

**City of Newburyport
Zoning Board of Appeals
December 10, 2013
Council Chambers**

The meeting was called to order at 7:13 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Duncan LaBay (Secretary)
Robert Ciampitti (Vice-Chair) *Arrived after approval of minutes*
Jamie Pennington
Howard Snyder
Richard Goulet (Associate Member)
Jared Eigerman (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of November 12, 2013 Meeting

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

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings (6 on the agenda)

Public Hearing #1:

2013 052
Address: 2 K Street
Dimensional Variance
Construct a single-family home with non-conforming front and side yard setbacks

This hearing is continued from the November 12th meeting. The board requested that the applicant speak with the architect to determine if the height of the structure may be reduced as well as to allow appropriate time for review and determination by the Conservation Commission.

Attorney Lisa Mead of Blatman, Bobrowski & Mead LLC, 30 Green Street, Newburyport presented on behalf of owners John F. and Susan Decaprio. The lot is located at the corner of K Street and Old Point Road and is one of the few empty lots grandfathered for building. The soil and topography of the lot has forced building to the rear corner. The proposed non-conforming setbacks are side yard at 10.5' and front at 13.2'. The ZBA asked for the Conservation Commission hearing results. They closed the public hearing and issued a notice of intent with no changes to plans. The second concern expressed by the ZBA was the height of the structure. The architect went back and took 6 inches off the structure. Ms. Mead presented plans showing the reduction of roof and ceiling height. There is really no room to take the height down any more because of systems in place.

Chair Ramsdell opened the hearing to public comment.

In Favor:

John Decaprio, 2 K Street

Mr. Decaprio just spent his 61st summer on the island and has owned this parcel of land for almost 40 yrs. After paying taxes and betterments for years, he would like to finally build a home. It's a beautiful, buildable lot and he would like to see this permit passed.

In Opposition:

None

Questions from the Board regarding Public Hearing #1:

None

Deliberations:

Mr. Eigerman appreciated the re-working of height and realizes that some of height is duct work. This is not an outlandish proposal, and it is an attractive proposed house. He had hoped for a foot to be cut from the height, but was satisfied and felt the building met the criteria.

Mr. Goulet appreciated the effort to shrink down the height.

Mr. Snyder was less concerned with the height reduction, and more that the structure was in the right location with soil and topography concerns. He clarified the proposed building height and 6 inch reduction.

Mr. LaBay echoed previous comments. He appreciated the attempt to bring down the height.

Motion to approve the application for a Dimensional Variance made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – recused
Jamie Pennington – non-voting, was not at original hearing
Howard Snyder– approve
Richard Goulet – approve
Jared Eigerman – approve

Public Hearing #2:

2013 056

Address: 3 Sylvester Street

Special Permit for Non-conformities

Remove single-story 7' x 9' enclosed porch and construct new 9' x 25' single-story addition

Sharon T. Donovan, Trustee, 3 Sylvester Street presented. The purpose of adding the addition is that she can live in the house on one floor. There is a porch located on the back that they would remove and extend into the back, a 9' single story addition that will square off the home. It would allow a bathroom and laundry to be added.

Chair Ramsdell opened the hearing to public comment.

In favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #2:

Mr. Pennington commented that the addition is rather modest and unobjectionable. He asked if they were confident that everything would fit in the space. Ms. Donovan responded that yes, contractors had been out to the home and confirmed the plans.

Mr. Eigerman noted the broad support from neighbors. The lot coverage will be brought very slightly over the required 25%. He asked whether the builder attempted to fit within the 25%. Ms. Donovan responded yes, but that it would be cutting it too close for what needed to fit in the addition.

Deliberations:

Mr. Ciampitti commented that the application is modest and appropriate. It is consistent with things we see in the ward. The presentation provided evidence that it met criteria.

Mr. LaBay noted the large number of abutters in favor. He reiterated that the setbacks remain the same and they are just squaring off the house. It is a small lot with a modest change.

