

September 5, 2012

## **Meeting Minutes**

The meeting was called to order at 7:06 PM.

### **1. Roll Call**

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

**Absent:** Noah Luskin, Paul Dahn

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

### **2. General Business**

#### **a) Approval of the minutes**

##### **Minutes of August 15, 2012 Meeting**

Henry Coe made a motion to approve the minutes as amended.

Don Walters seconded the motion.

The motion passed unanimously.

**Minutes approved.**

##### **Votes Cast:**

Dan Bowie: approve

Henry Coe: approve

Sue Grolnic: approve

Noah Luskin: approve

Jim McCarthy: approve

Bonnie Sontag: approve

Don Walters: approve

Cindy Zabriskie: approve

### **3. Old Business**

#### **a) Nat Norton 53 Spofford Street Section VI.C Special Permit *Continued from August 15, 2012***

Attorney Lisa Mead, Blatman, Bobrowski and Mead, Newburyport, spoke on behalf of developer Nat Norton. Reviewing her notes from the last meeting, she said this proposal to put a second, stand alone dwelling on the property meets zoning requirements. A requested meeting with the Affordable Housing Trust resulted in a recommended donation equal to two down payments for AHT affordable homes, or \$25,000. The amount was derived from a logical formula for home ownership projects from Section VI.C applicants. In response to a comment about massing,

Attorney Mead said the footprint of the new dwelling is 79 percent of the size of the original structure; the ordinance allows up to 90 percent. There is adequate access.

Open issues to be addressed include questions from board's site walk. The 'as of right' plan, reviewed by engineers, is required to have a 60-foot radius turnaround in the proposed cul-de-sac. A 30-foot radius is provided. A waiver would be needed. Landscaping changes included removal of a walnut tree in the back for the garage and a lilac bush at the entrance for the driveway. There was a concern about screening for the neighbor. The applicant proposed to install a 40-foot long cedar fence and to plant arborvitaes on the other side of the fence. They are proposing to move some existing plantings. Attorney Mead spoke to the fire chief about sprinklers. There is no code for sprinklering single-family dwellings but it's been requested on some new construction to help prevent loss. The applicant is agreeable to sprinklering the residence at the request of the board.

Attorney Mead discussed the community benefit, saying the board specifically asked for a recommendation from the AHT, although the board is not required to act on AHT advice. The AHT's formula is very specific. From the outset, the house was never rental stock. There was no intent by the owners to make the existing house a two-family and there is no loss of affordable housing. Attorney Mead asked that this information be considered.

A member said the footprint of the original home without the addition was smaller than the proposed dwelling in the back. The original house has an attached garage included in the footprint, but the new structure, with a detached garage, does not factor the garage into the footprint. There is living space in the new, unattached garage. Attorney Mead responded that 'subordinate' is well defined and the ordinance has been followed. They are not creating giant homes; the proposed dwelling and addition are fairly modest.

Another member pointed out that in the last meeting there was no space above the garage. Developer Nat Norton said there was no ordinance to prevent new owners from creating living space above the garage. The member said the real issue is what this project does for the public good. Despite the AHT recommended donation, determining the public good is this board's responsibility. We need to define what 'for the public good' means. We should ask for a reasonable public good, and in this case, the amount of \$25,000 being the only community benefit offered, \$25,000 is insufficient.

Another member asked if the neighbor agreed upon the proposed fencing and plantings? Attorney Mead had not received an okay from the neighbor.

Another member said a decision regarding public good has to be made at this point in time without considering precedents. We've learned that the community needs more affordable housing, both owner-occupied and rental. One of the guiding principals of Section VI.C was to provide what's needed to the community. It's a special permit, and a larger donation is a better benefit for the city. Another member said splitting a lot like this to create two, single-family homes under a special permit ordinance would never be accomplished with a variance. The member was not comfortable with the community benefit as it compared to what the applicant would be receiving.

Attorney Mead acknowledged that the board wants to do more toward creating affordable housing. This proposal is a special permit and there is precedent. The AHT has worked up a defensible formula that is logical and has a basis in the law, with meaning to what rental and ownership of affordable housing is in the city. The board doesn't like it and just wants more, but on what basis? A member responded that there were other elements to factor that the AHT does not take into consideration. It is not just about the numbers the AHT puts together. Attorney Mead said the board has an obligation to let applicants know what they are expected to do when they apply for something under Section VI.C and apply it fairly to all applicants.

