

**City of Newburyport
Zoning Board of Appeals
November 27, 2018
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)
Renee Bourdeau
Maureen Pomeroy
Edward Cameron
Mark Moore

2. Business Meeting

a) Approval of Minutes

Minutes of the 11/13/18 meeting

Ms. Bourdeau made a motion to approve the minutes and Mr. Ciampitti seconded the motion.
The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – approve

b) Request for Minor Modification – 42 Merrimac Street (2008-034 and 2008-035)

The applicant is requesting to square off roof deck with left over materials.

Ms. Bourdeau made a motion to approve the request for minor modification and Mr. Cameron seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – approve

c) Request for Minor Modification – 11 61st Street (2018-035)

The applicants are requesting to add a 10'x5' balcony projecting off the rear elevation. It would not touch the ground and would be supported by brackets.

Ms. Bourdeau asked if the applicants received any comments for or against the changes from neighbors. They did not.

Ms. Bourdeau made a motion to approve the request for minor modification and Mr. Moore seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – approve

3. Public Hearings

2018 089
Address: 2 Storey Avenue
Sign Variance
Allow a free-standing sign

The applicant requested a continuance to 12/11/18.

Motion to continue application 2018-089 to 12/11/18 made by Ms. Bourdeau, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – approve

2018 028
Address: 1 Inn Street, Unit 7
Appeal
Appeal of the denial of a request for issuance of a cease and desist letter by the Zoning Enforcement Officer dated 4/6/18 for noise and vibration in excess of what is allowed under the Zoning Ordinance due to operations associated with the property located at 35 Market Square

The applicant requested a continuance to 12/11/18.

Motion to continue appeal 2018-028 to 12/11/18 made by Ms. Bourdeau, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
 Robert Ciampitti – approve
 Renee Bourdeau – approve
 Maureen Pomeroy – approve
 Edward Cameron – approve
 Mark Moore – approve

2018 045

Address: 79 Parker Street

Variances

Construct light industrial building and include tap room with food service (Use #501) therein, include entertainment use (Use #407) and meeting space (Use #421) on the property, requires side setback relief for light industrial building, and relief for required parking spaces distance from use on site

2018 046

Address: 79 Parker Street

Special Permit

Allow accessory retail use (#604) in light industrial building/brewery

Attorney Lisa Mead of Mead, Talerman and Costa LLC, 30 Green Street presented the application. The applicants came before the board in Spring 2018 with the project and withdrew it to address feedback from the board. The applicants again filed over the summer and have continued the applications until tonight in order to have a full board. Key differences include the requested restaurant use for the barn being dropped, reduced maximum seating in the barn and exterior from 125 inside to 100 in total, brewery prohibited from having an event simultaneously with the event barn.

The location was historically residential, and this lot is the last one in the area. The design of the site is centered on the preservation of the historic farmhouse structure, reuse and rebuilding of the barn and preserving the farm setting at request of the Historical Commission.

The existing Historic farmhouse would be restored and have an office use. A later addition would be removed and reconstructed. The barn would be demolished and reconstructed and used as event space for private functions and special events. There will be a commercial kitchen in the barn, but it will not be used catering and preparation of food to be served at the event. This space will be limited to 100 seats in total for any combination of indoor and outdoor seating. The brewery would be prohibited from having an event simultaneously with the event barn. Use variances for entertainment and meeting space are needed. The new industrial building would house Newburyport Brewing at the rear of the site would contain a tap room/restaurant that will be limited to 175 seats in total (both indoor and outdoor or any combination thereof). If the brewery is hosting an outdoor event it will be limited to an additional 100 outdoor seats since these events will not occur when the barn is being used for an event. Use variances for entertainment, restaurant use are needed as well as a special permit for accessory retail use are needed. The accessory retail and entertainment use exist at the current Newburyport Brewing location on New Pasture Road. The lot meets all dimensional requirements except side setback related to the light manufacturing building. The setback is proposed at 23.6' where 50' are required. A variance is needed for parking as well as location of parking spaces. There are a proposed 68 parking spaces

directly adjacent, an additional 16 next door at 79A Parker Street, and an additional 24 spaces at 77 Parker Street. This totals 108 parking spaces where 97 parking spaces would be required if all uses were happening at the same time. The additional 24 spaces are over 300' away, requiring the variance for location.

The project will require a Special Permit for professional office use and a major site plan review from the Planning Board. An Order of conditions from The Conservation Commission would also be needed.

Eric Botterman, of Millennium Engineering explained the four items driving design the design; including the historic farmhouse, 25' city wetlands buffer, state riverfront 200' buffer, and flood plain.

