

**City of Newburyport
Zoning Board of Appeals
August 12, 2014
Council Chambers**

The meeting was called to order at 7:15 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Jamie Pennington
Howard Snyder
Richard Goulet (Associate Member)
Libby McGee (Associate Member)

Absent:

Duncan LaBay (Secretary)

2. Business Meeting

a) Approval of Minutes

Minutes of July 22, 2014 Meeting

Mr. Pennington made a motion to approve the minutes and Mr. Snyder seconded the motion.

The motion passed unanimously.

Votes Cast:

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

b) Request for extension of Use Variance – 7 Henry Graf Jr. Road, 2013-050 *(voted on after hearings)*

Attorney Mark Griffin represented the owners of 7 Graf Rd. and requested an extension for the use variance that the board approved on October 22, 2013. His client is working towards a building permit, but has been delayed with design and engineering plans. They requested an additional six months deadline.

Mr. Ciampitti made a motion to approve the extension of the Use Variance for six months and Mr. Pennington seconded the motion.

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings (5 on the agenda)

2014 038
Address: Route 1 (parcel 1)
Special Permit
Allow six residential units (Use #103)

2014 039
Address: Route 1 (parcel 2)
Special Permit
Allow six residential units (Use #103)

This hearing was continued from the July 8th meeting. BC Realty Trust was represented by Attorney Lisa Mead. There are two separate special permits being requested on two separate lots (for 6 townhouse style units on each). Ms. Mead addressed concerns from the board and public expressed at the last meeting.

-Public safety was discussed. Ms. Mead presented a signoff from Newburyport Fire. Newburyport Police and Lt. Murray signed off as well and it was submitted to board. Lt. Murray indicated there have been squatters on the property and complaints from neighbors in the recent past. Property owners and police have worked to get them to leave.

-Pedestrian safety was discussed. A sidewalk was confirmed and shown on plans that would extend from Hill St. to the property entrance. Cross easements would also be in place.

- Concern over fireplaces in the new residences was discussed. Given the elevation, wood/coal burning fireplaces would exhaust into neighboring yards. Owners agreed to place a deed restriction on coal and wood burning stoves, but would allow gas-burning fireplaces.

-Tree removal was discussed and a ‘no-cut’ area was defined and shown on plans.

-The wind energy conversion ordinance was discussed. Ms. Mead explained that after looking this, it applies to the siting of wind turbines, but is not to be applied in reverse. One cannot prohibit from building on their own property.

-The City Engineer submitted comments to the board where he pointed out that sidewalks and public water/sewer don’t exist. Sidewalks and connections would be included in the project. The project would not affect traffic conditions, but requires MA DOT approval. Ms. Mead

referenced letters from Hill St. residents to MA DOT and DPS regarding curb cuts and traffic – until permits are secured, no final determination from MA DOT would happen.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Jacqueline Kieras, 22 Hill Street
Stated her opposition.

Jason LaCroix, 14 Hill Street

His house is among closest to the new development. He suggested to the board that any removal of trees is worth a site visit because it would remove much of the hillside. They have not addressed erosion control or privacy issues. He would like the deed restriction extended to oil and wood pellets burning fireplaces also. The density of the project is not keeping with the community.

Christine Robinson, 12 Hill Street

She expressed concern of sidewalk only proposed on one side of route one. She asked for clarification on the total number of bedrooms. (24). And presented signatures of opposition from neighbors.

Mike Stanton, 10 hill Street

He expressed a shared concern that sidewalks should extend north on route one also. He was glad many issues were addressed, but he was not comfortable with the density, tree line/erosion and emergency access on route one.

Eileen Shapiro, 2D Hill Street

Her concerns were density and that the residences are proposed as rentals. That is a big neighborhood difference and not in character.

Robert Cronin, Ward 3 City Councilor, 126 Merrimac Street

He understood the position on the wind turbine and taking of land, but still believes that no inhabitants should be located within. He also believes that a traffic study should be done before a Special Permit is granted.