Motion to approve the application for a Special Permit for Non-conformities made by Mr. Pennington, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

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

Public Hearings #3, 4, 5:

2013 057

Address: 344 Merrimac Street

Dimensional Variance

Intensification of use so as to require a lot area variance, modification to structure to require rear yard setback

2013 058

Address: 344 Merrimac Street

Special Permit for Non-conformities

Modification to pre-existing non-conforming structure by adding a third living unit

2013 059

Address: 344 Merrimac Street

Special Permit

Change use from two-family (Use #102) to three-family (Use #103)

Ms. Mead presented all three applications, and noted that voting for each would be separate.

Attorney Lisa Mead of Blatman, Bobrowski & Mead LLC, 30 Green Street, Newburyport presented on behalf 344 Merrimac Street, LLC and Michael Svoboda and Adam Bartley, owners. Everett Chandler of Design Consultants was also in attendance. The petitioners seeks to convert a pre-existing, non-conforming two-family with two out buildings, to a three family within the WMD zoning district. The structure sits on the corn of Union Place and Merrimac Street. The petitioners wish to renovate the interior of the existing structure, construct an addition to the North of the structure, and remove the two out buildings. This is a Historic structure and they have appeared before the Historic Commission. There would be no renovation to the exterior of the original structure and two modern additions at rear and out buildings will be removed to accommodate new addition. A demolition delay release was issued by the Historic Commission.

Special Permit for Use

A three-family is allowed with a Special Permit per the Zoning Ordinance as long as the required general conditions are met.

First, “The Use requested is listed in the table of use regulations or elsewhere in the ordinances.” This property is located in the WMD zoning district where a three-family use is allowed by Special Permit.

Second, “The requested use is essential and/or desirable to the public convenience or welfare.” Use as a three-family is allowed in the WMD zoning district, and therefore by its nature, is determined desirable by the city. The proposed construction would provide diversity of housing, while not overusing the existing lot.

Third, “The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.” Adding one unit of housing will not create traffic congestion or impair pedestrian safety. The proposed project includes two parking spaces for each unit, and there would not be a need to park on the street.

Fourth, “The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area if the city will be unduly subjected to hazards affecting health, safety or the general welfare.” There will be a total of seven bedrooms within the three units. Three of those bedrooms currently exist. By adding four bedrooms at a possible addition 110 gallons per day of water and sewer use, this will not have a detrimental impact of the system and will not pose a health or safety hazard. There are plans to improve storm run off with new roof draining systems. Ms. Mead passed out plans for the new system. The driveways will also be a pervious material.

Fifth, “Any special regulations for the use, set forth in the special permit table are fulfilled.” There are no special regulations for a three-family use in the Zoning Ordinance.

Sixth, “The requested use will not impair the integrity of character of the district or adjoining districts, nor be detrimental to the health or welfare.” The new use as a three-family is consistent with the integrity and character of the neighborhood. There is a variety of residential uses along Merrimac Street. In the general vicinity there are single-family homes, two-family homes, and at least one multi-family as well as businesses. The proposed structure will not change the existing historic structure and there will be a clear separation from the new addition, which will also conform to the desires of the Historic Commission. The addition will be consistent with the neighborhood, and will not impair the character or integrity of the neighborhood.

Seventh, “The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.” The three-family use is consistent with the neighborhood and will not cause an excess of that particular use.

Eighth, “The proposed use is in harmony with the purpose and intent of this ordinance.” The three-family use is allowed by permit in the district, and is consistent with the surrounding neighborhood and is therefore in harmony.

Last, “The proposed use shall not be conducted in a manner so as to emit any dangerous, noxious, injurious, or otherwise objectionable fire, explosion, radioactive or other hazard, noise or vibration, smoke, dust, odor or other form of environmental pollution.” The construction and use of this structure will not create any of the above

Special Permit for Non-Conformities

The existing structure is non-conforming due to the front, rear, and side yard setbacks and the lot area. The petitioner is not changing the non-conformities to the Merrimac Street side setback or Union Place front yard setback. The new addition will be in line with the front yard setback as it exists and there will be no addition of any new non-conformity as to the front and side yard setbacks. There is ample room on site for use and parking and therefore will not be detrimental to the neighborhood as far as parking and traffic.

