

**City of Newburyport
Planning Board
May 18, 2022
Minutes**

The online meeting was called to order at 7:05 PM.

1. Roll Call

Planning Board Attendance: Alden Clark, Beth DeLisle, Bob Koup, Jamie Pennington, Heather Rogers, Bonnie Sontag, Rick Taintor, and Don Walters

Planning Director Andy Port and note taker Linda Guthrie were also present.

2. Public Hearings

***1) Brad Kutcher
344 Merrimac Street- VI-C Special Permit
VI-C Special Permit (PBSP-22-4)***

Nick Cracknell, 13 Pickard St., Amesbury, said Sam and Michelle Kimball own both units of a circa 1805 two-unit condominium known as the Levi-Carr House. The proposal restores the historic house, converts it back into a 2,500sf single-family dwelling, and constructs a second single-family dwelling in the rear. The project, already presented to the Newburyport Historical Commission (NHC) and the ZBA, includes a revised draft preservation restriction that incorporate changes from a site visit with the NHC and the Newburyport Preservation Trust (NPT). Improvements to sewer, water, and gas will be made when connecting to the proposed new house, and for the homeowner at end of Union Place because they are on septic and using a lead pipe that should be replaced. The affordable housing contribution is expected to be around \$40,000 based on \$20/sf. The historic house restoration includes removing non-contributing elements, such as replacing 13 vinyl windows. This proposal places the house 22 ft further back from Merrimac Court than the original plan to minimize privacy impacts to neighbors who prefer no access on Merrimac Court in this intimate neighborhood. The existing Union Place driveway currently accommodates 6 cars and will be reconfigured to serve both dwellings. The setback from Merrimac Court is 55 ft. The minimum lot area for a two-family in the Waterfront Marine District (WMD) is now 15,000 sf due to a zoning change, and the maximum building height is 25 ft. The predominant land use is single family homes in variety of architectural styles, a couple of two-family structures, and active marinas and boatyards. Existing conditions include a dilapidated shed that will be removed and replaced with grass, an accessory building, a mature elm tree with 40-50 ft canopy that will be preserved, open lawn at the lower end of lot, and a wide curb cut on the narrow 1,400 sf lot with about 375 of linear frontage on 3 streets. The project needed a rear yard variance. Existing non-conformities are front, rear, and side yard setbacks.

Nick Cracknell said 3 ZBA meetings for dimensional relief identified the neighbors' concerns about the potential loss of water views, sightlines, privacy, traffic, access, parking, deliveries, and construction vehicles. Appropriately scaled fencing is added, and the driveway is moved

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next to the New England Development building. Two paved sections of Union Place on this property need right-of-way easements. The first floor of the modest new house is 14 ft above the flood elevation for a total house height of 23 ft 9 and 7/8 inches high. The new house is about 95 ft from wetland. The Conservation Commission approved the project with erosion control measures. The new Cape style house is parallel to Union Place with a small 2-car garage and a privacy fence. Fencing already on the street will be continued. A view easement is added for the new house at 342 Merrimac Court. Street trees are proposed for Union Place.

The NHC focused on windows in the existing structure. The proposal includes 9-over-6 simulated divided light wood windows on the bottom and 6-over-6 windows on the second floor, preserving all window casing and trim around the windows. The big central chimney is unique and the NPT recommended preserving inside and outside the house with NHC support. The door and stairs will be restored.

The site plan and elevations have not changed since end of January. Clapboards and all natural materials will be used. The public benefits include significant offsite improvements of restoring a neighbor's front yard due to the negative impact of the construction at 342, sewer, water, and gas upgrades, removing overgrown hedges on the street that affect sightlines, new shade trees along Union Place, the affordable housing contribution, edge repairs for a Currier's Landing unit on Merrimac Court, the easement to City for maintaining a drainage swale on the property, and a deed restriction to prevent future expansion on this site. If the VI-C is not approved, the owners would seek an addition to the existing house. Mr. Cracknell reviewed the special permit findings.

Clarification questions from the Board.

Richard Yeager asked if the shed had no historic value and about shutters shown on the rendering. Mr. Cracknell said the shed is not salvageable because the roof is half gone. The shutters will look like they did originally and are only on Merrimac Court.

Public comment open.

Sam Kimball, owner, the funds from the new house at the rear will fund the historic restoration that helps meet their expanding family's needs.

Elena Reynolds, 2 Merrimac Court, said the Kimball's are considerate toward their concerns. She appreciates that the 11 Union Place unit will be off septic because of its proximity to wetlands.

Dan Danner, 346 Merrimac, said Union Place has light traffic and a basketball hoop on the street. He appreciates the care the Kimball's are taking

Public comment closed.

Don Walters asked if new structure will be more energy efficiency than the stretch code.

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Brad Kutcher said yes, everything would be high efficiency, included the closed cell wall insulation and open cell ceiling insulation.

