

**City of Newburyport
Planning Board
May 15, 2013
Minutes**

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

1. Roll Call

In attendance: Dan Bowie, Henry Coe, Paul Dahn, Noah Luskin, Jim McCarthy and Don Walters, Cindy Zabriskie

Absent: Sue Grolnic, Bonnie Sontag

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

2. General Business

Minutes

The minutes of 05/1/2013 were approved as amended. Jim McCarthy made a motion to approve the minutes as amended. Henry Coe seconded the motion and five members voted in favor. Don Walters abstained.

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

Chairman Bowie recused himself. Vice Chair Jim McCarthy led the meeting.

Attorney Chip Nylen, Partner, Lynch, Desimone, Nylen, LLP, 10 Post Office Square, Boston, MA, represented applicant Joe Leone. Plan revisions reflected concerns the board expressed previously. The two most important issues were traffic flow and stormwater. Peter Ogren, Hayes Engineering, 603 Salem Street, Wakefield, MA, had submitted the documents on those issues to the board earlier. He had convened a subcommittee to address the board's issues.

The first concern was runoff. The site currently consists of pavement and building. Walkways added would remove significant areas of pavement; landscaping would also be added. A hydraulic analysis was performed. The runoff pattern shows all flow from the site branching down into both the right of way and to a single catch basin in front of the office building. An old storm culvert with a top runs in front of the Waterfront Trust property and partly across the site, ultimately discharging into the Merrimac River. The catch basin was believed to connect to this conduit, although the exact location is unknown. The applicant analyzed all the separate watersheds, finding a decrease in both volume and run-off rate, but it was slight. The change in the 100-year peak flow went down to 5.02 per second.

The other issue was vehicular travel around the site. A fire truck could go all the way around both clockwise and counter clockwise to get back onto Merrimac Street, demonstrating adequate circulation. Two areas were indicated as pick-up and drop-off locations, with only one entrance used for the drop-off and pick-up crowd. There was enough room for three cars coming from the Waterfront Trust land to stage.

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Attorney Nylen asked for a waiver on the landscape architect. He provided another view perspective coming down from Green Street to address the view corridor issue. The portion of the building that concerned the board was now 100% glass so that no view was interrupted. The addition located behind does not block the view. The blank back wall had added articulation.

A donation agreement with the Waterfront Trust was signed allowing work to be conducted on the walkways that would be part of the Chapter 91 license. Attorney Nylen hoped all items had been addressed.

Vice Chair McCarthy clarified view corridor revisions. Observing the back right corner of the building was opened up, he said it created a view all the way through from the riverside as well as from Green Street. A member asked if a perspective drawing of that particular elevation of the fenestration was available? Four elevations were displayed.

Regarding stormwater, Vice Chair McCarthy asked if the intent was to tap into the underground culvert? Mr. Ogren said the roof drains would go into the culvert somewhere on the property as soon as the stone channel was located. Rain barrels would be installed to water the landscaping. The deck watershed and half of the roof would discharge into an 8-inch pipe directed into the culvert. The DPS was unable to move a camera very far up the pipe. A member asked if all of Christiansen and Sergei's peer review comments were in and whether everything was approved? Director Port responded yes.

Vice Chair McCarthy noted a waiver request on signage. Light cut sheets had been provided; other lights would be referenced in the decision. A member said a lighting study should have been done to assess spillover and used as further reference for the viewscape. This data was unavailable to the board. Vice Chair McCarthy noted there were five posts in the plan.

Director Port said the foot-candles from lighting on the Waterfront Trust property was an outstanding issue. The Trust was still in process for deciding what fixtures to use but their choice would be ornamental with a safe amount of lighting. Obligation rested with the applicant to provide the footing for those fixtures. Vice Chair McCarthy noted the five fixtures could wash out the building light thereby eliminating the restaurant lights as the over riding factor.

