

**City of Newburyport
Zoning Board of Appeals
February 24, 2015
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)
Jamie Pennington
Richard Goulet (Associate Member)
Libby McGee (Associate Member)

Absent:

Robert Ciampitti (Vice-Chair)

2. Business Meeting

a) Approval of Minutes

Minutes of the February 17, 2015 Meeting

Mr. LaBay made a motion to approve the minutes as amended 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 - approve

b) Annual Vote for Officers

Mr. Pennington made a motion to approve that the current officers remain.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Jamie Pennington – approve

Chair Ramsdell asked if any members of the board had interest in attending a future meeting on zoning changes (date and time TBD). Mr. LaBay was interested. Mr. Pennington would also attend.

Chair Ramsdell also informed the board that the Historical Commission may join the March 10th meeting.

3. Public Hearings

2014 042

Address: 114-118 Merrimac Street

Dimensional Variance

Variances for height, side yard setback, and rear setback

2014 043

Address: 114-118 Merrimac Street

Special Permit for Non-conformities

Alter pre-existing non-conforming structure to construct a new two-family home on the lot

2014 044

Address: 114-118 Merrimac Street

Special Permit

Demolish existing structure

2014 045

Address: 114-118 Merrimac Street

Special Permit

Allow a two-family (Use #102)

This hearing was continued from the 9/16/14, 10/21/14, 12/2/14 and 1/27/15 meetings. Attorney Lisa Mead of Blatman, Bobrowski, Mead & Towerman, 30 Green Street, represented the applicants, Robert and Beth McDonald of Munroe Street.

A brief timeline of the project/applications was presented. The proposal was to remove the existing structure and build a two-family structure in its place. The DCOD was adopted in April 2014 and an application was filed with the Historical Commission 5/22/14, with hearings were 6/5/14 and 6/29/24. Applications were filed with the ZBA 6/12/15. The first hearing with ZBA was 9/16/14. An appraiser, structural engineer and estimator were engaged in this application at the board's request following the 9/16/14 meeting. The structural engineer and estimator visited the site on 11/13/15. In early December upon receipt of the structural report, the applicants submitted questions that were answered in late December. An appraiser visited the site shortly after, submitting a report in mid-February. On 2/23/15 a partial roof collapse and buckling walls were deemed unsafe and to be demolished by the building commissioner. Building code supercedes zoning code, and the building will be demolished this week.

Mr Simcox, the appraiser hired by city for City concluded that there was no remaining market value or reasonable use. A two-family structure was highest and best use. To bring the structure to this use and restore would be cost prohibitive. Any investor would lose \$55,000 – \$120,000. As a vacant lot, it was valued at \$275,000. Based on standards of DCOD, the board should approve the special permit. However, it is no longer needed.

Everett Chandler of Design Consultants presented a site plan of the proposed project. This is a pre-existing, nonconforming lot in regards to frontage and lot area. The structure was non-conforming as well, with the front, side and rear yard setbacks, and maximum lot coverage. The lot is surround by the Rail Trail, Merrimac Street, and Route One. The proposed structure would be parallel with Merrimac Street. The driveway would consist of an entrance on Merrimac Street into a tandem garage, with an exit onto the Route One off ramp pending MA Highway approval.

Ms. Mead presented elevations with changes that reflected the board's previous meeting comments. There were design changes in the rear and front garage doors, with articulation added. The front balcony was removed. Cedar shingle and clapboard sides were added. Another change was that the basement needed to be filled in per the recommendation of the structural engineer and utilities brought up to first level.

Special permit for Use: A two-family is a use allowed with Special Permit in the WMD zoning district, and is even allowed by right with certain lot area. The use is desirable because as it provides housing and parking. There would be no undue traffic congestion or pedestrian safety issues. Traffic would improve being a residential structure and sidewalks would remain. Utilities would not be overloaded. Six bedrooms would have less impact than a restaurant, laundromat and residence that was there before. There are a variety of uses in the neighborhood, and this would be in harmony with purpose and intent of the ordinance.

