

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

The meeting was called to order at 7:05 P.M.
A quorum was present.

1. Roll Call

In Attendance: Duncan LaBay (Secretary), Robert Ciampitti (Vice-Chair), Jamie Pennington, 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 26, 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

2. Public Hearings

**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 February 26, 2013 Zoning Board of Appeals meeting.
Applicant alone appeared this evening.

Applicant Joe Leone submitted all the changes requested and asked if the board received a letter from his attorney with the index of changes? Mr. LaBay noted the board had a letter with a new set of plans attached. Acting Chair Ciampitti requested the applicant to go through his changes

with the board. The applicant cited the added set back, abutters' names, and view lines from Green Street. He also had sky view lines demonstrating there were no obstructions that blocked views from Green Street. The third-floor loft plan change made clear that this was not to be used as restaurant space and had no elevator. The roof peak height was reduced. Three view lines down Green Street to Murphy's Construction were unobstructed by gable dormers added to the historic part of the building. These were the changes asked for at the last meeting.

Acting Chair Ciampitti stated that with the detail of the changes, he was ready to poll those in favor.

Acting Chair Ciampitti opened the hearing to public comment.

In favor:

Lisa Mead, Attorney, Blatman, Bobrowski & Mead, 30 Green Street, Newburyport, MA on behalf of Brown's Wharf LLC, owner of property located at 40R Merrimac Street.

Attorney Mead was greatly concerned about this project and had worked closely with her client to make a proposed list of changes, submitted as a list of conditions. If the applicant would meet the conditions, based on plans dated March 14, 2013, she and her client would support the project.

Acting Chair Ciampitti responded that the applicant was in agreement with Attorney Mead's submitted list of conditions.

Attorney Mead articulated the conditions for the record.

In opposition:

William Harris, Attorney, 56 Lime Street, Newburyport, MA on behalf of Robert Finneran, 42 Merrimac Street, Newburyport, MA and the Newburyport Chapter 91 Citizen's Committee.

Attorney Harris was asked to deliver a document to the board from abutter Robert Finneran, who could not be present and was concerned the board did not have a certified plan.

Attorney Harris entered into the record a set of printouts from the Newburyport Police Department containing information that confirmed the flow of activity at the foot of Riverside Park. He cited that Acting Chief Bradbury recently asked for a 24-foot cut-through between Mr. Murphy's and Mr. Leone's properties. The document demonstrated numerous police reports of accidents, arrests, and other activities requiring police intervention, as reported by abutters. This project would add 442 patrons at Sunday brunch and during evening peaks in direct conflict with the current activity there. Mitigating traffic flow and circulation flow in Riverside Park was the largest concern.

Another issue, documented in a two-page statement, was Attorney Harris' concerns for the history of the site over the last 100 years. Riverside Park never had a discontinuance of the western side of the park according to the survey report Attorney Harris had commissioned. The city lost a free public landing in 1947. Appendix A1 showed work done for the former owner of the property. The Green Street view corridor was partially obscured with the addition of one story. Attorney Harris said this important view corridor had been open for 190 years.

The other problem was no place to mitigate traffic congestion, as the applicant decided not to mitigate any traffic onto 38 Merrimac Street. There was no place to turn out valet parking when

you had 442 additional patrons with coincident peaks. This location hosted most of the excursion boat activity, with at least 300 seats on the boats, including Boat Camp. How were park users seeking to access Market Landing Park and the boardwalk going to get to their destination if all parking was in use by the restaurants and boat users? The lack of public parking would displace all those attending special events. The NRA's traffic analysis had not taken this project into account. This would be one of the largest restaurants in Newburyport and it will not be properly mitigated. The project was too much of a good thing.

Mr. Leone had worked to provide two public accesses to make it safer, 5 feet on the west and 7 feet on the east for 10 feet of public access and Attorney Harris thanked Mr. Leone for that. Attorney Harris understood Planning Director Port had asked for some landscaping which was also good. The revenue for the city was a positive and the project added more greening of Waterfront Trust Land. Attorney Harris thanked Mr. Leone for that. Attorney Harris was asking for a continuance until there was a traffic analysis.

Acting Chair Ciampitti stated that Attorney Harris had communication with the Newburyport Fire Department on issues the board had no jurisdiction over. Director Port and Vice Chair Ciampitti met with Deputy Chief Bradbury. While traffic was usually addressed before the Planning Board, Deputy Chief Bradbury did not have any concerns for his own access to the site, neither to the Brown's Wharf Building nor to the Davis Auto Building. Generally, the Newburyport Fire Department does not address traffic analysis. If the applicant can show adequate parking within 300 feet, the zoning ordinance requirements are met.

Deliberations:

Mr. Eigerman could not say who was right or wrong about ownership of the land. While Mr. Leone owned the property so far as this Board is concerned, Mr. Eigerman could not argue with the fact that there was a parking problem. He had looked at the NRA commissioned study on parking. The parking appears to be a substantial detriment to the neighborhood. To mitigate, the board either reduces the size of the restaurant or asks for some sort of off-site parking.

Mr. Pennington stated he said enough in the last meeting.

Mr. LaBay appreciated the completeness of the site plans. He was in agreement that the parking issue was bothersome. There was no questioning the impact of a restaurant with 442 seats and he heard his colleague's concerns. He thanked Attorney Harris for the appendix that showed a lot of good history and his concerns about the view corridor remained.

Mr. Goulet thanked the applicant for the positive adjustments, more coherent plans and continuing to work with Mr. Murphy. Parking may not be resolved by reducing the number of seats and he remains concerned.