Regarding traffic flow, the turning radius of the fire engine was addressed. Sometimes the board required a traffic study but the problem, in some ways, is indefinable. Applying math was almost impossible. How was a queuing problem defined? The amount of traffic would definitely increase and there was only one direction entering and exiting the entire parking area. If a bus was there, traffic would start to back-up. The board conditioned that employees be trained in how to get things moving if people don't know to go around a car that is dropping-off. In terms of flow, emergency vehicles can get around unless the drop-off area clogs everything up. The board needs a commitment to a policy that would keep traffic unclogged. A member asked if it was more effective to say that the onus is on the owner to contact the Police Department to unclog traffic? Vice Chair McCarthy said a methodology was not described in the condition, only a commitment to get it resolved -- someone goes out there to deal with it. Director Port said the condition specifies a responsibility to the owner to keep an eye on the situation and to take

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action if traffic is backing-up. The member said if traffic became a problem, the police should be the problem solvers. It was better to give the police the responsibility to free up the area because a clog affected many other businesses and people. Attorney Nylen said there was no value to the restaurant if traffic clogged and he didn't believe it would be a chronic issue. The language the board drafted was something the applicant wanted to do anyway. The member would be more comfortable if language were added that required hiring someone or involving the police if necessary to ensure the area was properly managed. Attorney Nylen said numerous factors unrelated to our business could cause a clog. He preferred not to specify a police detail in the condition. Vice Chair McCarthy said as long as the applicant took the initiative and didn't allow a situation to develop where someone had to walk in and point out a problem with traffic flow. Attorney Nylen suggested adding language that included who was responsible for initiative and resolution of traffic clogs. The member suggested the restaurant would attract more foot traffic into the parking area compared to the many people entering the lot on foot now, but was comfortable overall with the language.

Vice Chair McCarthy read the list of waivers: signage requirement, licensed landscape requirement, groundwater protection, trees, not excavating, and environmental community impact analysis.

Public comment opened.

Doug Locy, 17 Alberta Avenue, Chair, Waterfront Trust, said the Trust was attempting to replace the current wooden posts with lighting that was consistent with and in use throughout Newburyport. The Trust was working with the city electrician to replace posts concurrent with the replacement of the one wooden pole that is part of this project. There were newer LED lights that shine downward. There had been discussion about where the lights should be placed. The architect for this project might help the Trust facilitate that effort. The Trust would be working on their new lights hopefully at the same time as the applicant. The lighting shown on the plan included four lights on the walkway, one on the center island, and one at the drop-off area. There were five poles currently in the parking lot. The Trust notarized an agreement with the applicant.

Bill Harris, 56 Lime Street, on behalf of Newburyport Chapter 91 Committee, was opposed to the site-specific plan because Somerby's Landing was a free public landing and could not be sold; it was not an option for the city to develop the parcel. He contested the right of the city to grant anything. The gambrel building did not have a Chapter 91 license. With specific focus on the effects of the building, he asked the board to consider that the main gateway to downtown had been Green Street since the late 1970s. The view about halfway down Green Street from the Masonic Temple would be of the awning coming out over a dining area, with outdoor umbrellas that provided protection for the diners. He asked the board to condition the prohibition of all awnings that would further obscure the Green Street view corridor. The board did not need to aggravate needless blockage of views. Awnings would project off the gambrel going to the east and in the front. Awnings and outdoor umbrellas on first floor deck, or anything that would protrude over Riverside Park, should be prohibited. He asked the board to imagine the awning fully extended, saying there would be a loss of nice views of church steeples. The board could do at least that much to protect the view corridor. With respect to traffic circulation and flow, the NRA had the right to flow traffic through Riverside Park, through accesses and egresses. There

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now existed access to Waterfront West. Any development there would impact traffic further. The Waterfront Trust should have flexibility to widen the traffic flow area.

Novak Niketic, 93 High Street, spoke in opposition to the plans. Public views would be changed, completely closing off the river view; the deck would create too much light illumination. The restaurant style does not look “Newburyport.” Photographs show that the glass walls do not help the view, especially if shades were pulled down against direct light, which would look bad. The glass wall would act as a mirror, reflecting headlights back at you. The proposed sidewalk had nothing to do with a public interest and served only the restaurant with loading and unloading areas. The board should not create the project at all.

Joseph Brown, 6 Cutting Drive, had expressed concerns for parking and traffic flow at a previous meeting. He said this restaurant would be larger than Michael’s Harborside, a place with terrible parking problems all summer long. He asked the board to recognize that Riverside Park is owned by a private corporation and is not a municipal parking lot. The 300-foot rule was the Green Street parking lot. There would be more problems than the board acknowledged. Mr. Brown said a review of the pros and cons of the 300-foot parking rule is needed and encouraged the board make a recommendation to the city on the rule. There were two dysfunctional pedestrian lights at Green and Merrimac Streets that should be repaired for the safety of the general public.

Public comment closed.

