

**City of Newburyport
Zoning Board of Appeals
12/8/15**

Present: Edward Ramsdell, Duncan LaBay, Jamie Pennington, Dick Goulet, Renee Bourdeau

Absent: Rob Ciampitti and Libby McGee

Business Meeting:

The minutes of the 11/10 meeting were approved unanimously. Mr. LaBay made the motion to approve and Mr. Goulet seconded.

A request for minor modification for 8 Willow Avenue was received though no one was present to discuss the matter.

Hillside Center applications – The applications have been received and are large and complex enough that it would be reasonable to schedule a separate hearing. Mr. LaBay motioned to hold the hearings for the Hillside Center on Wednesday, January 20, 2016 and Mr. Goulet seconded. All voted in favor.

A ruling from Land Court was received about the Kaplan property at 25-31 Storey Avenue requiring the ZBA to annul its decision and remand the review to the Planning Director in accordance with the court decision. Mr. LaBay motioned to annul the decision of 10/18/14 and remand it to the Planning Director. Mr. Goulet seconded and all members voted in favor.

The appellant for 8 Willow Avenue arrived and submitted new plans showing removing the second floor turret and third floor dormer removed. Nothing is increasing and the exterior dimensions would remain the same. Mr. Ramsdell felt it was a de minimus change. Mr. Pennington motioned to approve the request for a minor modification for the drawings dated 11/25/15. Renee Bourdeau seconded the motion and all voted in favor.

***Stephen Ranney
126 High Street
Special Permit for Non-Conformities
Continued from***

Steve Ellis of Ellis Contracting represented the applicant. He supplied further plans showing elevations. There would be no windows on the left side or rear. The garage would be the same size in the same spot. It is currently non-conforming because it's on the lot line. Mr. Ramsdell asked if the proposed windows and doors were the same as the current. Mr. Ellis said that the new garage would only have one window facing towards the property side. The current garage has additional windows.

No one was in attendance to speak about in favor or opposed to the application.

Mr. LaBay asked for clarification about the roof style. Mr. Ellis said it was a hip roof minus the cupola. Mr. Pennington wondered if the scale of the drawings was correct. He suggested conditioning the decision so that the garage is not taller than the existing. He thought the door may not be drawn to scale.

Mr. Pennington motioned approve the Special Permit for Non-Conformities on the condition that the structure is no taller than the existing ridge height or 14', whichever is lower. Mr. Goulet seconded and all voted in favor.

C&L Homes, LLC and George and Louise Atkinson

4 G Street

Dimensional Variance

Lisa Mead of Blatman, Bobrowski, Mead, & Talerma represented the applicants who were requesting variances to split the lot at 4 G Street. She explained that the Atkinsons have owned the property since 1996. It contains 4 of the original 4,900 s.f. lots and to total 19,600 s.f. The Atkinsons believed it was 2 lots when they purchased it. The existing home sits on lot B. On around August of 2000, Atty. Mead said that a portion of lot A became listed as buildable on the "buildable list" that the City provided. Along the time of the water/sewer project, the City had to identify the lots that would be buildable so DEP would know what the water/sewer ratios would be. She provided information and a map showing water service and sewer service were both provided to that lot. Atty. Mead said that the Atkinsons were also provided the betterment assessment for two separate lots, which they paid. Atkinsons have believed they had a buildable lot given the betterment, sewer provided, and "list of buildable lots." She said when she was approached by the purchaser about a zoning opinion, she determined that under 40A Sec. 4, the lots have merged because it was in common ownership by the Atkinsons. She said granting these permits would be equitable for Atkinsons. Need three variances would be needed to split the lot. Lot A would require an area variance. Any new structure would need to meet the current dimensional requirements. Lot B would need a lot area variance and a rear yard setback variance. She said that these corner lots may be considered for hardship. The opposing lots on G and H Streets are non-conforming for lot area. In addition, G Street is laid out across a portion of the Atkinson's property causing them a hardship. The resulting lots would remain big, if not bigger, than those in vicinity. She said it would keep with the general lot size in neighborhood and there were many other structures in vicinity with similar setback problems. The Atkinson's would be given no special relief and no detriment will be suffered by approving variance.

No one spoke in favor or opposed to the applications.

Questions – Mr. Pennington asked if each of the two lots were assessed. Atty. Mead said they received a double assessment. He also asked about the "list of buildable lots" that she referred to. Atty. Mead said that the list is not binding. The City was required to adopt an ordinance to show that no development could occur over what could have been developed under Title V. The list was created with the best knowledge available at the time. Mr. Pennington said he had never heard using this type of argument as part of a premise for zoning relief.

Mr. Pennington asked if there has been any instrumentation plan showing G Street is laid out in the lot. The applicant did not.

