

**City of Newburyport  
Zoning Board of Appeals  
February 26, 2013  
Minutes**

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

**1. Roll Call**

**In Attendance:** Duncan LaBay (Secretary), Robert Ciampitti (Vice-Chair), Jamie Pennington, Richard Goulet, Jared Eigerman (Associate Member), Richard Goulet (Associate Member)

**Absent:** Ed Ramsdell (Chair), Howard Snyder

Mr. Ciampitti was the acting Chair in Chair Ramsdell's absence.

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of February 12, 2013 Meeting**

Mr. Eigerman made a motion to approve the minutes as submitted and Mr. Goulet seconded the motion.

The motion passed unanimously.

Duncan LaBay – approve

Robert Ciampitti – approve

Jamie Pennington – approve

Jared Eigerman –approve

Richard Goulet – approve

**c) Request for minor plan change for 88 High Street**

Ruth Berberman (Unit A, 88 High Street, Newburyport MA) represented herself and the other owner of the 88 High Street property at the meeting. The applicants received a Special Permit for Non-Conformities on December 11, 2012 to remove the rear decks and construct two, two-car garages attached to the house. The Board voted unanimously to approve this application with a special condition to use pervious material of the applicant's choosing on the driveway to allow for proper drainage. At the February 12, 2013 Zoning Board of Appeals Hearing, the applicants are requested a plan change to remove one of the entry points off of Tremont Street. Due to topographical constraints, the garage that was proposed to face Tremont Street must be changed so that the doors will face the rear of the property, as the other garage unit on site does. With this change, access to both garages will be shared and only one entry point from the street will be required. The ZBA expressed concern about the fact that the abutter, Steve Cavan, 88 ½ High St, was not at the 2/12/2013 meeting and had previously indicated, at the original hearing on 12/11/2012 that he was in favor of the application but would be concerned if there were any

changes to the plan. The applicant indicated that the ZBA currently has a letter in file which indicates that abutter is okay with the change in plans, but remains concerned about the drainage. The applicant also presented one additional change which was to move the staircase from the Tremont side to the High Street side. Mr. Pennington indicated he was fine with the change.

**Mr. Pennington made a motion to approve the minor modification, seconded by Mr. Eigerman.**

The motion passed unanimously.

Duncan LaBay – approve

Robert Ciampitti – approve

Jamie Pennington – approve

Jared Eigerman –approve

Richard Goulet – approve

**3. Public Hearings (8 on the agenda)**

**Public Hearing #1:**

**2013 004**

**Address: 40 Merrimac Street**

**Special Permit for Non-conformities**

**Allow an upward extension of pre-existing non-conforming setbacks**

This hearing is continued from the January 22, 2013 Zoning Board of Appeals meeting. Attorney Richard Nysten, Lynch, DeSimone, & Nysten, LLP summarized recent activity associated with the project. Douglass Trees, architect was present at the meeting along with Joseph A. Leone, owner of the 40 Merrimac Street, LLC. As originally proposed, the applicant sought relief to allow an upward extension of the building to accommodate a 591-seat restaurant, with a mix of both interior and exterior seating. The proposal included the restoration of the historic building, reconstruction of the existing concrete block structure attached to the historic building, the construction of a second story above the concrete block portion, as well as first story roof deck, the installation of a 7' pedestrian walkway that will run from Merrimac Street, alongside the building, on property owned by the Waterfront Trust (WFT) to the riverside to satisfy Chapter 91 requirements. The applicant has reduced the number of seats in the restaurant to a total 442 (indoor and outdoor seating). The applicant envisions the outdoor seating to be at capacity during the warm summer months with the indoor seating at capacity during the winter season. The proposed reduction in seats reduces the parking demand. The reduction in seating will also more closely align with the plans presented at the MEPA review (431 seats). The applicant has eliminated the refrigeration system and loading dock previously shown on the rear of the building. The applicant has agreed to relocate the kitchen exhaust fans inside the building and they will come out the roof. He raised the fence from 7.5 to 8.5 feet. Abutter David Murphy, has hired an acoustical consultant who wants the exact manufacturer and data sheets for the equipment. The applicant has requested that they allow them to submit information later. They feel they are making a reasonable effort. They are not asking for a free pass. They do not want to get tied into a specific vendor. They are going to have outdoor dining and will not want noise to disturb their customers. They may not be able to put up the walkway as proposed.