Vice Chair McCarthy asked how the applicant would handle both sun glare and heat generated by the glass, would it be tinted? Mr. Leone said window glass technology existed that would keep the glass clear but performed as tinted glass in reducing glare and heat. He didn’t know if this glass technology would be what best served the needs. Vice Chair McCarthy gave legitimacy to keeping car lights from reflecting back up Green Street. A member asked if planting shrubs in the front could mitigate the reflection? Vice Chair McCarthy would rather use the glass technology. Attorney Nylen said it was also a question of geometry. There wouldn’t be a problem at the top of Green Street, but it would be an issue where the road flattens out at the bottom. There would be no reflection with the 2nd level glass; car lights wouldn’t reflect up that high. If the board wanted to condition using up-to-date window technology, the applicant would agree. The member said where cars were level with the building was the area where headlamps were an issue, three to four feet up, more for trucks. Conditions could state that if headlamp reflections were an unfortunate result of what was built then it would be addressed appropriately; the member could accept that. Mr. Leone said at three to four feet, he wanted glass, but below that would be tables and people. He didn’t want headlights coming into the restaurant either and said any effect that created a reflection issue would be addressed. Vice Chair McCarthy said mitigating reflection would be a condition. The board needed to address disallowing shades to protect the views. Director Port suggested that creating a condition on shades and reflection that had a follow-up to it would provide for an inspection to address these issues after the building is complete. The applicant could work with the police regarding pedestrian safety in terms of identifying problems with pedestrians, redoing the striping and other upgrades.

Vice Chair McCarthy addressed awnings and a letter submitted by Mr. Finneran. Now that there was an awning on the 2nd floor on the east side of the building, Mr. Finneran requested a

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condition that the awning could not hang over Waterfront Trust Park. Vice Chair McCarthy agreed. Attorney Nylen said an awning was located on the northeast side of the building on the 2nd floor where the dormer with the awning protruded halfway onto the deck. Mr. Leone agreed not to have it. A member said that the gambrel is replicated in the back; it too would have an awning to match the front of the building. The awning was not covering tables; it was an architectural detail. Mr. Leone said he would tone it back so it wouldn't block the view corridor. Director Port was not convinced that either the 2nd floor extension or awnings would impact the view and said there were very few points where it could impact, based on the angle and what was shielded by it. He thought it might be unwise to cut off the awnings. A member asked to better understand. Another member said that the Brown's Wharf building was depicted as being behind the restaurant building. Vice Chair McCarthy said it depended on where a person stood. Director Port thought you would see over the awning and the roof extension, while at the first level, you would see more than you could see today. Vice Chair McCarthy said it seemed as if there was only concern for the 1st floor on the east side of the building. There were no awnings that faced the east; Mr. Leone fixed those. The only awnings were two small ones on the 2nd floor. The board conditioned that no awnings could be added to hang over the Waterfront Trust land and the 2nd floor awnings could not extend any further than they do now. Vice Chair McCarthy asked here the Waterfront Trust property line was located? Attorney Nylen said the condition was preventative. Director Port would draft a condition that the site of awnings could not change.

A member said the awning in front was not a fit with the historic nature of the building or what existed there previously and believed the applicant could do a better job. In the past, boats pulled-up close to the building. The wide flat building surface was unattractive. The member presented a photo of the building's original awning and said the applicant should try to replicate it, at least providing an awning of the same shape as the historic awning. Mr. Leone said he had tried to emphasize the industrial aspects of the building as well as add a contemporary feel to the industrial-ness. Attorney Nylen said if that was the only issue, a condition to come back before the board would be fine. Vice Chair McCarthy disagreed. Director Port said if the board wanted an awning in line with the historical photograph, he would incorporate that in a condition and the applicant could return to the Planning Office to show a photo of the awning that fit the condition.

A member said the roofline and trim was slightly different in the historical photograph from what was there now, and very different from the proposed renderings. Little details could make an historic building beautiful. Also, the windows appropriate to that style and period were more like the City Hall windows. Mr. Leone agreed to carry out the detail changes on the addition, but said the Historical Commission had some issue with duplication and wanted a different transition line. Vice Chair McCarthy said to build an addition that respects the old building. Mr. Leone said he was at the mercy of a computer system and couldn't disturb the brick façade. He had every intention of restoring the antique windows and trim. Vice Chair McCarthy observed that a reference was now at hand.