Brandon Holben, of Winter Holben Architecture and Design explained that the NHC approved the design and modification of the farmhouse and barn. Everything would be brought to ADA compliance. Not much changed since the last application with design as NHC already approved design. The farmhouse would be renovated, new addition built, including a connector to the new barn. An industrial building in the background would surround an interior courtyard, giving the project a campus feel.

Attorney Mead went over the hardship determination for the requested variances. Soil condition, shape and topography of the land were argued. The property is unique and significantly challenged by wetlands and river front area on three sides. It also sits at the intersection of Graf Road and Parker Street. There was also an added challenge of working around a historic structure. Parking challenges are directly related to wetlands restrictions, leading to the need for off site parking.

A Special Permit for Use; Accessory Retail Use (250 s.f.) in the new industrial building (Use #604) is requested. The following general conditions were filled according to Attorney Mead;

1. The use requested is listed in the table of use regulations or elsewhere as in the ordinances requiring a special permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.
2. The requested use is essential and/or desirable to the public convenience or welfare. The use is allowed in the I-1-B district by Special Permit. It is convenient, desirable to have retail space. Dianne's Desserts and Fastenal are among others in the business park with accessory retail uses
3. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety. The accessory retail use alone would not affect traffic or pedestrian safety.
4. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare. The accessory retail use would not have any restrooms or affect municipal systems.
5. Any special regulations for the use, set forth in the special permit table are fulfilled. There are no special regulations for use in this case.
6. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare. This use is permitted utilized in the business park currently.
7. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood. There are a few other accessory retail uses currently in the district.
8. The proposed use is in harmony with the purpose and intent of this ordinance.

9. The proposed use shall not be conducted in a manner so as to emit any dangerous, noxious, injurious or otherwise objectionable fire, explosion, radioactive or other hazard, noise or vibration, smoke, dust, odor or other form of environmental pollution.

The applicants have proposed the following conditions to approvals;

1. Office Building:
 - 1.1. Rehabilitation of the existing farmhouse and renovation of its addition shall comply with design recommendations of the Newburyport Historic Commission. (The Historic Commission approved the design presented at their June 27th meeting).
2. Industrial Building:
 - 2.1. The accessory retail use (in the case of the brewery - promotional items, t-shirts, keychains, hats, etc.) shall be located within the Industrial Building, may be accessory to any industrial use, and shall not exceed 250 sf in floor area.
 - 2.2. The accessory taproom/restaurant footprint (including kitchen, restrooms, bar and stage), shall be located within the Industrial Building, shall be accessory solely to production, and no other use, and shall not exceed 3,500 sf in floor area.
 - 2.3. Only alcoholic beverages produced by the tenant in the light industrial building shall be served in conjunction at the accessory taproom.
 - 2.4. Live entertainment may be performed solely as an incidental part of the accessory taproom and adjacent outdoor spaces, and not as a separate accessory entertainment/club use.
 - 2.5. The accessory taproom shall include no more than **a combined total of 175** indoor and outdoor seats. Service shall be limited to actual serving hours not extending beyond 10:30 p.m. and shall include no more than 175 seats in total including a combination of seasonal outdoor seating of which a maximum of 135 seats applies to indoor seating. The outdoor seating area shall be contiguous to the Taproom **and** for seasonal use only.
 - 2.6. The Tap Room may not host an outdoor event or outdoor live entertainment if there is a **private** event occurring either inside or outside at the Barn. In order to assure this provision, the taproom must book the Barn in order to host an outdoor event. **In booking the Barn only one event on the property at a time will be assured.**
 - 2.7. The entertainment use variance shall be limited only to live entertainment and shall specifically not include membership clubs, lodges or video game arcades.
 - 2.8. The designated outdoor event space may not be used by the Brewery if the Barn is operating a **private** function in **either the indoor or the designated outdoor event** space.
 - 2.9. The Tap Room will include messaging and signage that stipulates NO PARKING on Parker Street.
 - 2.10 Employees of the Tap Room, Industrial Building and any hired contractors shall be instructed to park off-premises at 77 Parker Street during planned outdoor events.
3. Meeting Space/ Function Facility / Barn:
 - 3.1. The principal meeting space use shall include no more than 100 seats indoors and 100 outdoors in the designated seating area for outdoor events. At no time may the total combined indoor and outdoor seating exceed 100 seats. The designated outdoor event space will not be used by the Brewery if the Barn is hosting a function, be it inside or outside.
 - 3.2. The principal meeting space use shall be limited to the hours of 8:00 am to 12:00 am, with a last service call of 10:30 p.m., regardless of day.

