

July 6, 2011

**Planning Board  
Newburyport City Hall**

The meeting was called to order at 7:08 P.M.  
A quorum was present.

**1. Roll Call**

**In attendance:** Dan Bowie, Bonnie Sontag, Sue Grolnic, Don Walters, Henry Coe, Anne Gardener, Julia Godtfredsen, Paul Dahn

Missing: Jim McCarthy

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

**2. General Business**

**a) Approval of the minutes**

**Minutes of June 15, 2011 Meeting**

Bonnie Sontag made a motion to approve the minutes as submitted.  
Don Walters seconded the motion to approve the minutes.  
Minutes approved as amended.

**Votes Cast:**

Dan Bowie: approve  
Sue Grolnic: approve  
Bonnie Sontag: approve  
Don Walters: approve  
Henry Coe: abstain  
Anne Gardner: approve  
Julia Godtfredsen: abstain  
Paul Dahn: approve

**b) Minor plan modifications for 5 Handel Drive  
Section VI.C Special Permit**

Steve Richard, owner, was present and sought permission to remove 9 trees. He had previously provided the Board with additional planting updates and, at this meeting, submitted signed letters from all the abutting neighbors indicating that they are in favor of the changes. Mr. Richard is adding about 54 trees ranging from 6 to 8 feet. Members of the Board were concerned that the pool was still on the plan. They asked that Mr. Richard resubmit the plan without the pool. One Board member noted that the trees being planted are very different than those being removed. The applicant indicated that the neighbors were in support of the types of trees that are being planted as they will provide screening.

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Anne Gardner made the motion to approve pending submission of the plan without the pool.

Don Walters seconded the motion.

Motion Approved.

**Votes Cast:**

Dan Bowie: approve

Sue Grolnic: approve

Bonnie Sontag: approve

Don Walters: approve

Henry Coe: approve

Anne Gardner: approve

Julia Godtfredsen: approve

Paul Dahn: approve

**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.**

*[note: this agenda item was taken out of order because the applicant was delayed by traffic and arrived late]*

**3. Old Business**

**a) Port Associates Limited Partnership**

**4-6 Hale Street**

**Major Site plan Review**

*Continued from June 1, 2011*

Ron Ranere, architect, summarized the changes that had been made since the previous hearing.

- A site walk-through had been conducted for Board members where they walked the footprint of the building.
- 3-dimensional views were created which were presented at the walkthrough and at the present meeting showing the new building alone and the new building with the current building. These depictions provided a sense of the differences in scale between the current building and the new building.
- The appearance of light fixtures changed: pictures of the “cut-off” fixtures were presented and provided in the Board’s packets.
- The dumpster enclosure will be a stone wall with a gate (when trash is NOT being picked up, the dumpster enclosure will not be visible).
- A window elevation was provided.

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- The Board had requested more plantings so as driving down Low Street, drivers would not see the parked cars - more supplemental shrub planting was added to plan (approximately 50 shrubs were added).
- The row of evergreen trees running along the perimeter with the abutters has been made more continuous with additional plantings.
- Work had been done on section of retaining wall to enhance it as discussed during the walkthrough.

Steve Sawyer indicated that the updated plans have been submitted and that they have responded to Christiansen and Sergi's comments as well as comments from the Planning Board. He ran through, plan by plan, from the plan set and noted the changes. Changes included such things as a temporary sedimentation swale to handle storm water management during construction; addressing the Conservation Commission's concern about filling in an area by reducing the 1500 feet of filling by 2/3; and widening the truck access based on Christiansen and Sergi's concerns.

One Board member asked if there will be a traffic issue with trailers going across the middle line of the road. Trailers will go over the middle line when turning into the truck access area, but this is not uncommon and is acceptable given there is no parking on the street. It was indicated there was enough room for trucks to get completely off the road. In response to a question about signage for the emergency access road, it was indicated that there would be signs indicating "For Emergency Use Only".

Changes to grading and drainage were discussed along with changes to storm water treatment. There were questions from the Board about storm water treatment. The applicant indicated they had addressed Christiansen and Sergi's concerns. The changes to the large infiltration basin and the smaller basins were discussed. Changes to the swale on Hale Street were discussed.

Chairman Bowie indicated that the Board had received Christiansen and Sergi's final comments late today, indicating there were 3 remaining items to be addressed. The first 2 (waiver from City of Newburyport for parking within the front set back and waiver permitting the landscaped buffer to be located within the Hale Street right-of-way) are addressed in the Decision document, per Andrew Port. The 3<sup>rd</sup> item was architectural drawings. The applicant indicated they had provided elevations and the 3 dimensional drawings requested.

Chairman Bowie asked if there were additional questions/comments from the Board.