A member asked if there was consideration for pedestrian safety and fixing the lights on Merrimac Street? What could be done to improve the crosswalk connections? The member suggested a meeting between the DPS, the applicant and the Planning Office to discuss an ADA ramp, restriping and other measures. Another member pointed out there were two cross walks.

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A member said if the board didn't require a photometric analysis and there was spillage, was the board waiving the applicant's obligation to deal with glare? Director Port responded no, adding that the site plan review aspect that concerned him was traffic on Merrimac Street. He said perhaps the city or the applicant could do something about retiming the traffic signal to address the additional traffic because traffic on Merrimac Street had not been thoroughly vetted. Vice Chair McCarthy said there was a condition to come back and evaluate traffic afterwards with the Police Department, the city, the NRA, the applicant and all other stakeholders. A member said the board was not addressing who would pay for any solutions. Another member said the solution was a parking garage, but the onus for that was not on the applicant. The first member asked if the solution for traffic flow was a parking garage? The other member said yes, plus a raised crosswalk to slow the traffic. A macro view and plan was needed for all of the people in Newburyport rather than just what Mr. Leone was going to do. Vice Chair McCarthy said there had been enormous effort by the city to understand parking, including the NRA parking study. The city implemented paid parking and that made a change. The enormous traffic would affect the quality of life for everyone in the city. Director Port agreed that traffic was a larger issue. There were so many different factors that it would require state funds. Vice Chair McCarthy thought traffic flow was an issue of the same magnitude and wanted a macro approach for moving people into, around, and back out of the city as part of the city's overall growth.

A member asked if the board wanted a placard on the historic building? Another member asked if there was any plan to articulate the history of the building? Mr. Leone said no, at least not yet. The first member said the Historical Commission didn't ask for it, so it must be okay. What would prevent the applicant from putting up umbrellas from the 2nd floor? Was there any concern for that and did the board want to prohibit it because it impacted the viewscape? The other member said it was not in the style of the Black Cow to do that. The first member said the only concern was the viewscape. Was the board satisfied that the freezers or anything else would ever protrude above the wooden fence? Another member asked if there was any vinyl? Mr. Leone said it was all wood, 6 feet tall with 2 feet of lattice above and would be maintained. Another member asked why put handicap parking on Merrimac Street and not in the parking lot at the entrance? Director Port said the parking lot slopes down. The member said there was no handicap parking anywhere else on the street in the city; this would be inconsistent. Director Port agreed and said the city was a bundle of different considerations. The City Council was involved and regulated handicap parking. The member asked whether the City Council had required a certain amount of handicap spaces? Director Port said they had to provide four handicap spaces. The lot clearly qualified for the 300-foot rule. Attorney Nylen said there was a need to go before City Council to secure a handicap designation for four spaces in front. Vice Chair McCarthy said handicap spaces wouldn't be filled much except during the summer, and that served to de-clutter the viewscape. Director Port said a spot on Merrimac Street closest to the entrance of the lot was the best place for handicap parking.

Director Port read the list of draft conditions incorporating issues newly raised. Regarding condition #2, Attorney Nylen would prefer not going to the registry, but would file with the building commissioner. Director Port accepted the change, and continued with the alterations made (based on the issues raised): Condition 9a revised to request the historically-styled awning; 9b removed; 9c revised; 10 revised to include 'shall take the initiative;' 11 revised to bring sketch to Planning Office rather than go before board; see notes on Conditions list. There are

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now 17 Conditions. A member said Condition 15 conflicts with the plans, opening a window to future litigation. Vice Chair McCarthy said the condition extended what was already in there.

Don Walters made a motion to approve the Major Site Plan Review per the special conditions and waivers granted. Henry Coe seconded and all members present voted in favor.

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.

Chart House Development, LLC
2 Mechanics Court
Major Site Plan Review

Chairman Bowie resumed the agenda.