Bonnie Sontag reviewed the draft findings and suggested adding language to special permit finding #4 that specifies the hardship. Director Port agreed that memorializing the hardship rationale in the decision is appropriate because this approval sets a precedent for both the ZBA and the Planning Board. The variance was granted prior to this Board's special permit approval.

Heather Rogers supported the nicely-sized structure for this neighborhood.

Beth DeLisle is concerned about the VI-C language. The language says it shall comply, and it doesn't, it has a variance. But the ZBA variance doesn't render the project as complying with the setbacks. It's a hard argument to make legally, given that the language of the VI-C doesn't speak to that. Director Port said if there's general agreement on the approval, he would provide a revised decision for the next meeting.

Bonnie Sontag said the Board can acknowledge the variance in the language and made a note that the VI-C language needs to be worked out.

Rick Taintor agreed with Ms. DeLisle. He would be more comfortable if the applicant received a variance to be compliant with the zoning to discourage people going to the ZBA for variance from the new ordinance. This is a good project. He suggested narrowing the approval, and being very precise on the wording in the findings, as well as changing the language in finding #2 where it begins, "Similar relief..." He didn't think it necessary to reference the neighboring property where two adjoining back yards are joined. The relief was adopted under a different ordinance. That statement needs to be revised in order not to tie this property to that one in any way because they are different situations. Director Port said he would review the decision accordingly.

Bonnie Sontag reviewed the general special permit draft findings which could be enhanced with specifics from the presentation on #6, #7, and #8. She reviewed the draft special conditions and requested using as close as possible to the actual sf, about 1,900 sf and the actual affordable housing contribution of about \$38,000.

Don Walters said the \$20/sf affordable housing is inflated to account for the CPI. Director Port said it will be paid at the time of the building permit and doesn't take into consideration the fee. Mr. Walters would prefer language that says, "equal to \$20/sf."

Bonnie Sontag said the occupancy permit for the new structure is after restoration is complete.

Nick Cracknell preferred to complete the restoration by a date certain, within a year of the approval, rather than tie it to the occupancy permit. Director Port said the reason for that language is the need for something in the decision with leverage or triggers that staff can rely on without chasing down contractors. Based on experience with enforcement, the occupancy permit provides greater leverage.

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Nick Cracknell agreed. As a backstop some form of surety would be posted to ensure the project finishes in a reasonable amount of time.

Rick Taintor recommended a special condition for street tree maintenance and ensuring that the colored site plan is part of the decision because it shows the trees. The condition would be the same as the one used for Hancock St., but in this case, the street trees are on private property due to the narrowness of Union Place. He suggested, "Easement for Tree Maintenance on Union Place: Consistent with applicable provisions, Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance, the applicant shall include in the condominium documents for both dwellings an easement to allow the DPS to access and maintain the proposed trees along Union Place since they will not be placed in the existing public right of way....prior to the certificate of occupancy." The City should be able to fix a tree problem if needed, assuming that the owner might actually do it first.

Don Walters said the deed restriction for single family usage should be in the special findings. The language in the draft special #1, "...no further subdivision of this lot shall be permitted," doesn't have to be filed at the registry. Director Port agreed to add that.

Bonnie Sontag recommended to continue until after the NHC meeting when they will presumably accept the draft PR.

Don Walters made a motion to continue the VI-C Special Permit application for 344 Merrimac Street to 6/15/22. Richard Yeager seconded the motion, and all members present voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

2. General Business

a) Approval of Minutes

Don Walters made a motion to approve the minutes of 4/20/22 as amended. Bob Koup seconded the motion, and 8 members present voted in favor. Richard Yeager abstained.

Motion Approved.

b) Other updates from the Chair or Planning Director

Bonnie Sontag said the IFS submitted their settlement decision design for consideration by the Planning Board. The public hearing is scheduled for June 1. A site walk date will be posted. Director Port suggested 5:30 PM on the night of the hearing. All the new material is on the

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open.gov platform. All previous material is on the City website. Don Walters recommended members review the original decision to understand the issues the Board had with the project. Bonnie Sontag asked for the staff report by early next week because of the long weekend.

Jamie Pennington created a 3D model in SketchUp to help with the Waterfront West zoning.

Director Port said the proposed STRUs amendment was not adopted because there was no consensus on the terms, especially the amnesty provision for existing operators as to whether they are residents of Newburyport or not and some other similar concerns about non-conformity. The timeframe to act on the ordinance closed. There seemed to be a common thread of agreement about operators who were properly registered with the state as of a certain date, but differences about the parameters. Allowing existing operators to continue operating did not have any consensus.

3. Adjournment

Bob Koup made a motion to adjourn. Don Walters seconded the motion, and all members present voted in favor.

Motion Approved.

Meeting adjourned at 8:43 PM

Respectfully submitted -- Linda Guthrie