

**City of Newburyport
Zoning Board of Appeals
October 28, 2014
Council Chambers**

The meeting was called to order at 7:10 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Duncan LaBay (Secretary)
Jamie Pennington
Richard Goulet (Associate Member)

Absent:

Howard Snyder
Libby McGee (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of October 21, 2014 Meeting

Mr. LaBay made a motion to approve the minutes as amended and Mr. Ciampitti seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– absent
Richard Goulet – approve
Libby McGee - absent

3. Public Hearings

2014 058 Address: 331 High Street Sign Variance

Replace existing free-standing sign on High Street and install a new free-standing sign at the North Atkinson Street entrance

Laura Warnick, HMFH Architects, Cambridge, MA presented the application. This hearing was continued from the October 14th meeting. The existing sign on High Street would be replaced and a new sign added on North Atkinson Street. The maritime theme of the school is shown in floor tiles, the gym floor, throughout the school and now the signage. The sign is modeled after the 'Welcome to Newburyport' sign in the new roundabout. The sign will have granite posts, a 'jay blue' ring with a polished aluminum cut-out ship in the middle. The High Street sign announces the senior/community center, is two-sided, and perpendicular to High Street. The North Atkinson Street sign announces the Bresnahan School, is one sided, and parallel to the street. Sign posts will be 7'4" high and the sign itself will reach 9' high. Ms. Warnick passed around a color sample and presented the sign renderings and locations of signs to the board.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Mayor Holaday, Chair of the School Committee, and Member of School Building Committee

The Mayor spoke of the many months of hard work on this project. The sign presented has been through a number of modifications throughout the project. The sign is similar to the one in the roundabout and keeps with the school's nautical theme.

Susan Viccaro, Superintendent
Appeared in support.

Christina Davis, Principal, Grades 1-3
Appeared in support.

Amy Sullivan, Principal, Early Childhood
Appeared in support.

Steve Bergholm, Director of Facilities for Schools
The building committee worked very hard on this sign. He is in favor of the sign as presented.

In Opposition:

None

Questions from the Board:

Mr. Ciampitti asked about lighting on the sign and the timing of them.
There will be cylindrical lights - two on High Street and one on North Atkinson Street. Timing would be controlled by the building management system.

Mr. Pennington asked if the High Street sign would be in the same location.
The new sign would be a little closer to High Street than the existing sign.

Mr. LaBay asked whether the height of proposed sign (at 9' to the top of the oval) would be the same height as the existing Bresnahan sign.

The sign would be about the same height, yes.

Deliberations:

Mr. Ciampitti commended Ms. Warnick on the detailed sign presentation. This was a great evolution from the first pass. He greatly appreciated the color and texture sample and can see that the materials are right, the lighting detail cut sheet, and redaction of the LED sign. The maritime theme is consistent with the project.

Mr. Pennington agreed with his colleague. He appreciated the rationale and theme.

Mr. Goulet concurred. His concern was the LED sign and how sign design was linked to new building.

Mr. LaBay also agreed. His primary concern was the LED sign. He was pleased to see temporary signage removed.

Mr. Ramsdell concurred. He appreciated tying the sign into the new project.

Mr. Ciampitti asked about the installation timing.

The signs should be installed within the next six weeks.

Motion to approve application 2014-058 for a Sign Variance made by Mr. Ciampitti, seconded by Mr. Pennington.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– absent
Richard Goulet – approve
Libby McGee – absent

2014 052

Address: 29-35 Storey Avenue

Appeal

The Trust seeks to annul Condition #1 in the decision of the Planning Director dated 7/9/14, which conditionally approved the Trust's application dated 6/9/14 seeking to modify the site plan approval previously granted to the Trust on 7/8/07. The Trust also seeks an order vacating the corresponding decision of the building inspector dated 7/16/14 denying the Trust's application for a building permit dated 7/11/14.