Variance

The petitioner seeks a variance for lot area and rear yard setback. The structure is located on a corner lot and has pre-existing non-conforming setbacks and lot area. Neighboring homes are also non-conforming due to setbacks. The shape of lot narrows to the rear and the topography falls approx. 4'. The proposed change of use will not be a special privilege. Is consistent with the neighborhood and would be a reasonable use of property, improving conditions. There is significant open space on the lot, 26 % more land than the zoning ordinance required. Much of the rear of the lot will remain unchanged and trees in the rear of the lot will stay.

The applicant originally tried to design a different rear structure, but found that massing was too large and would have required a height variance. They changed the design of the structure that was presented that meets height requirements and is much more in line with the original structure. The Historic Commission was appreciative of this as well.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Sarah Anderson, 340 Merrimac Street

Ms. Anderson sees this project as offensive to the existing neighborhood. The home is over 200 years old and neighbors have shared the yard for years. Creating a three-family would block neighbors' views, and there would no longer be privacy to immediate neighbors. Sunlight to neighbors would also be affected. The current use as a two-family is good, but she does not support the three-family. She could see if it was an open lot, but with regard to the immediate neighborhood, there are no three-families that she knows of.

Daniel Lynch, 342 Merrimac Street

Mr. Lynch took offense to the project. This home was built in 1804 and many homes were built before non-conformities were in existence. This is a Marine district and was made that way to protect the area and not overload it and build homes. The proposed structure would be 5' from his yard and he will have no view from half of his home. The design is 'getting greedier' than

when the developer originally showed neighbors some plans. He is opposed to the project. This is Historic Bellevilleport, which was for ship builders and modest homes.

Steven Schaepe, 3 Curriers Landing

Mr. Schaepe echoed the comments of neighbors. The structure, design, and magnitude are not within the character of the neighborhood.

Ken Okaya, 348 Merrimac Street

Mr. Okaya pointed out that for those in the neighborhood the view is much different than from Merrimac Street. People who walk in the neighborhood would see that the home is 'out of whack.' The choice of materials and options that are available, he is against. It is largely a single-family neighborhood. It is not just an unsightly project, but it would infringe upon the neighborhood.

Dave Edwards, 346 Merrimac Street

Mr. Edwards read the letter of the neighbors below. He also noted that he researched the sun on the US Navy website and the morning sun Sept–May is significantly impacted. Currently, only Dec-Feb sun is affected with the existing trees.

Penny Lazarus, 313 Merrimac Street – (LETTER READ BY DAVE EDWARDS)

Ms. Lazarus' letter expressed the opposition to the project by both her and her husband. She pointed out that it seems the petitioners are building a new home and simply connecting them for zoning purposes. The height of the new addition is higher than that of the existing structure and the magnitude of the expansion is detrimental to the neighborhood. Neighbors value their sight line and that would be taken away from them. She also expressed concern for flooding.

Moirra Connell, 346 Merrimac Street (LETTER READ BY DAVE EDWARDS)

Ms. Connell pointed out that the owners of the property are not actually proposing the project and the sale of the property is contingent upon approval of plans. She was approached in August by the developers and told that rough plans would be presented in weeks. This never happened and the ideas that were conveyed do not match up with plans presented to the board. It is a large single family home with a connector being proposed. Square footage of the addition exceeds that of the existing two units. Ms. Connell rebutted the general conditions for a Special Permit for Use presented by Ms. Mead. Finally, Ms. Connell expressed concern for flooding. The water table is just below surface. Mr. Edwards showed pictures of flooding and pointed out on maps the areas of concern.

Charlie Tontar, Councilor Elect, Ward 4, 29 Jefferson Street

Mr. Tontar received a number of phone calls and emails regarding this project. A concern in this ward is in fill housing. Projects like this are changing the north end and the essence of Newburyport, the waterfront, and marine area. We should be preserving viewsapes and ways to the water. There would be an impact on the integrity and character if neighborhood. This is a unique micro neighborhood in Newburyport with a cluster of late 18th early 19th century vintage homes. It evokes the history of the community and he believes that allowing this variance will forever alter a jewel of the city.

Marian Leighton Levy, 323 Merrimac Street

Ms. Levy often walks neighborhood. She is shocked at this proposed project. It would change the character of the neighborhood. She opposed the project.