Mr. Ramsdell said that the list provided by the applicant was a component of an analysis done for the water sewer project. He was concerned that the disclaimer says it was for build out potential and is pre- water and sewer. It also clearly states that it is not to be relied on for site specific for parcel level analysis. He said it bothered him that the list was only a planning estimate but being presented as a list of buildable lots. Atty. Mead said that there are lots on the list where betterments were not assessed. But they did assess this lot and betterments have been paid. She said there was no question that the Planning Department had ever represented that the list was definitive. It was only to show the potential for buildout. Mr. Ramsdell noted that the water sewer line does not necessarily make it a buildable lot. Atty. Mead said they were there for relief and equity. Mr. Ramsdell was concerned the documents were being presented as if they were proof.

Deliberations – Mr. Pennington said he was compelled by the equity argument though it doesn't support a variance. He said they could argue that the corner lots and surrounding lots are non-conforming. The installation of sewer argument buttresses that. The size of the two new lots would be similar if not larger than ones in the area. He added that there were also encroachments from public ways. Mr. LaBay said there was a tremendous equity issue. He was struck that it was an application on a corner lot with frontage on three streets having a dozen abutters and no one was present in opposition. The resulting lots would be larger than the surrounding. They've been paying for over ten years. The corner lot argument provides the necessary hardship as all the adjacent corners are substandard. Mr. Goulet agreed with the points Mr. LaBay made and supported the application. Ms. Bourdeau agreed not so much about the sewer installation issue but the hardship. Mr. Ramsdell agreed it was an equity issue though it concerns him to create another buildable lot on Plum Island since it's such a fragile place. Mr. Goulet said the infrastructure was already installed.

Mr. LaBay motioned to approve the dimensional variance for a lot split for area of lot A and lot area and rear setback for Lot B. Mr. Goulet seconded. All voted in favor.

Daniel G. Steger, DGS Architecture, PLLC
30 Market Street
Special Permit

Daniel Steger, architect, represented the owner. An in-law suite is being proposed on the second floor. There is already an existing bathroom and bedroom on that floor. All work would be done within the existing structure. A kitchen facility would be installed. It would allow the owner to age in place and allow relatives to live with her for assistance when the need came.

No one spoke in favor of the application.

Opposed – Norman Fahey of 28 Market Street lives on the other side of the half house. He said the abutter's notice was the first he heard of the apartment and he didn't want an apartment next to him.

Questions – Mr. LaBay asked about parking. Mr. Steger said that the parking is all on street. Mr. LaBay asked how the in-law integrates with the other parts of the building. Mr. Steger said that the in-law suite would be to the rear of the structure. Mr. LaBay asked about access to the third floor. The stairway to the third floor would not be located within the suite.

Ms. Bourdeau asked how long the special permits were good for and whether the owner would live there. Mr. Steger said the in-law would be for the blood relative, not the owner. Mr. Steger said that the owner would live there and the in-law would not be occupied until she needed assistance. Mr. Steger said that the owner wanted to construct the kitchen now and was instructed by the Building Department to get the in-law special permit even though it may not be occupied until later. The board discussed whether or not they had the ability to allow a special permit for an in-law apartment that would not be occupied since the petitioner would have to attest that a relative was living there as required by the ordinance. The Board discussed the possibility of installing everything but the kitchen.

Mr. LaBay mentioned that there is no off street parking. Mr. Ramsdell said he was fine without requiring a parking space but was concerned the lack of relative. Ms. Bourdeau agreed that was an issue and since there was no timeline, the Special Permit could expire before it is even acted on. Mr. LaBay was concerned with the building layout and lack of parking since presumably whoever lived there would have a vehicle. He also noted that they wouldn't be able to prove a relative lived there. He suggested the applicant request a withdrawal and reapply once they have set plans to inhabit the unit. Mr. Ramsdell also suggested looking at other ways to accomplish the work and talking to the Building Department to figure out where exactly the threshold was. The owner said she was not able to determine when in the future she would may be incapacitated and wanted to do it when she is able. Mr. Steger said he would discuss it further with the Building Department. Mr. LaBay said most of the work can be done by right and he could come back when they had final plans. Mr. Steger requested to withdraw the application without prejudice. Mr. Pennington motioned to allow the withdrawal and Mr. LaBay seconded. All voted in favor.

Philip and Tamara Schwartz c/o Mark W. Griffin, Esq.