Steve Shapiro 2D Hill Street

He expressed this is a predominantly a neighborhood of single family, duplex and triple family homes. He is opposed to the project.

Andy Morris, 23 Cherry Street

He expressed opposition. Traffic, entrance/exit, parking, sidewalks, snow removal, and drainage were discussed as concerns.

Jeff Tomlinson, 21 Hill Street

He agreed with Councilor Cronin on the wind turbine ordinance. He is not an advocate of taking personal property, but setbacks are in place for reasons of health and safety and the sections should be construed together as a statute. As far as traffic congestion, only route one has been discussed, but not the impact of surrounding streets.

Tim Loring, 28 Hill Street

Little had been said on the impact of quality of life. He expressed that people in the neighborhood have been abused and are not in favor of this project.

Patty Spalding, 5 Bricher Street

She questioned why DPS would not be involved yet and their opinion should be welcomed. There had been discussion that this is a primarily multifamily neighborhood. She passed out a color-coded map of the neighborhood and single, multifamily homes.

She also presented to the board a deed with slope easement on the parcel.

Sheila Twomey 16 Hill Street

She is opposed. Concerns included sidewalks, rental units, and developing within the setbacks of the wind turbine.

Dan Twomey 16 Hill Street

His concerns included traffic, parking on side streets, and kids/traffic.

Pamela Stone, 30 Hill Street

Her concerns included sidewalks, and wind turbine flicker for those living in the new residences.

Michelle Stanton – 10 Hill Street

Her concerns were the flicker and what would happen if construction starts, does not finish and the units are abandoned.

Ms. Mead addressed a few of the concerns expressed:

- Wood pellets would be prohibited, but she strongly suggested not restricting oil.
- There is currently no proposal to extend the sidewalk north to Pond Street.
- Parking on the property would exceed zoning requirements.
- Traffic – DPS did provide a traffic opinion.
- She reiterated that the refinement of plans would be reviewed at a site plan review. (Snow removal, drainage, etc.)

Questions from the Board regarding Public Hearing #1 & #2:

Mr. Goulet asked for clarification on the extent of the proposed sidewalk. Ms. Mead presented, and stated that they would have to get approval of MA highway, of course.

Mr. Pennington asked about MA Highway and their approvals. Ms. Mead explained that once all permits are in place they would approve the project pieces. He had concerns over vegetation and

sightlines. Ms. Mead clarified that any vegetation would be kept low, but they do not know until site plan review what would be in place.

Mr. Snyder was concerned with vegetation removal, a traffic study had not yet been done, and the abandonment issue. Ms. Mead addressed his concerns.

Mr. Pennington asked about trash removal on site. Ms. Mead answered that will be presented in site review for and she presented some possible places. He asked if there were patios in the back of units. Ms. Mead answered that decks are shown on plans. He was also concerned about the erosion of the site. Ms. Mead presented the retaining wall around the property and plantings where grading was not required.

Ms. McGee brought up the slope easement question. Mr. Ciampitti responded that it refers to a book and page and they would have to abide by them.

Deliberations:

Mr. Ciampitti appreciated the detail and additional efforts. Zoning Board approves the broader issues. He was concerned with traffic congestion, pedestrian access, risk involved, and the property within the district. He leaned in a way that this project is not desirable to the public welfare.

Mr. Goulet was confident that many of the technical aspects would be addressed at site plan review. He thought it reasonable and fitting with the master plan.

Ms. McGee was concerned with traffic congestion. Though she supported the growth close to train.

Mr. Snyder appreciated the concerns of neighbors. He struggled with density. He supported the multifamily idea in the district and smart growth in the master plan.

Mr. Pennington was in the middle. He was not prepared to support as proposed.

At this time, Ms. Mead requested to withdraw the application.

Motion to withdraw without prejudice application 2014-038 for a Special Permit and made by Mr. Ciampitti, seconded by Ms. McGee.

