

**City of Newburyport
Zoning Board of Appeals
September 16, 2014
Auditorium**

The meeting was called to order at 7:14 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair) - arrived after minutes approval
Duncan LaBay (Secretary)
Jamie Pennington
Howard Snyder
Richard Goulet (Associate Member)
Libby McGee (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of August 12, 2014 Meeting

Mr. Ciampitti made a motion to approve the minutes and Mr. Snyder seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– approve
Richard Goulet – approve
Libby McGee - approve

3. Public Hearings

2014 042 Address: 114-118 Merrimac Street Dimensional Variance Variances for height, side yard setback, and rear setback

2014 043 Address: 114-118 Merrimac Street

Special Permit for Non-conformities

Alter pre-existing, non-conforming structure to construct a new two-family home on the lot

2014 044**Address: 114-118 Merrimac Street****Special Permit**

Demolish existing structure

2014 045**Address: 114-118 Merrimac Street****Special Permit**

Allow a two-family (Use #102)

Attorney Lisa Mead of Blatman, Bobrowski, & Mead LLC, 30 Green Street, presented on behalf of Robert and Elizabeth MacDonald, the petitioners. This is the former 'Mr. India' building on the corner of Route One and Merrimac Street. The applicant is proposing to demolish the existing structure and, in its place, construct a new, two-family residence on the property. Located in the WMD zone and the DCOD, the property is currently home to a pre-existing, non-conforming mixed-use structure that once housed a one-bedroom residential unit, a restaurant and a commercial space (formerly a Laundromat). The property has been on the market for 930 days. There is currently no parking, but the proposed structure would have tandem parking underneath with entrances on Merrimac Street and exits on Route One. There have been preliminary conversations with MA DOT allowing for curb cuts and easement allowing cars exit onto the Route One off ramp.

Special Permit for Use

A two-family is allowed by Special Permit in the WMD district. This use is desirable for the City in that it is allowed by Special Permit. There will be parking available and the property will be brought back to life. The use will not create traffic congestion or impair pedestrian access. It will not overload public utilities, in fact a mixed use building would have used more utilities than a two-family would. The proposed use will not impair the integrity of district. It is keeping with the character of the neighborhood. In the immediate area, there are other multi-family buildings including the Foundry, Rivers Edge Condos, Mechanics Court, among others. This new use will improve the neighborhood. It is in harmony with the purpose and intent of the ordinance. There are limited options available as to what to do with the property and this is a good re-use. There would be no dangerous emissions or anything of that nature. After construction it would operate as a two-family home.

Special Permit for Non-conformities

They would alter the pre-existing, non-conforming structure to construct a new two-family home on the lot. The current building goes over the property in more than one area. They would be adjusting the new building to fit while improving lot coverage and non-conformities. The changes would not be more detrimental, they would be an improvement to what is there.

Dimensional Variance

The applicant is proposing to change the use from a mixed-use structure to a two-family residence. The applicant states that due to the high water table and soil conditions of the parcel, the utilities for the proposed residences may not be located in the basement and must be located at grade. The first floor of the structure is proposed to be parking and space for the utilities with the living on the upper levels, necessitating the request for the height variance to allow a 34.3' tall structure where 25' maximum height is allowed. This argument is in addition to the lot shape hardship.

Special Permit

The applicant seeks to demolish the existing structure and falls under the new DCOD ordinance. This is a historic structure and is contributing to National Historic Register. Whenever reasonably feasible, historic structures should be saved. On July 11th the Historic Commission provided recommendations that original structure be preserved, but later additions could be taken off. The original structure has gone through a series of uses and owners, with each differing use resulting in additions and alterations to the principle structure. The structure, sitting at a gateway to the City, was one of the City's first firehouses where one of the City's first suction engines, the "Deluge" was housed. Since its life as a firehouse, the structure has been used as office space for the Essex News, several restaurants, a laundry mat, and an apartment. It appears as though the changing uses each brought additions and alterations the have resulted in the loss of much of the historical fabric of the structure. One feature that dates the building back to 1930 is the brick cornice detailing along the Merrimac Street roofline and a portion of the Bridge Street roofline. This feature is similar to cornices found on other structures in Newburyport that date back to the 1930s. Other than the cornice detail, the historical integrity of the structure is called into question due to the many alterations the building has undergone.

