

**City of Newburyport
Zoning Board of Appeals**

April 12, 2011

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

1. Roll Call

In Attendance: Duncan LaBay, Charles Ciovacco, Jamie Pennington, Nat Coughlin, Rob Ciampitti (7:45pm), Ed Ramsdell

Absent: Sean Leonard

Chair Ramsdell moved the business meeting to after the Public Hearings.

2. Public Hearings

2a) Lisa Breton

11 55th Street

Special Permit for Non-Conformities: add a second story on a pre-existing non-conforming home

The notice of public hearing was read aloud for the record.

Robert Watt of Construction Advisors represented Lisa Breton. Existing two bedroom dwelling in the PIOD with existing non-conforming setbacks and 25% lot coverage. There is a three-season porch that is part of the dwelling by removing the porch brings the lot coverage down below 20% and relieves the non-conforming setback on the east side. The dwelling is currently a ranch and will raise the roof to classic cape with shed dormer on rear and two A dormers in front. They are increasing square footage of house from 1190 to 1225. The height change is from 13'3" mid-roof to 16'11". This will fit well in the neighborhood and there are still many taller dwellings around it. The abutters are pleased to see something happening with the house. The house will be fully remodeled on the interior and exterior that will contribute to the neighborhood. In conclusion, they will be reducing the lot coverage, taking one non-conforming setback, and making it conforming. This is a conservative project.

Chair Ramsdell opened the hearing to public comment.

In favor:

No one spoke in favor.

In Opposition:

No one spoke in opposition.

Chair Ramsdell closed the hearing to public comment.

Questions from the Board

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Mr. LaBay saw that the Building Commissioner had checked off Conservation Commission.

Mr. Watt said they received that sign off on Tuesday April 11th.

Mr. Pennington stated that they did not show the dormer on the second floor plan. He asked if they were planning to build out any more space.

Mr. Watt said the second dormer is a dummy dormer just to balance out the house. He said it would be open below.

Mr. Coughlin asked if the dummy dormer was open to the space below if it was just a fixed window to get the appearance.

Mr. Watt stated yes to give balance to the house.

Mr. Ciovacco said that it seemed the discussions with the abutters were very positive even though no one spoke in favor of the project. Based on the photos presented with the packet it would not appear anyone would be opposed.

Deliberation:

Mr. LaBay complimented Mr. Watt for such a well-articulated and modest plan. He appreciated the side setback adjustment and the thoughtful use. He is in favor.

Mr. Pennington agreed with Mr. LaBay.

Mr. LaBay made a motion to approve.

Mr. Pennington seconded the motion.

The motion passed unanimously.

Votes cast:

Mr. LaBay – approve

Mr. Ciovacco – approve

Mr. Pennington – approve

Mr. Coughlin – approve

Chair Ramsdell – approve

2b) Todd Baltich

200 Merrimac Street

Use Variance: allow use #502 (fast food/carry-out) to allow for carryout pizza

The notice of public hearing was read aloud for the record.

Todd Baltich is the owner of Leary's Fine Wine and Spirits and he would like to put a pizza oven in the store. He currently sells a number of food items including frozen pizza. He wants to take the pizza a notch up and heat it before it leaves the establishment. He included emails from customers who are in support of carry out pizza at Leary's.

Chair Ramsdell opened the hearing to public comment.

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In favor:

Jack Boland proprietor of Port Paint & Paper, 201 Merrimac Street. Mr. Boland stated that they are two of the owner-operated businesses in that area and they all strive to be good neighbors in a predominantly residential neighborhood. He has known Mr. Baltich since he bought the business and it has never looked better. He runs the wine tastings in an outstanding manner and the consistency of his employees is a testament to his business. Mr. Baltich is sponsoring this year's Yankee Homecoming wine tasting, and he has been involved with events with Anna Jaques Hospital and Yankee Homecoming in the past. They are small businesses fighting big box companies and businesses across the state line. They offer a nice place to do business locally and try to offer something more to their local customers. He said that this is what Mr. Baltich is trying to do.

Mary McDonald, resident of 191 Merrimac Street is concerned primarily with the traffic generated by Leary's but also in the whole area. Between the gas station, Park Lunch, the playground, Lombardi's Oil and the baseball field, there is a lot of congestion and there are large trucks during the day between 8:30 am and 6 pm. She is also concerned that the pizza will change the hours of Leary's. In the application, it stated that drive-by traffic had dropped by 80% and she would like to see that study. She supports the business, but is concerned about the increase in traffic. She understands that businesses need to tweak what they offer, but she also is concerned that this is a door to then ask for tables and chairs and another liquor license. There are already six eating establishments on the street in a half-mile area. She would like to see a limitation if the use is granted to limit to current hours and not increasing to a larger establishment.

Barry Connell, resident of 36 Woodland Street is a customer and neighbor and he thinks it is a reasonable proposal for the business to stay fresh so customers do not migrate away. In the years he has lived on Woodland Street the property has been well maintained, and the interior is kept orderly. As someone having gone before the License Commission for one-day liquor licenses, he sees the value of the education Leary's provides as well as ice, soft drinks, cheeses and frozen pizza. He feels picking up a pizza with a bottle of wine or beer might be appealing for customers. He does not think this will change the pattern of use in the neighborhood or in the traffic. Mr. Baltich has been successful because he attends to the needs of his customer base. He feels this is a worthy petition and encourages approval.