The motion passed unanimously.

Votes Cast:

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

Motion to withdraw without prejudice application 2014-039 for a Special Permit made by Mr. Ciampitti, seconded by Ms. McGee.

The motion passed unanimously.

Votes Cast:

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

2014 047

Address: 59-61 Bromfield Street

Appeal

Appeal of the Building Commissioner's decision to not enforce a complaint that the demolition of the structure was not permitted under the City's Building Demolition ordinance or the Demolition Control Overlay District

Bill Harris (Newburyport Preservation Trust), 56 Lime Street

NPT attends Historical Commission Meetings and works with residents and developers on preserving historic structures. The NPT is appealing the building commissioner's decision not to enforce a complaint that 59-61 Bromfield Street was not permitted under Newburyport's Building Demolition ordinance OR the Demolition Control Overlay District ordinance (demolitions occurring on or after 4/16/14). NPT requests that the developer go through the process of applying for the demolition application, paying fees, and a permit be issued. They should follow the process in place.

Tom Kolterjahn (President, NPT), 64 Federal Street

Mr. Kolterjahn brought the board through a timeline of what occurred. He presented a series of photos since 1980 through the present. He personally saw this home on a consult from basement to attic and expressed that it was in no way in danger of collapse. He presented the slow 'demolition' floor by floor through photos of the exterior. He argues this was a major demolition and was never applied for. NPT wants to prevent this from happening again.

Linda Miller, 20 Ship Street

She has walked by this structure daily for 30 years. It was full of federal features, was not unstable and was fully occupied. She began worrying as replacement of each floor started from the bottom, up. She argued that is not post and beam anymore – it is a stick structure and it no longer contributes to the national historic district. She argued it was done illegally as they did not go for the demolition delay. One needs permission according to law.

Stephanie Niketic, 93 High Street

Ms. Niketic spoke of the fact that no demolition permit was applied for except for removal of two rear additions.

Linda Smiley (Historical Commission), 7 Atwood Street

She clarified with minutes from NHC what Mr. Ragusa applied for. The additions in the back were to be demolished. There was never any mention of any demolition of the house and there was talk of keeping some of the original features.

Kem Widmer, 272 High Street

He spoke of sill replacement and that the house on could easily have been renovated and not replaced. He argued that far more energy was used in reconstruction than to repair what needed to be repaired.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Linda Tulley 18 ½ Walnut Street

NPT member. Moved here 2000 in her retirement because of the historical beauty. She was appalled at what happened. She asked what the difference is between this step by step demolition and a true demolition and rebuild. She noted the City Council is pro-preservation and recently voted on the DCOD. We need to ensure these ordinances are followed.

William Hallett, 23 Olive Street

NPT member. This home is the history of the city is what it is all about. He plead to prevent unpermitted demolition.

Reginald Bacon, 21 Strong Street

NPT member. He was in support of the enforcement of zoning laws. If additional demo was required, the appropriate steps should have been taken. We are citizen curators.

Mary Haslinger, 299 High Street

She was in favor of the appeal. She believed it was not necessary to replace everything to make the repairs needed. She was disappointed that a public hearing was not held for a demolition permit where the public could hear and speak.

Elizabeth Hallett, 23 Olive Street

It is our job to honor and preserve for future generations. She questioned what the use of a law was if it is not enforced.

Charles Tontar (Ward 4 City Councilor), 29 Jefferson Street

As councilor when he voted for DCOD, he voted so that something like this would not happen.

Rita Mihalek 27 Charter Street

This appeal is legitimate and necessary. He was horrified at the inadequacy of the city here.

In Opposition:

Kevin Foley (Attorney, representing Mr. Ragusa), 246 High Street

-Attorney Foley argued that the NPT does not have standing to come before the board – they must be specifically aggrieved. This would be on solid ground to dismiss on that alone.

-He argued that the NHC has no role when additional permits are needed after a project has started.

-He addressed comments from supporters of the appeal.

