

**City of Newburyport
Zoning Board of Appeals
1/12/16**

Present: Edward Ramsdell, Rob Ciampitti, Jamie Pennington, Dick Goulet, Renee Bourdeau
Absent: Duncan LaBay

The minutes of 12/8/15 were approved unanimously. Mr. Goulet motioned to approve and Ms. Bourdeau seconded. All voted in favor.

2015-060

**Wendy's Old Fashioned Hamburgers c/o Bohler Engineering
27 Storey Avenue
Sign Variance
*reface existing sign cabinets
Continued from 11/10/15***

The applicant requested to withdraw the application without prejudice. Mr. Goulet motioned to allow the approval without prejudice and Mr. Ciampitti seconded. All voted in favor.

2016-004

**Adam True, The True Company
48 Boardman Street
Dimensional Variance
*split lot to create two non-conforming lots with variances required for lot area, frontage, lot width, and rear yard setback***

The applicant requested to continue the hearing to the meeting of January 26, 2016. The meeting of the 26th is already full to Mr. Ramsdell recommended continuing to February 9, 2016. Mr. True, the applicant, said he was hoping to meet on the 26th due to time sensitivity of the project. He was also hoping to have an open house this upcoming Saturday to address neighborhood concerns. The Board discussed allowing the continuation to the 26th with the understanding that the hearing may need to be further continued due to the complexities. Mr. Goulet motioned to continue the hearing to the end of the 1/26 meeting and Ms. Bourdeau seconded. All members voted in favor.

2016-001, 002, 003

**Diamond Sinacori LLC
151 High Street
Dimensional Variance
*variance for lot area where the pre-existing non-conforming building use is changing to multifamily
Special Permit for Non-Conformities
alteration of a pre-existing non-conforming structure to allow for a new multi-family use
Special Permit for Non-Conformities
renovate existing structure into a ten unit multi-family structure (Use #103)***

Atty. Lisa Mead of Blatman, Bobrowski, Mead & Talerma represented the applicants along with their team from Tise Design and Design Consultants, Inc. Atty. Mead said they were seeking a variance for lot area and the number of units within a structure. They were proposing to modify a pre-existing non-conforming structure and proposing to renovate and restore the former Kelley School. There would be four units on each existing floor and two additional units upstairs. They proposed 14 spaces under the building and four in the rear. The existing setbacks are non-conforming and the height is already 48'. They proposed to do nothing to the height although the roof will change. They would need 44,000 s.f. of lot area for the use where there is approximately 15,000 s.f. The applicants wish to be sensitive to the historic structure and Bartlet Mall as a cornerstone. Atty. Mead explained that the City issued an RFP asking to develop the Kelley School into multi-family structure and preserve the historic building. They were not required to seek approval from Newburyport Historical Commission (NHC) though they still are. NHC has approved the design and a Preservation Restriction which must also be approved by MHC, subject to final exhibits. They will need to also go before Planning Board for Site Plan Review. She indicated that they hoped to continue the hearing so they could get a sense of the Board's opinions before they have their Planning Board hearing.

Steve Tise from Tise Design said that the major change is in parking. They proposed a new curb cut and ramp off of High Street. They would be excavating the lower level to provide garage parking. They were also proposing 4 additional outdoor spaces along Auburn Street. Mr. Tise said the basement level of the school is only down about 4' from existing grade. The renovation would change little in terms of the site and architecture though it will require the complete restructuring of the basement. They were respecting the existing 4 classroom layout with high ceilings. There would be a new dwelling unit in each classroom with a mezzanine in each. The main entrance would still be on High Street. They would be restructuring the roof to allow for two penthouse apartments. He said all the units are two bedroom with a third room, not legally a bedroom (library, study, etc.) They would do a complete restoration of the exterior, which includes window and trim replacement. They proposed to demolish the existing fire escapes and replace them with ornamental iron balconies. The roof would still be a hip roof but with dormers. The project would include restoring landscaping and iron fencing. There would be a communal terrace in the rear. The fence along property line will be repaired.

