

**City of Newburyport  
Zoning Board of Appeals  
June 26, 2012  
Minutes**

The meeting was called to order at 7:20 P.M.  
A quorum was present.

**1. Roll Call**

**In Attendance:** Ed Ramsdell (Chair), Duncan LaBay (Secretary), Robert Ciampitti (Vice-Chair), Jamie Pennington, Howard Snyder, Richard Goulet (Associate Member)

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of June 12, 2012 Meeting**

Mr. LaBay made a motion to approve the minutes as submitted and Mr. Snyder seconded the motion.

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve  
Duncan LaBay – approve  
Jamie Pennington – approve  
Howard Snyder - approve  
Robert Ciampitti – approve  
Richard Goulet – *did not vote*

**b) Public Hearings (4 on agenda)**

**Public Hearing #1:**

**2012      008**

**Address: 3-5 Pine Street**

**Special Permit for Non-Conformities**

Allow for renovation of an addition to the two-family residential structure where said renovations and addition will result in the extension of front- and side- yard setback non-conformities

Geno Renaldi, Manager of 3-5 Pine Street Development, LLC

Lisa Mead, Attorney, Blatman, Bobrowski, & Mead, LLC, 30 Green Street, Newburyport, MA. represents Mr. Geno Ranaldi, Manager of 3-5 Pine Street Development, LLC

This is a continuation from the March 27, 2012 ZBA Meeting, the April 24, 2012 ZBA Meeting, the May 22, 2012 ZBA meeting, and the June 12, 2012 ZBA meeting.

Attorney Mead indicated that at the May 22, 2012 meeting the Zoning Board of Appeals had requested the applicant and the neighbors meet again. They did meet. The applicant was able to accomplish some of the neighbors' requests, but not all.

Attorney Mead presented sketches demonstrating the improvements the applicant has agreed to construct. These improvements include:

- Siding: shingles will be added to the front consistent with local homes
- Existing clapboard siding will be caulked and painted in an appropriate fashion
- Shutters will be added to the front and sides
- Corbels will be added under the overhang in the rear
- Fencing will be added
- The rear yard will be completed with a small deck leading down to an at-grade patio.

In addition the applicant will:

- Provide a sidewalk with asphalt to the curtain and then brick to the entry
- Provide cobblestone pavers on the driveway
- Provide a brick paver sidewalk from front to back
- Provide a fence separating the driveway from the rear yard
- Provide landscaping as shown in the sketches.

Certain requests from the neighbors could not be accommodated. For example, adding additional windows to the west side of the second floor could not be accomplished due to the location of the beams.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

**None**

**In Opposition:**

Mr. Ned McClung read a statement from the abutters and neighbors of 3-5 Pine Street; he also provided a copy of the statement to members of the ZBA. In this statement, these neighbors and abutters (listed below) provided their rationale for requesting a denial of the special permit.

**Bob Miller and Dana Hooper, 25 Marlboro Street, Newburyport, MA**

**Matt and Charmaine McDermott, 23 Marlboro St, Newburyport, MA**

**Clifford Goudey and Leah McGavern, 21 Marlboro Street, Newburyport, MA**

**Jason and Katrina Weigold, 8 Pine Street, Newburyport, MA**

**Ned McClung and Anne Comeau, 4 Pine Street, Newburyport, MA**

**Questions from the Board:**

After the statement from the neighbors and abutters was read, Attorney Mead asked to comment. She indicated that the changes being proposed were not "in blatant disregard" for the purposes of the proceedings as indicated in the statement read by Mr. McClung. Closing the cantilever was

done to bring back the corner and some semblance of architectural integrity. The developer did try to find ways to rectify the situation.

Mr. Pennington asked if they were excavating the fill. He asked about the elevation drop. Chris Gambell, landscaper, answered Mr. Pennington's questions and indicated that the new landscape proposal completely takes care of any drainage problems.

**Deliberations:**

Mr. Pennington indicated that the structure that was there to begin with was odd. A lot of the reaction has been to the architecture. Maybe the applicant is trying to make things better from a bad beginning. Though he hasn't yet come to a decision, he is getting increasingly more comfortable with granting the special permit.

Mr. Ciampitti referenced the opinion letter from the City Solicitor. We have to do this analysis as if we had no memory of what happened. It seems as though a compromise (as close as possible) was reached. The special permit criteria – is it more detrimental? He believes that it is hard to say it is more detrimental. It is not perfect, but it is not clear that is being proposed is substantially more detrimental. He is feeling that he could support the application.