The applicant responded to Mr. Harris' concerns. Mr. Harris suggested, in 1751, the property was donated. Attorney Nylen has not found anything definitive. He indicated they purchased the property with title insurance. The title company says they own the property. Mr. Harris feels passionately that a portion of the property belongs to the City and no one can do anything with it. The applicant feels they have addressed the concerns and have met the criteria of the special permit application.

**Acting Chairman Ciampitti opened the hearing to public comment.**

**In favor:**

**Andy Marion, 43 Barker Road, Salisbury, MA.** Mr. Marion indicated he is in favor of the application.

**In Opposition:**

**Robert Wolf, Attorney, 61 Pleasant St., Newburyport, MA, co-counsel with William (Bill) Harris.** Attorney Wolfe indicated that a settlement agreement on the location of Summerby's landing indicates it can never be sold. This parcel has been so controversially litigated, it is all wrapped up in the appeals court case. This parcel has been litigated 5 times in the past 300 years. It makes sense to pay attention to who owns it. The Board should consider taking to the City Council to find out title. He suspects the documents are in the Clerk's office. He believes discussion should be suspended until both sides can present the title documents. It is inappropriate to make decisions that are in opposition to previous site agreements.

**Lisa Mead, Attorney, Blatman, Bobrowski & Mead, LLC, 30 Green Street, Newburyport, MA, representing Brown's Wharf, LLC, David Murphy, owner.** Attorney Mead said the applicant did meet with her client, David Murphy. The meetings resulted in changes, many inconsistencies have been revealed. In the site plan, A-1, the exhaust units still exist. The chimney is in different locations on different sets of plans; she is concerned that there is no consistency between the plans: What are they building? This project is the most intense project to hit the Newburyport Waterfront in over 20 years. The information provided by the applicant should be accurate, consistent, and professional. Her client hired a firm to review the cut sheets on the equipment. It is not unusual to present specifics to the ZBA. It is not enough for the applicant to say they are complying with the law. Her client would like more information on the loading dock – the pictures are not clear. She respects Mr. Trees' analysis of the parking situation but questions where he got the expertise to do the analysis. There will be an impact on parking. How are they obtaining data about the people that will be using the facility? Her client is not necessarily opposed to the project.

**Lawrence McCavitt, 5 Madison Street, Newburyport, MA.** Mr. McCavitt is on the same committee as Mr. Harris who could not be at the meeting tonight. Mr. Harris had submitted an email to Chair Ramsdell and the Board. He supports the comments made previously by the two attorneys (Wolfe and Mead). He is concerned with the scope of the project – it is something we don't want to have happen. They have suggestions for mitigation of Chapter 91. The property is not the property of the owner. The parking study is flawed.

**Robert Fenner, 1 Ferry Lane, Georgetown, MA** Mr. Fenner has no doubt of the east side – the line goes right along the side of the building. He has no doubt it is a material change in the use of the property. It is substantially more detrimental to the neighborhood. Has there been a major site plan review? He believes it is premature to go to Planning Committee. He has not

seen the letter from the Historical Commission. This is substantially more detrimental to the neighborhood, the pathways to the waterfront, and the views to the waterfront. This is a big building, it takes a way a lot of the water views and the light. This will reduce the value of his building

Attorney Nylen addressed issues that have been brought up. He indicated that Attorney Wolfe said that this property had been brought up 5 times in 300 years and this fact supports his point that this needs to be done in land court. He discussed what part of the property his client does own and he is comfortable with that. They have title to the property. They have title insurance. His client takes Attorney Mead's and her client's concerns seriously. They have responded word for word to the conditions Attorney Mead put on the Special Permit. What troubles him about Mr. Harris is that he suggested donate 38 Merrimac Street to the Waterfront Trust and lease it back for Restaurant purposes.