Chairman Bowie responded that ordinance language states "a clear public benefit to the public is derived including but not limited to a long-term restriction involving one or more of the following: 1) creation of affordable housing, 2) preservation of historical structures and 3) preservation of significant natural resources." This proposal does not have one of those proposed. The definition of 'clear' is at play here. We are not obligated to accept the AHT formula. Attorney Mead asked the purpose of seeking AHT input? Chairman Bowie said the board likes to see what they have to say, but input is not applied blindly. Attorney Mead asked why ask applicants to go to other places for input if the board is not going to use it? The AHT feels it's important to preserve affordable housing and two down payments is a clear benefit to the city. If I'm an applicant before the board and the AHT is saying this donation is a benefit, but this board is not saying what a benefit is, the board can't be arbitrary about it. Chairman Bowie said this project is worth more than two down payments to the city and in the last meeting mentioned six figures. Attorney Mead asked what the basis of the six-figure number was? Chairman Bowie said the Section VI.C process confers a benefit to the applicant. The property owner could receive the benefit of two single-family homes. Attorney Mead said it is one additional home. Chairman Bowie said that's the basis for six figures.

A member said Section VI.C had accomplished phenomenal projects around the city. The primary criterion is how well a project fits with the neighborhood. No amount of money could encourage the board to adversely impact a neighborhood. Further, the ordinance allows the applicant to offer multiple things. A combination of benefits is what should be considered here and there's precedent for that, but we're on this one thing because the AHT provided a number and that's all you're offering. Before discussing any public benefit, it would be best to hear more from the neighbors about what this does to their neighborhood.

Attorney Mead said the house was 59 feet from the rear lot line, but could go to 29 feet. There are a number of VI.C-type developments in this neighborhood. The proposal is not dissimilar from the houses in the area. There is a nice separation between the two structures; it's 80 feet to the next house. This is the max build out of this house. It will probably be a little less than the 1440 square feet overall.

Mr. Norton said during the site walk there was talk of shifting the garage to the rear to save the walnut tree. He would like to keep the garage close to the house. The walnuts fall on the roof and they don't smell good. There are plenty of other nice trees on the property.

The public hearing was opened.

Stephen and Jane Lemuth, 53 Spofford Street, introduced themselves as the property owners.

Colonel Ted and Andrea Probert, 47R Spofford Street, are not in favor of the proposed development. They have concerns about setting precedents for building the new structure and ensuring that the existing structure doesn't become a two-family home. Looking at the rendering of the house with the attached garage, indicates they are hoping a buyer will enhance it for a two-family. Col. Probert doesn't want to be the neighborhood watchdog. He has concerns about the two adjacent lots following suit. Does subdividing become the next neighborhood craze? Approving this is a risk. Our investment is our home and we're getting ready to do a renovation. We're looking to protect our investment and our interests. Chairman Bowie said if the board was to allow this application, they would condition it upon the use of a single family and the Building Department would enforce it. But, once someone moves into the property they could take all the trees down. What were your thoughts on the proposed screening? Col. Probert said if the worst happens, we'd like some screening but cedar is not what we'd choose. If you look at neighborhood properties, so much different fencing is not very appealing. A picket fence, a wire fence, a cedar fence, how will that look, better or worse? A green buffer would look much better.

Dianne Teed, 58 Spofford Street has lived there 30 years and is concerned that the neighborhood was getting more dense over time. She asked what this development could lead to? Her understanding was different than what she learned tonight. She thought the developer was buying both structures and converting the two-family to a one-family. She agreed with the Probert's concerns about what it might mean down the road. Steve Martin, 59 Spofford Road, was approached to sell 20 feet. There was a loss of 36 trees when the Young's property was converted.

Public comment closed.

Attorney Mead was amenable to a green buffer and conditions in the permit that would disallow cutting any more trees. She considered asking for a continuance to think about things.

A member asked Col. Probert if any of his windows, other than those on his garage, faced the applicant's property? Col. Probert said the kitchen and some second floor windows faced the property. The member said that several houses, including the Probert's lot and the adjacent lot, have a house in front and a house in back. Did Col. Probert think the proposal, if it looked similar to the rendering, detracted from the area? Col. Probert thought it would detract from the neighborhood if the front house was not returned to a single-family, in keeping with the rest of the neighborhood rather than keeping the front house in need of repair and building a new house in the back. Col. Probert was looking to improve the appearance of his house. If the front house was not going to be brought back to life, that would affect his property. The member said there is potential for a buyer to use it the way it is now, as a two-family house.

Another member said that fixing the front house before building the back house would be a benefit to the neighborhood, in addition to the AHT donation a community benefit. Chairman Bowie asked whether fixing-up the front house was being contemplated? Attorney Mead said the goal of the current owners was to raise revenue by selling the house in order to move in town so

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Ms. Lemuth can walk to work. The current house was too big for the couple. The special permit attaches to the entire property and they would do whatever is required to make it a single family, including pull out the second kitchen. The goal is for this dwelling to be a single family home and the current owners don't have a timeframe for converting it.

