

**City of Newburyport
Zoning Board of Appeals
City Council Chambers
January 14, 2020
Minutes**

1. Roll Call

Vice Chair Robert Ciampitti called a meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. Present were members Robert Ciampitti, Maureen Pomeroy, Mark Moore, Ed Cameron, Stephen DeLisle and Rachel Webb (non-voting member).

2. Business Meeting

a) Election of Officers

Mr. Moore moved to nominate Mr. Ciampitti for Chair, Mr. Cameron for Vice Chair and Ms. Pomeroy for Secretary. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote.

b) Minutes

Ms. Pomeroy moved to approve the minutes of the December 10, 2019, meeting as submitted. Mr. Cameron seconded the motion. The motion was approved by a 5-0 vote.

c) Request for Minor Modification

31 Johnson Street (2018-013 and 2018-014)

George Haseltine represented the applicant, who is requesting a Minor Modification to a Special Permit and a Special Permit for Non-Conformities. He is requesting permission to construct the garage on the driveway rather than further back on the lot. The garage would not be as costly to construct in the new location and would provide some privacy. Erik Sorenson, 29 Johnson Street, wrote a letter of support for the request. Mr. Cameron moved to deem the proposal a minor modification and approved the request. Mr. Moore seconded the motion. The motion was approved by a 5 – 0 vote.

3. Public Hearings

19 Marlboro Street, LLC c/o Mark Griffin, Esq.

19 Marlboro Street

2019-061 - Special Permit for Non-Conformities

Continued from 11/12/19

Mark Griffin and Matt Landis described the changes that have been made to the plans since the November 12 meeting, when Board members and abutters commented that the proposed structure was too massive. The applicant met with the abutters and responded to their concerns. All of the garages, both attached and free-standing, have been removed from the plans, and the massing of the addition has been reduced. The parking would now be located along the edge of the driveway and at the rear of the property. The parking area is currently gravel and the applicant is proposing to replace this with asphalt. Attorney Griffin said the changes improve the plan in terms of open space and lot coverage. There would be no intensification of existing non-conformities. Only existing non-conformity is the front setback and this would not be changed.

City of Newburyport
Zoning Board of Appeals
January 14, 2020

The hearing was opened to comments from the public. Linda Levis Colson, 2 Lincoln Street, said the applicant worked hard to reduce the size of building and listened to her concerns about the garage. She does not like that the left side of the lot is all pavement and that the parking extends to the rear of the property. Kathleen Malynn, 14 Marlboro Street, said she is happy with the revisions but thinks the applicant could improve the landscaping by using a material other than impervious pavement. Pat Henault, 7 Marlboro Street, said she is concerned about runoff from the pavement. Tom Kolterjahn, 64 Federal Street, said he is not opposed to the revised plans, although he thinks the structure is still too large and the amount of demolition could possibly be greater than 25%. He would like the preservation of the historic chimney to be a condition of the special permit.

The applicant responded that he had considered locating two parking spaces to the right of the structure rather than at its rear, but this would result in the destruction of the portico. Only one back wall is to be demolished, which is approximately 5-6% of the structure. The stormwater issue has not yet been thoroughly investigated but a dry well might be considered.

Ms. Pomeroy said that while the removal of the garages was a big improvement, the increased roof area and the amount of pavement could create issues with runoff. Mr. Cameron also would like more information on the amount of runoff. Mr. DeLisle said the reduction in the size of the project is a positive step, but the runoff issue must be addressed. Ms. Webb thanked the applicant for making the changes to the plans but said she is also concerned about runoff. The applicant indicated he would be willing to change the asphalt to a permeable material.

Ms. Pomeroy moved to approve the Special Permit for Non-Conformities with the conditions that every effort shall be made during construction to protect the chimney; the applicant shall seek approval for a Major Modification in the event that any additional walls are impacted during construction and a pervious paving material shall be used in the place of asphalt. Mr. Cameron seconded the motion. The motion was approved by a 5 – 0 vote.

Phineas Gay III and Mindi Poston Gay c/o Lisa Mead, Mead, Talerman & Costa, LLC
10 Railroad Street
2020-001 - Special Permit

Request to Continue

The applicant requested to a continuance. Mr. Cameron moved to continue the Special Permit application to the January 28, 2020, meeting. Mr. Moore seconded the motion. The motion was approved by a 5 – 0 vote.

Jeff Stott c/o Lisa Mead, Mead, Talerman & Costa, LLC
7 Dove Street
2020-002 - Special Permit for Non-Conformities

Request to Continue

The applicant requested to a continuance. Mr. Cameron moved to continue the Special Permit application to the January 28, 2020, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5 – 0 vote.

City of Newburyport
Zoning Board of Appeals
January 14, 2020

**Ben Sirota c/o Lauren Rathbone, Precision Pool
4 Dorothy Lucey Drive**

2020-003 - Dimensional Variance

The applicant is seeking a Dimensional Variance to install a swimming pool in the area defined as the front yard setback. The front yard setback is on Moseley Avenue, which the applicant uses as the backyard. No member of the public spoke either in favor of or in opposition to the proposal. Mr. DeLisle said the applicant has proven a hardship and has met the requirements for a variance. Mr. Moore said the front yard setback is the only useable space on this unique lot. Ms. Pomeroy moved to approve the Dimensional Variance for 4 Dorothy Lucey Drive. Mr. Cameron seconded the motion. The motion was approved by a 5 – 0 vote.

