

**City of Newburyport
Zoning Board of Appeals
July 9, 2013
Minutes**

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

1. Roll Call

In Attendance: Ed Ramsdell (Chair), Duncan LaBay (Secretary), Richard Goulet (Associate Member), Jared Eigerman (Associate Member)

Absent: Robert Ciampitti (Vice-Chair), Jamie Pennington, Howard Snyder

2. Business Meeting

a) Approval of Minutes

Minutes of May 28, 2013 Meeting

Mr. Goulet made a motion to approve the minutes as amended and Mr. LaBay seconded the motion.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

Minutes of June 11, 2013 Meeting

Mr. Goulet made a motion to approve the minutes as amended and Mr. LaBay seconded the motion.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Jared Eigerman – approve
Richard Goulet – approve
Ed Ramsdell– approve
Duncan LaBay – approve
Jared Eigerman – approve

Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

b) Land Court Request

On May 13, 2013, the Land Court upheld the City of Newburyport ZBA grant of a Special Permit for the nursing home at 4-6 Hale Street. Although the court affirmed the grant for a Special Permit, they asked that the plans be revised to remove the loading dock encroachment into the setback area or that the applicant seek a variance for the encroachment. The applicant chose to revise the plans to remove the encroachment and the ZBA reviewed the change as a minor modification of the plans.

Mr. LaBay indicated the change was a de minimis change and appropriate. Mr. Eigerman said that the change was minor, in an approved footprint.

Mr. LaBay made a motion to allow the de minimis change to the Special Permit for non-conformities granted on 3/8/2011 for the property located at 4-6 Hale Street, owned by Port Associates, to allow the relocation of the loading dock for the purpose of avoiding encroaching into the required front yard setback as shown on the plan titled “Revised loading dock to comply with court decision so loading dock is not in setback “ dated June 25, 2013, provided by Ranere Associates Inc, 135 Massachusetts Avenue, Boston, Massachusetts 02115, Mr. Eigerman seconded the motion.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

3. Public Hearings (4 on the agenda)

Chairman Ramsdell indicated the Public Hearings would be taken out of order because there is a request for a continuance on third hearing and people may be in the audience waiting for this hearing.

Public Hearing #1:

This hearing was actually the second hearing on the agenda.

2013 032 Address: 3 Plummer Avenue
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Special Permit for Non-Conformities

Remove one-story rear ell (10' by 20') and reconstruct as a two-story, and construct a one-story kitchen addition (18' x 22') resulting in an upward extension of the preexisting non-conforming rear setback

William and Nancy Brogden, 3 Plummer Avenue, represented themselves at the hearing. In addition, their architect, William March, 29 Green Street, Suite A, Newburyport, spoke on their behalf.

Ms. Brogden said they are moving from a 1000 sf house to a 1700 sf house with the addition. They are moving from a 5 room house to a 6 room house with 1.5 baths. Ms. Brogden provided a slide show for the Board and audience. The slideshow displayed how the ell on the back was rotted out. There is no foundation on the back ell. They will take it off and put a foundation underneath. Previously it has been infested with squirrels. The slide show emphasized what the house was like when they purchased it.

Ms. Brogden showed an elevation of the house demonstrating what it will look like after the proposed modifications have been made.

The applicant is seeking a Special Permit for Non-Conformities to allow the demolition of the one-story rear ell with the reconstruction of a two-story structure in the same footprint and the construction of a one-story addition on the eastern side of the home. The applicant is requesting relief for lot area, rear setback, front setback, and floor area.

The applicant went before the Historical Commission in September 2010 where the Historical Commission found that the structure is historically/architecturally significant, but that the demolition permit could be released.

Chairman Ramsdell opened the hearing to public comment.

In favor:

None present at the Hearing

A letter from Ronald and Theresa LaPierre, 16 Plummer Ave, Newburyport, MA in favor of the application had been previously received by the Board.

The applicant indicated the Board should have received a letter from Jeanine Murphy, 10 Plummer Ave, Newburyport, MA, the only direct abutter, in favor of the application. The applicant provided the letter from Ms. Murphy to the Board. The letter indicated that this abutter fully supported the plans.