Special Permit for Non-conformities: The existing conditions are non-conforming in front, side, and rear yard setbacks, frontage, lot area and maximum lot coverage. The new project would improve front and right side yard setbacks and maximum lot coverage. Parking would also be added. It would not be substantially more detrimental to the neighborhood.

Variance: This is needed for side yard and rear yard setbacks and height. This is a corner lot surrounded by other non-conforming lots and structures, making an argument for hardship. The property shape and topography are also unique. The height is directly related to soil and a high water table, and the need for a filled in basement. WMD only allows 25' height, but other residential districts allow 35'. 34.3' are proposed here.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Tom Kolterjahn, 64 Federal Street, Newburyport Preservation Trust

He was in support of saving the building and is saddened and outraged that it will come down due to neglect. He was opposed to the new plan. His concerns are with size, gateway location, and impact on the Rail Trail.

Jared Eigerman, 83 High Street

The demolition of the structure is necessary as it is a threat to public safety. He was upset about deliberate neglect and length of time the permitting process took. He commented on out of state applicants coming in and making changes. The replacement building design is in progress, but not there yet.

Stephanie Nikotich, 93 High Street

She noted that she owns a Historic commercial building in Amesbury and had the roof cleared of snow. It is the responsibility of the owners. She was concerned with the landmark location, unattractive use, context, and scale. The site is better suited for mixed use.

Jim McCarthy, 17 Russia Street

He noted his comments are as a resident and not member of Planning Board. The building demolition is now a moot point. He believed design was about halfway there. One design concern was the building on sloped lot, causing uneven foundation to be exposed and not enough room for plantings to hide this.

Ms. Mead commented that the applicants live on Monroe Street and are not out of state. She also made a point to say that the applicants and board diligently pursued the application since DCOD adoption and was not implying that the process made this happen.

Questions from the Board:

Ms. McGee asked about how parking and flow of traffic would work. She also questioned the height as compared to the existing structure. Mr. Chandler noted that the height would be similar to the Mechanics Court condominiums.

Mr. LaBay asked for clarification on how the building would sit on the lot and what foundation would be exposed as Mr. McCarthy had mentioned. Mr. Chandler answered that the lot does slope slightly, but less than a couple of feet. The rendering was relatively close to what one would see when the project is done.

Mr. Goulet commented on the wide sidewalk wide along Route One and the possibility of vegetation. Mr. Chandler stated that they would have no control over the sidewalk there, it is MA DOT.

Deliberations:

Mr. Pennington commented that this is a very unique parcel and application that he has given a lot of thought. He did believe there was a reasonable use for the site and he was not opposed to a two-family. However, the application and design were severely lacking. In particular he mentioned the zero lot line, '3 story box' design, dormers, and unique driveway configuration. He was not ready to support.

Ms. McGee felt the same. The scale and proportions were too much. She was drawn to the keywords of the public; gateway and entry point. She was not prepared to support.

Chair Ramsdell also did not like the design. He felt it was big and boxy. The driveway was concerning as well, but he did not have a solution yet. Something was missing. He also addressed comments on the demolition and neglect of the property. There was no one happy that the building would be demolished. This was an unusual winter. Applicants and the process cannot be blamed.

Mr. LaBay remarked that the emergency demolition was not predicted and this was an unusual winter. The proposed structure is rather large and the drive through parking is unusual. Perhaps if the structure were to shrink to 80% it would work. He commented on Mr. Eigerman's statement of out of state buyers moving in. In 1980, he was in the same situation as have others and many would take offense to the comment.

Mr. Goulet was troubled by the massing of the structure and thought something smaller might work. He also addressed a comment made by Mr. Eigerman on neglect. He has seen in his own work that some buildings could not have snow removed because it was unsafe.

Ms. Mead requested a continuance to the 4/14/15 meeting.

Motion to continue applications 2014-042, 2014-043, and 2014-045 to the 4/14/15 meeting made by Mr. LaBay, 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 - approve

Motion to withdraw without prejudice application 2014-044 for a Special Permit made by Mr. LaBay, seconded by Ms. McGee.