Mr. Gould brought the board through the history of the property. He also demonstrated on an interactive diagram, what would remain if later additions were removed. The budget to restore the historic part of building remaining would not be worth the investment.

Ms. Mead stressed that it is not reasonable to preserve or repair the building. The project would be consistent with what is happening in the general area on Merrimac Street. While at one time a firehouse, after years of changes, additions, and construction, it has already been 'demolished.' She pointed out there are significant differences from other firehouses in city that have been re-used.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Linda Smiley, Chair of Historic Commission.

The recommendation letter said that the NHC encouraged removal of later additions on **west** side of building. They did not intend for other additions to be removed. There has been much effort

into demolition plans instead of saving a historic structure. She stressed the purpose of the new ordinance is to preserve historic structures.

Tom Kolterjahn, President of Newburyport Preservation Trust

The Trust strongly opposes this proposal. Many other building have been in worse conditions downtown. He agreed it has had many owners and uses, but to say it must be torn down makes no sense. Demolition would not serve intent of the DCOD. He urged the board to use licensed professionals to come in and analyze the building and give an expert opinion.

Linda Tulley, 18 1/2 Walnut Street, Member of NPT

She presented to the board a packet of former firehouses and how they have been re-used/renovated throughout the city. She also briefly brought the board through the history of 114-118 Merrimac Street and its uses.

Reginald Bacon, 21 Strong Street

This property is near his home. He is in favor of preservation and not demolition. He believes the structure is in no worse shape than others that have been renovated during the downtown revitalization. It is his belief that it is time for some enforcement of the new DCOD ordinance.

Bob Currier, 3 4th Street Plum Island (was on Redevelopment Authority during Newburyport restoration

Firehouses are part of the history of the City. Federal, State, public and private funds all came together to make revitalization work. This is an example of a very early firehouse that should be preserved.

Jared Eigerman, 83 High Street, City Council

Came to represent himself as a resident and not as a City Councilor. He believed it vital to talk about DCOD and the ZBA has the power here for the public good. The intent of DCOD is to prevent the demolition. He appreciated the design and presentation, but does not believe the building is a lost cause. It is an important gateway site for the City. He recommended the board get expert opinions to bring in some real data before making a decision.

Stephanie Niketic, 93 High St

Ms. Niketic followed on Mr. Eigerman's comments in that getting an expert opinion is a good idea. She believes some of the data presented is not entirely correct.

Ms. Mead followed briefly commented that this situation is very different from buildings downtown in the 1970s and there were other cards at play.

Questions from the Board:

Mr. Ciampitti, Mr. LaBay, Mr. Pennington and Ms. Mcgee had questions regarding parking and how exactly it would work. Ms. Mead followed up by saying that each unit would have two tandem spaces. The entrance to the garage would be on Merrimac Street and the exit to the garage and access back to the street would be onto Route One. This is obviously subject to final

approval from MA DOT. There would be a single overhead door to the garage openings and the driveway would be paved.

Chair Ramsdell asked a question regarding the remaining bricks and what has deteriorated and would be unusable. Mr. Gould responded that about 40-50% have deteriorated.

Mr. Ciampitti asked about the entirety of foundation and whether it is to be removed. Mr. Gould responded yes, this would be to stabilize the structure.

Mr. Pennington asked about the standing water and foundation. Mr. Gould explained that there is a fairly high water table and the foundation is a combination of processed and field stone.

Mr. Ciampitti asked about thoughts on parking alternatives and whether they had approached MA DOT about the land abutting the property and possible easement. Ms. Mead responded that they have not asked about parking on that property and that the current proposal is best scenario.

Deliberations:

There was discussion amongst board members as to whether or not to bring in expert opinions on the condition of the building and whether it has any remaining market value and use and then continue the hearing to a later date.

Ms. Mead agreed the applicants would not challenge this, though wanted to know the scope of what the experts would be reviewing.