Steve Sawyer of Design Consultants, Inc. explained the ramp which included a new curb cut on High Street. The grade would be 5.9%, which is very subtle. The maximum height of wall adjacent to the driveway would be 5'. There would be a flasher system on the one way ramp that would warn anyone entering the ramp that there was a car exiting. Vice-versa, there would be another signal that would indicate cars entering the garage. They would be digging test pits for ground water this week and were not expected to find anything. They proposed including a particle separator and infiltration system. There would be floor drains in basement that ties into sanitary sewer. Utilities will be run to Auburn Street. He showed a plan depicting a large car with the ability to maneuver within the garage. A crosswalk on Auburn Street will be eliminated. Sidewalk improvements will be discussed in SPR process. They would be reducing stormwater by introducing heavily landscaped areas.

Tom Bertulis from Design Consultants did a traffic analysis and found a relatively low crash rate at the intersection. The proposal would result in very few new trips during peak times. There would not be a lot of added delay due to the low number of vehicles. He added that they found there was sufficient site distance in both directions according to standards. Mr. Sawyer noted that these cars would not need to back onto High Street.

Atty. Mead listed hardships including the corner lot rule, where uses on corners are non-conforming. She said that this was a unique structure in which the purpose no longer works in its location. It's also a historic structure that the City wants to save. There is still significant value in the building. It is a critical landmark on High Street next to the Bartlet Mall and the Superior Courthouse and a focal point for the entire City and historic district. The City had to find a use that would provide long term maintenance and preservation. Atty. Mead submitted a map showing all surrounding lots are non-conforming. She said the Board may find hardship related to the proposed use. It won't derogate from the purpose and intent of the ordinance and would not be inconsistent with the surroundings. The project will preserve Kelley School for years to come.

Atty. Mead said they needed the Special Permit for Non-Conformities to modify the pre-existing non-conforming structure. It would not change the exterior dimensions and won't further encroach upon front yard setback or height. The change of use won't be more detrimental than the existing. They were proposing more parking on the site than there has ever been. There was a higher demand for parking previously as it has been an elementary school and Youth Center. She said that the cars will no longer take up any parking at park across the street during a snow emergency. The project will be complimentary to the neighborhood.

Atty. Mead explained that they also would need a Special Permit for multi-family use and she addressed the required criteria. The Zoning Ordinance allows for this use by SP. There is currently a mixture of single families, 2-families, and multi-families in the immediate area. Preservation has been clearly stated by City. The use will not create traffic congestion or create undue safety. There would be twice the required site distance on one side of the exit than is required. Required parking is 16 where 18 is being proposed. There would be less impervious surface on site so therefore less off site runoff. They would be treating more water on site. DPS has said there is ample water and sewer capacity. She provided a letter from the City Marshall requiring the indicator light on the garage. There are no special regulations in the table. The use will not impair integrity of the district. The restoration will be made possible by development of a ten unit structure. The use will not be detrimental to health or welfare of City, and will not cause an excess of use. The project would be in harmony with purpose and intent of ordinance. The site is in the R3 district so by nature its use is consistent.

In favor:

Chuck Griffin, 1&3 Vernon Street spoke in favor. He felt it was a remarkably good use for the building. Traffic and use will be less than what it was before since there used to be teachers

parking along the road. Mr. Griffin said he looked at developing the property himself and found it astounding to put in underground parking. He gave his enthusiastic support.

Bill Harris, 56 Lime Street, said it was an asset to be able to preserve this historic building. He noted the high cost of preservation and said it was important to repurpose historic buildings. He asked if there were safeguards to protect the non-traditional dormers from lighting. Mr. Tise said there was no fixed lighting. These would be private residential units so the only lighting would be traditional residential lighting. He didn't think it was a concern.

Bob Cronin, 126 Merrimac Street, Ward 3 Councilor was in favor. He said he sat on the Kelley School reuse committee. This company impressed him. They do high end work and Newburyport deserves this project.

Mayor Donna Holaday spoke about the reuse of the building. She said they became brutally aware of the maintenance costs and knowing its historic value, were very concerned with what would happen to the structure. She said it was very important to the community to preserve the building. He said Diamond & Sinacori's portfolio is magnificent and they do quality work in historic preservation. Mayor Holaday passed on a request from the School Committee to keep the Kelley School sign.

No one spoke in opposition to the applications.

Questions:

Mr. Ciampitti was concerned about High Street's sight lines. Mr. Bertulis said that the sight lines in each direction exceed minimum requirements. Mr. Sawyer said there is no wall or obstruction at the sidewalk obscuring the view to the left. The nose of a vehicle would have bisected the sidewalk at that point and the car would be at grade. Ms. Bourdeau asked about the wood fence along the edge of the driveway. Atty. Mead said the fence would be gone and a low ornamental fence would be installed that would not obstruct the sight line.