The motion passed unanimously.

Votes Cast:

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

2015 004

Address: 44 Forrester Street

Dimensional Variance

Demolish existing garage and construct an addition with new garage and a bedroom above along a 0' side setback

2014 005

Address: 44 Forrester Street

Special Permit for Non-conformities

Construct an addition over 500 s.f. on a property with non-conforming frontage and lot area

A letter was submitted to the board to withdraw the applications without prejudice. The applicants are working with the building commissioner on other options that would not require ZBA approval.

Motion to withdraw without prejudice applications 2015-004 and 2015-005 made by Mr. LaBay, 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 – approve

2015 016

Address: 177 Storey Avenue

Use Variance

Continue existing veterinary clinic use (Use #201) on a proposed separate lot no longer accessory to adjacent residences

Attorney Mark Griffin, 11 Market Square, Suite 8 represented the applicant Dr. Lagasse. Dr. Lagasse currently owns a veterinary clinic in Haverhill. Dr. Shankin currently owns the veterinary Clinic at 177 Storey Avenue, Newburyport. Mr. Griffin presented the site plan. The parcel contains two single-family homes and a third structure that is currently being operated as a veterinary clinic. The original owners received permission from the ZBA in 1968 to allow the operation of the clinic on the property as an accessory use. The current owner, who bought the property in 1991, has continued this use to present day. The owner is now looking to sell the property and has received an offer to purchase both the parcel and the practice. The prospective buyer would like to subdivide the parcel so that the clinic is on its own property through the planning Board's Approval Not Required (ANR) subdivision process. If all of the necessary relief from the ZBA and the Planning Board is granted, the end result would be two parcels, one with the two existing single-family homes and one with the clinic. The parcel is in an R1 zoning district, which necessitates that applicant's request for a Use Variance to allow the veterinary clinic to exist as its own use on its own property. The proposed parcels and structures meet all dimensional requirements for the R1 zoning district.

Dr. Niki Lagasse, 13 Jefferson Court spoke briefly. She has owned and operated a veterinary clinic in Haverhill (where she grew up) since 1986. She is quite happy with that practice, but has always wanted to practice in her new hometown. Dr. Shankin will be retiring and she would like to take over his practice. She is happy in her current home and does not wish to reside on Storey Avenue. She has no immediate plans to sell the residences and would likely rent them. They may be back to the ZBA in the near future for a variance for renovations to update the clinic.

Mr. Griffin clarified that they are here to establish the use right now and they may need to come back when plans are complete for renovations. The use is not substantially more detrimental to the neighborhood. The clinic has been operating since 1969 and has been a benefit to the community. It is an ideal parcel for the veterinary clinic use.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Michael Lagasse, 13 Jefferson Court

Dr. Lagasse's husband explained how dedicated his wife is to her career and community.

Dr. Berba, Amesbury

Another veterinarian that is hopeful to work for Dr. Lagasse. He children attend the IC School in Newburyport and she is excited to be more involved with the community.

In Opposition:

Pam Boudoin, Storey Avenue

She was seeking clarification on what will become of the residences. She also wanted to be clear on the planned expansion of the clinic. This has always been a home business with a caretaker onsite. The neighbors are concerned with the expansion, kennels added, noise, etc.

Questions from the Board:

Chair Ramsdell remarked that if the board granted this property separation, there would be a standalone business in the middle of a residential area. He asked whether the applicant had thoughts of constraints for expansion so neighbors would feel better. Mr. Griffin was not sure a condition could be added. If expansion impacts dimensional requirements, they would be back.

Ms. Boudoin commented that when the school was added to the neighborhood, the neighbors had significant input. She was concerned this might set a precedent for businesses in their neighborhood and whether the vet business could be sold to any other type of business. Chair Ramsdell answered the use could not change until someone came before the ZBA.

Deliberations:

Mr. LaBay commented that if the applicant were to live on parcel B, the question would be irrelevant. This is simply a matter of do they or don't they live on the property.

