

**City of Newburyport
Zoning Board of Appeals
City Council Chambers
January 28, 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, Ed Cameron, Stephen DeLisle and Rachel Webb. Maureen Pomeroy and Mark Moore were absent.

2. Business Meeting

a) Minutes

Mr. Cameron moved to approve the minutes of the January 14, 2020, meeting as submitted. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote.

b) Requests for Minor Modifications

50-58 Middle Street

2017-049

Joseph Jemallo said he sent certified letters to 19 abutters. He received nine favorable responses and none opposing his plan to remove a planting bed that runs along his driveway. He submitted more details about his plan to extend the brick and add a four-foot-high fence. The style of the fence has not yet been decided. He said the change would be consistent with other properties on the street. He also plans to remove the grass from the front of the property and replace it that with brick as well to eliminate the need to pick up dog waste.

No one from the public spoke in favor of or in opposition to the request. Mr. Cameron said he is happy the applicant reached out to the neighbors. Mr. DeLisle said the modification would be a minor one. The style of the fence should match that which is existing on the property. Mr. Ciampitti agreed there should be a continuity in the choice of material.

Mr. Cameron moved to deem the request a minor modification and to approve the minor modification with the condition the fence material shall match that what is used elsewhere on the property. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote.

1 and 3 Vernon Street and 10A, 10B, and 12 Auburn Streets

2019-022, 023, 024, 025, and 026

Charles Griffin said he would like to begin work on the Old Gaol. A condition of the dimensional variance is that the applicant shall enter into a perpetual preservation restriction agreement and the final preservation restriction shall be recorded prior to the issuance of any new or associated building permits for the subject property. Obtaining approval for preservation restrictions from the Massachusetts Historical Commission has proven to be a lengthy process. The applicant is requesting this condition of the variance be modified to allow work to begin before the preservation restriction has been recorded.

Mr. Cameron moved to deem the request a minor modification and to approve the minor modification. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote.

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3. Public Hearings

Steven Lewis c/o Lisa Mead, Mead, Talerman & Costa, LLC
332 Merrimac Street and 7 Savory Street
2019-057 - Dimensional Variance

Request to continue to 2/11/20

The applicant requested a continuance. Mr. DeLisle moved to continue the public hearing to the February 11, 2020, meeting. Mr. Cameron seconded the motion. The motion was approved by a 4-0 vote.

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

Mr. Ciampitti recused himself from the discussion. The applicant requested a continuance due to the lack of a quorum. Mr. DeLisle moved to continue the public hearing to the February 11, 2020, meeting. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote.

Jeff Stott c/o Lisa Mead, Mead, Talerman & Costa, LLC
7 Dove Street

2020-002 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to remove a barn in poor condition at the rear of the property. A new barn with the same footprint would be constructed in a slightly different location and a small lean-to would be added to its side. The lot is non-conforming for lot area, frontage, front setback, right side setback and lot coverage. The barn is nonconforming for height and rear and side setbacks. The height of the new barn would be the same as the existing barn, which is 1.5 feet above the allowable height for accessory structures. The lean-to would intensify lot coverage by 2.4%. The application does not trigger the tree and sidewalk ordinance.

Ms. Mead distributed letters of support from neighbors. She said there would be no intensification of existing non-conformities and the change would not be more detrimental to neighborhood than the existing structure. Conditions would be improved because an unsafe structure would be removed. The side yard setback of the barn would be increased by 1.4 feet. Currently the barn sits on the property line and extends slightly over it at one corner.

The hearing was opened to comments from the public. No members of the public spoke in favor of or in opposition to the application. Mr. Cameron commented that the conditions for special permit have been met. Mr. DeLisle said the new barn would be an improvement over the existing conditions. Ms. Webb said the neighbors support the proposal and the new barn would be removed from the lot line. Mr. Ciampitti said the barn has come to the end of its useful life.

Mr. Cameron moved to approve the Special Permit for Non-Conformities for 7 Dove Street. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote.

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Jivonne Alley, Joppa Design, Inc.

31 Dove Street

2020-006 - Dimensional Variance

2020-007 - Special Permit for Non-Conformities

The applicant is proposing to construct a two-story addition at the rear of a single-family house located in R-2 district, which would result in an extension of a pre-existing non-conforming side setback and non-conforming lot coverage. The lot coverage would be 27%, higher than the 25% allowed. The zoning was changed in 2017 from R-3 to R-2 to prevent infill. The application does not trigger the tree and sidewalk ordinance.

Property owner Erin Dunphy said the 256 square-foot addition would be a modest one to a modest home and would be in scale with other houses in the neighborhood. The change would not be detrimental to the neighborhood because most homes on street do not meet zoning requirements. It would not change the character of neighborhood because 21 of the 27 houses on the street exceed 27% lot coverage. Letters of support from six abutters were submitted.

No members of the public spoke in favor of or in opposition to the application. Mr. Ciampitti asked for more information on how the standard for a hardship is being met. Ms. Alley responded that the owners have less flexibility than the neighbors because the lot is the smallest on the street. The size of the lot would make it difficult to make any kind of improvements. In order to keep within the lot coverage 25% requirement, the addition could only be four feet in width, which would not gain enough space to make the cost of construction worthwhile. The proposal would not be inconsistent with the goals of the downsizing ordinance.