Mr. Pennington asked about the details of the proposed railings. He also noted the Preservation Restriction and asked if it included a design review process. Atty. Mead said the Planning Board typically reviews details like the railings. They hoped to work with Planning Board and get final plans to the ZBA when they have been set. The Preservation Restriction has been done except for the approved plans that are required to be attached. Any changes would be required to be reviewed by the NHC and MHC. Architectural plans have already approved with their adjustments and are in front of Planning Board for review. Mr. Pennington wanted more detail on the decorative ironwork, fence, and dormer details since a substantial part of their argument was based on historic preservation.

Ms. Bourdeau asked if it was necessary to put the condensers in the front of the building. Mr. Tise said they were originally concentrated in the rear but decided it was more equitable to scatter them. He said there will be low, historically appropriate fence enclosures equally

positioned around the building and two roof mounted condensers in the rear. Atty. Mead said that the NHC didn't review the landscaping, just the structure. She added that mullions will be added to the next set of renderings.

Mr. Goulet asked about the mini Cultec system. Mr. Sawyer said it was not needed to meet any stormwater rate/volume. It was only added because of the concern for the potential of icing runoff. Mr. Goulet asked if the entrances are ADA accessible. Mr. Tise said they were not. The levels are multi-units that aren't accessed by elevator. He said accessibility was not required for homeownership units.

Mr. Ramsdell asked about the functions of the garage warning system. Mr. Tise explained how the lights would alert oncoming cars of entering/existing traffic. He said it would need to be discrete. There would be no audible alarm as it would be out of character with the neighborhood. He said it will be designed by an electrical engineer. Atty. Mead said that would likely be a condition of the Site Plan approval.

Mr. Ciampitti said he was very satisfied with the level of detail they've received. He appreciated that they provided more data than necessary that is outside of Board's purview. Mr. Pennington agreed that it was a very sound concept. He said the applicant has already made a great case in terms of addressing criteria. Mr. Goulet said he was also in support of the adaptive reuse. He agreed with Ms. Bourdeau's comment about the fencing of the condenser units since they weren't depicted on the plans. Ms. Bourdeau suggested moving the front units to the side and added that the legal criteria have been justified. Mr. Ramsdell said he did not see a reason not to support the application.

Merrill Diamond of Diamond Sinacori thanked the Board for their preliminary support. Also thanked the Mayor, Councilor Cronin, and Andy Port for their help in the process. He said that most of his firm's work has been adaptive reuse and historic preservation. This project was very important to him. Atty. Mead mentioned that Mr. Diamond used to sit on the MHC and suggested they take a look at their portfolio.

Atty. Mead requested to continue the hearing to the meeting of 2/23/16. Mr. Ciampitti motioned to continue the hearing to 2/23/16 and Mr. Goulet seconded. All voted in favor.

2016-009

Robert and Elizabeth MacDonald c/o Lisa L. Mead, Esq.

114-118 Merrimac Street

Dimensional Variance

modify previously granted variances for height, side yard setback, and rear setback to change the egress and parking and correct a scrivener's error in the plan reference

Special Permit for Non-Conformities

modify previously granted Special Permit for Non-Conformities to change the egress and parking and correct a scrivener's error in the plan reference

Special Permit

modify previously granted Special Permit for a two-family use (Use #102) to change the egress and parking and correct a scrivener's error in the plan reference

Atty. Mead represented the applicants, Bob and Beth MacDonald. She said that the Board approved permits last April for this project. She said that nothing on the elevations was changing. The garage doors have not been changed. The Board originally approved the cars pulling into garages and out onto the Route 1 off ramp. She submitted a letter from MassDOT giving preliminary approval of this access arrangement. Atty. Mead said that MassDOT does not sign off on permits until local permits are granted. After the project was approved in April, Eric Botterman met with MassDOT and they decided that they were not amenable to traffic exiting onto Route 1. Without interfering with the line of no access/no transit that is on the MassDOT portion of the site, the cars can turn around in the rear of the lot. She said they must still go through the MassDOT real estate process. A contract has been executed with MassDOT and payment has been made to start the process to get an easement.. They will not give a final approval until the local Board has issued their permits. She understood the Board did not want cars to back onto Merrimac Street. She submitted a letter from the City Marshall stating his approval of the proposed arrangement. Atty. Mead also noted a scrivener's error referencing the wrong set of plans in the original decisions. She also requested an extension of the variance for six months.