Architect Trees addresses issues about the view and parking. He explained the inconsistencies with the chimney. The historical commission has had discussions about which of the 2 different locations they prefer – Mr. Leone does not care which way it goes.

Attorney Mead's suggestion that the loading dock perhaps will require a variance. The Board is approving a set of plans with this decision. The concern about odors was mediated by taking the exhaust fans from the side to the top of the building.

**Questions from the Board regarding Public Hearing #1:**

Mr. Eigerman asked about the Eastern façade – is it lattice work now. The applicant said they deleted dining area and it will be solid. The applicant would like to have dormers if allowed by Historic Commission; otherwise they will be ok not having them. Mr. Eigerman indicated that they can't defer the decision about the dormers to the Historic Commission. What is their proposal? The client said they are proposing no dormers.

Mr. LaBay questioned that there are dormers on the plan. The applicant's counsel said no dormers and the applicant said yes to the dormers

Mr. Goulet asked about the refrigeration unit placement. Architect Trees said it has been placed inside.

Mr. Eigerman had a question for the staff. Does the applicant have ownership of the lot? The planning staff responded yes.

Mr. Ciampitti asked if there were any questions from the board on the elimination of odor. Architect Trees said the exhaust from the kitchen fan would go up vertically, well above building.

Mr. Pennington referred back to the historical Commission 1/20/2013 Memorandum. Except for the confusion about the dormers he feels the applicant is working to higher standards.

Attorney Mead said she and her client are very concerned about what plan they are attaching to their approval. There are differences in the different plans provided to her client and to the board.

Attorney Nylen apologized for the confusion with the dormer and said that his client would like to have the dormer, if the Historic Commission comes back and says no, they will have to come back to the board.

Mr. LaBay asked about the noise information. He referred to the points Attorney Mead had made regarding the noise issues. Architect Trees said they are very familiar with the information. They are seeking basic approvals. They have included a list of equipment all at 60 decibels or less. They are committed to providing detailed engineering. There are state regulations on

sound. There will be no problem meeting sound requirements. Attorney Trees continued that they need to be able to bid out to several different vendors, each of which will have a slightly different sound profile.

Attorney Nylen said they would be willing to have a condition on sound placed on the Special Permit.

### **Deliberations:**

Mr. Eigerman spoke about the following:

Waterfront Trust: there are serious issues, he is not going to disregard a settlement agreement. We are NOT land court, The staff says the applicant owns the land. Attorney Nylen indicated it is his clients risk if there are issues with title. He doesn't believe the Zoning Board can deal with this issue. Mr. Fenner's Issues: the issue of views is something we care about. It is not the Zoning Board's duty to protect private views but to protect public views.

Noise: he feels we can deal with a condition of approval where the applicant has to come back and show the readings. Odor: garbage, more than exhaust is his concern. He asked if the applicant would be willing to have the garbage locate inside put as a condition.

The applicant said yes. Parking: Is it the board's duty to take this into account? Will it be substantially more detrimental than Davis Electric? This is a City-wide issue.

Design: the ZBA has to make a call. The Planning Board will deal with the parking layout. The historical commission suggests a break between old and new.

Mr. Pennington indicated that this is a complex application. The title issue is a major issue but it isn't within the ZBA's purview. He appreciates the fact that the applicant has a chicken and egg problem. Sound: he is convinced there is equipment that can satisfy the sound ordinance and agrees it is appropriate to have a sound test as a condition. Discrepancies in the plans: the applicant addressed the major discrepancy from the last hearing and he appreciates that.

Major Planning issue: parking. He wishes there was a plan in the City to mitigate this issue. Until such a time, there is no need to impose the solution on the applicant.

He does not see the views as an issue. Is this substantially more detrimental. He thinks it is a plus for the city and a benefit to this part of the City. He has no trouble saying this is NOT substantially more detrimental.

Mr. Goulet agreed with a lot of what Mr. Pennington said around parking, noise, title, and odor. The changes that have been made are positive.