This application was continued from the September 26, 2014 meeting. Attorney Lisa Mead of Blatman, Bobrowski & Mead, 30 Green Street presented on behalf of Richard and David Kaplan, Trustees of Plaza Realty Development. Her colleague Martin Fantozzi of Goulston & Storrs, Boston, MA was also present.

At the last meeting, the board requested that counsel provide an opinion on the board's authority to act on the application two weeks in advance. The opinion was received Thursday afternoon. Documents requested from the planning director and Mayor led to concerns. Ms. Mead suggested the board was misled at the last meeting. The city solicitor not present at the meeting due to a last minute conflict. Ms. Mead informed the board that the planning director, Andy Port knew one month prior to the meeting that the city solicitor could not make it and was reminded two weeks prior. Mr. Port never notified the board or applicants.

Ms. Mead provided the board with new materials to read through and asked that they take a few moments to review.

Mr. Fantozzi explained that this is an appeal of the planning director's rights. The members of the ZBA must act as a quasi-judicial body and are held as a judge in a case tonight.

A main concern was that the board was misled at the last meeting in that the planning director was aware of the city solicitor not being able to make the 9/26 meeting. A public records request was sent to the City. After reviewing, Mr. Fantozzi claimed that emails and conversations took place between various parties that were not appropriate. They suggested Chair Ramsdell recuse himself from the hearing.

Ms. Mead clarified the modifications proposed. This project proposed four de minimis changes to the 2007 site plan approval;

- The size of the structure. An area of 13,580 square feet is currently proposed. In the 2007 proposal, an area of 13,440 square feet was proposed. This is only a 1% increase.
- The building was shifted 20 feet to the East
- The drive through was moved to the rear of the building, taking it out of view from Storey Avenue
- MA DOT approval modified the access and egress

Ms. Mead noted that the applicants incorporated suggestions from the planning board after a private meeting where they were not allowed to participate. Some of the suggestions included removing an ATM, adding more landscaping, more pedestrian access marking, more screening and moving the compactor area.

Ms. Mead again cited Holyoke and Tewksbury cases from the last meeting. The bottom line is that the planning director wants the building to be different.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Jim McCarthy, Chairman, Newburyport Planning Board

Mr. McCarthy brought up that these changes to the site plan might be de minimis to an attorney, but to site plan review, these plans are very different. He strongly supported Mr. Port's decision. Administering site plan review is difficult and the board has a difficult task in front of them tonight.

Mayor Donna Holaday

Mayor Holaday appeared not in opposition or in support. She made mention that some time has passed since initial approvals. She encouraged developers to meet with her since and after one such meeting the applicants became irate. Three weeks later they barged into her office screaming and threatening to the point where she was concerned for her safety and a third party had to step in.

Patricia Cantor of Kopelman and Paige, City Solicitor.

Ms. Cantor confirmed that she advised the planning director in early phases. She now appeared before the board to assist – this is common practice and not inappropriate as the applicant's attorney suggested. She brought up the quasi-judicial body terminology and suggested that the board listen to evidence and come to independent conclusions.

Questions from the Board regarding Public Hearing #2:

Ciampitti brought up the notion of de novo.

Ms. Cantor remarked that the 2004 subdivision approval controls the scope of the planning director, site plan review and this board's review. The 2007 site plan is moot, unless they went back and used that approval. It is no longer relevant because it was not built and they have come in with different plans.

Mr. Ramsdell asked for clarification on whether plans presented were the most up to date. All plans are current, but did not depict the MA DOT change. Mr. Ramsdell also asked whether these plans were different to the ones that had been presented to Mr. Port as part of the application that he had ruled on. Ms. Mead confirmed that the current plans were different and not those presented to Mr. Port.

Mr. Pennington asked Mr. McCarthy what the normal practice of the planning board would be with this degree of change. Mr. McCarthy brought up the term de minimis being used – a legal term. Minor and major are terms the planning board would use. De minimis to them is from the public eye and what they would think. He would say that the public would say that the project is completely different.

