

**City of Newburyport
Zoning Board of Appeals
February 17, 2015
Council Chambers**

The meeting was called to order at 7:15 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Duncan LaBay (Secretary)
Jamie Pennington
Richard Goulet (Associate Member)

Absent:

Libby McGee (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of February 3, 2015 Meeting

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

The motion passed unanimously.

Votes Cast:

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

b) Scheduling

The board would like to cancel the following 2015 meeting dates: 7/28, 9/22, 11/24, 12/22.

LaBay made a motion to cancel these meetings and Mr. Goulet seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – absent
Duncan LaBay – approve

Jamie Pennington – approve
 Richard Goulet – approve
 Libby McGee – absent

3. Public Hearings (10 on the agenda)

Public Hearing #1:

2015	010
Address: 81 Lime Street	
Special Permit for Non-conformities	
Demolish pre-existing non-conforming two-family structure and construct a new single family home	

Lime Street Realty Trust was represented by Attorney Lisa Mead of Blatman, Bobrowski & Mead & Towerman LLC, 30 Green Street. A plot plan presented with the existing and proposed structure. The existing structure is a non-conforming two-family structure built in 1787 that has been added to and renovated many times. The Historical Commission voted to impose a one-year demo delay prior to the DCOD and the year has now passed. The proposal is a single-family with a parking space and garage on the left. Elevations and floor plans were presented. There would be three bedrooms on the 2nd floor and a bonus room on the third floor. No new non-conformity would be added. The home would sit on a smaller footprint. Lot coverage would decrease from 39% to 29%. The front yard setback would increase from 0 ft. to 4.6 ft. and the side A setback would increase from 2.9 ft. to 4 ft. The project would reduce density by becoming a single-family use, and improve multiple non-conformities. Parking would also be added. Letters of support from neighbors were submitted.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Julie Menin, 83 Lime St,

She appreciated a smaller footprint and the design. Her concern was that the new structure would be taller.

Bruce Menin, 83 Lime St.

He appreciated efforts made to try to accommodate neighbors. He mentioned George Haseltine said he could lower the height by 6 in. and he would encourage this. He also noted that this new garage would be one of only two on Lime St.

Jim McCarthy, 17 Russia St.

He was concerned with height of structure and suggested a stipulation that the peak does not pass that of the neighboring homes.

In Opposition:

None

Questions from the Board regarding Public Hearing #1:

Mr. LaBay asked Mr. Menin if adding a second garage to the street was an issue. Mr. Menin responded that it was not a problem, just an observation.

Mr. Pennington asked for the ridge height, but the applicants did not have that information. There was discussion of how the plans reviewed by the Historic Commission had changed from a two-family Federalist into what was presented today. Lots of work went into the project over the year to better match the neighborhood and streetscape.

Mr. Goulet asked for ceiling heights. Mr. Haseltine answered that they would be 9 ft. on the first floor and 8 ft. on the second floor.

Deliberations:

Mr. Pennington commented that the rendering did not help the design. He wished he had ridge heights of adjacent homes. He commented that without the garage it would be tough to approve the project. He was amenable to lowering the structure. He did not believe the project would be substantially more detrimental to the neighborhood.

Mr. Goulet agreed. It would be consistent with the neighborhood. He would be in favor of lowering the height 6 in. as well. This is a nice project.

Mr. LaBay agreed with the conclusion of supporting. The smaller footprint is positive. The height is well within the limits. They will gain a parking space and improve setbacks. Taken from the prior proposal a year ago, this is substantially better.

Mr. Ramsdell agreed.

Motion to approve application 2015-010 for a Special Permit for Non-conformities with condition to lower the 1st floor by 6 in. made by Mr. Pennington, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – absent
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee – absent

Public Hearing #2, 3, 4:

2014 079

Address: 2 Storey Avenue

Dimensional Variance

Decrease a 19.1' setback to a 9.8' setback where the structure and use are non-conforming

2014 080

Address: 2 Storey Avenue

Special Permit for Non-conformities

Upward extension of a pre-existing non-conforming rear setback

2014 081

Address: 2 Storey Avenue

Appeal

Appeal of the Building Commissioner's decision that Major Site Plan Review is required for a proposed addition

Mr. LaBay as an abutter recused himself.