-He spoke of letters from neighbors in support of project at 62 & 69 Bromfield Street

Mr. Ragusa, 278 High Street

His intention at NHC was to restore the building. He could have gone the route of a demo delay and waited a year at the time he went before the commission. He lives and works in town and would never tear down a historic building. Structural deficiencies had to be fixed. There has to be a middle ground where parts of buildings are saved and other parts replaced. He feels awful about the public response, yet understands the passion.

Peter Binette, Assistant Building Inspector

In the process of what was going on, Gary Calderwood asked for another set of eyes to go to the property. He met Mr. Ragusa and was surprised at the original skeleton that is still in place. To give the impression of an entire rebuild is untrue.

Gary Calderwood, Building Inspector

A permit was granted for a complete interior and exterior renovation. He argued that changing from 5 units to 2 units, there are building codes that need to be followed. Sills and the north wall were deteriorated. He argues they could have torn down and rebuilt the house cheaper. There are five inspections on a perfect job and they have already been to this property five times (and are only on the foundation stage). The work was absolutely done by permit and process.

Sherif, 192 Water Street

He attended many meetings on ordinances and wanted to understand. Was a rule broken? What is a demo? The ordinance is clear on a demolition definition. He believed a process wasn't broken because demo wasn't done. This will become precedent and redefining what a demolition is.

Martha Rossman, 3 Chestnut Street

She has great respect for what they are trying to do with the renovations. She would like to see the construction finished and inhabited and would like to see Mr. Ragusa finish the project.

Mr. Harris responded to some of the comments made.

Questions from the Board regarding Public Hearing #4:

Mr. Ciampitti asked if NPT is seeking fines. Mr. Harris clarified only if there was defiance. Mr. Ciampitti commented that ZBA are not a precedent setting board. If a project needs a substantial change, what should process be? There was discussion of process with Mr. Harris and Mr. Calderwood.

Mr. Snyder asked for a permitting timeline clarification.

Mr. Calderwood brought the board through more on the process and how it was followed.

Deliberations:

Mr. Goulet commented that he would have to rely on subject matter experts and according to them, the work had to be done.

Mr. Pennington agreed. There are a few additional facts he would love to have to make an informed decision. There is some original house there. How much and is it a demo? There us a grey area. This clearly met demolition definitions from NPT perspective, but not developers. He was leaning toward not in favor of the appeal.

Ms. McGee questioned the 25% demolition in DCOD. Mr. Calderwood pointed out that this was not relevant.

Mr. Ciampitti was also struggling. He would love to know what is under the green board.

Mr. Ramsdell thought about whether the work was done properly according to the building commissioner. It seemed the record keeping was scattered. From listening to all, the building inspector directed the contractor in what he did.

Mr. Snyder commented that alteration/renovation requires some form of demolition. It is a grey area.

Mr. Goulet commented that we have a solid permitting processes.

There was discussion on if anyone would change their decision after seeing the structure on a site visit. It was decided that no, decisions would not change.

Motion to grant Appeal application 2014-048 made by Mr. Snyder, seconded by Mr. Goulet.

The motion did not pass.

Votes Cast:

Ed Ramsdell– no

Robert Ciampitti – no

Duncan LaBay – absent

Jamie Pennington – no

Howard Snyder– approve

Richard Goulet – no

Libby McGee – non-voting

2014 048 Address: 8 Eagle Street Appeal

Annul the Building Commissioner's issuance of a building permit for the construction of a single-family home at 8 Eagle Street on the grounds that (i) said property long ago merged for zoning purposes with the adjacent property at 10 Eagle Street and it is not a buildable lot and (ii) even in the absence of the merger, said property was not vacant on the date of the zoning amendment rendering it non-conforming and consequently does not benefit from the protections of MGL c. 40A, § 6, ¶ 4, and further order the recipient of the referenced building permit to immediately cease and desist all activities under said permit

Mr. Pennington recused himself from this hearing.