The board members were in agreement that the application is a difficult one. While the amount of lot coverage being proposed is not much greater than that allowed under the ordinance, the bar is high for granting a variance. Other properties on the street might have lot coverage between 28% and 32% but the approval for that coverage was received before the ordinance was as restrictive as it is now. Mr. Cameron said he would be inclined to adhere more rigidly to the criteria if the amount of proposed coverage were greater, but under the circumstances he could support a variance. He said this is not the case of a developer proposing to enlarge a property in order to sell it at a greater profit. Mr. Ciampitti said the proposal does not represent the type of infill City Council was trying to prevent through downzoning and the expression of support from the abutters must be taken into consideration.

Ms. Webb moved to approve the Dimensional Variance for 31 Dove Street. Mr. Cameron seconded the motion. The motion was approved by a 4 – 0 vote. Mr. DeLisle moved to approve the application for a Special Permit for Non-Conformities for 31 Dove Street. Ms. Webb seconded the motion. The motion was approved by a 4 – 0 vote.

Charles Reynolds

133 Old Ferry Road

2020-008 - Special Permit for Non-Conformities

The applicant is proposing to construct a 12' x 24' shed, which would increase the pre-existing non-conforming lot coverage. The shed would be located at the rear of the property and would not block any views. The single-family home is on a half-acre lot that was subdivided from a larger lot and is much smaller than other lots on the street. The house currently covers 6% of the

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lot. The shed would cover an additional 1.4%. The lot is under a conservation restriction. DCR supports the project because it would allow equipment to be stored out of sight. The Massachusetts Historical Commission has determined the project would not have an adverse impact on historic resources. A letter of support was also submitted by an abutter.

No members of the public spoke in favor of or in opposition to the application. Mr. Cameron said the application is reasonable and would not be detrimental to the neighborhood. The other board members were in agreement.

Mr. Cameron moved to approve the Special Permit for Non-Conformities for 133 Old Ferry Road. Mr. DeLisle seconded the motion. The motion was approved by a 4 – 0 vote.

Kevin and Stefanie Pessolano

2.5 Coltin Drive

2020-009 - Special Permit for an In-law Apartment

Eileen Graf presented the application for a Special Permit for an in-law apartment that would be attached to the existing structure. The lot is conforming in size and is at the corner of an undeveloped street. One corner of the house is non-conforming with regards to the rear setback. The addition is slightly higher and wider than the existing house but would not be greatly visible from the front of the property. The in-law apartment would be above a new two-car garage and would add 700 square feet to the existing structure. Two neighbors signed a letter of support for the application.

No members of the public spoke in favor of or in opposition to the application. The proposal meets the requirements for an in-law apartment, which were read aloud by Mr. DeLisle. An annual recertification is required for the permit.

Mr. Cameron moved to approve a Special Permit for an In-law Apartment. Ms. Webb seconded the motion. The motion was approved by a 4 – 0 vote.

Lauren Eramo and Amy Rasimas c/o Lisa Mead, Mead, Talerman & Costa, LLC

49 Kent Street

2020-010 - Special Permit for Non-Conformities

2020-011 - Special Permit for an In-law Apartment

Lisa Mead represented the applicants, who are proposing to construct a 561 square-foot, one-story in-law apartment. In addition, an existing garage would be demolished and a new garage would be constructed in the same location. The NHC approved the demolition of the garage and the change of the flat roof over the porch to a pitched roof. The lot is a preexisting non-conforming one for area, frontage and lot coverage. The house is a preexisting nonconforming structure for front setback and one side yard setback. The garage is a preexisting non-conforming accessory structure for rear yard setback. The location of the new garage would improve the condition by 1.7 feet. The addition to the house would extend the side yard non-conformity.

Ms. Mead said the proposal would not add a new non-conformity and would not be more detrimental to neighborhood than the existing structure. The proposed new garage would be further from the property line and would be half the size of the existing structure. She submitted letters for support for the in-law apartment.

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The hearing was opened to comments from the public. Peter Dambrosio, 71 Washington Street, said he is concerned that the digging of a foundation might have a negative impact on a nearby tree. He also does not want the garage to prevent him from extending and maintaining his fence. Attorney Mead responded that the garage would be constructed on a slab and would be further from the property line than the existing structure.

Monica Reuss, 47 Kent Street, said her property is in close proximity to the applicant's and she is concerned the proposal would be detrimental to her. The house would be extended by 26 feet and because of the slope, it would appear to be 1.5 stories above ground. It would block her light and views and impact her privacy. She thinks her property could be damaged during construction and she fears her property values would be reduced. She said the purpose of side setbacks is to protect neighboring properties. She would like the proposal to be modified to be more sensitive to abutters and more in conformance with zoning requirements. Attorney Mead responded that the in-law apartment would not cast additional shadows on the property, which is already impacted by other structures and trees. She said the proposal meets the standard of not being substantially more detrimental to the neighborhood than the existing conditions.

Martha Van Koevering, 45 Kent Street, believes the proposal would have a negative impact on privacy and drainage. She said that for other projects on the street, the opinions of neighbors were sought and compromises were reached. She is concerned there could be applications for further changes to the property, such as the addition of a second story. She would like an alternative solution to be found, such as moving the addition further from the property line.

The board members suggested that the clapboards could be extended lower towards the ground so that less of the concrete foundation would be visible. They also suggested the hearing be continued to allow for conversations with the abutters and for some of their concerns to be addressed. Attorney Mead requested a continuance to the next meeting.

Mr. Cameron moved to continue the public hearing for a Special Permit for Non-Conformities to the February 11, 2020, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 4 – 0 vote. Mr. Cameron moved to continue the public hearing for a Special Permit for an In-Law Apartment to the February 11, 2020, meeting. Ms. Webb seconded the motion. The motion was approved by a 4 – 0 vote.

The meeting adjourned at 9:53 pm.

Respectfully submitted,
Gretchen Joy
Note Taker