Attorney Mead observed that two board members were not present and requested a continuance to September 19.

Don Walters made a motion to continue the Section VI.C Special Permit to September 19. Henry Coe seconded the motion. The motion passed unanimously.

**Motion approved.**

**Votes Cast:**

Dan Bowie: approve

Henry Coe: approve

Sue Grolnic: approve

Noah Luskin: approve

Jim McCarthy: approve

Bonnie Sontag: approve

Don Walters: approve

Cindy Zabriskie: approve

**4.) New Business**

**a) City of Newburyport School Department  
331 High Street  
*Major SPR Application Completeness Vote***

Chairman Bowie said the Planning Office had reviewed the application and recommended the board vote for completeness. Andrew Port, Planning Director, said there would be additional calculations for storm water and scheduled the public hearing for September 19. A member said there were a couple of areas for tension, storm water and a peer review for traffic regarding the Community Center proposed for the same site. Planning Director Port reminded the board that there was no completed design for the Community Center. The traffic study would have to be supplemented to address traffic. A large parking area would need to be offset by an underground filtration system. Chairman Bowie asked what was contemplated for peer review for traffic. Planning Director Port said that was up to the board, that the architects would be able to discuss it. Chairman Bowie asked that someone who could discuss it be present at the meeting.

Henry Coe made a motion to approve the Major SPR Application Completeness. Jim McCarthy seconded. The motion passed unanimously.

**Motion approved.**

**Votes Cast:**

Dan Bowie: approve

Henry Coe: approve

Sue Grolnic: approve  
Noah Luskin: approve  
Jim McCarthy: approve  
Bonnie Sontag: approve  
Don Walters: approve  
Cindy Zabriskie: approve

**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) Stephen B. Sawyer, Design Consultants, Inc.  
Brown Street OSRD Subdivision  
*Request for Plan Modifications***

Steve Sawyer proposes to make a change to the sizable detention pond that runs into the low area in the back of the subdivision. Upon building the project out, Mark DePiero, the developer, has concerns about the aesthetics of the open pond and potential to attract mosquitos. He'd rather put it underground. Mr. Sawyer spoke with Philip Christiansen, Christiansen & Sergi, to see if there were any technical objections. A new proposal would infill the low area with an underground chamber to create a large void allowing water to flow into a large, underground reservoir. The point of discharge would not change. There are still funds in the budget. Mr. Sawyer pulled data from the 100-year storm event and matched that peak requirement to the underground storage. In a second item, Mark DePiero has found people driving down into the development, stopping and then backing-up into the Caswell driveway to go out. He'd like to provide a small turnaround. It would also be a parking space for the landscaping and a maintenance truck. Operationally, we're seeing that people need a 15 feet wide x 20 feet deep turnaround. No walls are required; the planted slope would wrap around the embankment. It's not as visible from up above. These are the two changes before the board.

Chairman Bowie asked what this does to the open space calculations? Mr. Sawyer said parking and paving are allowed in the open space area. I believe it's 148 feet; a small amount of pavement falls in the open space area. Planning Director Port said overall, the open space impact shows the same boundaries. A member asked if the drainage would change the walkability of the path? Mr. Sawyer said no, because the grading does not change and the walking path is further down. The only time this would overflow is in the 100-year event. Another member asked what it would look like if you came upon it while walking along? Mr. Sawyer answered that it would appear as level land with shrubs. The proposed change increases the usability of backyards. A member asked if it needed to be marked so people don't use it? Mr. Sawyer suggested adding three, small granite markers to indicate the area as it is a drainage easement area. The member thought it should be added to the plan.

Chairman Bowie wondered if the original plan included some granite monuments? Planning Director Port said yes. Mr. Sawyer said the original plan had the storm water system in open

space behind parcel one. There was a reduction in the area for the drainage feature, and they kept it in the project, not in the open space. Planning Director Port made a recommendation to have Philip Christiansen do a review and get it back in time to be resolved at the next meeting. He had asked Mr. Sawyer to put together an operation and maintenance plan for Mr. Christiansen to review. Mr. Sawyer said he had a complete operation and maintenance plan for the system that needs modification. A member asked if it would be possible to see the final plan at the Planning Office? Planning Director Port said he could distribute it.

Chairman Bowie asked if the board was comfortable with this as a minor modification. A member recalled other board members had talked about a low impact design. Did this meet that objective? Another member responded yes and asked, about the turnaround, why people wanted to back up in the Caswell driveway? Planning Director Port explained that there was a larger, gateway- styled entrance there. Another member was not convinced the little turnaround would keep people from turning into the driveway. Chairman Bowie preferred this discussion to be done in the context of a public meeting and continued the request for plan modification until September 19.