Mr. Baltich responded to Ms. McDonald's concerns by stating that the hours of operation will not change and in Massachusetts it is against the law to have both an on-premise liquor license and an off-premise liquor license at the same establishment, so he would not be able to serve and sell alcohol. He clarified that for the most part the people who will buy the pizza are the existing customers. He will be the person purchasing the oven and he does not have a pizza baker at this point.

Not In Favor:

No one spoke against.

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Questions from the Board:

Mr. LaBay asked if the hours of operation remain the same, then this is just an ancillary profit maker with in the current business structure. **YES.**

Mr. LaBay asked since Leary's currently sells food products with beer and wine and he could expand that piece without going before the Board, why he is choosing this route instead of expanding food. **Mr. Baltich stated that he wants to create a shopping experience with the smell of pizza as people are shopping and sampling of food. In addition, one-stop shopping is the trend to come in and pick up pizza and wine is powerful. This would be an ancillary revenue stream.**

Mr. LaBay said that potentially this would be a foot in the door to expand in other ways.
Carryout – **Yes** Delivery – **Perhaps** Vehicles/people - **1/1**

Mr. Pennington asked if the parking ever over flows the parking lot and the parking ratio.
No, wine tastings are busy but there is the other side of the building and along the fence by the ball field. The business is 6200 SF and there are 35 spaces.

Mr. Coughlin asked whether the parking requirement is more intense due to the carryout aspect.
Not sure how the board should handle the parking with mixed business use.

Mr. Pennington asked from a functional standpoint, how it would work time wise with people ordering pizza.

Mr. Baltich replied that people would call ahead.

Mr. Ramsdell observed that the pizza operation will be a small part of the business at Leary's since its ancillary to the main business and he does not feel it would drive the parking. There is not a rule of the parking ratio in this instance; it is common sense to determine what is rational.
Mr. Coughlin stated that they should assume the business would be successful and discuss the potential impact.

Mr. Baltich stated that the only time parking is full is during the spring and fall wine extravaganzas.

Mr. LaBay stated that this board is also in charge of signage changes and asked if he is anticipating any changes and that the protocol is to come before the board first.

Mr. Baltich does want to put a sign indicating pizza is available but does not have more information at this time.

Mr. Ramsdell asked for the actual hours of operation.

Mr. Baltich stated the hours will not change and they are Mon – Thurs. 9am to 9pm, Fri. and Sat. 9am to 9:30pm and Sunday 12pm to 7pm.

Deliberation

Mr. Pennington has no problem with the application. This is limited to allowing carry out pizza only. He supports the variance.

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Mr. LaBay said that the application had demonstrated provides with justification for normal legal requirements. To restrict to pizza only is in how the board crafts that.

Chair Ramsdell states that the application is for fast food use and specifies "carry out pizza". If the applicant decided to sell anything else, he would need to come before the board for a modification.

Mr. LaBay questioned whether the carry out would allow for delivery.

Chair Ramsdell responded that delivery would come under carry out.

Mr. LaBay would not want to underestimate the impact of deliveries.

Chair Ramsdell noted that delivery would decrease the traffic flow and would be a benefit.

Mr. Pennington stated the board could make it a condition, stating not for dining.

Chair Ramsdell said the application is for take out/fast food.

Mr. Pennington questioned whether it would allow prepping and cooking.

Mr. Coughlin stated that he could see both sides and could base an argument on fact it would be successful enough to generate traffic and how much impact that would be. Five years down the road if it successful and he wants to add to the menu it may be hard to say no.

Mr. Pennington made a motion to approve.

Mr. Ciovacco seconded the motion.

The motion passed unanimously.

Votes cast:

Duncan LaBay – approve

Charles Ciovacco – approve

Jamie Pennington – approve

Nat Coughlin - approve

Chair Ramsdell – approve

Business Meeting

Opened 8:15pm

Chair Ramsdell said a case that went before the ZBA in 2002 regarding 462 Merrimac Street lot split picked up the original lot sizes in the variance granted instead of the lot sizes being changed to. One of the lots is being sold and they have asked the ZBA to issue a certification of the vote to the lot sizes in the 2002 decision.

Mr. Ciovacco motioned to issue a certification of the vote.

Mr. LaBay seconded the motion.

The motion passed unanimously.

Votes cast:

Duncan LaBay – approve

Rob Ciampitti - approve

Charles Ciovacco – approve

Jamie Pennington – approve

Nat Coughlin - approve

Chair Ramsdell – approve

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Rules and Regulations

Chair Ramsdell stated that the only item changed is the diagram to show how to measure elevation, there is a note stuck in purely to show how these measurements should be made. He asked if the board wanted to adopt tonight.
The board decided to consider at the next meeting.

Election of Officers

Mr. LaBay moved to re-elect the existing slate of officers.

Mr. Ciovacco seconded the motion.

Roll call vote:

Duncan LaBay – yes

Rob Ciampitti – yes

Charles Ciovacco – yes

James Pennington – yes

Chair Ramsdell – yes

Business meeting closed at 8:23pm.

Adjournment

Motion made to adjourn by Chair Ramsdell.

Motion seconded by Mr. Pennington.

Motion unanimously approved.

Meeting adjourned at 8:24pm.

Respectfully submitted, Lynn Kinsella - Note Taker