No one spoke in favor of the requests.

Reginald Bacon of 21 Strong Street was opposed and thought it was wrong for a non-owner applicant to apply for something that would be to the detriment of the public good. Also, he thought the driveway having cars nosing out would be insane. Since the time the building has been gone, there have been improved sight lines. He said the City was not able to approve this plan until MassDOT has given their approval.

Bronson deStadler, 19 Walnut Street, objected to the height which blocks views from the rail trail. He said the building shouldn't be able to block views.

Robert Cronin, 126 Merrimac Street, Ward 3 Councilor, said that the Traffic Safety Advisory Committee voted that this proposed egress was not safe. A vehicle coming off the off-ramp would be directed towards traffic exiting the garage. Andy Port said it could make the situation less safe and MassDOT would be looking at it in the future. Mr. Cronin said that there was no enforcement ability to prevent someone from backing out onto Merrimac Street, which is arguably the worst crash location in Newburyport. Although permits have already been approved, he thought the City should be expanding the marine zone, not shrinking it. He also objected to obscuring views of Merrimack River. He said this was clearly a traffic hazard area. He asked the Board not to extend the variance and reject the other permits.

Lela Wright, 4 Winter Street thought the proposal would take away visibility of intersection. She added that she was also concerned that the parking garage could be built which would bring in more traffic. She thought it was a potential for hazard and was not in favor.

Douglas Phillips of 62 Federal Street said he appreciates effort to improve proposal. He submitted photos of area indicating that it is a busy and dangerous intersection. He also showed a view from the rail trail that will be obscured and a photo showing snow obstructing the view on the corner. He said that since Mr. India was removed, visibility has been improved. He urged the board to reject the proposal for any building on that lot and maintain it as an open area.

Stephanie Niketec said the footprint that was approved was not safe. She said both proposals are using state land. It would cause public harm. She said she thought if the ZBA approved this plan the public would go to the State asking why they would give an easement that would block views and create hazards. She asked the Board to deny the modification and not extend the variance.

Ed Cameron, 17 Oakland Street, City Councilor, asked the Board to deny the permit and not extend the variance. He said parking on site will make it worse and it's a public safety issue. He mentioned that this was a non-owner applicant. He said he didn't think that anyone would want to live there. He thought it would be dangerous on foot or on car. He said he was not opposed to everything. It could be residential, retail, or commercial but the parking would need to be provided elsewhere.

Bill Harris, 56 Lime Street, said the project needs to provide a net benefit to the City to be allowable. He believed the Board would be in grievous error if they approved the applications, as a lot of money was spent on rail trail. He thought there was an excess of height. He suggested building a single family with a narrower width. This structure would be almost double the height and the square footage is much greater than the previous. There would be harm to the historic district and view corridors. He submitted a report about backing out onto streets. He said he was concerned with the unenforceable requirement that will result in cars backing out onto Merrimac Street. He said the applicants do not need to take up the entire lot for the structure. They should have room to turn around on their own property. A traffic report indicated that there are a high number of accidents at this intersection. He didn't think MassDOT would be able to grant the permit. Mr. Harris asked the Board to not grant extension and if not, require MassDOT to do their approvals first.

Jeanette Isabella, 1 Lime Street, said she has been to previous hearings and the Board promised they would take into account neighbors' opinions. She was not sure how it could have ever been approved in the first place. She added that the Towle project will create more traffic too. She asked that they not be allowed to take away the view. She added that the City should not reward people that let their properties to go into disrepair.

Mr. Sawyer said there are only two dwelling units being proposed. There is 40'-50' from the intersection to the garage. There are multiple areas in the City within 50' from an intersection, granted this is a very busy one. There is room for cars to pull through and pass. He said he can't speak to enforcement. They calculated 60 trips/day for a 10 unit building for their Kelley

School project so this would be about 11 cars/day, 1 during the peak hour. He said they were not introducing a major amount of traffic. He felt this was an insignificant impact to this intersection.

Atty. Mead reminded the board that there was a structure in almost the same position previously. There were very limited uses for this property for anyone. There has never been parking on the site. The use in the past had much more traffic generated. It was a restaurant, laundromat, and residences. She was disappointed that the TSAC met without giving the applicant the ability to be present or answer any questions. She said it's important to remember that these are Newburyport residents doing work to a private property. Many other non-owner applicants are in front of the Board and that's their right. She said she was dismayed to hear those types of comments. Atty. Mead said the garage won't generate more people coming downtown. The argument that traffic is being generated beyond what was there before doesn't make sense. The use has already been approved. The design has been approved. The request is just for the parking redesign. She reiterated that MassHighway will not consider permits until local permits are granted. This application was to approve parking, extend the variance, and correct scrivener's error.