Mr. Andrew Port, Planning Director recommended a continuance to hire consultants – both an appraiser and an architect or engineer.

Ms. Mead would also contact MA DOT to see if the land abutting the property may be able to be used for parking.

Mr. Pennington commented that he was underwhelmed in the design, where this is a gateway building to the city. He would like to see improvements.

Motion to continue applications made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell– approve
- Robert Ciampitti – approve
- Duncan LaBay – approve
- Jamie Pennington – approve
- Howard Snyder– approve
- Richard Goulet – non-voting
- Libby McGee – non-voting

2014 050

Address: 25 Highland Avenue

Use Variance

Allow a portion of the Petitioner's property to be used as a parking lot

Attorney Lisa Mead of Blatman, Bobrowski, & Mead LLC, 30 Green Street, presented on behalf of Anna Jacques Hospital. Mark Goldstein, Anna Jacques Executive VP was also in attendance. Ms. Mead presented a map of AJH campus and showed the board where the proposed parking lot would be. A portion of property from Toppans Lane was deeded to AJH from memory care facility project, currently underway. The new lot would create 100 spaces and will need to go through a full site plan review if approved by ZBA. The city is lucky to have local hospital and it needs to stay competitive and offer additional parking. It will alleviate cars driving around looking for parking and also from parking on side streets. It will be a benefit to the public good.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Mark Goldstein, AJH Executive VP

He was really excited about expanding. The lots can currently park 600, and this will add another 100 spaces. Often during peak times the lots fill quickly. Valet parking is also offered. Everyone will benefit from this.

In Opposition:

none

Questions from the Board:

None

Deliberations:

Mr. Ciampitti commented that the board rarely grants use variances. All criteria was clearly demonstrated and this project is easily supportable.

The other board members agreed.

Motion to approve application 2014-050 for a Use Variance made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

Richard Goulet – non-voting

Libby McGee – non-voting

2014 051
Address: 46 Plummer Avenue
Special Permit for Non-conformities
Expand existing garage and mudroom and construct a second floor over the entire footprint

Jay and Julie Spence, owners presented the application. They have owned the property for 13 years, love their neighborhood and the City, and don't want to leave town. This is a small lot, so they are looking to build up. The garage must come down and be moved 2 ft.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Dan Warchol, 47 Plummer Avenue

Is in support. This will enhance the neighborhood.

Stanley Kulfan, 50 Plummer Avenue

There has been a lot of construction around their home. This will be perfect for Plummer Ave. as most homes are two story homes and this will keep with the neighborhood.

Mr. LaBay acknowledged letters from neighbors at 14 Christopher Street and (13, 27, 28, 30, 31, 37, 38, 44, and 36) Plummer Ave. in support.

In Opposition:

None

Questions from the Board:

None

Deliberations:

Mr. LaBay commented that it is a small building on an odd lot. It is a creative use of a small lot. He is in support.

Mr. Snyder –commented that the layout is keeping with the character of neighborhood.

Motion to approve application 2014-051 for a Special Permit for Non-conformities made by Mr. Pennington, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell – approve
- Robert Ciampitti – approve
- Duncan LaBay – approve
- Jamie Pennington – approve
- Howard Snyder – approve
- Richard Goulet – non-voting
- Libby McGee – non-voting

2014 052

Address: 29-35 Storey Avenue

Appeal

The Trust seeks to annul Condition #1 in the decision of the Planning Director dated 7/9/14, which conditionally approved the Trust's application dated 6/9/14 seeking to modify the site plan approval previously granted to the Trust on 7/18/07. The Trust also seeks an order vacating the corresponding decision of the Building Inspector dated 7/16/14 denying the Trust's application for a building permit dated 7/11/14

Richard E. Kaplan and David E. Kaplan, Trustees of Plaza Realty Development Trust ('PRDT') were represented by Attorney Lisa Mead, of Blatman, Bobrowski, & Mead LLC, 30 Green Street. PRDT is requesting that the ZBA annul Condition #1 and order the Building Commissioner to grant a building permit.