Janice Giles, 10 Merrimac Court

Ms. Giles was concerned with Union Place. With new access to parking from Union Street, there would be more traffic. This is currently a one lane road that is often frequented by walkers as well. It is a safety concern. She was also concerned on impact of the value of her own home. She posed the question as to the purpose of the connecting mudroom. She was also curious as to what siding will be used and if its consistent with the old home. Additional traffic was big concern to her.

Eileen McCoy – 5 Hancock Street

Ms. McCoy lives across the street from a project that the contractor built recently. She noted the materials used were low quality and it was a disgrace to the neighborhood. She advised neighbors to visit Hancock Street to see past work.

Questions from the Board regarding Public Hearing #3:

Mr. Ciampitti asked what materials they intended to use on the new stricture in order to keep the integrity and consistency of the neighborhood. Ms. Mead said that clapboards and cedar shingles would be used. Mr. Ciampitti asked what they would be using for windows. Mr. Chandler answered that they would be using simulated divided lights.

Ms. Mead touched on a few points. There is currently a driveway where the addition is going. The addition will not take down trees. They will only be adding one driveway, another driveway already exists. With regards to the height of the proposed addition, the mean height is 23.5', and 30.7' to the ridge. The City requires to measure by mean. With concern to infiltration, one of the planning tools the City uses is the master plan. That document encourages infiltration and discourages sprawl on larger open space parcels.

Ms. Mead asked to take comments from board and neighbors and asked for a continuance. They would take comments and questions and address at continuance.

The board's concerns were as follows:

Mr. Pennington – infiltration, drainage, vehicular access.

Mr. Ciampitti – infiltration and the water table, the requested use and its impact on this unique micro community, materials choices.

Mr. Snyder – Storm water, soil conditions.

Mr. Goulet – Shares same concerns, storm water, overflow.

Mr. Eigerman – Lot area variance, addition doubling the floor area, would like examples of three-families in the neighborhood, interested in having borings done, driveways on Union Street, Façade is very long, would like to see rendering of what it would really look like.

Mr. Ramsdell – Concern with not having design criteria to work with. Not long ago there was an attempt for a Historic District.

Mr. LaBay – The square footage. The addition proposes the square footage of the total of the two existing units, connected by a mudroom.

Deliberations:

None

Motion to continue applications 057, 058, and 059 to the January 28, 2014 made by Mr. LaBay, seconded by Mr. Pennington.

The motion passed unanimously.

Votes Cast:

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

Public Hearing #6:

2013 060

Address: 71 Middle Street

Special Permit for Non-Conformities

Demolish existing garage (20' x 30') and reconstruct new single car garage (16' x 20')

Mark Sakaniwa, owner of 71 Middle Street presented this application. He is seeking a special permit for non-conformities to demolish a 20' x 30' garage and construct a 16' x 20' garage in its place. A 2' setback on the Eastern property line will remain and a 2' setback would increase on the Northern line. The current structure is buckling, cracked and in general disrepair. Part of the existing structure serves as a fence and buffer area with a neighbor. The property owners would replace a fence all around the property after construction.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Shari Wilkinson, 30 Federal Street

Ms. Wilkinson is the abutter in which the existing structure acts as a fence. She commented that temporary fencing would be desirable during construction because of her dogs. Other than that, she was in complete support with the project.

In Opposition:

None

Questions from the Board regarding Public Hearing #6:

Mr. Snyder commented that the application also mentions a covered porch. He asked whether that was included as part of the application and whether it was included in the lot coverage coverage. Mr. Sakaniwa answered that the porch was not included in the application and that no, the lot coverage is 4% over with the proposed garage only.

Mr. Pennington asked whether the owner was ok with adding temporary fencing. He answered that yes, he was absolutely ok with it.

Deliberations:

Mr. LaBay commented that this is a reasonable request and that abutters seem to be in favor.

Mr. Ramsdell added that a smaller structure cannot hurt.

Motion to approve the application for a Special Permit for Non-conformities with stipulation that temporary fencing be added during construction made by Mr. Pennington, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

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

Adjournment

Motion to adjourn made by Mr. LaBay, seconded by Mr. Goulet at 9:01 PM.

The motion passed unanimously.

Votes Cast:

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

Respectfully submitted, Katie Mahan - Note Taker