Mr. LaBay is in agreement with his colleagues comments. He is willing to believe some issues can be dealt with. Where he has an issue – Is it substantially more detrimental? He is concerned about the size of the proposal and the size of the structure. He finds this difficult to visualize. He thinks it is substantially more detrimental than what is there now.

Acting Chair Ciampitti agrees with his colleagues that title is not an issue for the ZBA. He agrees with his colleagues on noise and odor.

Mr. Eigerman asked about whether the building overhang in the loading area counts as building area. If the definition excludes the building overhand, than this remains a special permit application and not a variance application.

Mr. Pennington reads drawing well and agrees there have been discrepancies. Mr. Pennington, except for the former and chimney does not see any discrepancies. The applicant needs to make a determination.

Mr. Eigerman asked are the dormers in or out? Mr. LaBay feels the applicant is one iteration short of where they should be

Acting Chair Ciampitti says the Board has come up with a few questions that bear input from the applicant. What is it we are approving?

The applicant indicated that the 3<sup>rd</sup> floor space will be for office space, mechanical equipment. The applicant described the elevations.

Mr. LaBay said the board is deep into deliberations and still getting input from the applicant. He does not feel there is consistency with the plans yet. This is an immense addition.

Mr. Pennington said they need more detail on the part of the building where the 2 roofs come together. Architect Trees said they have been waiting for recommendations from the historic Commission.

Acting Chair Ciampitti said there will be nothing else from the Historic Commission. He asked if the applicant is inclined to put together a final rendition to settle some of these issues

Attorney Nylen said the most current plans that the board has represent what they want to do.

Acting Chair Ciampitti indicated that the board would like more information.

Mr. Eigerman said the problem is with the renderings and squaring those with the plans. He indicated that it is in the applicant's interest to give the board a fresh set of plans. There are 3 variable issues: dormers, views to water, parking

Attorney Nylen made the request to continue the hearing until the second meeting of the Zoning Board of Appeals in March.

**Motion to continue the hearing for the application for a Special Permit until the March 26, 2013 Zoning Board of Appeals Meeting made by Mr. LaBay, seconded Mr. Goulet.**

The motion passed unanimously.

Duncan LaBay - approve

Robert Ciampitti – approve

Jamie Pennington – approve

Richard Goulet – approve

Jared Eigerman –approve

**Public Hearing #2:**

<b>2013</b>	<b>011</b>
<b>Address: 59 Storey Ave</b>	
<b>Use Variance</b>	
Alter an existing free-standing sign	

Heather Dudko, 2 Phoebe Way, Worcester, MA represented the applicant, Sunoco, 59 Storey Ave., Newburyport, MA at the meeting. The applicant is seeking a Use Variance to alter one panel (out of three) of an existing, freestanding sign located at the Sunoco gas station at the above-referenced address. As proposed, the only alteration to the sign will be the installation of an electronic display for gas prices, which will replace the current manual display. The sign's location and dimensions will remain the same, as will the other two existing sign panels. The proposed replacement panel will feature LED lighting that will remain static with no flashing of

prices or other potentially distracting changes in illumination. The electronic boards would provide the public with more accurate information about gas prices. Employees will be able to change prices on the sign safely from inside the station. Free-standing signs are allowed in the City. The current freestanding sign predates current zoning bylaws for the B1 District; however the sign continues to be appropriate in this area.

**Acting Chair Robert Ciampitti recused himself. Mr. LaBay served as Acting Chair for this hearing.**

**Acting Chair LaBay opened the hearing to public comment.**

**In favor:**

**None**

**In Opposition:**

**None**

**Questions from the Board regarding Public Hearing #2:**

Mr. Eigerman asked if the applicant would be willing to accept the sheet for Able Technologies as part of the approval. Ms. Dudko said yes.

Mr. LaBay asked if the inspection sticker was on the sign now. Ms. Dudko responded that it was and that it will remain. He asked the applicant if she knew when the existing sign was permitted. Ms. Dudko said no, but it predated the by-law.

**Deliberations:**

Mr. Pennington said the approval should be limited to the area of the sign that is changing. Mr. Eigerman indicated he appreciated the applicant's materials.