In Opposition:

None

Questions from the Board regarding Public Hearing #1:

Chair Ramsdell asked about the permit from the Historical Commission. The applicant said yes, they had received a demolition permit.

Mr. LaBay asked if any thought had been given to breaking up the alignment of the new addition. The front looks like a hotel front.

Architect March said the idea was to keep it neat and clean. It is a very small building and does not need to be broken up. Ms. Brogden said there is a nice big tree and bush in front of the house that should break things up.

Mr. LaBay was concerned about massing.

Chair Ramsdell asked if the addition had been kicked back, the applicant said yes

Deliberations:

Mr. Eigerman indicated he is generally supportive of the application. The amount of square footage still makes it a modestly-sized home. When you look at the plan, there is just a fence between the garage and the kitchen. If it had been a structure, he would have been concerned about massing. The fence will be important so it doesn't look like a hotel.

Mr. Goulet said there were a lot of vertical changes and it looked fine to him.

Mr. LaBay agrees this is a big improvement to the whole structure and improves the rear setback. The Historical Commission has approved the permit. He is fine with the application.

Chair Ramsdell agreed with his colleagues. He said the long sheet depicting the elevation did not show the building in its best light. He is supportive of the application.

Mr. LaBay made a motion to approve the Special Permit for Non-Conformities for 3 Plummer Avenue, seconded by Mr. Goulet.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell – approve
Duncan LaBay – approve
Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

Public Hearing #2:

This hearing was actually the third hearing on the agenda.

2013 033

Address: 30 Woodland Street

Special Permit for Non-Conformities

Demolish pre-existing non-conforming garage and build a pottery barn on same footprint

Therese Robinson, 30 Woodland St., Newburyport, MA is the applicant. She was represented at the meeting by John Kelleher, 4 Chase Street, Newburyport, MA. Mr. Kelleher is Ms. Robinson's contractor and friend. He handed 3 letters of support from the neighbors to the Board.

Mr. Kelleher spoke and said that Ms. Robinson does sculpture. She wants to demolish the structure that is existing and build a pottery barn. The structure is in bad shape, with footing only 32 inches below grade. There is a crack in a wall of the existing structure. He wants to tear the existing structure down and build another one on the same spot.

Chairman Ramsdell opened the hearing to public comment.

In favor:

Clunies, 32 Woodland Street, Newburyport, MA

Tobins, 4 Dexter Street, Newburyport, MA

The daughter of the owner of 4 Dexter Street was present at the Hearing and said that her mom's home directly abuts the garage. It is in disrepair. Ms. Robinson tried to save the existing structure. Ms. Robinson is very nice; she had her land surveyed and went to the neighbors with the plans. A neighbor that abuts the property as well, where the property line is between shrubs has been taking care of the shrubs for years. As a result, Ms. Robinson is putting a fence on her property, not in the middle of the shrubs.

Bellingers, 3 Dexter Street, Newburyport, MA

Mary T. Raven, 390R Merrimac, Newburyport, MA

In Opposition:

None

Questions from the Board regarding Public Hearing #2:

Mr. LaBay asked about what was non-conforming about the existing structure. He also had questions about the height of the proposed structure. The setbacks issues are the only non-conforming issues with the proposed structure.

Mr. Eigerman and Mr. LaBay asked more questions about the height to get a better understanding of the proposal for the new structure.

Mr. Goulet asked if there would be a kiln. Mr. Kelleher said this had not been discussed but they are planning on putting in smoke detectors. Mr. Goulet also asked about the driveway. He wondered if it were adequate for parking. Mr. Kelleher said the applicant was willing to set the building back 4-5' so there would be a place to park.

Chair Ramsdell asked about the distance from the property line to the front of the building. Mr. Kelleher said 9 feet.

Mr. LaBay asked about the distance from the sidewalk to the structure. He indicated that the truck depicted in the photos provided wouldn't fit.

Chair Ramsdell indicated he was a little concerned about eliminating parking.

Mr. LaBay asked about what was holding the current structure up. Mr. Kelleher said the 32 inch footing which is currently causing the cracking of the wall in the existing structure.

Mr. Eigerman indicated that they are proposing putting in an entirely new foundation.