One Board Member wanted the operation of the dumpster explained in more detail and the applicant explained it to the Board Member's satisfaction. Another question came up about the temporary parking lot and the additional sediment washing onto Hale Street. Andrew Port indicated that a silt fence would take care of this and could potentially be added to the draft decision. A Board Member asked about the assumed ground water level. The assumption is 2 feet below the seasonal high. Irrigation was discussed.

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Another Board Member asked about the grading and drainage plan and whether there needed to be more vegetation to pick up the sediment. A question was posed as to whether the vegetation, being a mix of deciduous and evergreen, would provide enough screening. The applicant indicated that they actually want visibility to the site, but that the evergreen shrubs would obstruct visibility to the parked cars.

Chairman Bowie indicated, for the record, that he had received a letter from the Attorney who represents the Philipinos. The Philipinos have filed an appeal of the ZBA action that is presently pending in the Massachusetts land court. The letter suggests that any action by the Planning Board may be premature. Chairman Bowie indicated that the letter has been received and is part of the file. He indicated that the site plan review ordinance is very clear on time constraints within which decisions have to be rendered. The Planning Board is obligated to consider the application and take action. There is no mechanism for the Planning Board to delay.

Public Comment (Chairman Bowie asked public comments be restricted to what was presented)

**Cynthia Welch Philippino, 17 Colton Drive, Newburyport, Massachusetts**

Ms. Phillipino asked about the changes in grading and the proximity of the building to their property line. Mr. Sawyer responded that they matched the existing grade about 7 feet from the property line.

Public Comment Closed

Bonnie Sontag, Secretary, read the draft decision.

Board member asked about landscape maintenance and asked if there was a condition that we could put in about on-going maintenance. Andrew Port indicated that we can add a condition about landscape maintenance.

Some minor typos were found on the draft decision and those were corrected.

Wording changes to Conditions 2 and 4 were made.

A fifth Condition was added about installing a silt fence between Hales Street and the temporary parking area. Andrew Port provided specific wording.

Board member asked about landscape maintenance and asked if there was a condition that we could put in about on-going maintenance. Andrew Port indicated that we can add a condition about landscape maintenance.

Don Walters made the motion to grant the Major Site Plan approval with the terms and conditions documented and discussed.

Henry Coe seconded the motion.

Motion approved.

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**Votes Cast:**

Dan Bowie: approve  
Sue Grolnic: approve  
Bonnie Sontag: approve  
Don Walters: approve  
Henry Coe: approve  
Anne Gardner: approve  
Julia Godtfredsen: approve  
Paul Dahn: approve

**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.**

**b) Bradley Kutcher, Kimberly Realty Trust**

**251 Merrimac Street**

**Section VI.C Special Permit**

*Request to continue to July 20, 2011*

Chairman Bowie indicated a request for continuance had been received from the applicant. The letter from the applicant was read to the Board.

Henry Coe made a motion to continue to July 20, 2011.

The motion was seconded.

Motion approved.

**Votes Cast:**

Dan Bowie: approve  
Sue Grolnic: approve  
Bonnie Sontag: approve  
Don Walters: approve  
Henry Coe: approve  
Anne Gardner: approve  
Julia Godtfredsen: approve  
Paul Dahn: approve

**c) 17 Graf Road Realty Trust**

**17 Graf Road**

**Major Site plan Review**

*Continued from June 15, 2011*

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The applicant's attorney and project engineer were in attendance. A recap was provided for the Board. They are planning the construction of a new 19,440 square foot building on the site to the rear of the existing 10,250 square foot building. There will be 39 additional parking spaces and access through a 24-foot wide new driveway from Graf Road.

The reviews from Christiansen and Sergi were discussed along with the applicant's response to those reviews.

#### Questions and Comments from the Board

There had been initial concern about the sidewalk, but Christiansen and Sergi felt it was adequately addressed. One Board member was concerned about safe access from parking area to building – is there adequate space along landscaping area to walk? Another Board member indicated he would rather see a sidewalk around the building. The applicant said they could accommodate this. The sidewalk or, instead of a sidewalk, defining a portion of pavement for walking with striping, was discussed in some detail between Board Members and the applicant.

The fact that there is currently no tenant means that the exact parking requirements are not known. Board member indicated she would like to see a few more trees.

#### Open for Public Comment

No public comment

#### Public Comment Closed

Chairman Bowie asked for other comments from the Board.

One Board Member was concerned about the fact that the amount of parking required couldn't be accurately determined because there was no tenant. There was nothing the Board could do to address this issue.

The applicant's attorney referenced Christiansen and Sergi's most recent comments. There are a number of issues that would be conditions of improvement.

Christiansen and Sergi, in a 7/6/2011 correspondence, indicated that the issues have been addressed. These conditions will be written into decision.