Mr. Pennington asked for clarification on elevations proposed in 2007 vs. 2014.

Mr. Ciampitti questioned whether what they need to consider is if it's minor modifications? And how do they judge that as a ZBA? Is there a standard? There are four specific departures from the 2007 approval as presented by Ms. Mead.

Ms. Cantor cited section 15C in the Ordinance, which distinguishes between major and minor. She believes this is major. The appellant argues the building is only 1% larger building, but the ordinance specifies from current conditions, not from approved plans. The 2004 approval said going forward that the new version of the ordinance would apply. It said not to apply dimensional or use requirements except for section 15. Section 15 triggers the major/minor change.

Ms. Mead commented that we have lost site of the big picture. The appeal is that the planning director is imposing arbitrary decisions/conditions. Mr. Port did not want to approve this site plan.

Mr. Port defended the process and his actions.

Deliberations:

Mr. Ciampitti suggested that this would be better placed in front of a real court. He was struggling with the language in the approvals.

Mr. Ramsdell commented that what they are looking at is complex. He brought up the suggestion of referring the appeal back to the planning director and applicant to work out.

Mr. Pennington found foothold in that the 2004 conditions govern, but the 2007 plans have changed. Mr. Port followed procedure as he saw fit. He did not understand why adhering to conditions was so onerous. The board have not been presented with why this is a big deal. If stepping in de novo, they need to know that.

Mr. Ciampitti agreed with the analysis. De novo – imagine doing this from beginning. Is it forward moving of the board to ask questions of why the conditions are a big deal?

Mr. Ramsdell questioned whether chewing through this de novo was preferable to putting the appellant back with the planning director to work out.

Mr. Goulet agreed with Mr. Ramsdell's position. They ought to give professionals the opportunity to make headway.

Ms. Mead commented that the applicant would rather have a denial than turn those wheels again.

Mr. Fantozzi spoke of the dysfunctional relationship that exists.

The attorneys point moved Mr. Ciampitti. He felt the board owed them a decision.

Motion to approve appeal application 2014-052 to annul Condition #1 in the decision of the Planning Director dated 7/9/14, which conditionally approved the Trust's application dated 6/9/14 seeking to modify the site plan approval previously granted to the Trust on 7/8/07. The Trust also seeks an order vacating the corresponding decision of the building inspector dated 7/16/14 denying the Trust's application for a building permit dated 7/11/14 - made by Mr. Ciampitti, seconded by Mr. Pennington.

The motion failed.

Votes Cast:

Ed Ramsdell– no

Robert Ciampitti – no

Duncan LaBay – no

Jamie Pennington – no

Howard Snyder– absent

Richard Goulet – no

Libby McGee – absent

2014 062

Address: 143A State Street

Special Permit for Non-conformities

Demolish and reconstruct single family home

Attorney Paul Gagliardi of Healey, Deshaies, Gagliardi & Woelfel PC, Amesbury, MA presented the application. Wojcicki Holdings, LLC is proposing to tear down the existing single family home. They have approval from the Historical Commission through demolition delay. They are proposing to construct a new single family home. The reason the applicants are before the board because of a use non-conformity. The property is located in the B1 zoning district where a single-family use is not allowed. They have applied R3 dimensional standards when designing the new build and all dimensional standards were improved. No new non-conformities are being created. The use will not be more detrimental to neighborhood. There are many single-family uses on State Street, in fact 17/27 uses in the immediate area are single family. They have filed for Conservation Commission and have an early November meeting set. Looking at the proximity to wetlands, they are reasonably comfortable the building will not be moved.

Mark Wojcicki commented that he would send plans and work directly with abutters to make sure they do not add to the storm water flow issues in the area.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Barbara Oswald, 158-160 State Street

She was in support of a single-family use in the 'Back Bay' neighborhood. 33 years.

Tim Goldren, 143 State Street

He is an abutter concerned with storm water flow. He is in agreement a new home, but would like those issues address. Mr. Wojcicki agreed to work closely with Mr. Goldren on this issue.