**Motion to approve the Use Variance made by Mr. Pennington, seconded by Mr. Eigerman seconded with the following 2 conditions: 1) the approval applies to the 35 sf area only and 2) the approval incorporates the 1 page sheet, dated 3/9/2010 from Able Applied Technologies, as part of the project description.**

The motion passed unanimously.

Duncan LaBay – approve

Robert Ciampitti – recused

Jamie Pennington – approve

Richard Goulet – approve

Jared Eigerman –approve

**Public Hearing #3:**

<b>2013      012</b> <b>Address: 351 High Street</b> <b>Special Permit for non-conformities</b>
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Modification to a pre-existing non-conforming two-family structure and use by adding onto and reconstructing
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Lisa Mead, Attorney, Blatman, Bobrowski & Mead, LLC, 30 Green Street, Newburyport, MA represented the applicant Holton Realty Trust (Toby Hoare) at the meeting.

Attorney Mead referenced her letter to the Zoning Board, dated 1/16/2013 when supporting this application for a Special Permit for non-conformities. The applicant is seeking to add a one story 496 sf addition to the north side of the structure and a one story 1871 square foot addition to the south side of the Structure connecting it to the east side of the garage. This would result in a residential unit consisting of 3,287 square feet. An existing deck on the south side of the structure will be removed and living space will take its place. An existing porch on the north side will be removed and replaced with living space and a new egress to the second floor unit. The purpose of the addition is to provide handicap access from the garage into what will become a fully accessible first floor unit which will consist of three bedrooms where there are now two bedrooms. The office space in the garage will be turned into storage. The applicant will occupy the first floor unit as his primary residence while the structure will remain a two family structure. These plans include the need to demolish the porch on the north side of the building and the deck on the south. The use will remain a two-family residence, with no changes proposed to the second floor living unit. The applicant was before the Newburyport Historical Commission (HC) in December 2012 with these plans. The Newburyport Historical Commission determined that the structure was not historically significant and demolition, as necessary, could move forward. Attorney Mead indicated that the change will not be substantially more detrimental to the neighborhood than the existing non-conformities. Attorney Mead referenced 9 letters of support that had been provided, including different abutters and the Mayor.

**Acting Chairman Ciampitti opened the hearing to public comment.**

In favor:

**Kevin Lanphear, 347 High Street, Newburyport, Massachusetts.** Mr. Lanphear represented himself and his wife, Lyndi. The Board has a letter from them. He is in support of the application, they approve the modifications.

**Sarah White, 349 High Street, Newburyport, MA.** Ms. White has lived next door to the applicant for 13 years and is probably the largest abutter. She indicated there is no detrimental impact on the property.

The following Newburyport residents submitted letters:

- **James and Ann Azzaroto, 16 Myrtle Ave, Newburyport, MA** indicated that do not oppose special permit.
- **T. Bradley Duffin, 2 Cutting Drive, Newburyport, MA** indicated no objection to the proposed project.
- **Sean Reardon, 1 Cutting Drive, Newburyport, MA** indicated no objection to the proposed project.
- **Residents, 12 Myrtle Ave, Newburyport, MA** indicated no objection to the proposed project.



- **Ralph Fowler, 18 Myrtle Ave., Newburyport, MA** indicated no objection to the proposed project.
- **Christopher Smith, 7 Cutting Drive, Newburyport, MA** indicated no objection to the proposed project.
- **Jody Axelson, previous renter at 351 High St, Newburyport, MA** requested the Board grant the Special Permit.
- **Kevin and Lyndi Lanphear, 347 High St., Newburyport, MA** approve of the modifications (Mr. Lanphear was also present at the meeting).
- **Mayor Donna D. Holaday** encouraged a favorable approval of the application.

### **In Opposition:**

**None**

### **Questions from the Board regarding Public Hearing #3:**

Mr. Pennington indicated that when buildings get this tight, drainage may be of concern. He asked if the applicant had thought about where the run-off was going to go from the large roof. The applicant said, no and that the architect was working on drainage plans. He is aware of the potential concern with the neighbors.

