the property, normally only a 10-foot wide set back would meet the building code. It should not be legal to build-up on an illegal building to block an historic view from the courthouse. All the mitigation is being done on Waterfront Trust property.

He was further concerned with the plan's history of changes. He believed the project needed to be re-noticed for fair notice and due process. The whole matter may be contested and made a difference the city's overall capacity. He had given the board a draft agreement that shows in red the proposal of the applicant's attorney to donate to the park. There would be more traffic coming through Riverside Park and a huge amount of traffic coming to and from Waterside West, the New England Development property. Displaced parking and traffic circulation were huge issues affecting three boat operators, each seating 250, during the large Sunday brunch crowd at the proposed restaurant. He wanted boat operators' customers to have parking. Park users were also displaced. A place for minivans to move people back and forth in the future should be considered. Prior Planning Director Nick Cracknell's plan showed 40% of the view corridor was already blocked. This project blocked it further. Acting Chair McCarthy said the board would assess the trade-offs under consideration.

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Waterfront Trust Chairman Locy pointed out that if the board had copies of an agreement between the applicant and the Trust marked-up in red it was a document in progress not an agreement. He acknowledged the issues with traffic and parking.

Acting Chair McCarthy said the ZBA had a chance to deal with parking. The board will work on flow and safety. There might be trade-offs that could help in all those areas. He was pleased the applicant had responded to changes requested by other boards. He wanted everyone to know the project would not move so fast the public wouldn't have a chance to provide input.

Attorney Adam Costa, Blatman, Bobrowski and Mead, LLC, Newburyport, spoke on behalf of his client, David Murphy, Manager, Brown's Wharf, LLC, 40R Merrimac Street. He supported the proposal. A written agreement on modifications deemed necessary included relocating HVAC units to the roof and screening for trash receptacles. As part of the special permit issued by the ZBA the conditions would be part of the Planning Board's approval process.

Elizabeth Petty, 57 Purchase Street, said the yellow rectangle representing the glass portion of the building blocked part of the view. Did the glass open with doors? Would there be public access to the landscaped area? Mr. Trees said glass windows folded in for ventilation were behind a railing and the area contained dining tables. Ms. Petty asked if there were any signage requirements? Acting Chair McCarthy said freestanding signage was the purview of the ZBA. Mr. Leone said signs inside were consistent with the Black Cow. He wouldn't advertise on the building or use neon. The Carburetor Repair sign on the brick building was the oldest sign in Newburyport. Acting Chair McCarthy requested a sketch of outdoor signage plans.

Elizabeth Heath, 25 Oak Street, member, Committee for an Open Waterfront, opposed the plan because the encroachment on Waterfront Trust land would be for private, commercial purposes. Scaling back to allow for set back from property lines would simplify matters. Traffic, parking and the view corridor were all detrimental issues. The applicant needed help understanding the meaning of public parkland that respected the city's history and future.

Robert Finneran, abutter, 1 Ferry Lane, Georgetown, said no public notice to abutters or the public took place. The Historic Commission wrote their letter before he knew what was happening. Parking where people were walking and why the Trust would give a permanent easement to a commercial establishment to meet their Chapter 91 requirements were some of his concerns. He asked the board to consider the east and west view. His west view now of the river, the marshes, the light will be gone. He objected to merging parking issues with traffic flow issues. A traffic study was different than the parking requirements needed. No one had asked for a certified plot plan for the property. Who would measure what is being removed? There will be no measurement reference if the board relied on a plan from the architect. There was a private right-of-way 20 feet wide between his property and the applicant's that was at risk. He had to close off his two parking spaces for most of the year because Mr. Leone's employees try to park there. The proposal was a huge massing project. The ZBA looked at the issues through a different lens than this board and he urged the board not to disregard reviewing issues the ZBA had dealt with. When the 3,000-pound grease trap was mentioned, the applicant had pointed to Mr. Finneran's private right-of-way. He also had concerns about delivery trucks. The fenced enclosure would make space back there smaller. He was concerned about containing debris

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coming off the building and whether the building would be a different color than the building behind it. He did not want the whole mass a single color. He was noticed to come here for an April 3rd meeting and the applicant's submissions at that meeting were considered complete before the public was given a chance to participate. Board members corrected him by stating the April 3 meeting had been cancelled and that he was referring to the March 20 meeting. He had concerns about piped in music, the noise of HVAC systems on the roof, any outside music, as well as traffic. He was not in favor of the project.

Acting Chair McCarthy asked if the ZBA required the applicant to comply with requirements for noise. Nylen affirmed they did, adding that an institutional check with the Building Inspector existed. Regarding a certified plot plan, Mr. Trees said an ALTA plan was in the board's packet.

Public comment closed.

Acting Chair McCarthy preferred to leave view corridor and traffic for the end. He requested cut sheets for the LP1 and LP2 and wanted consideration from the Waterfront Trust for a lighting fixture if the pole was removed.

He was comfortable with the landscaping, but west of the building was all pavement and he didn't see anything for stormwater or wells. Mr. Trees said the peer review suggested a dry well would flood, spilling out over the surface area. The plan was to use the surface water drainage in place today. He needed to discover how to direct and relieve new roof water. Acting Chair McCarthy said removing pavement was better than straight paving all the way to the road. Mr. Trees responded that removing pavement would cause water to enter the building's basement. Acting Chair McCarthy said allowable coverage was exceeded and required an effort toward stormwater management. Mr. Whalen said they would investigate alternatives. A dry well attempted at the Black Cow was, over a 2-year period, silt-plugged from the non-paved parking lots and was altered to a solid paved area. A member said stormwater management was an area of professional expertise. The board would be more comfortable if stormwater was addressed using that expertise.