**c) Debra & Douglas Wine**  
**223 High Street OSRD Subdivision**  
***Performance Guarantee and Definitive Subdivision Plan Endorsement***

Chairman Bowie summarized by saying plans were approved in January, but never signed and recorded in the registry of deeds. A performance guarantee signed by the applicant is needed and the applicant has been trying to get a covenant with the bank for the performance guarantee. The applicant now is looking to refinance. Plans will be signed with the understanding that the covenant will be recorded and signed at the time of the refinancing, which the board would need to coordinate. Planning Director Port said the board has plans to sign for recording and we could also authorize Chairman Bowie to sign the covenant for the board at the time of the refinancing. A member asked what needed refinancing, commenting that one of the parcels is not in the plans anymore. Planning Director Port said that the project is being refinanced as one big piece. Another member asked if the board received the letter from Ted Jones from the Planning Office. Mr. Jones opposes the subdivision plan. Chairman Bowie said the plan was approved years ago. Planning Director Port added that the letter is just a formality.

Bonnie Sontag made a motion to approve the Performance Guarantee and Definitive Subdivision Plan Endorsement. Don Walters seconded the motion.

**Motion approved.**

**Votes Cast:**

Dan Bowie: approve  
Henry Coe: approve  
Sue Grolnic: approve  
Noah Luskin: approve  
Jim McCarthy: deny  
Bonnie Sontag: approve  
Don Walters: approve

Cindy Zabriskie: approve

Planning Director Port said there would be some modifications to one sheet of the plan and another signing needed. The five members needed signed the other plan sheets.

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

### **a) Update from Office of Planning & Development Andrew R. Port, Director of Planning & Development**

There is a proposal for the Davis Auto Building to become a restaurant with an issue regarding the Chapter 91 license. Planning Director Port feels it's a good development for the waterfront. The mayor and Planning Director Port are writing a letter for the connection to the waterfront.

The Northbridge proposal for an assisted living facility will be before the board shortly, with the additional three-lot subdivision as part of it. A member asked if there would be two separate applications? Planning Director Port said yes, as well as a separate site plan for the additional parking Northbridge has given the hospital. Chairman Bowie asked how quickly the residential project would go forward? Planning Director Port said it was not fast-tracked and could be a year or two down the road. A member asked if they would be reviewing a site plan that does not have adequate parking? Planning Director Port said no, Northbridge has adequate parking for their facility. The hospital is being given 130 additional parking spaces by Northbridge in exchange for access to their facility directly from the hospital property. Another member asked if access would be through private land? Doesn't the board have to see some details for that? Chairman Bowie said we'd be seeing all of it.

Planning Director Port recommend everyone attend the Newburyport Redevelopment Authority meeting on September 12<sup>th</sup> 7 pm at the Firehouse. The status quo is not in the city's best interest. It's a combination of keeping some waterfront parking, making a nice park, and building some buildings. He thinks the NRA plan will be good for the downtown and create a better connection to the waterfront itself. Today, the park leads into parking lots. During events, the park is lively, but otherwise not. The idea is to make the park livelier.

Zoning changes are being discussed internally for the industrial park to become a business park, allowing more office-type uses rather than exclusively industrial uses. Planning Director Port is getting feedback from businesses in the park about the zoning change now. He asked the board for their thoughts. A member asked if the zoning change would further loosen the industrial park uses by changing zoning throughout the entire park? Would it be better to talk about what changes are worth making? Planning Director Port said they are trying to make it possible for businesses to expand. The city could get more revenue from business expansion. There are flooding issues in the industrial park and we are taking that into consideration. Everything's on the table for discussion.

As we complete the Open Space and Recreation Plan, and look at housing too, these are both key components of a Master Plan. We're planning to schedule a 10-year horizon meeting for key



players regarding land use and growth management. Planning Director Port would like to focus more on economic development than the last Master Plan did, such as how we can better utilize the park itself, encourage R & D for clean technologies and those types of uses. He would like to get together with the board to talk more about the Master Plan on Thursday, November 8, around 6 pm, and include key boards and the City Council Planning and Development sub committee.

A member showed the board the manual used at the federal level for signage, titled *Manual on Uniform Traffic Control Devices*. All communities gave feedback on the manual and some sections were changed. First, a community has to establish what the priorities are for a sign: a sign has to fulfill a need. Unnecessary traffic control devices should be removed. A community has the authority to decide. This manual describes how to put a sign in but it doesn't replace your judgment. There are 40 signs in one square block area at the end of the Hines Bridge looking out towards Amesbury.

## **6. Adjournment**

Henry Coe made a motion to adjourn.

Bonnie Sontag seconded the motion.

Motion approved unanimously.

Meeting adjourned at 8:57 PM.

Respectfully submitted, Linda Guthrie, Note Taker