Attorney Mead indicated that the board could make the condition of no additional run-off part of the approval.

Mr. Pennington asked if there are any wetlands. Mr. Hoare indicated no, there were a lot of trees.

Mr. Eigerman asked if submitting a drainage plan to the building inspector would satisfy Board members.

Mr. Goulet asked about the proposed exterior materials. Attorney Mead indicated shingles on the East and South sides and clapboard on the North elevation. The main building is clapboard, Mr. Goulet asked what was happening with the gable. Mr. Hoare said it is not living area; it is just there to get light into the living area. Mr. Hoare indicated he is trying to be preemptive with making the structure handicap accessible. He will live there with crutches and a wheel chair. Mr. Pennington indicated that there is a need for more single story structures in the City.

### **Deliberations:**

Mr. Eigerman indicated that as far as the Special Permit, he has no trouble finding that the proposed modifications are not substantially more detrimental. The house is placed very far back from High Street. The side set-back was addressed – they have a letter from that abutter. He would be in favor with the condition that they submit a drainage plan to building inspector. Mr. Goulet mentioned the support of the abutters. He asked if they should do a ‘1 story forever’ condition. Attorney Mead indicated they would have to come back with any changes. Mr. Hoare has met with every single abutter twice. Mr. Ciampitti said any change would prompt coming back to the Zoning board.

**Motion to approve the Special Permit for non-conformities made by Mr. Eigerman, seconded by Mr. LaBay with the condition that, prior to issuance of a building permit, a drainage plan is submitted.**

The motion passed unanimously.

**Votes Cast:**

Duncan LaBay – approve

Robert Ciampitti – approve

Jamie Pennington – approve

Richard Goulet – approve

Jared Eigerman –approve

**Public Hearing #4:**

**2013      013**

**Address: 2 Forrester Street (Lot 1)**

**Special Permit for Non-Conformities**

Request for a special permit for multi-family use (#103) to allow three units

**Public Hearing #5:**

**2013      014**

**Address: 2 Forrester Street (Lot 1)**

**Dimensional Variance**

Request for dimensional variances for lot area, rear, side, and front yard setbacks, frontage and lot coverage requirements for multifamily lot

**Public Hearing #6:**

**2013      015**

**Address: 2 Forrester Street (Lot 1)**

**Dimensional Variance**

Request for dimensional variances for lot area, rear setback requirements for a single family lot

Lisa Mead, Attorney, Blatman, Bobrowski & Mead, LLC, 30 Green Street, Newburyport, MA represents the Blue Door LLC, owner of the property at 2 Forrester Street. The property consists of 2 structures, a single family structure facing Forrester Street and a two family structure facing Merrimac Street. The single family structure was built in 1934 and the two family structure was built in 1933. The Applicant proposes to split the lot into Lot 1 and Lot 2 creating a single family lot which faces Forrester Street and a multi-family structure which would continue to face Merrimac Street. Attorney Mead suggests the formal split of the lots into two separate lots more in keeping with the general development and condition of the respective neighborhoods in which both properties exist. Forrester Street is a more developed single family neighborhood while the portion of Merrimac Street in which the structure is located is more consistent with multi-family and commercial uses. The Applicant seeks to add dormers to the rear of the two family and create a third unit in the two family structure, combining the first floor to the rear with a new/renovated second floor, all as one unit. The applicant is not making the existing situation worse; the applicant is proposing to add no new additions to the footprints of the structures, but given the change of lot lines, variances are required. In summary, the Applicant is requesting the Board grant a Special Permit to allow multifamily use on Lot 1 and the following variances to Lot 1: lot area, frontage, side setback, rear setback, and lot coverage. The applicant is requesting variances for Lot 2 for lot area and rear setbacks. If relief is granted from the Board, the

Applicant will proceed to the Planning Board for an ANR approval. Attorney Mead provided aerial maps and assessor records. She provided the following letters of support from the most direct abutters.