Acting Chair Ciampitti considered the parking problem as a city issue. Was it appropriate, to saddle one entity, the applicant, with the totality of the parking situation although it was substantial detriment? Were there benefits and did they mitigate the negative side of the situation? With more development surely to come, the parking problem would not go away or be fixed by any one solution to this project. This was just the next project, or perhaps the tipping

point. There was a great deal on the positive side, such as less non-permeable surface. It would be folly for the board to try to solve the parking issue when the site plan review would address it.

Mr. Eigerman suggested mitigating the detriment. According to the NRA study there wasn't capacity for anything else right now. While it may not be fair to ask the applicant to find 72 spaces, Mr. Eigerman nevertheless agreed the number of seats was too big and out of balance. The board dealt successfully with the obstacles of noise and increased lot coverage, but loading was covered in the site plan review. Mr. Eigerman didn't think the board had to order a traffic study. He disagreed with Attorney Harris on that, but agreed the Board should address the problem because the applicant was not parking on his own site. Michael's Harborside was 355 seats and this project was 100 seats more. If the board wanted the project to go forward, in order to secure the benefits, they had the power to limit uses or come up with some mitigation: either fewer seats or some provision for off-site parking, or both. More balance was needed.

Mr. Pennington was not compelled to use that authority. The project was a positive for the city and well-conceived. He was fully prepared to support it. The city would have an issue with the parking. He didn't know whether the board could measure the problem at 72 cars. The city should find a mechanism to solve parking; he wouldn't know what measuring stick to use.

Mr. LaBay said in the past, when he'd come downtown and had to park elsewhere, he had gone elsewhere than where he intended to go. Mr. Leone was taking a risk. Using that perspective, the board had no means of regulating the parking problem. It was a larger city problem.

Mr. Goulet said mitigation may be a dangerous term for us. It is a good project.

Acting Chair Ciampitti stated that an addition to the plus column was that as the largest restaurant it would be a destination. If people had to park far away, it was a plus to have the commerce dispersed, as people walk to where they're going. It was a risk that people parked far away may find a closer destination. This was a fantastic use of the site. It was also the right time for this use, and a careful, thoughtful, adaptive reuse of historic structures.

Mr. Eigerman said the code required certain findings. He made clear that the market should decide whose restaurant succeeds, but there comes a point where something has too much of an impact. In the winter we wouldn't have a parking problem, but during the 8 PM dinner hour in July and August, was when some valet parking would be required. Without anything to mitigate that peak, Mr. Eigerman was not comfortable with the project and he wanted to be. With the evidence before the board, it was hard not to find substantial detriment. The city had 95 % use, considered at capacity, without Yankee Homecoming, including on street parking. It was not the applicant's fault. The board had the authority to make this happen without detrimentally impacting downtown parking in high season.

Acting Chair Ciampitti suggested if there were to be a condition for valet parking to mitigate the summer at the height of the peak, where would that leave Mr. Eigerman on the project?

Mr. Eigerman said there was vacant land where parking was available, such as the Institution for Savings, the Newburyport Five Cent Savings Bank, and the Immaculate Conception lots. All he

could go by was comparables. He didn't know whether the applicant could handle a reduction in seats, but he did know 442 seats would support valet parking.

Planning Director Port had met with the traffic consultant John Byrd, Union Studios and the NRA. He agreed there was a larger parking issue and a need for a parking garage. He said it would be beneficial to pull some of the project's parking traffic away from the waterfront. He cautioned against burdening this applicant. There was a benefit in that the board was not dealing with a proposed strip mall parking problem. Director Port cautioned against the idea of catering to peak days, preferring the downtown to be considered a walkable area without asphalt all over it. He preferred the focus shift to a garage for consolidating the overall parking footprint and the city would take the lead in coordinating the use of the private lots mentioned. This application did not trip the parking threshold for Director Port because the impact would be unknown until the operation went into effect. The overall benefit outweighed any detriment.

Mr. Eigerman acknowledged Director Port's comments, but said 442 seats did trip the threshold for him. Other issues, such as the Waterfront Trust having boating displaced, could be addressed through preferential pricing. Mr. Eigerman was down to one issue and not comfortable with the summer peak problem.

Mr. LaBay observed difficulties in attempting to craft a condition related to when the valet parking should be employed. The applicant may find it was in his best interest to offer valet parking and perhaps that was the better way to deal with parking. The board could strongly encourage his consideration for it.

Mr. Pennington commented that Andiamo's used valet parking. It was not a requirement, but the market needed it.

Mr. Eigerman asked to hear from the applicant.

Mr. Leone said he does less than break even at the Black Cow during the winter months. The 24 parking spaces he controls fill up with Boat Camp and coffee patrons. The 156 seats he has proposed on the deck here were absolutely necessary for his survival. If the board reduced the project's seats substantially, he felt strongly that he would be negatively impacted. At the Black Cow, he has only 60% capacity except in the summer, when he makes it all up. He was taking a chance with this business proposal. He doesn't see the casual customer he's hoping to attract opting to pay for parking. Currently, he doesn't get complaints about parking. The people who come into the restaurant are happy to be there. Locals didn't see a lot of people they knew in his restaurants because they come from out of town. Newburyport restaurateurs all depend on the summer to get through the winter because this is a world class resort town in the summer.

Mr. Eigerman proposed adopting conditions a-e, adding the 5-foot public access on Brown's Wharf.

Motion to incorporate conditions a-e as submitted by Attorney Mead made by Jaime Pennington and seconded by Duncan LaBay.

The motion passed unanimously

Votes Cast:

Duncan LaBay – approve

Robert Ciampitti – approve

Jamie Pennington – approve

Jared Eigerman –approve

Richard Goulet – approve

Adjournment

Motion to adjourn made at 8:40 PM by Mr. LaBay and 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, Linda Guthrie – standing in for Jennifer Lamarre - Note Taker