Mr. LaBay indicated that the solicitor's letter was instructive in helping to find possible solutions to reach. This is a difficult situation; the Board is being asked to deal with something that has already happened. He is not comfortable with how we got here, he is not comfortable with what we have. But, he indicated we do NOT have the ability to tear the structure down. As a non-lawyer, he has to lean on the opinions of those on the board who have a better understanding of the law. He tends to agree with Mr. Ciampitti.

Chairman Ramsdell tends to agree with his colleagues. He asked if what we are stuck with is substantially more detrimental. If we tear out the pieces that were not authorized, the situation becomes even worse. He thinks there has been progress towards improving a bad situation. He is regretfully in support of granting the permit.

**Motion to approve the Special Permit for Non-Conformities made by Mr. Pennington understanding that the applicant's June 11 2012 letter and attachments would be included as part of the approval, this motion was seconded by Mr. Ciampitti. Please note the special permit was approved but required the inclusion of the June 11, 2012 letter and attachments which include describe a list of the improvements that the applicant has agreed to make.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Jamie Pennington – approve

Robert Ciampitti – approve

Howard Snyder – *did not vote*

Richard Goulet – *did not vote*

**Public Hearing #2:****2012 015****Address: 26, 30-32 Toppans Lane****Special Permit**

Construct and operate a 64 unit (74 bed) assisted/independent living facility (use #108, Congregate Elderly Housing)

**Mr. Pennington recused himself.**

**This is a continuance from the May 22, 2012 hearing.**

Jeff Rolof, Attorney representing Northbridge Communities LLC, spoke. At the May 22, 2012 ZBA Meeting, the board asked that applicant to explore different issues: utility-related issues, traffic study, and continued discussions with the hospital and medical center. The primary concern was access off of Toppans Lane. Meetings with the Hospital and Medical Center have still not resulted in an agreement. Northridge would like to proceed with the special permit for use application. This process will be followed by a major site plan review with the Planning Board. The current meeting is to determine if the use being proposed is an appropriate use for the property.

Steven Sawyer, PE, Director of Engineering, Design Consultants provided a detailed grading of the access driveway up to the site. He indicated that only 2 large trees will be taken down with the construction of the driveway. DPS confirmed that the project will not overload the Public Utilities. It will not overload or adversely impact the sewer system on Toppans Lane or Low Street. The existing water supply was also determined to be adequate. Mr. Sawyer also indicated that the loading dock was resized since only small trucks will be used and also indicated that the detail provided was more than typically is provided for a special permit application.

David Giangrande, Design Consultants, Inc. provided an overview of the traffic impact assessment that was completed. Traffic recorders were set up on May 30<sup>th</sup> and May 31<sup>st</sup>. Toppans Lane currently carries low volumes and operates under free flow conditions. The average and 85<sup>th</sup> percentile speeds are significantly higher than the school posted zone of 20 mph. There is no posted speed limit on Toppans Lane. Daily and peak hour traffic associated with the new facility was estimated. The proposed assisted living facility will generate 11 vehicle trips in the AM peak hour, 17 trips in the PM peak hour and 202 trips per day. The estimated trips include all personnel, vehicle and service vehicle trips to the property. An analysis was done looking at the number of trips which would be generated if the property was used for an alternative purpose. If there were 19 duplex houses, or 51 apartments or a YMCA facility, daily trips would be estimated at 253 or 998 or 1000 respectively. A Level-of-Service (LOS) was determined for the new site driveway intersection at Toppans Lane. LOS ranges from "A" (little or no delays) to "F" (worst or forced flow conditions). The left turns into the site drive will experience a LOS "A" while the vehicles exiting will experience a LOS "B" with minimal delays during the morning and afternoon peak hours. None of the residents will have the ability to drive with all traffic being generated by staff and visitors. The arrival and departure of employees consisting of kitchen staff, aids, and administration personnel are balanced and

staggered throughout the day. All deliveries are performed with medium sized box trucks. Sight distance was also discussed. The conclusion indicated that the proposed facility will only generate 202 daily trips, 11 during the am peak hour and 17 during the pm peak hour. Additionally, the peak hours of the proposed facility do not coincide with the peak hours of existing traffic on Toppans Lane. The total deliveries and trash vehicle trips are only 5 trips per week on average by box truck only. The proposed facility with access from Toppans Lane will not impact traffic flow and can operate safely with the existing vehicle and pedestrian traffic on Toppans Lane. Of the many potential development uses for this parcel, the proposed has insignificant traffic demands and is very well suited to the existing residential and school uses associated with Toppans Lane.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