From discussion, it was determined that the following should be addressed:

- Plantings would be added
- Show something different with parking spaces in rear (if don't need them when tenant is acquired, they won't be built)
- Delineate pedestrian walkway; explore pedestrian access a bit more
- Christiansen and Sergi's issues.

The Board continued to discuss the sidewalks and pedestrian access and determined where there should be a delineated pedestrian area and where there should be a sidewalk.

The possibility of creating a “green” roof was discussed briefly.

The Hearing will be continued until 7/20/2011 at which time a draft decision will be considered.

**d) Springwell Investments**

**Oleo Woods Subdivision/Russell Terrace Extension**

**OSRD Special Permit Modification**

**Definitive Subdivision Modification**

*Continued from June 15, 2011*

Chairman Bowie indicated that coming out of the 5/18/2011 meeting, there were 2 major issues and he wanted the meeting to start off with those issues:

1. Change in PDA
2. Planting Mitigation Program

Bill Sheehan, Attorney for the applicant summarized the findings relative to the PDA:

- October 2005 PDA (southwest line) was proposed right where current applicant is seeking to put it back to
- The PDA line stayed in this location until November 2005 when the prior developer and the Planning Board agreed Lot 10 should be retired though still in the PDA
- November 2005 and December 2005 there was a note on the plan that Lot 10 would be retired but the PDA line was still there
- November 2006, the PDA line was moved North of Lot 10 and excluded Lot 10.
- The applicant in April of 2011 asked to relocate the PDA south of Lot 10
- The Conservation Commission has approved Lot 10 as a buildable lot and has indicated there are no adverse impacts of building there
- Letter from Landscape Architect, Frank Todd, indicating there is nothing different from a soil, geological consideration to exclude Lot 10
- In summary there is no physical reason not to relocate the PDA.
- The applicant is seeking to relocate the PDA and unlock Lot 10.

The major reason for building on Lot 10 is financial.

The plan for Lot 10 was discussed with the Board. They have relocated the house, reconfigured the driveway, and have proposed plantings.

Chairman Bowie's reaction:

- Agree any number of plans considered
- 1st substantive OSRD project in Newburyport
- Great deal of discussion about the location of the PDA

The approved PDA does NOT include Lot 10. The Conservation Commission has no bearing on what the Planning Board does. He feels a determination was made, he does not see a reason to change that determination, and he has a problem justifying the deviation from the PDA line.

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Mr. Sheehan, Attorney indicated that initially the PDA line did include Lot 10. The change in location was when the former developer agreed to retire Lot 10. Because of this, there is no reason to include PDA line south of Lot 10.

Chairman Bowie indicated that this application seeks to modify a previous approval request to get another developable lot.

Board member asked what in the current offer will provide public benefit?

Mr. Sheehan indicated that the applicant has:

- 1) Added 17 trees, 4 bushes
- 2) New pump station that takes care of all the homes on Russell Terrace and Russell Terrace Extension,, not just the new homes
- 3) Moved 100 trees which would not have survived
- 4) Buffering.

Board member indicated that they would do this whether or not the board approves Lot 10 as a buildable lot.

There was discussion about receiving a modification by demonstrating there is a public benefit.

Mr. Sheehan indicated Lot 10 was the receptacle for 100+ trees, most of which would not have survived. Relocated trees from Lot 10, provides buffering.

Board member said that buffering and improvement of trees were not considered an additional public benefit.

Chairman Bowie indicated that the pump station has been part of the discussion since Day 1 and that the tree agreement is not persuasive.

Board member asked, with Lot 10, was anything given to prior developer in exchange for retirement of Lot 10?

Chairman Bowie indicated that the line, where it ended up, was a compromise.

Board member asked what matters to us about Lot 10? Does it really matter?

Chairman Bowie responded yes, the Board should be consistent. Originally, it was to provide more buffer.

Board member: Consistency is very important. If PDA changing, need to go through same process.

Board member: Why not Lot 10?



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There was discussion about the applicant getting DPS fees waived. They are in the process of trying to negotiate this. Fees are in the 100s of thousands of dollars – that goes a long way to off-setting the cost of the pump station.

Mr. Sheehan indicated that in 2005, 2006, 2008, no one cared, no expert was involved in the placement of the line.

Board member indicated that the applicant is abutting wetlands throughout the project.

Board member: As part of regulations for relocation of PDA, there was a tax benefit in return for moving the PDA to where the Board wanted it.

Chairman Bowie: in initial design process, PDA was established by qualified design team

Board member: What was the last OSRD on record? DPW needs to let us know what the public benefits associated with the pump station are. Was the PDA line in error?

Attorney Sheehan: Frank Todd is a qualified landscape architect. The plan was approved by Conservation Commission. Trees were added as buffer to rain garden. The applicant has: reconfigured driveway, distributed trees. interspersed additional trees along the buffer to wetland (see 6/8 letter).