Attorney Mark Griffin, 11 Market Sq. represented Sotirios Asprogiannis, Trustee of S&D Realty Trust, applicants. Continued from the 12/2/14 and 2/3/15 meeting. The proposal has gone through many stages of change. The pre-existing, non-conforming structure is in a unique area located at "Three Roads" at the intersection of Storey Avenue, Ferry Road and Moseley Avenue. Its frontage is one Ferry Road, Harnch's Way and Storey Avenue. Its use (502; fast food carry out) is not conforming in the R2 district. An existing walk-in freezer encroaches on a rear abutter. The Building Commissioner agreed that B1 district regulations be applied to this application. Lot area would increase from 12,719 sq. ft. to 13,450 sq. ft. The rear yard setback would increase from -.4 ft. to .8 ft. and the side setback at Storey Avenue would decrease from 19.1 ft. to 10.6 ft. They are proposing ample parking at 27 spaces. The structure would expand 840 sq. ft., seating will increase from 48 to 64, a wall and freezer encroachment would be remedied, an enclosed trash area will be added, new handicap accessible restrooms would be added, and better handicap accessibility will be added.

City Council will vote pending project approval from ZBA on a wedge shaped piece of land on Harnch's Way that would be given to Famous Pizza in exchange for widening and paving Harnch's Way.

Craig Douglas, architect briefly spoke. The design of this project started over two years ago. They want the project to be mutually beneficial for the City, Famous Pizza, and neighbors. Many improvements will be made to the site and interior of the building. They are attempting give the building a cohesive look. A new kitchen will be up to code, added bathrooms, and handicap accessibility. The inspiration for design was downtown Newburyport. This is the last prominent building as you leave the City through the end. They plan to wrap the building with a brick face, move HVAC systems onto the roof to improve noise and eye appeal. There would be no parapet on the backside of part of the structure per a neighbor request.

They are appealing the Building Commissioner's decision that Major Site Plan Review is required for a proposed addition. They respectfully disagree as the ordinance says any new, non-residential use and this is not a new use.

The Special Permit for Non-conformities for an upward extension of a pre-existing non-conforming rear setback is needed. This will not be substantially more detrimental to the neighborhood. They have worked with neighbors and this is much more aesthetically pleasing. They are curing encroachments, moving HVAC to a better location.

A dimensional variance to decrease a 19.1' setback to a 9.8' setback where the structure and use are non-conforming is needed. Impact on neighboring properties is minimal. This is one of the more unique lots in Newburyport with frontage on three sides and a unique shape. There are a number of surrounding properties that are also non-conforming as reason for existing hardship.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Attorney Griffin submitted an email from an abutter Duncan LaBay of 4 Ferry Road, Newburyport supporting the application.

In Opposition:

Ray White, 3 Ferry Rd.

Concerned with HVAC and exhaust on roof and noise and also looking at an “unfinished” back of the building.

Robert Solazzo, 7 Ferry Rd.

Concerned with noise and exhaust smells. Want these issues addressed.

Mr. Griffin attempted to address these issues. The only section of the back of the building without a parapet would be the side facing Mr. Morrill's property per his request. The HVAC and exhaust units would be enclosed by parapets on the roof to reduce noise.

Questions from the Board regarding Public Hearing #2, 3, 4:

Mr. Ramsdell questioned whether the HVAC units have a surround. Mr. Griffin responded that yes, noise would be projected upward. Mr. Ramsdell also asked about the freestanding sign and whether that would remain. Mr. Griffin answered that the sign would come in under a new application for another location on the property. An internal neon sign has also been removed.

Mr. Ciampitti questioned whether the lack of parapet wall along Mr. Morrill's property would create another problem of noise for other neighbors. Mr. Griffin answered that only the Morrill's will see this side and that any unit on the roof will be enclosed to minimize noise.

Mr. Pennington questioned the HVAC and venting on the roof and whether they could ensure it would be fully parapetted. Mr. Griffin responded that they will have to comply with the City noise ordinance and they cannot commit to locations of equipment on the roof as they are not that far into the project yet. Noise would be diminished from what exists now.

Mr. Goulet asked about site improvements. Mr. Griffin explained how currently cars cut through the parking lot in avoidance of the narrow Harnch's Way. There is guardrail separating the lot

from the Way. The applicants have proposed to widen Harnch's Way and add granite curbing and a green grass strip for snow in winter. Entrances would be less inviting for pass through.

Deliberations:

Mr. Ramsdell commented that in regards to the appeal and need for site plan review, he felt the applicant is correct. This is not a new structure or use. The board agreed. He noted that City Council wanted to make sure neighborhood had chance to speak and a determination was reached. They would then move forward with the land transfer.

Mr. Pennington commented that they can still meet minimum parking without the City turning over the land. He would like to see a condition added.

Mr. Ciampitti commented that the SPNC rationale was very well articulated and this is an appropriate request. As far as the Dimensional Variance, the surrounding properties being non-conforming is a hardship. The shape of the lot is also a factor.

Mr. Goulet agreed. There are many positive impacts. Handicap access, restrooms, cured encroachments, site improvements to improve safety and appearance are all positive.