Frederick Habeeb

5 75th Street

2020-004 - Dimensional Variance

Paul Magliocchetti represented the applicant, who is seeking a Dimension Variance to construction a single-family home on a vacant lot on Plum Island. He began by correcting two items in the memorandum submitted in support of the variance. Mr. DeLoach has not personally owned the property since 1973 but it was in his family since that time. Also, the deficiencies are more significant than was stated in the memorandum and an amended document was submitted. In 1974, the Building Department issued a letter stating the lot is a buildable one. The Plum Island Overlay District (PIOD) was adopted in 2001. Attorney Magliocchetti said Mr. DeLoach delayed building on the lot because the water and sewer lines did not extend to that part of the island. He said the strict application of the ordinance would deprive the applicant of the ability to use the lot and would result in a taking. He said the applicant is able to meet the requirements for a variance.

No members of the public spoke in support of the application. Ellen Moniz, 6 75th Street, said this is not the only vacant lot on the street, there are three others. This lot was determined to be unbuildable when the water and sewer lines were installed. She is concerned about the stress an additional home would place on the utility system. William Fallon, 8 75th Street, said the lot has no sewer hookups and does not meet zoning requirements. The lot is fully vegetated with beach grass, which is important for protecting the island from erosion. Lee McLaughlin, 9 75th Street, said the plan does not meet the requirements for setbacks, frontage and floor/area ratio. The Building Department determined the lot was not grandfathered. The lot is in the AO flood zone, which is experiencing severe erosion. She is concerned the development would cause increased flooding and would compromise the fragile water and sewer system. She submitted letters from neighbors who could not attend the hearing and are opposed to the application. Mark Consoli, 3 75th Street, said the PIOD was created for situations such as this and the application violates every one of its provisions. He said the ocean was further from the lot at the time the overlay district was put in place than it is now. Jeremy Schall, 4 75th Street, said the proposal does not meet a single zoning requirement. The road is very narrow in this location. He is also concerned that the installation of pilings would damage the foundation of his house. Maureen Adams added that cracks in foundations were caused by construction that took place at a greater distance than from that which is now being proposed.

City of Newburyport
Zoning Board of Appeals
January 14, 2020

Attorney Magliocchetti responded that the lot would have been grandfathered if it were two feet wider and other houses in the area do not meet zoning requirements. He said the application meets the criteria for exemption from the PIOD.

Mr. Cameron listed the purposes of the PIOD, which includes a limitation on the expansion of non-conforming structures to prevent the exacerbation of the problems of density. The focus of the PIOD is on preserving that which is existing and additional building should not be permitted, especially on this part of the island, where severe erosion is taking place. He said the application does not meet criteria for a variance. Mr. DeLisle said he could not find the conditions are present to grant a variance. The circumstances are unique to the applicant's lot only because he sat on his rights for so long. The circumstances are not the result of the applicant's actions but rather his inaction. He added that granting relief would constitute a special privilege. There are no other similar situations because the other property owners chose to take action. Ms. Pomeroy said she agrees with the comments made by her colleagues. Mr. Moore said under the Administrative Consent Order, new development must not be encouraged on Plum Island.

Mr. Ciampitti said that while he is sympathetic to the family, the Board must carry out its responsibilities. City Council recognized the extreme sensitivity of the resource area when it adopted the PIOD and the lot does not meet its requirements. The application to build on a vacant, non-conforming lot in a fragile resource area is a dramatic example of intensification. Under 40A, when the zoning changed, the applicant had five years to preserve the buildable status of the lot but he chose not to do so. He also chose not to have a water and sewer stub installed. Any hardship is at least in part self-inflicted due to the inactivity of the applicant. He asked Attorney Magliocchetti if wished to withdraw the application for a variance, which he did not.

Ms. Pomeroy moved to approve to the Dimensional Variance for 5 75th Street. Mr. Cameron seconded the motion. The motion failed by a 0 – 5 vote.

Sean Mindes, Handy and Some, LLC
13 Bromfield Street

2020-005 - Special Permit for Non-Conformities

The applicant is proposing to replace the railing of a roof deck with solid walls and a roof in order to convert the space to a walk-in closet. The change would result in an upward extension of a pre-existing non-conforming side setback. No windows would be added and the change would not be visible from the street. No member of the public spoke either in favor of or in opposition to the proposal. Mr. Moore said the proposal would not create any new non-conformities and would not be detrimental to the neighborhood. Mr. Cameron moved to approve the Special Permit for Non-Conformities. Mr. Moore seconded the motion. The motion was approved by a 5 – 0 vote.

The meeting adjourned at 9:17 pm.

Respectfully submitted,
Gretchen Joy
Note Taker