178 Water Street

Dimensional Variance

Special Permit for Non-Conformities

Atty. Mark Griffin represented the applicants. This application is a follow up as a result to a Land Court decision appeal. A Special Permit for Non-Conformities was approved for construction of a mudroom along a non-conforming setback and a Variance was approved for construction of a garage. The neighbors appealed and a settlement agreement was issued requiring the plan to be amended by bringing the setback for the mudroom back by 1' from where it was approved. They also required the 30.25' length of the garage to be reduced by

10" resulting in a 6.1' setback on Somerby's Court. Construction began and the mudroom was built when they discovered that there were errors in the original site plan. 1.2' and 1.3' was the setback of the constructed mudroom where the settlement required 1.3' and 1.4'. The mudroom was also built 6" too long because of the errors on the site plan. These were small errors and didn't result in anything greater than what was already approved. The barn/garage was supposed to be constructed at 22.25'x 30.25' but the as-built came up inches different. Atty. Griffin said that the must meet the terms of settlement agreement and the decision must reflect what was built. He said the same criteria as the first applications still apply. The changes would not be more substantially detrimental than the existing and wouldn't affect any other abutters. He said the accessory building is larger than allowed so it must conform to regular setback requirements. The Board previously found a hardship as the lot is a unique, large, corner lot. There is also the existence of pre-existing non-conforming properties surrounding this one, lending itself to a hardship.

No one spoke in favor or opposed to the applications.

Questions – Mr. Ramsdell asked for confirmation that the appellants concur with the amendments. Atty. Griffin said he assumed so as they did not avail themselves the opportunity to object. He understands they are OK with the changes. Mr. LaBay asked how the addition was built in the wrong location. Atty. Griffin said there was a miscommunication between the surveyor and the architect.

Deliberations – Mr. Pennington felt they were minor modifications and the changes provided an improvement. He said that he supported the minor changes to something already approved. Mr. LaBay said they have already discussed the required criteria and they have improved the situation since. He mentioned that there was an unusual size and shape to this lot. Mr. Goulet and Ms. Bourdeau agreed. Mr. Pennington motioned to approve the Dimensional Variance and Mr. LaBay seconded. All voted in favor. Mr. Pennington motioned to approve the Special Permit for Non-Conformities and Mr. LaBay seconded. All voted in favor and the applications were approved.

Stephen F. Boy c/o Mark Griffin, Esq.
24-26 Erie Avenue
Special Permit for Non-Conformities

Atty. Griffin represented the applicant in requesting a Special Permit for Non-Conformities to remove the existing ranch home and replace it with another single family home which would be slightly larger. He said that the lot was non-conforming with respect to lot area and lot width. It has 9567 s.f. of lot area. Atty. Griffin said that a lot of the lots on the street are also non-conforming in terms of lot area. It is in a 1950s neighborhood that conformed to zoning when built. He said the removal is not subject to any demolition ordinances or other permitting. The proposed front setback would be 15.5'. The replacement structure would be built along the average front setback line of the neighboring structures. It will comply with all other dimensional requirements. The height is increasing but still way below 35' limit. It would be bigger than the existing but within the required thresholds. It would be a two-story home with

attached garage. It would not be out of character with neighborhood, although it is not a ranch. The proposed structure would not be substantially more detrimental than the existing structure.

In favor – Dave Guilmet, who lives across the street at 21 Erie Avenue spoke in favor. He said he has lived there since 1991 so he knows area well. He said it was obvious that house needs to be taken down and recommended that the Board approve it. He said there were not many two stories in the area but it's a good design. He said he welcomed a new house and new neighbors.

Thomas Murphy of 31 Harding Avenue said he was in favor of letting them build a new house but objected to the proposed front setback. He was concerned that you can't get car off the street enough and it would impede snow removal.

No one spoke in opposition.

Questions – Mr. LaBay asked about the siting of the new house and garage. Atty. Griffin said the setback increased to 18.9' at the front of the garage. Mr. LaBay asked if it was possible to move the garage back. Atty. Griffin said if they did, it would no longer be flush with the façade. Mr. LaBay asked about the slope in the rear. Atty. Griffin said it sloped down in the rear but then slopes up again. Mr. LaBay noted that it was an unusually shaped lot and asked about the abutter notification. Atty. Griffin said the lot was in common ownership. Mr. Goulet asked about the existing concrete driveway. It would be replaced with asphalt and there would be no change in pervious surface. Atty. Griffin said they would consider it though it was not being proposed as part of this application. The neighbors discussed the lack of flooding in the area and agreed it was not an issue.

Deliberations – Ms. Bourdeau was in support noting that there was no opposition. Mr. Goulet said it was straightforward. He said that it would appear it was possible to move the garage back to pick up a few extra feet. Mr. Ramsdell noted it was already at almost 19'. Mr. Pennington said that he appreciated the applicants using dormers to keep the height down and felt it was a reasonable application. Mr. LaBay agreed and noted the lack of opposition. He said the design is reasonable, the use is reasonable, and he was in support. Mr. Ramsdell agreed. He added that although he was fond of encouraging impervious material, this was not a massive increase in impervious material.

Mr. Goulet motioned to approve the Special Permit for Non-Conformities and Mr. LaBay seconded. All members voted in favor and it was approved unanimously.

The meeting adjourned at 9:04pm.

Respectfully submitted,

Dianne Boisvert
Note Taker