Motion to approve application 2014-079 for a Dimensional Variance with condition that City Council grant site control of portions of Harnch's Way as shown on proposed site plan made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – approve
Duncan LaBay – recused
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee – absent

Motion to approve application 2014-080 for a Special Permit for Non-conformities with condition that applicant will adhere to any and all City of Newburyport noise ordinances and will endeavor to parapet mechanical on roof to verticalize noise made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – approve
Duncan LaBay – recused
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee – absent

Motion to grant appeal 2014-081 made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – recused
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee - absent

Public Hearing #5:

2015 009

Address: 15 Tremont Street

Special Permit for Non-conformities

Construct addition to pre-existing non-conforming two-family structure

Balmoral Development LLC and Chris Horan, Manager were represented by Attorney Lisa Mead of Blatman, Bobrowski, Mead & Towerman, 30 Green Street. The existing conditions are a two-family structure in the R3 district. The applicant is proposing to construct an addition on a pre-existing, non-conforming two-family residence. The project includes the elimination of a barn and construction of a new 2 ½ story unit, including a two-car garage, to be attached to the existing structure by a one-story connection. As part of the project, a rear deck and side porch will be removed. Open space remains in the rear of the structure. The applicants are requesting relief to exceed 500 sq. ft. of new construction. All non-conforming lot features would remain the same, with the exception of side A setback which would improve by changing from -1.8 ft. to 1 ft. The project is not significantly more detrimental to the neighborhood. They will be removing encroachments, a barn that is not usable, adding parking, and rehabilitating a historic structure. Emails of support were presented to the board. Elevations were presented.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Ruth, Beberman, 88 High St.

Likes the work on the front of the property. She does not like another house in someone's backyard.

Hugh Martinez, 13 Tremont St.

He read a letter to members of the boards signed by 40 neighbors. Photos were also provided as to what proposal will mean for the neighborhood and homes and help provide perspective. Concerned with size, scale, massing, density, and impervious surfaces.

Robert Levins, 84 Federal St.

Concerned with looking into yard, density, footprint, air and light loss, fire safety, single-family homes connected with a garage.

Nancy Ware, 84 Federal St.

Concerned with the project being out of character, light and air impact, and density. She would like to see a smaller duplex.

David Kipp, 11 Tremont St.

Agreed with neighbors. Concerned with impervious surfaces and the water table.

Mary Maguire, 13 Tremont St.

Believes the neighborhood will massively change.

Richard Gruen, 82 High St.

Concerned that a modern house will be built onto the back, the surface for the private way, and snow removal.

Anne Spraker, 20 Tremont St.

Agree with neighbors. Concerned with fire access.

Pam Kipp, 11 Tremont St.

Agreed with neighbors. Concerned with neighborhood changing and density.

Ms. Mead attempted to address the concerns of neighbors. This would remain two-family use. The proposed addition of unit two is smaller than the existing footprint. The height is lower. Lot coverage requirements are met. Open space remains. The private way will not change and there will be a garage to help with parking. Snow plowing would not change.

Questions from the Board regarding Public Hearing #5:

Mr. LaBay responded to an earlier comment from a neighbor, that the neighbors at 16, 18, and 20 Tremont Street were sent notices.

Mr. Pennington asked if the origin or historic use of the property was known. Ms. Mead responded that it was laid out as part of an estate pre-1871. One gentleman owned the entire area.

Mr. Goulet asked what the driveway surface for parking would be. Ms. Mead answered that a semi-pervious or pervious stone would be used. They are open to changing the private way surface also.

Deliberations:

Mr. Ramsdell commented regarding the barn. The city has chosen in the DCOD to specifically state that structures must be specifically listed; therefore it does not apply to the barn in this case.

Mr. Pennington commented that the project is conceptually ok, but the devil was in the details. The lot is unusual in narrowness. There are a lot of multifamily properties in the neighborhood. He did not think the project would be substantially more detrimental.

Mr. LaBay believed the addition as proposed would be substantially more detrimental to 13 Tremont St. because of the closing in of space with the connected addition.

After a discussion with Mr. LaBay, Mr. Ciampitti noted that while the proposal would not be in conformity with the required side yard setback, it would be improving the setback from that which currently exists with the barn.

Ms. Mead commented that the applicant would bring the residence back 4 ft. to get the 10 ft. setback. They could not move the garage further because the driveway would be squeezed out.

Mr. Pennington commented that on the improvement that would be and it breaks up the long wall in the back.

Mr. Goulet appreciated the move back 4 ft.

A neighbor was concerned with the setback from the private way, but Mr. Pennington commented that there were a few other houses much closer to the private way than this project would be.

Motion to approve application 2015-009 for Special Permit for Non-conformities with a condition that the surface of the driveway is not impervious and that the residential section of the 2nd unit will be brought forward 4 ft., creating a 10 ft. setback made by Mr. Pennington, seconded by Mr. Ciampitti.