Curt Young indicated he was involved in the original design. He talked about planting plan and changes that have taken place. The 21 additional plants are of benefit to the wetlands.

Board member asked Mr. Young: Do you have an understanding of the current planting plan? What is the best plan? Mr. Young indicated there is a net benefit to the wetlands with the new planting plan. Very comparable plan in terms of impact.

Existing mature trees on lot 10, if developed would have to be removed (7 trees)  
Nothing has been proposed for losing those. No way to develop Lot 10 without removing the trees.

Should/can these trees be replaced – not a typical approach. The original planting plan was developed because trees were cut that were not supposed to be cut.

Open to Public Comment (focused on the issues being discussed)

**Jerry Mullins, 7 Parsons Street, Newburyport, Massachusetts**

Board Member, Parker River Clean Water Association

Is in agreement with doing Lot 10 in exchange for further public benefit. Wants more trees along the Nature Trail that abuts the project.

Board member asked about the connection between Lot 10 and the Nature Trail? There is no direct connection.

**Stanley Giordano, 3 Russell Terrace Extension, Newburyport, Massachusetts**

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No problem with development on Lot 10. New developers seem much more reputable than old developers. With old developers, clear cutting and rock removal took place on Friday, Saturday, and Sunday. No objections to Lot 10. Is there a required set-back? Last developer thought a permanent easement was there. How many fire hydrants?

**Richard McCarthy, 8 Russell Terrace Extension, Newburyport, Massachusetts**

What protection is there for Russell Terrace for street being damaged? If DPS notices problems, DPS will require developer to pay damages. Abutter has no objections to Lot 10. Traffic will probably be a problem.

Chairman Bowie indicated he recognized traffic issues mentioned.

Mr. Young responded to a request about a trail buffer. Not in original mitigation program. There is the potential to cluster some plants that would be of benefit with a trail buffer.

Public comment closed

Comments from Board on Lot 10

BM: The PDA line was not arbitrarily placed; she hasn't heard anything that says it is a benefit to "us" to move the line.

BM: There is a public benefit in several ways. He is okay with moving the PDA line.

BM: PDA makes sense to include as part of the development. She takes issue with how to quantify the benefits.

BM: Does see benefit of off-setting costs to City, but gets concerned about the value with respect to DPS fee waivers. If vote for project, would like to see solid story of cost/benefit to City.

BM: She is not convinced public benefit is of any value to City. She doesn't like layout of lot – it looks significantly different from other lots. Would vote NO at this point.

BM: Agrees with previous BM. He is concerned with removing trees in Lot 10.

BM: Public benefit should be quantified. DPS should tell the Board what the benefit would be.

BM: Not seeing clear reason to deviate from existing PDA line.

By Chairman Bowie's count, at this point, the Planning Board is evenly split.

Attorney Sheehan wants to make a case on quantification.

BM: Andrew Port should be involved with the quantification. Have a breakdown, itemizing costs for installing pump station. Feedback from DPS is important.

On the tree remediation issues, BM wants to do a walk-through with Jerry Mullins.

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Chairman Bowie indicated he is satisfied with remediation plan as proposed. The only question is the additional trees along the Nature Trail.

BM, looking at the plan, asked about the circles on back of properties. The applicant responded that the circles represent stone walls.

The Hearing will be continued until 7/20/2011.

There will be follow-up on Lot 10, pump station, and tree planting (try to cluster the trees).

The Planning Department will meet with DPS and the cost/benefits will be clearly delineated.

#### **4. New Business**

##### **Springwell Investments**

##### **Oleo Woods Subdivision/Russell Terrace Extension/Lot 18**

##### **Section VI.C Special Permit**

The applicant has complied with requirements for VI.C. Though rendering makes the two homes appear side-by-side, the applicant states that the homes are “stepped”. Board Members would like to see more windows on the sides of the two homes that face each other. The applicant indicated that it will be dependent on the inside layout (closets, bathrooms, etc). There was a question about the length of the longer driveway; the developer responded that it was about 70 feet long.

##### **Open to Public Comment**

##### **Stanley Giordano, 3 Russell Terrace Extension, Newburyport, Massachusetts**

Closest point to his property is 20 feet. He prefers this plan to the old one with the duplex.

##### **Public Comment Closed**

The Hearing will be continued until 7/20/2011.

Bonnie Sontag, Jim McCarthy will not be present at the next hearing

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

Discussion around 79R Storey Ave: Notice to Board Pursuant to MGL c. 61A § 14. Notice given as of 6/29/2011. P&S agreement for site was briefly discussed.

#### **6. Adjournment**

Motion made to adjourn.

Motion seconded.

Motion approved unanimously.

Meeting adjourned at 11:04 P.M.

**Respectfully submitted, Jennifer Lamarre – Note Taker.**