**Marc Griffin, Attorney, 6 Harris Street, Newburyport, MA**

The traffic engineer indicated that the number of trips would increase with other uses of the property. The Rindlers have been trying to find the best use of their property for the past 6 years. Northridge is in a difficult position serving many masters (residents, hospital, medical center). Northridge cannot get access through Wallace Bashaw Jr. Way. The best use of location and design has been presented. The building is one story to accommodate neighbors.

**In Opposition:**

**Lisa Mead, Attorney, Blatman, Bobrowski, & Mead, LLC, 30 Green Street, Newburyport, MA representing Anna Jaques Hospital**

The access roadway is in a residential district, you need to look at the total use. The proposal before you is the only proposal by which you can judge the criteria. 1- is it essential or desirable to public well-being or welfare? Attorney Mead believes that the use is not essential and would be more desirable off of Wallace Bashaw Drive. 2 – Does the requested use impact the integrity of the charter or district? The City had already determined this was not an appropriate use by not letting the hospital use Toppans Lane. For years the hospital discussed access via Toppans Lane, for years, the City said “no”. Eventually Wallace Bashaw Way was developed. If the road goes where it is being proposed, a whole swath of trees will have to be removed. 3- Traffic. Attorney Mead requested the City conduct a peer review of the traffic study. She is not an expert, but has issues with the recent traffic study. Traffic would have a detrimental effect on the neighborhood. Did the number of truck trips per week include trash? Hazardous materials? There is no analysis of bicycle or pedestrian data. The hospital has attempted to work with Northridge. The hospital would like to gain some parking but Northridge does not want to change the design of its facilities. It is important to consider the entire site when determining if the use is consistent with the neighborhood.

**Ginny Eramo, 28R Toppans Lane, Newburyport, MA**

She expressed grave concerns about the development though she did not think the use was horrible. She does not want to change the neighborhood. She was alarmed that pedestrian and bicycle traffic was not included in the traffic study.

**Bob Martin, 16B Toppans Lane, Newburyport, MA**

He is new to the neighborhood and is astonished by the number of school children on the street. Toppans Lane is the defacto parking lot for the High School. Middle School children are using skateboards down the middle of the street. Traffic is not about averages, they get tremendous peaks of traffic on Toppans Lane. It is very concerning to add more access on Toppans Lane.

**James Utterback, 6 Toppans Lane, Newburyport, MA**

He indicated that the previous comments in opposition of the access from Toppans Lane were perceptive and observant. There have been 5 to 6 accidents in 11 years.

**Tom Smith, 36 Toppans Lane, Newburyport, MA**

He agrees with what his predecessors said. He is less concerned with keeping traffic moving than with keeping traffic from hitting something. He is also in favor of having a peer review. He asked why there had been no mention of the distance from the intersection to the pedestrian and service entrance to the high school and to the athletic fields.

**Michelle Duratti, 15 Phillips Drive, Newburyport, MA**

Ward 6. She has 2 children – her oldest son will become a pedestrian and a cyclist on Toppans Lane. This is not a site driveway. It is a commercial roadway and she is opposed. Children walk on Toppans Lane on a single sidewalk. She demands a more thorough traffic study. She is concerned about the children. The proposed rezoning and access road will create risk. She asked that the Board deny the application for the special permit.

**Michael Sullivan, Summit Place, Newburyport, MA**

He read the R-2 definition. He indicated that the proposal is grossly changing the character of Toppans Lane. This town does not have strong defenses on development in a school district and residential area.

**Mark Goldstein, Executive Vice President and Chief Financial Officer at Anna Jaques Hospital**

He indicated they have been working with Northridge for 9 months. The original 2 story building was okay, but it is more cost effective to do a one story building. He would like to see the project go forward with access on Wallace Bashaw Jr. Way. He asked that the Board not consider access from Toppans Lane a viable proposal.

**Sarah Holden, 34 Toppans Lane, Newburyport, MA**

She has no objection to use. She would like the access to move from Toppans Lane without going to a 2 story building.