The motion passed.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – no
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee - absent

Public Hearing #6, 7, 8:

2015 011 Address: 22 Union Street Special Permit for Non-conformities Construct an addition over 500 sf to a pre-existing non-conforming single family home
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2015 012
Address: 22 Union Street
Special Permit
 Demolish over 25% of the existing structure

2015 015
Address: 22 Union Street
Dimensional Variance
 Construct an addition that exceeds the allowable lot coverage

Attorney Mark Griffin presented on behalf of Steve and Kathleen Dodge, applicants. The applicant is seeking to remove rear additions and construct a new addition in their place on the pre-existing, non-conforming, single-family home. Since 22 Union is listed as a Contributing Structure on the District Data Sheets and the proposed demolition exceeds 25% of the structure's exterior, the project is subject to the regulations of the DCOD.

This pre-existing, nonconforming structure was built in 1750, sits on Union Street in the R2 district. They are proposing to remove an L-shaped portion of the existing home built in 1950s. They will not be touching the original home. They would add a two-story addition to rear of the existing structure (in excess of 500 sq. ft.) to add a kitchen and master bedroom. The structure is non-conforming in regards to lot area, lot coverage, frontage, front yard and side yard setbacks. With the new addition lot coverage would increase from 12.8% to 27.8% where 25% is the maximum. All others would remain the same. The Historic Commission has approved this project as it will retain historic features and compliment the structure.

Mr. Dodge briefly spoke about the project and how passionate he is about the property. He has been on the Historic Commission 2.5 years. The historic structure will be untouched and any renovations will be brought back to period. They want to bring the structure back to life. They intend to use authentic materials such cedar clapboards, etc. The neighbors are in support. Mr.

The applicants need to demolish over 25% of the existing structure, triggering the DCOD. They justify this with the reasonable use standard. The Dodge's want to live in the home and have fully functional modern day living.

The applicants will construct an addition that exceeds the allowable lot coverage and need a Dimensional Variance granted. The lot is unique and undersized. Many surrounding properties that are also non-conforming was an argument for hardship.

The applicants intend to construct an addition over 500 sq. ft. to a pre-existing non-conforming single-family home and need a Special Permit for Non-conformities. The project will bring aesthetic improvement and integrate with neighborhood. Restoration and preservation of the structure will not more significantly more detrimental to the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #6, 7, 8:

None

Deliberations:

Mr. Pennington commented on the attention to detail in this project. He was prepared to support.

Mr. LaBay commented that the presentation provided justification for the Dimensional Variance, Special Permit, and Special Permit for Non-conformities. He was in support.

Mr. Goulet and Mr. Ciampitti agreed.

Mr. Ramsdell agreed and pointed out glowing comments from the Historical Commission.

Motion to approve application 2015-011 for a Special Permit for Non-conformities made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee – absent

Motion to approve application 2015-013 for a Special Permit made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee – absent

Motion to approve application 2015-015 for a Dimensional Variance made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Libby McGee – absent

Public Hearing #9, 10:

2015 013 Address: 17 J Street Dimensional Variance Request for relief for side setback on renovation and reconstruction of single family home
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2015 014 Address: 17 J Street Special Permit for Non-conformities Modify a previously granted permit due to reconfiguration of land
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Attorney Lisa Mead of Blatman, Bobrowski, Mead & Towerman, 30 Green Street, represented Christopher and Denise Horan. In November 2014, the Board granted a SPNC for this property. During title certification, it was discovered that a portion of the parcels that comprise the property are not entirely owned by the current owner. They are requesting a modification to the SPNC to reflect to correct dimensions and also a variance for the side yard setback, which was originally thought to be a pre-existing non-conformity, but upon the reconfiguration of parcels, was in compliance and, with the proposed project, will be a new non-conformity. In November 2014, the Board found that the proposed change would not be substantially more detrimental to the neighborhood than the pre-existing non-conforming structure. The applicant has stated that the odd shape of the lot, particularly the side lot line, restricts the size and location of the proposed addition, which speaks to the hardship criteria for the variance request. Ms. Mead presented the plot plan with explanation.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #10:

None

Deliberations:

Mr. Ciampitti commented that the applicants more than met criteria and articulated reasons that an adjustment needed to be made.

The rest of the board agreed.

Motion to approve application 2015-013 for a Dimensional Variance made by Mr. LaBay, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2015-014 for a Special Permit for Non-conformities made by Mr. LaBay, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

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

Adjournment

Motion to adjourn made by Mr. Goulet, seconded by Mr. Ciampitti at 10:55 PM.

The motion passed unanimously.

Votes Cast:

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

Respectfully submitted, Katie Mahan - Note Taker