- 3.3. The uses granted in the Barn and incorporated support facilities are limited to special occasion and/or business or corporate events. Food service and operations shall not include daily restaurant use.
- 3.4. Live entertainment may be performed solely as an incidental part of the principal meeting space use and are allowed in the designated outdoor event space.
- 3.5. The entertainment use variance shall be limited only to live entertainment and shall specifically not include membership clubs, lodges or video game arcades.
- 3.6. All events will include messaging and signage that stipulates NO PARKING on Parker Street.
- 3.7. Employees of the Barn and any hired contractors shall be instructed to park off-premises at 77 Parker Street during planned outdoor events.
4. Entire Site:
 - 4.1. Shared parking shall be no fewer than 68 spaces on the immediate Property, or 84 spaces if you include the abutting parcel known as 79A ($68 + 16 = 84$). An additional 24 parking spaces shall be provided on 77 Parker Street for a total of 108 spaces ($84 + 24 = 108$).
 - 4.2. The Petitioner shall provide and confirm over-flow parking on 79A and 77 Parker Street as evidenced by a lease agreement, a form of which is a part of this submission, which in substantially the same form shall be provided to the Building Commissioner prior to the issuance of a certificate of occupancy for the brewery building on the Property and which will be a minimum 15 year term.
 - 4.3. No final occupancy permit shall issue for the brewery until either 1. A pathway is constructed across the Property accessing the leased parking at 79A and 77 Parker Street or 2. A sidewalk is constructed from the Property entrance to the leased parking at 79A and 77 Parker Street.
 - 4.4. The Parking Lease shall be recorded prior to the issuance of any occupancy permit for the taproom or the barn.
 - 4.5. The Applicant will make every effort to obtain conservation commission approval for the additional parking as proposed on the plan dated July 30, 2018 and titled "Variance Plan" Sheet 2 of 2 and noted as "Possible Parking Spaces". In the event it is approved, and it is determined following 6 months of operation to be needed, **due to a public safety concern as determined by the City Marshal**, the Applicant will construct same. In the event it is not approved, it will have no effect on the permits granted hereunder.
 - 4.6. In the event **that approvals for additional parking are not granted by the Conservation Commission on 79 and 79A Parker Street, and** it is determined **due to public safety concerns as determined by the City Marshal**, following 12-months of operation that additional parking is needed, the Applicant will include **up to** an additional **24** parking spaces at 77 Parker Street as part of the Leased parking.
5. Post Permit Changes: Any Changes to the plans as a result of the hearings with the Planning Board or the Conservation Commission which do not cause a new need for a variance nor fully relocate the structures as proposed shall be incorporated herein and shall not require the Applicant to return for a modification of the permits granted hereunder.

Chair Ramsdell opened the hearing to public comment.

In Favor:

*Resident, Scotland Road, Newbury
Newburyport Brewing expansion is natural and wonderful.*

In Opposition:

Rob Germinara, 2 Ashland Street

Not against brewery. Concerns; too ambitious, smaller footprint and all parking on site would be more appealing, wetlands and Conservation Commission approvals to come, flooding, not comparable to brewery at 40 Parker Street, ongoing lawsuit on 77 Parker Street, gateway to the City, and demolition of the barn.

Questions from the Board:

Attorney Mead commented that in the NHC recommendations, they noted the barn is not historic. Wetlands are to be determined by Conservation Commission. Lawsuit at 77 Parker Street does not involve the current owner.

Ms. Bourdeau asked for clarification on the parking areas. Attorney Mead re-iterated.

Mr. Cameron asked for clarification on seating versus people at an event. Attorney Mead explained that seats=people.

Ms. Pomeroy asked about the property at 77 Parker Street and whether the parking would be shared with businesses currently there. Attorney Mead explained that they are proposing parking in an area not currently used. Ms. Pomeroy asked what would happen if lease the lease is terminated. Attorney Mead explained there would be a 15 year recorded lease for parking in place. If terminated, the site would be out of compliance, and it would become a zoning enforcement issue.

Mr. Cameron asked how much the outdoor entertainment space is used at the existing brew site. The brewery hosts about five festivals each year currently.

Ms. Bourdeau asked for clarification on maximum people allowed at future events. If maxed out, the site is required to have 97 parking spaces. This would include if the brewery's 175 seats, plus an additional 100 outside if nothing was happening at the barn. Offices would not be used on the weekend. Employees are to park at 77 Parker Street and 79A Parker Street during events.

Chair Ramsdell questioned what the applicant would foresee happening at the expiration of the lease. If nothing happened and the lease expired it would be a zoning violation. Chair Ramsdell was opened discussion on the language of proposed condition 5 where the line would be drawn. He suggested leaving the application open until other Conservation Commission and Planning Board heard the application.

The Board discussed leaving the hearing open to digest information and conditions and allow time for other Boards to meet versus perhaps a vote this evening.

Deliberations:

Ms. Pomeroy continued to have concerns on numbers on the property. Even with a reduction of 25 seats, 275 could be on property. She also wanted to see an additional condition that the owner come back before the expiration of the lease of 77 Parker Street.