- Wayne Hogan, 7 Forrester Street, Newburyport, MA. Mr. Hogan indicated no objection to the proposed project.
- Adam and Dawn Norris, 4 Forrester Street, Newburyport, MA. Mr. and Mrs. Norris indicated no objection to the project.
- Doug Cronin, 335 Merrimac St, Newburyport, MA. They indicated that had discussed the removal of a section of the fence closest to the street with the applicant, at the applicant's expense, and agreed this was an acceptable improvement allowing better site lines for cars exiting both driveways while preserving the separation between the buildings.

**Acting Chairman Ciampitti opened the hearing to public comment.**

**In favor:**

**None**

**In Opposition:**

**None**

**Questions from the Board regarding Public Hearing #4:**

Mr. Pennington asked that if this were a district where four units were allowed, would this be preferable. When you have that much density sometimes it makes sense to have more ownership. Attorney Mead said no that they didn't consider this.

**Deliberations:**

Mr. Eigerman indicated that the other nearby lots are non-conforming with non-conforming buildings. He talked about having the condition of the design of the fence to make sure it is not solid to allow visibility. He said that aesthetically, he wishes they did not need a 6<sup>th</sup> parking spot. Mr. Pennington indicated the parking was sub-optimal.

**Motion to approve the Special Permit for Non-Conformities made by Mr. LaBay, seconded by Mr. Goulet.**

The motion passed unanimously.

**Votes Cast:**

Duncan LaBay – approve

Robert Ciampitti – approve

Jamie Pennington – approve

Richard Goulet – approve

Jared Eigerman –approve

**Motion to approve the Dimensional Variance made by LaBay, seconded by Mr. Eigerman.**

(Dimensional variance for lot area, rear, side, and front yard setbacks, frontage and lot coverage requirements for multifamily lot.)

The motion passed unanimously.

**Votes Cast:**

Duncan LaBay – approve  
Robert Ciampitti – approve  
Jamie Pennington – approve  
Richard Goulet – approve  
Jared Eigerman –approve

**Motion to approve the Dimensional Variance made by LaBay, seconded by Mr. Eigerman.**  
(Dimensional variance for lot area, rear setback requirements for a single family lot.)

The motion passed unanimously.

**Votes Cast:**

Duncan LaBay – approve  
Robert Ciampitti – approve  
Jamie Pennington – approve  
Richard Goulet – approve  
Jared Eigerman –approve

**Public Hearing #7:**

**2013      016**

**Address: 13 65<sup>th</sup> Street**

**Dimensional Variance**

Petitioner seeks dimensional variance for lot width, front, and side setbacks, FAR, frontage, and lot area

**Public Hearing #8:**

**2013      016**

**Address: 13 65<sup>th</sup> Street**

**Special Permit for non-conformities**

Petitioner seeks special permit for non-conformities to convert a pre-existing non-conforming utility building into single family residential use

**Mr. Eigerman recused himself from booth Public Hearing #7 and Public Hearing #8.**

Mark Griffin, Attorney, Law Offices of Mark W. Griffin, 11 Market Square, Suite 8, Newburyport, MA represented Henry Becker (builder) and Maria Eigerman (property owner) at the meeting. Attorney Griffin read from his memorandum of support for the application at the hearing. He indicated that the applicant proposed to convert the existing utility building to a single family residential use. The building footprint will remain the same and the building envelope will be almost the same – except for the addition of a dormer on the westerly side of the building and an open deck and landing. The structure will be raised upward on pilings to comply with the existing regulations associated with the flood zone and this will cause an

increase in building height to 31.5 ft., which is less than the PIOD height requirement. In the event the Board does not approve the conversion, this building will become a derelict building. Attorney Griffin provided arguments indicating that the dimensional variance and the special permit cannot co-exist and the request should just be for the Special Permit.

**Acting Chairman Ciampitti opened the hearing to public comment.**

**In favor:**

**Leon Freedman, Reservation Terrace, Newburyport, MA.** Mr. Freedman indicated he is not an abutter, but is a neighbor. The two pieces of property were once one property. An easement was given to the city to put a road in.