Matthew Belanger, Ashley Belanger, (4 Eagle) Sean Casey, Susan Casey, (10 Eagle) Tyler Walker, & Juliet Walker (13 Eagle) were represented by Attorney Lisa Mead. Ms. Mead brought the board through the appeal application stating two main reasons behind it.

1. The Locus (8 Eagle Street) merged for zoning purposes with the adjacent 10 Eagle Street property when they twice came into common ownership once rendered non-conforming, the Locus is no longer itself a buildable lot.
2. The Locus was not vacant on the date if the Zoning Ordinance amendment rendering it non-conforming, such that it does not qualify for the protections affordable by G.L. c. 40A, § 6, ¶ 4.

Chair Ramsdell opened the hearing to public comment.

In Favor:

A petition from neighbors was passed out by Ms. Mead.

In Opposition:

Attorney Mark Griffin represented Regan Family Series LLC, owners

Mr. Griffin stated that the owner started site work, but has stopped since appeal. Mr. Griffin commented on Ms. Mead's arguments.

1. On the merger, he argued that the beneficiaries were not the same
2. On the lot not being vacant, he argued this issue was raised and resolved by Attorney Blake, from city solicitor Kopelman and Paige, prior to the building permit being issued.

Kevin Wallace, Realtor

The owners have made significant monetary investment to start the project and build a single family on the site.

Gary Calderwood, Building Inspector

At the time, they thought the landowner was trying to split the lot illegally. Only recently did they start to reconsider the situation with two different trusts/beneficiaries. Mr. Raycroft, City Assessor contacted Kopelman and Paige and Attorney Blake. It was determined that the lot was

empty at time of zoning change in 1957. On Attorney Blake's advice, he issued the building permit.

Ms. Mead commented that Attorney Blake's letter did not mention common ownership at all. Mr. Griffin commented that it would be reasonable to believe that Attorney Blake reviewed the trusts in the packet Mr. Griffin originally submitted when trying to obtain a permit in 2010.

Questions from the Board regarding Public Hearing #4:

Mr. Ciampitti asked if the beneficiaries were noted in the trust. Mr. Griffin answered yes, Timothy and Kimberly Regan, as sole beneficiaries, one per trust.

Deliberations:

There was some discussion of Attorney Blake's letter and clarification of his statements/conclusion.

Mr. Ramsdell commented that there were two affidavits, equally valuable and suspect and they cancel each other out. He was inclined to be sympathetic to the city solicitor, though the argument was persuasive.

Mr. Ciampitti was aligned on the analysis.

Motion to grant Appeal application 2014-048 made by Mr. Snyder, seconded by Ms. McGee.

The motion did not pass.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – no
Duncan LaBay – absent
Jamie Pennington – recused
Howard Snyder– approve
Richard Goulet – no
Libby McGee – no

2014 049

Address: 3-5 Broad Street

Special Permit for Non-conformities

Allow the extension of a pre-existing non-conforming front setback for a previously constructed sunroom

Suzanne Poitras, owner of 3-5 Broad Street appeared before the board. She did extensive renovations on this property over the years. Would like to sell. The building inspector went through the home and found that there was a 5x10 sun porch with no building permit. She explained she had paperwork done and then had a major family crisis. The front yard setback on the main house is 9.3 ft. no additional non-conformity was created. There was a minimal decrease in open space.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Gary Calderwood had no issue with this. He would like to see this go forward so the sale can happen.

In Opposition:

None

Questions from the Board regarding Public Hearing #5:

Mr. Ciampitti asked how many feet were added. Ms. Poitras answered 110 square feet were added.

Deliberations:

None

Motion to approve Appeal application 2014-049 for Special Permit for Non-conformities made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

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

Adjournment

Motion to adjourn made by Mr. Ciampitti, seconded by Mr. Pennington at 12:27 AM.

The motion passed unanimously.

Votes Cast:

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

Respectfully submitted, Katie Mahan - Note Taker