Ms. Bourdeau liked the project and thought it would bring a lot to Newburyport. She had trouble separating herself from potential Conservation Commission issues and felt the site was maximized within constraints. She was okay with variances. Offsite parking logistics seem troublesome.

Mr. Cameron agreed on the positive attributes. The existing business expansion, preservation of the farmhouse, and farm setting to remain were among the positives. He was not hung up on parking and left it up to Conservation Commission on access to the offsite parking. He was very much in favor.

Mr. Moore agreed that a parking plan is key, although overflow was not ideal.

Chair Ramsdell expressed the safety component of parking is concerning. He liked the project. He was a bit uncomfortable with looking through proposed conditions against staff comments with what was heard tonight and come to a vote.

Mr. Ciampitti agreed with his colleagues in support. He pointed out that “ambitious” does not mean bad. In this instance, ZBA is the starting point in this process. There are many experts working on this project and it is an organic malleable process. This is a vote in commencement of this project and it will likely need to be tweaked. Parking issues exist everywhere. He liked the integration of old and new.

Ms. Pomeroy agreed with coming back for a vote. There is a lot on the site, and making sure conditions address everything is a concern. She wanted to remove condition 5. She also wanted to add a condition related to the applicant coming back before the expiration of the lease at 77 Parkers Street.

There was discussion of a vote this evening versus continuing. Chair Ramsdell asked the City Planner, Kate Newhall-Smith for input. She tended to lean toward more time to review. She did understand membership issues and timing. She suggested if there are a couple of sticking points to incorporate them into a decision tonight.

Ms. Bourdeau agreed with revising conditions, including 4.4 and removing 5 and continuing to a vote. The Board ultimately decided to vote tonight.

Conditions;

As proposed above, striking condition 5, and modifying 4.4 to include more language regarding the need for the application to return prior to the lease ending or when knowledge of the lease being terminated happens.

Motion to approve application 2018-045 with above conditions made by Ms. Bourdeau, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – non-voting

Motion to approve application 2018-046 with above conditions made by Ms. Bourdeau, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – non-voting

2018 049

Address: 34-36 Hancock Street

Special Permit for Non-conformities

Modify pre-existing non-conforming structure by constructing a 8'x16' three season porch

Rick Cole of RC Builders and Director of Neptune VFA presented the application. The applicants proposed adding a 128 s.f. smoking room. There was a lot of opposition at the last meeting and the Board encouraged some communication between the applicant and neighbors. They had a meeting at the club where seven out of nine showed up. They also spoke with the new owner of the home purchased directly abutting the rear of the club. The room would be fully contained and is an effort to help neighbors and not have smoking outside.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Cameron asked if there was a recent letter in opposition. Ms. Newhall-Smith noted there were two letters in opposition from 21 & 28 Chestnut Street.

Chair Ramsdell asked if the windows could to be opened. Mr. Cole said they could keep them secured closed. He noted smoke eaters with HEPA filters would be used in the room.

Ms. Bourdeau noted the opposition had noise concerns. If windows were secured closed, that may help. Perhaps this could be a condition.

Deliberations:

The Board agreed that with a condition regarding window secured closed, they would be in favor.

Conditions;

-Windows in the addition are to remain closed

Motion to approve application 2018-049 with above condition made by Mr. Bourdeau, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – approve
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – non-voting

2018 063

Address: 6 Coffin Street

Special Permit for Non-conformities

Construction 500+ s.f. master suite and loft addition resulting in an extension of the pre-existing non-conforming front yard setback

Benjamin Brown, owner presented the application. The applicants are proposing an addition that would house a master suite with an office loft. The property is set on a dead end street and is non-conforming with regard to frontage and front yard setback. They would maintain all materials throughout the addition; cedar shingles, white trim and white vinyl windows would be used. They tried to keep the addition appropriate scale for the home and neighborhood. They hope to grow the space to meet their family needs and stay in the City.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Maria Svirsky, 4 Coffin Street

In support. Neighbors are fortunate to have a young family in the neighborhood and the street will benefit from the addition.

Jane Snow, 9 Coffin Street

In support. Grew up in there and ecstatic about the addition and how it blends with the street.

Greg Greene, Builder

He noted he would bring the same attention to detail to this house that he has in other projects around the City.

In Opposition:

None

Questions from the Board:

Ms. Pomeroy asked the applicant to review materials that would be used. White vinyl windows, white trim, cedar shingle siding, and asphalt shingle roof would be used.

Deliberations:

Ms. Bourdeau commented on the modest request and support from neighbors.

Mr. Ciampitti commented on the thoughtful project and neighbor support.

The rest of the Board agreed.

Motion to approve application 2018-063 made by Ms. Bourdeau, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

The meeting adjourned at approximately 9:40pm

Respectfully submitted, Katie Mahan - Note Taker