**In Opposition:**

**Dominick Garibaldi, 15 67<sup>th</sup> St, Newburyport, MA.** Mr. Garibaldi indicated there were several signatures from abutters opposed to this project. In 7/2004 a shed was erected. He had asked building commissioner, Mr. Calderwood, if this 2 story shed could be made into a residence. Mr. Calderwood had said no. He indicated that this is a non-conforming shed on a non-conforming lot. He had been previously told by Mr. Calderwood there would be no water or sewer to this property.

Note: the Board had received a letter co-signed by two residents from 10 Lafayette St., Newburyport and 12 65th Street Newburyport. Each had expressed opposition to construction going on in the summer, but not opposition to the project in general.

Several other residents (names listed below in Deliberations Section) had signed a letter saying the number of projects on Plum Island should be limited until more is known about erosion and our water and sewer problems.

**Questions from the Board regarding Public Hearing #7 and Public Hearing #8:**

Mr. Ciampitti said they had heard concerns and asked the applicant to address them. Everett Chandler, Design Consultants, Inc. spoke on behalf of the applicants said that the street the project is on has and continues to be a street and a public way.

Mr. Pennington indicated that he didn't think the structure meets the accessory test.

Mr. Goulet asked if there were any utilities going to the structure now. The applicant said that yes, electric was going to the structure

Mr. Ciampitti asked whether the street has been accepted by the municipality as a public way.

Mr. Freedman, resident indicated there is no water and sewer hook-up to the building. He had been told that if there is no water and sewer hook-up, it is not a buildable lot by the building Commission.

**Deliberations regarding Public Hearing #7:**

Mr. Ciampitti asked the Board to walk through the two applications as originally proposed – a variance and a special permit.

Mr. Pennington said it might be easier to approve as a variance; the lot was similar to surrounding lots. Mr. Goulet agrees. Mr. LaBay said that the argument supporting the variance is that the abutting lots were non-conforming. Mr. Ciampitti said the special permit request was mooted by the variance. Mr. Ciampitti said the application had provided enough evidence to support the dimensional variance request. Mr. Pennington said from a variance perspective, the

existing structure is almost irrelevant. Mr. LaBay summarized the material from residents who have concerns: Mr. Garibaldi (14A, 67<sup>th</sup> Street, Newburyport); Laura Hoffman(12 67<sup>th</sup> Street, Newburyport); Debra Feinman (14B, 67<sup>th</sup> Street, Newburyport); Margaret and Fordyce St-John (5 65<sup>th</sup> Street, Newburyport) – these residents believe all further projects, especially non-conforming proposals, be limited until more is known about erosion and our water & sewer problems.

**Motion to approve the Dimensional Variance made by Mr. LaBay, seconded by Mr. Goulet.**

The motion passed unanimously.

**Votes Cast:**

Duncan LaBay – approve  
Robert Ciampitti – approve  
Jamie Pennington – approve  
Richard Goulet – approve  
Jared Eigerman –recused

**Deliberations regarding Public Hearing #8:**

Mr. Pennington asked if the applicant wanted to withdraw the request for a Special Permit. Attorney Griffin referred to the special permit criteria for the upward extension. Mr. Pennington indicated he would want to know if there was a water/sewer hook-up. Mr. LaBay indicated that the upward extension is predicated by the situation on the Island. Mr. Ciampitti said that without the Special Permit condition, the application remains incomplete.

**Motion to approve the Special Permit for Non-Conformities made by Mr. Pennington, seconded by Mr. LaBay predicated on the condition that the applicant secure water/sewer permits prior to obtaining a building permit.**

The motion passed unanimously.

**Votes Cast:**

Duncan LaBay – approve  
Robert Ciampitti – approve  
Jamie Pennington – approve  
Richard Goulet – approve  
Jared Eigerman –recused

**Adjournment**

**Motion to adjourn made at 11:15 PM p.m. by Mr. Goulet seconded by Mr. Ciampitti.**

The motion passed unanimously.

Duncan LaBay – approve  
Jamie Pennington – approve  
Richard Goulet – approve  
Robert Ciampitti –approve  
Jared Eigerman -approve

**Respectfully submitted, Jennifer Lamarre - Note Taker**