**Questions from the Board:**

Mr. Snyder asked Northridge to describe use of the facility. Wendy Nowokowski, President Northridge Communities responded to his questions as follows. Northridge develops, owns and manages quality senior living communities throughout New England. The community they are proposing developing in Newburyport is a memory care residence. This will be a 64-unit, 74 bed

assisted living unit to accommodate residents with Alzheimer's disease and other related dementias. The average age of the residents is 83. The residents are primarily widowed women. A box truck is used to deliver food. The facility focus is on memory care. Residents can not drive. There are bus trips arranged for the residents. 5 visits per week for EMTs or ambulances is predicted based on data from their other facilities.

Mr. LaBay asked for clarification on the shifts. How many shifts per day? There are 3. How many staff? There are 6 admin. staff and 9 CNAs. There is an overnight staff of 4-6. The highest of staff at any time is between 18 and 20. Kitchen staff arrives at 6 AM. Aides arrive between 7 and 8 am, office staff arrives between 9 and 10 am. 20 people will potentially arrive over a three hour interval. Northridge was asked to respond to comments about their efforts with the Hospital. Attorney Rolof indicated that Northridge has been trying. They agree that gaining access via Wallace Bashaw Way makes sense. Northridge has been in talks with the hospital for 1.5 years. To provide what the hospital is asking, the building would have to move up in height and closer to the residences.

Mr. Ciampitti asked if they would benefit from another pass. He believes there are issues with the traffic study and would like to seek a peer review, but feels that the Toppans Lane access is the inferior path to take. Northridge has no objection to more negotiations with the hospital but wants to be able to make progress.

#### **Deliberations:**

Mr. LaBay said that Attorney Mead had presented 3 issues. 1- is it essential or desirable. Yes, it is desirable. 2 – the impact to the character of the District. There has been a lot of discussion about this and 3- traffic impact- not sure what the peer reviews will add. Neighborhood integrity goes beyond the new traffic study.

Mr. Snyder indicated that the use is favorable, how it is being brought to the site is of concern. The use would better serve the community if it there was different access. He would encourage one more "college try". Several of the neighbors are not opposed to the use, just to the access from Toppans Lane.

Chairman Ramsdell asked if they want a peer review or study. Mr. Ciampitti indicated that it is premature until alternative access exploration has been exhausted. Mr. Snyder felt the applicant should work with the hospital some more to see if they can't find a different way to access. Chairman Ramsdell indicated that we can't keep sending people away and telling them to come back. Mr. Ciampitti indicated that this would be the "last college try" then the Board will deal with the only proposal that exists. Chairman Ramsdell indicated that if the special permit is rejected, it throws the project "under the wheels" for two years.

**Motion to approve a continuation of the hearing for the Special Permit for Non-Conformities to July 24 , 2012 made by Mr. LaBay, seconded by Mr. Ciampitti.**

The motion passed unanimously.

#### **Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve  
Jamie Pennington – recused  
Robert Ciampitti – approve  
Howard Snyder – approve  
Richard Goulet – *did not vote*

### **Public Hearing #3:**

**2012      023**

**Address: 55 ½ - 57 Bromfield Street**

**Special Permit for Non-Conformities**

Construct an addition over 500 s.f. on a two family structure with pre-existing non-conforming front and rear yard setbacks, lot coverage, and lot shape

Everett Chandler, PLS, Design Consultants, Inc, 68 Pleasant Street, Newburyport, MA spoke on behalf of the applicant, Concordia Homes, Inc.

The current use of the land is in the form of a two family non-conforming structure located on two deeded parcels of land as half houses and the proposed use will be in the form of a two family structure as condominiums on the entirety of the properties. The existing structure and lot are non-conforming with respect to front and rear yard setbacks, lot coverage, lot area (minimum lot area), lot area (shape – 80% box does not fit), and parking. The proposed use is also a two family structure that will not violate any further requirements of the zoning code for the structure. The rear yard setback will be made less non-conforming, the front yard setback will remain the same, the lot coverage will remain the same, and the addition of one parking space will now bring the total for the two units to the required four spaces.

The proposed project removes a building that both structurally and visually detracts from the neighborhood and replaces it with a new building that will replicate the existing style of the building as well as the building on Bromfield Street directly across Hancock Street from the project, thereby creating a more pleasing streetscape that will bring the appearance of the entire neighborhood to a higher level. Additionally, the project lessens the yard setback non-conformity relative to the principal structure on the site and maintains compliance with other dimensional requirements of the ordinance, and does not further intensify any of the requirements with respect to the structure.