Applicant Craig Pessina, Chart House Development, LLC, was previously before the Zoning and Planning Boards to secure permitting for a 9-unit multi-family project on this property. Steve Sawyer, Design Consultants, Inc., Newburyport, said four residential units will be up front on Merrimac Street and five more units will run along the side to the back of the property with one parking spot more than required. The pine trees behind units 5-9 will be maintained; the stockade fence will be removed. Stormwater received careful scrutiny with an extensive boring program 24-36 inches below grade throughout the site. A frost wall will be constructed, but no full basements. Proposed was permeable pavement directly along the buildings so that water goes into the sub-grade area directly below. Non-permeable surface water would go into the rain gardens. A brick sidewalk was located at the entry with ADA compliant ramps. The groundwater rises up closer to the surface as you go toward the rear of the property. The two stormwater mitigation rain gardens hold eight inches of water and an additional loose stone surface runs through lawn that is more permeable than grass. Currently a swale exists on the River's Edge Condominium side. There is a path to the rear and to the left. Stormwater going into the brick swale enters a culvert to the ocean. Proposed was redirecting the entire site flow toward the Rail Trail. There is gravel right up to the wall. The wall would be converted back to lawn area. Permeability of the sub strata wasn't great, with a silty area, so provided was a ribbon of stone into the lawn area and down to the final rain garden at the rear. Stormwater was reduced by 40-50% and directed closest to the point where it discharges, improving how much stormwater goes off the site. Christiansen & Sergei agreed and asked for an excavation of an additional 24 inches of soil out of the rain garden and replaced with gravel. Additional soil was removed from below the porous pavement and gravel added. The plan should improve the flooding mentioned at River's Edge, but nothing here would impact their basements. During high tide, river water will back-up into a pipe creating potential issues at River's Edge. The Foundry introduces a lot more stormwater than this site's stormwater and we are directing it away from River's Edge.

Utilities would go into the manhole cover because we cannot connect directly into the pipe; the manhole cover would be sealed up. Deputy Fire Chief Bradbury was fine with the access. Elevations of the facades of each building were presented.

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In reference to the high water table, a member asked if infiltrating the water was impossible because of ledge? Mr. Sawyer said they would achieve infiltration but regulations required 24 inches between the stone and the surface water in order to take credit for infiltration. The member asked how fast infiltration occurred in the gardens? Mr. Sawyer answered 24 hours. The member said electricity and gas meters were unsightly. Mr. Sawyer said meters were located in back of each building, covered with plantings. Clarifying where electric utilities went underground, another member said it was just to the left of the entry as you enter. Mr. Pessina said the cover was depressed at grade level. Chairman Bowie asked about maintenance of rain gardens? Mr. Sawyer replied maintenance would occur at least twice or more per year and include filling the gardens with bark mulch. There would be rigorous maintenance for the permeable pavement that included vacuuming two to three times per year. The Operations & Maintenance protocol would be an appendix to the condominium document. A member asked if there were updated renderings of the commercial building? Mr. Sawyer presented elevations.

Public comment opened.

Paul Bevilaqua, Clerk, Homeowner's Association, River's Edge Condominiums, 126 Merrimac Street, expressed support and asked if anything could prevent the rain gardens from being eliminated in the future for extra parking? Director Port said the permit for use secured that no element of the plan would change; any changes violated the permit. He appreciated the way stormwater was addressed and learned something about the cause of problems with stormwater. The stormwater, when it drained off, would be closer to the swale. He asked how close and would the velocity of run-off increase? Mr. Sawyer responded there was a requirement not to increase velocity and, in this case, both velocity and volume are reduced. Everything on the site ends up in the last rain garden before it overtops and flows out into the swale.

Public comment closed.

Director Port read the conditions.

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

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. Planning Office/Subcommittees/Discussion

The Brown Street Extension name change came up in the last meeting. Director Port presented a draft Certificate of Vote for the board's approval. Jim McCarthy moved to approve the Certificate of Vote. Paul Dahn seconded and all members voted in favor.

The Caswell (325, 323R and 329 High Street) plan's front lot was tied to the home covenant applicant. The Planning Office had been asked to get that lot released; it was close to the roadway. Mr. Caswell didn't own the lot when the plan was discussed. It was understood that

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once Mr. Caswell gained title to it, it needed to be released from the covenant because the owner was refinancing. Director Port presented a draft Certificate of Vote that required notarization for the release of the lot. Don Walters made a motion to approve the Certificate of Vote. Henry Coe seconded and all members voted in favor.

Director Port said if there was any interest in the MBTA property this time around, the city should make progress on a specific 40R zoning for it. The Planning Office wanted to learn how viable the project was given the issues of noise and trains that would factor into the pricing. Michael Green, Oleo Woods, L.D. Russo, and other local developers are interested this time. A member asked how many stories were possible? Director Port suggested a maximum of four or five might be what the community would accept.

5. Adjournment

Henry Coe made a motion to adjourn. Jim McCarthy seconded and all members voted in favor. The meeting adjourned at 10:22 PM.

Respectfully submitted,

Linda Guthrie, Note Taker