Chair Ramsdell asked if there was any chance of sliding the building back and/or nibbling a bit at the size of the building. It is tough to grant a Special Permit when there are parking issues. If there was diagonal parking, then cars could fit. You need 2 spaces for a single family.

Mr. LaBay asked if the applicant was intent on keeping the footprint. He also asked how much of a building was needed to accommodate a pottery barn. He asked if the applicant could design something less than 22 x 22.

There was continued discussion between the Board members concerning the parking.

Mr. Eigerman read the rules about angled parking.

Mr. LaBay asked about the required setback of an accessory structure,

Mr. Eigerman said there was nothing wrong with the volume of the structure. Could they fit 2 diagonal spaces in front of the structure and keep the volume?

Chair Ramsdell said the applicant is willing to do slide the building. Can the Board live with this or do they want to change the size of the building?

Mr. Goulet said you could keep the same footprint and move the structure back.

Chair Ramsdell said his preference was to slide the building 5'. He said they do not want cars on the sidewalk.

Mr. LaBay said there is a non-conforming building now that the applicant is asking to tear down and put up a replacement building. It is fair game to look at parking.

Mr. Eigerman said the building could be moved back sufficient distance to get the cars in at an angle.

Deliberations:

Mr. Eigerman said this application represents an improvement, the abutters support the application, the only question, because of parking, is where do you put the structure on the lot?

Mr. LaBay said that if the structure is moved, it should be moved 5' in the direction of the back and a foot closer to the house to get rid of a non-conforming setback

Mr. Eigerman made a motion to approve the Special Permit for Non-Conformities for 30 Woodland Street with the condition that the building footprint be 6' from the northerly line and 15' from the westerly lot line, seconded by Mr. Goulet.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

Public Hearing #3:

This hearing was actually the first hearing on the agenda.

2013 034 Address: 10 77th Street Special Permit for Non-Conformities Demolish pre-existing non-conforming single-family home and rebuild
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Chairman Ramsdell indicated that the applicant, Mr. James House, asked for a continuance until the July 23 meeting in a letter.

Mr. LaBay made a motion to continue the Hearing for the Special Permit for Non-conformities for 30 Woodland Street until the July 23 meeting, seconded by Mr. Goulet.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve

Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

Public Hearing #4:

2013 031

Address: 65 Parker Street, Unit 6

Use Variance

Petitioner requests a Use Variance to allow Use #404, Retail Services

James T. Connolly, Attorney, 51 Green Street, represented the applicant Jay Howlett, President Chase & Lunt Insurance, 47 State Street, at this hearing. Also representing the applicant were Ralph Castagna, the Trustee of the Condominium Association. In addition, James Howlett spoke on his own behalf at the meeting.

Attorney Connolly indicated the applicant is seeking a Use Variance, to allow Chase & Lunt (use #404, Retail Services) to move to 65 Parker Street, which is in an industrial zone. There are no plans to enlarge the footprint of the existing building which is part of the Seaport Industrial Park condominium. Unit 6 is one of the eleven units which comprise the condominium. The building is located at the edge of the industrial park and the Vendant building across the street is used entirely for offices. In addition, other units in the condominium are currently used for commercial, rather than industrial uses. Directly across Parker Street is an R-3 Zone. The commercial use at this location would provide a buffer between the R-3 Zone and the residential one.

The demand for industrial use has fallen over time. In order to allow the buildings to be occupied, it will be necessary to allow some kind of use other than industrial. Leaving the condominium vacant for lack of an industrial use creates a substantial hardship for the property owner.

The Zoning Ordinance already permits an accessory retail use (Use #604) of the property in the I-1 Zone. The addition of retail use from an insurance office will not create a drastic change in use, and will allow the space to be occupied, rather than remain vacant in the absence of an industrial use of the space. Also, the Seaport Industrial Park condominium Association has already voted to authorize the commercial use of the building.

The building already exists, and its footprint will not be increased. Use of the building for commercial purposes will not impair the integrity or character of the district, which already includes many commercial uses, including a climbing wall.

The parking requirements for Use #404 are three spaces for each 1000 square feet of gross floor area. The required number of parking spaces would thus be 34. The number of deeded spaces will be 35. In addition there will be additional spaces available.