Acting Chair McCarthy asked the applicant about utilities. Mr. Trees said they were leaving the overhead wires and the water and sewer connected to Merrimac Street. Mr. Leone would look into putting wires underground.

Acting Chair McCarthy said traffic generated would be substantial. While the opportunity to talk about parking has passed, the board could focus on traffic flow and safety. A member strongly encouraged the applicant to look at site plan review requirements. Christiansen & Sergei would be reviewing stormwater management and all elements on the site plan review to ensure a thorough public record. C & S would also comment on how many parking spaces were needed. Director Port had mentioned previously that the city manages the NRA and Trust properties. Is that what was meant by city-owned properties? The board needed to know the spillover from lighting. Acting Chair McCarthy would make a list of site plan review issues for the applicant.

Because the applicant planned to use public parking, a member asked where a traffic study would come from? There was clearly not enough space in the NRA parking lot. Mr. Tree said his

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document showed 240 parking spaces within 300 feet of the restaurant, thus making them compliant with the ordinance. Mr. Leone said he would have fewer than 300 seats most of the year. Current Black Cow customers park all over the city because they come to visit places throughout Newburyport and not exclusively for patronage at the Black Cow. Acting Chair McCarthy repeated that traffic flow and volume generated were substantial issues. Parking was outside the board's purview, but if there were concerns that 442 seats created a dangerous situation, a study was needed despite the fact that the applicant's customers would be parked all over the city. A member asked if anyone on the applicant's team could identify glitches and solutions? Mr. Tree responded that daily trip numbers were in the MEPA. A member asked if some of the parking should be pulled out to improve circulation? Acting Chair McCarthy said the board needed more information on queuing and safety for a more convincing argument that the traffic and flow would work safely.

Mr. Trees asked if the board was familiar with the Burke Traffic Study from last October? Page 13 recommended how to handle parking for the entire downtown. The report showed the NRA was interested in maximizing income from their parking. The proposal provided an additional \$28,000 in Trust parking income, documenting parking problems only 5% of the time because there was wide open parking in winter. Although the issue was complex, providing income during six dead months was a good trade-off. Acting Chair McCarthy said the applicant bore some responsibility and needed to acquire the appropriate expertise to convince the board that 442 restaurant patrons would not create pedestrian safety and traffic flow issues. Mr. Leone said Building Inspector Calderwood assured him it was not his responsibility to address parking. Acting Chair McCarthy repeated his request for pedestrian, traffic and safety data rather than parking information. Mr. Trees said five hours was a typical parking time. If there was a two-hour limit, that would change both flow and numbers. A traffic expert would assume just what it is now. Acting Chair McCarthy responded that traffic engineering performs only level of service. If walking or driving safety was affected by restaurant patrons, the board needed to know that as a matter of due diligence on the site plan review. If the public thought safety was an issue, the board considered it an issue. If traffic engineers said it was indefinable, that would go in the public record.

If the applicant needed waivers, a written list should be submitted. He would list all items on the site plan review from which Mr. Trees could ask for waivers: stormwater plan, signage, traffic expertise, photometric analysis, etc. Mr. Trees had a lighting proposal with fixture details he was prepared to give the Trust; when approved it would come to the board. A member wanted to see what the Trust approved before ordering a photometric analysis.

Acting Chair McCarthy suggested the applicant submit engineering related information ahead of the next meeting, including the cut sheets and revisions to the blank exterior wall that could be seen from the water. This agenda item was set for the May 15th meeting.

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4. Continuation of General Business

*David Hall
5 & 9 Cottage Court
Informal Discussion*

Chairman Bowie returned to the meeting.

David Hall, Principal, Hall & Moscow Real Estate Development, Newburyport, had started a conversation with Planner Newhall-Smith regarding development of Bruce Hiller's old salvage yard and barn between two dead end roads: Cottage Court and Hillside Ave. The project was a brownfield he was in the process of cleaning on an assembly of parcels totaling four plus acres. The development goal was a clustered community of long-term rental housing units that included common ownership of land with an affordable housing component and very high performance building envelopes with a lot of green features. Was the better way to pursue permits through OSRD or other special permit? He did not want to get deeply into design features without understanding what was important to the board, although he had determined that parking worked best next to the travel lanes.

Chairman Bowie said the more detail provided the more meaningful the feedback. A member suggested submitting differing scenarios and layouts he liked so the board had something to react to. Chairman Bowie said the layouts would not have to be highly detailed at this stage.

A member asked if there were any regulations that applied to common ownership? One piece of private land was one scenario; separate lots would be a different scenario. Mr. Hall said it was zoned R3, limiting the number of buildings per parcel and number of units within a given structure. The set back requirements were murky. Did the board like the idea of cottage style homes sitting next to a sidewalk or prefer a set back? Because the zoning was complicated, his presentation included many site photographs. We'd be educating one another and he thought providing site information would be helpful.

A member wanted to know what type of density he was looking for versus what was by right. Another member said if there were 10 units, at least one should be affordable. Chairman Bowie said the city was likely to need a connection between Cottage Court and Hillside Avenue to create a loop. Mr. Hall should speak informally to the Fire Department regarding access.

Mr. Hall's presentation might be an hour. A member suggested continuing to May 1st.

6. Adjournment

The meeting adjourned at 10:15 PM.

Respectfully submitted,

Linda Guthrie, Note Taker