**Chairman Ramsdell opened the hearing to public comment.**

#### **In favor:**

**Jay Jorgenson, 6 Hancock Street, Newburyport, MA**

He is an immediate abutter and likes the plan

**Cynthia Muir, 10 Hancock Street, Newburyport, MA**

She likes the plan, but had a question about the parking. She was okay with the answer provided.

**Paul Acquaviva, 62 Bromfield Street, Newburyport, Ma**

He is in favor, but did ask the applicant to confirm that the condos would not be two different colors.



**Susan Acquaviva, 62 Bromfield Street, Newburyport, Ma**

She is in favor.

**In Opposition:**

**None**

**Questions from the board:**

Mr. LaBay asked what the Historic Commission had to say. Mr. Chandler indicated that the applicant had had issues with the historic commission in the past. 6 months were lost before he could start on his project. They will be applying for the demolition delay.

Mr. Snyder indicated there was still a semblance of character in the proposal. He asked about the site plan and discussed potential parking alternatives with Mr. Chandler. He was satisfied they made the appropriate choices for parking.

Mr. Pennington asked about other elevations. Mr. Everett indicated they were mirror images of what he had presented.

**Deliberations:**

Mr. Ciampitti indicated that the application met all the criteria for a special permit. This is a re-adaptation of the existing architecture, bringing it back to modern use. He intends to support the application. He asked about the siding which is painted hardy board with four inch clapboards.

Mr. LaBay concurred with his colleague.

Chairman Ramsdell indicated it was a reasonable application.

**Motion to approve the Special Permit for Non-Conformities made by Mr. Ciampitti and seconded by Mr. LaBay.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Jamie Pennington – approve

Robert Ciampitti – approve

Howard Snyder – approve

Richard Goulet – *did not vote*

**Public Hearing #4:**

**2012      024**

**Address: 6 76<sup>th</sup> Street**

**Special Permit for Non-Conformities**

Construct an addition over 500 s.f. on a property with pre-existing non-conforming front and rear yard setbacks

Everett Chandler, PLS, Design Consultants, Inc, 68 Pleasant Street, Newburyport, MA represented Janice Reagan and Taylor Wallace, applicants.

The applicants would like to move here. They would like to make this summer cottage a year-round home. It will be a single family non-conforming structure. The existing structure and lot are currently non-conforming with respect to front and rear yard setbacks, lot area (minimum lot area) and lot area (share – 80% box does not fit).

There will be no intensification of existing non-conformities nor will the construction of the structure result in any new ones. The proposed use is also a single family structure that will not violate any further zoning code for the structure. The front yard set-back will be made less non-conforming and the rear yard setback will remain the same.

The removal of the home and subsequent reconstruction of the same will remove a small home that currently sits on a pile foundation that the owner has been told is not viable for reuse. The proposed construction of the new home will be consistent with the nature of homes recently constructed on the island and will allow for parking of vehicles to be under the building removing them from view to create a more natural beach feel to the neighborhood.

The conservation commission has provided their approval. The new structure will adhere to FEMA flood regulations.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

**None**

**In Opposition:**

**None**

### **Questions/Deliberations**

Mr. Pennington indicated that the drawings leave a lot to the imagination. More elevations are needed. Mr. Chandler indicated that the applicant is working to modify a set of plans purchased on-line. The third floor will not be a habitable space.

Mr. Ciampitti asked where the applicants were. Mr. Chandler indicated they currently reside in Newton.

Chairman Ramsdell also said that more elevations were needed.

Mr. LaBay asked if they had spoken with the neighbors. It might be good to have written or in-person support from neighbors.

Mr. Chandler, on behalf of the applicant, requested a continuance.

**Motion to approve a continuance for the Special Permit for Non-Conformities to July 24, 2012 made by Mr. LaBay, seconded by Mr. Pennington .**

The motion passed unanimously.

### **Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Jamie Pennington – approve

Robert Ciampitti – approve  
Howard Snyder – approve  
Richard Goulet – *did not vote*

**Adjournment**

**Motion to adjourn made by Mr. LaBay, seconded by Mr. Ciampitti at 9:45 p.m.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve  
Duncan LaBay – approve  
Jamie Pennington – approve  
Robert Ciampitti – approve  
Howard Snyder – approve  
Richard Goulet – *did not vote*

**Respectfully submitted, Jennifer Lamarre - Note Taker**