Mr. Castagna indicated that he serves in multiple capacities:

- 1) He is the original developer of the Seaport Industrial Park.
- 2) He is the trustee of the newly formed Park Association
- 3) He is the trustee of the Seaport Industrial Park.

He said there is a hardship here as the unit has been vacant for 18 months. It was previously occupied by someone who was not heavy industrial; there were some offices. They have not been able to attract an interested party for an industrial use. Chase & Lunt is considering relocating from downtown Newburyport to the Industrial Park and this space is easily adapted to office space. The condominium association voted to accept Chase & Lunt into the Park; they accept Chase & Lunt's Use. It is not really retail like a clothing store, it will be mostly offices.

Mr. James Howlett, President, Chase & Lunt Insurance lives in Amesbury, Massachusetts. Chase & Lunt has been in existence since 1897 and has been downtown most of that time. It is a difficult decision to make the move but it is also an easy decision. They will be increasing square footage and will be able to provide the employees with parking. Technology has changed the industry. Most communications between the office and clients are with email and fax. They employ 26 people now, up from 16 in 2006. They can't expand their current space and there are no other real options downtown. They are continuing to grow and want to be able to accommodate up to 35 employees. There are 34 parking spaces at the Industrial Park and there are an additional 7 communal spaces.

Chairman Ramsdell opened the hearing to public comment.

In favor:

Ray Nippes, 16 Essex Street, Newburyport Massachusetts

Mr. Nippes is a Trustee of the Industrial Park and works at Bixby International, 1 Preble Way, Newburyport, MA. Mr. Howlett and Chase & Lunt have a lot of clients in the Industrial Park. Mr. Nippes also sits on the industrial committee for the Chamber. He feels they will see more Corporate Headquarters and Research and Development in the Park – this is a trend. He fully supports Chase and Lunt's move to the Industrial Park.

Austin Spinella, 4 26th Street, Newbury, MA

Mr. Spinella is a commercial real estate broker and believes this is a good idea to consider if Newburyport wants to remain competitive.

John Green, Georgetown, Massachusetts

Mr. Green is one of the owners of the building Chase & Lunt would like to move to. The building has been on the market for 15 – 16 months and having Chase & Lunt occupy the space would help him out.

Anthony Triglione, 59 Turkey Hill Road, West Newbury, MA

Mr. Triglione is an abutter, he owns Unit #1. He is the Chairman of the condo association which unanimously voted to allow Chase & Lunt. He is also a commercial real estate broker and it has been tough to find a suitor for the property. They lost a company that wanted to come to Newburyport. There are no properties in Newburyport that are affordable with sufficient parking.

In Opposition:

None

Questions from the Board regarding Public Hearing #4:

Mr. Eigerman asked about the nature of the use and the number of “walk-ins” from the State Street location.

Mr. Howlett said that Chase & Lunt has worked hard on branding through their web-site. There is no huge flow of walk-in traffic. They are more comfortable than they would have been 4-5 years ago. Attorney Connelly mentioned that the definition of 404 actually has insurance in it, but the business is much more like professional consulting services than like retail services.

Deliberations:

Mr. Eigerman indicated that Use Variances are tough, He forgot to ask about the other office uses that exist today – did they obtain variances? Mr. Castagna said no.

Mr. Eigerman continued that the economic argument is clear. They are unfortunately relegated to a Use Variance because Zoning needs to be updated. Chase & Lunt is a legend in town and Newburyport does not want to let them go. He feels it is a more professional use than a retail use and he has no concerns about supporting the application.

Chair Ramsdell said a few years ago, the ZBA accepted economic argument. This isn't the first time and this argument carries weight.

Mr. LaBay said the best argument for was Item B in the application, in addition to the realities of economic hardship. He supports the application.

Mr. Goulet agrees with his colleagues.

Mr. LaBay made a motion to approve the Use Variance, seconded by Mr. Eigerman.

The motion passed with four votes.

Votes Cast:

Ed Ramsdell– approve

Duncan LaBay – approve

Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

Adjournment

Motion to adjourn made by LaBay, seconded by Mr. Goulet at 8:45 P.M.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Jared Eigerman – approve
Richard Goulet – approve
Robert Ciampitti – absent
Jamie Pennington – absent
Howard Snyder – absent

Respectfully submitted, Jennifer Lamarre - Note Taker