Questions:

Mr. Ciampitti asked for clarification on the garage and asked if a car can be kept in the garage or if it is just an access way. Atty. Mead said that they would not be able to keep the cars in the garage with this scenario. Mr. MacDonald said that the garage would have an entrance and exit lane. Mr. Ciampitti was worried that people would want to put their cars in the covered area. Mr. Sawyer said the potential for backing out has been reduced since there is space to shuffle cars in the rear. Atty. Mead said the garage doors were an aesthetic addition. There are only two units and there is still the ability to turn around. Mr. Ciampitti thought the previous plan was workable because there was cyclical movement of traffic. He said he didn't feel great about this plan and felt it fell below a critical bar for his comfort. Mr. Ramsdell said he had the same concerns as Mr. Ciampitti.

Mr. Goulet asked about the MassDOT letter and the process. Atty. Mead said the MacDonalds preference now is easement but could end up being in fee. Beth MacDonald said that she, her husband, and infant daughter plan on living there and the arrangement works for them. Whoever purchases the other unit would also have to like the setup.

Deliberations:

Mr. Pennington felt the application was impossible to approve. No study can predict the behavior. He said he'd personally want to back out onto Merrimac Street. The turn around has solved it, but human behavior does not go along with that. He added that there is a use for the parcel and the Board can't completely take away the rights. He felt that this project is a classic hardship as it's a very difficult site. He said he was pleased with the design of the structure. The City can opt to pay market value for the building but that's not in the ZBA's right. He said

he was sympathetic to the applicant and felt they were dealt a bad card with MassDOT. He was not prepared to support the application as presented. Mr. Goulet was equally troubled and said he was sold with the previous proposal. He was not in support without the exit onto Route 1. Ms. Bourdeau said that the parking situation was troublesome knowing that all parking for this building is in the hands of MassDOT. She said she was not in support at this time. Mr. Ramsdell said he had no objection to the six month extension of the variances as they stand but said he does not support the two barrel entrance/exit. Considering the traffic movement, he suggested there could be too much structure on the site. He was OK with correcting the scrivener's error. Mr. Ciampitti agreed.

Atty. Mead appreciated the comments and asked the Board to approve the extension of the variance, correct the scrivener's errors, and continue the rest of the hearing. She added that the site has never had parking and asked the Board if the objection is having any traffic coming out onto Merrimac Street. If there is parking on site, egress must be on Merrimac Street. Mr. Ramsdell said it was not a non-starter. The two-barrel egress popping out of the building was his problem. Mr. Pennington felt the site was difficult enough that he could consider a parking variance. He said he would rather lock it down with a two-family use than it potentially becoming a restaurant again. Mr. Port asked if the fact that it's a two-family was an issue and wondered if a reduction of units would improve the situation. Atty. Mead said that a single-family is not allowed in a WMD district. Mr. Ciampitti said he was concerned with blind egress. Atty. Mead said there is 3' from the building to the wall so a door can open so it can't be moved closer to the wall. Mr. Ciampitti said his problem was with the cars pulling out of a structure onto Merrimac Street. The vehicle is blind until it isn't and may not provide enough lead time. Mr. Ramsdell didn't want to see the driveway moved towards the down ramp. Mr. Goulet also mentioned it was only 11 vehicles/day but was concerned about the setback from Merrimac Street and pulling out. Mr. Pennington was concerned about the potential for the owners to use the driveway as garage parking. Mr. Ramsdell agreed they were all good intentions.

Atty. Mead asked to continue the hearing to the meeting of 2/23/16. Mr. Ciampitti motioned to correct the scrivener's errors in the plan references of the previously granted applications and Mr. Goulet seconded. Mr. Ciampitti also motioned to extend the previously granted variance for a period of six months to 10/21/16 and Mr. Goulet seconded. All members voted in favor. Mr. Ciampitti motioned to continue the request for modifications to the meeting of 2/23/16 and Mr. Goulet seconded. All members voted in favor.

The meeting adjourned at 10:09 pm.

Respectfully submitted,
Dianne Boisvert
Note Taker