2004: PRDT received a Definitive Subdivision Approval from the Planning Board in 2004.

2007: PRDT received site plan approval for a 13,300 square foot multi-tenant building. This application was approved by then-Planning Director Nancy Colbert.

2014: PRDT submitted an application to modify the 2007 approved site plan. The 2007 approval did not lapse due to the failure of the applicant to take action. It continued to be "active" through the two permit extension acts granted by the State, therefore the zoning that was in effect at the time of approval stands – a "grandfathering" situation that was fully vetted and confirmed with the City Solicitor.

The following modifications were proposed:

- Moving the drive-thru window from the side of the building to the rear;
- Increasing the size of the building by approximately 420 sq. ft.;
- Shifting the building on site to the west;
- Realigning the Storey Ave entrance and egress;
- Converting a three-tenant structure to a single-tenant building; and
- Altering the architectural style of the structure from a design that mimicked that of Port Plaza to an "old mill building" concept.

Josh Swerling, Engineer, Ferris Development LLC, Southborough, MA

Mr. Swerling took the board through site plans of the 2007 plan overlay and the current proposal.

Paul Frederick, Architect, HPA Design, Inc., Wrentham, MA

Mr. Frederick took the board through the building design and how it is keeping with the character of the City.

Ms. Mead and the applicant believe that Director Andy Port has a personal agenda and is not following zoning.

She cited two similar cases to the board, including Quincy Vs. Board of Tewksbury as well as a Holyoke case.

Chair Ramsdell commented that the board had asked that the city solicitor be at the meeting, but they could not make it. He suggested leaving hearing open and continuing.

All were less than pleased that the City Solicitor could not be in attendance. There was quite a bit of discussion between board members and applicants as to what questions the board had for the Solicitor and whether or not they would continue the hearing this evening without advice.

It was decided between board members that they would prefer to get advice from the Solicitor and would like to continue the meeting.

Ms. Mead asked that a written opinion be submitted by the City Solicitor and shared with the applicants two weeks prior to the hearing's continuance.

Motion to continue Appeal application 2014-052 to the October 28, 2014 meeting made by Mr. Ciampitti, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell– approve
- Robert Ciampitti – approve
- Duncan LaBay – approve
- Jamie Pennington – approve
- Howard Snyder– approve
- Richard Goulet – non-voting
- Libby McGee – non-voting

2014 053
Address: 7 Roosevelt Place
Special Permit for Non-conformities
Demolish a pre-existing non-conforming single family home that does not have the required lot area and rebuild a single family home that meets all required setbacks

Mr. Pennington disclosed that he had worked with the architect on the project in the past, but did not feel the need to recuse himself.

David C. Knight and Michelle J. Gormley were represented by Everett Chandler, of Design Consultants. The existing home is a single family on a non-confirming lot. The proposed structure would also be a single family, conforming to all criteria. This is the land Mr. Knight grew up on. The project would be consistent with the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Mr. LaBay acknowledged letters a number of letters of support from neighbors.

In Opposition:

None

Questions from the Board:

Mr. Snyder asked about the frontage being a corner lot. Mr. Chandler answered they would be maintaining frontage on Roosevelt Place.

Deliberations:

Mr. Ciampitti commented that the lots were laid out prior to dimensional controls, causing interesting issues for people. This was a sensitive proposal.

Mr. Snyder appreciated the design on a small parcel and removal of all non-conformities.

Motion to approve application 2014-053 for a Special Permit for Non-conformities made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell– approve
- Robert Ciampitti – approve
- Duncan LaBay – approve
- Jamie Pennington – approve
- Howard Snyder– approve
- Richard Goulet – non-voting
- Libby McGee – non-voting

Adjournment

Motion to adjourn made by Mr. Snyder, seconded by Mr. LaBay at 11:08 PM.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell– approve
- Robert Ciampitti – approve
- Duncan LaBay – approve
- Jamie Pennington – approve
- Howard Snyder– approve
- Richard Goulet – approve
- Libby McGee – approve

Respectfully submitted, Katie Mahan - Note Taker