In Opposition:

None

Questions from the Board:

None

Deliberations:

Mr. Ciampitti commented that this was a well-documented argument. The use will not detract from existing conditions.

The rest of the board agreed.

Mr. Pennington commented that they will still need to go before the Conservation Commission, but are confident in their plans.

Motion to approve application 2014-062 for a Special Permit for Non-conformities made by Mr. Pennington, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– absent
Richard Goulet – approve
Libby McGee – absent

2014 072

Address: 245 Northern Boulevard

Dimensional Variance

Create two non-conforming lots with insufficient lot area and frontage by changing the location of the shared lot line

Attorney Mark Griffin, 11 Market Square Suite 8, presented on behalf of Kevin and Debra Raftery, owners. The applicants want to create two non-conforming lots at 245 Northern and 0 Harbor Ave, located on Plum Island in the PI Overlay District. Together these lots are approximately 16,000 square feet. There is an existing cottage and a shed on the back portion of 245 Northern. A ‘paper street’ runs through the lot – the applicants have applied for a discontinuance of this easement. The discontinuance is sponsored by Allison Heartquist and is currently hung up in the Planning and Development Subcommittee. The lots are separately unique. The Rafterys purchased both lots in 2008. 245 Northern housed the Oliver House structure when they purchased it. In that time real estate turned and renovating the Oliver house turned out to be financially not feasible. After 2009 they gave up the idea of renovating and attempted to sell the property. In 2013 they got approval to demolish the Oliver House and rebuild a single-family home to sell in the combined locust. Buyers were not interested in sharing the land with another cottage. They are now asking to split the lots and form one vacant lot at 245 Northern and one cottage at 0 Harbor. Each lot would be approximately 8200 square feet

and be non-conforming as far as lot area and frontage. The board should consider that lot width will not be met also.

A hardship exists in that the shapes of the lots are unusual. 0 Harbor is undersized and borders a paper street while 245 Northern is larger. The two lots are also surrounded by non-conforming properties. They argue the new lots will be less dense and not detrimental.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Kevin Raftery, owner

He and his wife restored the cottage on the Harbor Street side with the intention of living there and restoring the Oliver House. Over seven years have passed and they have sunk over \$1 million. They are wanting to recuperate some of this. Buyers want their own lot. He noted that they have been paying two betterment fees and utilities are in for both parcels.

Paul Morin, 21 Harbor Street

They live across the street. When the applicants purchased with the intent to restore the Oliver House he thought it would be challenging. He has watched them work very hard landscaping and rebuilding the cottage. The Oliver House was too far-gone. This change would enhance neighborhood.

In Opposition:

None

Questions from the Board:

Mr. Ramsdell noted his hesitation in approving an application with a 'paper street' down the middle.

Mr. Gagliardi explained it is an abandoned way. The City never took fee and never laid out dimensions of Barker Street. It is possible to create a lot with an easement on it. All abutters have access from other places.

Deliberations:

Mr. Pennington noted that the applicant made a strong rationale and hardship argument. The vast majority of surrounding lots are non-conforming. He was a little uncomfortable with the 'paper street.'

Mr. Ramsdell commented that Mr. Griffin was correct in that there is an easement and the City did not take fee.

Mr. Ciampitti commented that the applicant made an argument that the shape of lots is unique as well. The owners made a painstaking attempt to preserve and re-use the property. This is not unreasonable and brings new life to something that did not work out.

Mr. Goulet and Mr. LaBay agreed.

Motion to approve application 2014-072 for a Dimensional Variance creating two non-conforming lots with insufficient frontage, lot area and lot width for lots A & B made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– absent
Richard Goulet – approve
Libby McGee – absent

Adjournment

Motion to adjourn made by Mr. LaBay, seconded by Mr. Goulet at 10:35 PM.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– absent
Richard Goulet – approve
Libby McGee – absent

Respectfully submitted, Katie Mahan - Note Taker