Chair Ramsdell commented that this would be creating a standalone business in a residential district. He asked if there were any plans put together on expansion. Mr. Griffin responded that they are only in draft stages. If plans stay as is, they would be back with a variance application for expansion on the side setbacks.

Ms. McGee questioned why they did not present expansion plans and variance with this application. Mr. Griffin explained time constraints for the purchase were the reason.

Mr. Goulet suggested they impose a percentage expansion restriction.

Dr. Lagasse explained that standards of veterinary care have changed and that is what is why they would expand. She passed out very preliminary plans of expansion in hopes of putting the board and neighbors at ease. Boarding and kennels are used for medical necessity.

Mr. Labay commented after looking at the plans that there would be an addition toward the church next door. The use variance and applicant's intent seem reasonable. The non-conformity of adjacent properties forms a hardship argument.

Motion to approve application 2015-016 for a Use Variance with a condition that expansion for use does not substantially exceed the Feb 12, 2015 plans presented to the board until the applicant returns to the ZBA made by Mr. Pennington, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

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

2015 017 Address: 81-83 Storey Avenue Sign Variance Permit a freestanding sign

Tropic Star Development has submitted a request for a sign variance to allow a freestanding sign at the to-be-relocated Shell Station on Storey Avenue. The current sign would be disassembled and the new sign proposed on Storey Avenue to the left of the main entrance, in front of some plantings. It is important to have clear signage on Storey Avenue giving notice of the entrance and eliminating confusion. The proposed sign measures 6' in height from grade to the top of the sign and 7'-6" in width. It will be externally illuminated with ground-mounted spot lights, the stone base of the sign will match the wall that borders the property and the decorative cap and topper will mimic the architecture found on the approved building renderings. Conceptual renderings were presented to the board.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Pennington asked if any freestanding signs for the pharmacy are also anticipated. Yes, at the Low Street entrance. Others signage would be on the building itself.

Ms. McGee appreciated the detail and package.

Chair Ramsdell brought up approval from the planning board as a minor modification to Site Plan Approval with conditions.

Deliberations:

Mr. Pennington commented that this was a nice alternative to the two-post standard. Having a masonry base is a nice mix.

Ms. McGee commented that the massing was nice.

Mr. Goulet commented on the attractive signage.

Mr. LaBay was pleasantly surprised with the sign and appreciated the reduced size.

Chair Ramsdell noted the location on the lot as well as non-conformities surrounding the lot.

Motion to approve application 2015-017 for a Sign Variance made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – absent

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Libby McGee – approve

2015 018

Address: 8 Oakland Street

Dimensional Variance

Allow a two-family use on an undersized lot

2015 019

Address: 8 Oakland Street

Special Permit

Allow a two-family use (#102)

Brad Kutcher and Bradku, LLC and owners Ann and Bob Miller, submitted applications for a Dimensional Variance and also a Special Permit for Use to allow a two-family use on a 11,660 square foot parcel where 12,000 square feet is required. These applications are the first step in a longer permitting process that includes an application to the Planning Board for a “VI-C Special Permit” to allow two residential structures on one parcel and coordination with the Historical Commission to place a Preservation Restriction on the existing structure. The project team is all local with prior experience on projects in town including 251 Merrimac Street and 386 High Street.

The proposed plan includes the restoration of the existing home, which will include a new, two-car garage off of the most northerly driveway off of Oakland Street; a new, 2 ½-story single-family home fronting on Walnut Street with a two-car garage using the existing driveway off of Walnut Street. The existing home was a two-family from approximately 1970-2003 and was then converted into a single-family.

Mr. Cracknell lead the board through a thorough Powerpoint presentation the team, project goals, approach, analysis, neighborhood input, finding, and proposed stipulations.

Dimensional Variance: The shape and topography of the corner lot as well as the presence of non-conforming lots in the immediate neighborhood were evidence of hardship.

Special Permit for Use: A two-family use is allowed by special permit. No undue traffic congestion or impairment of pedestrian safety would be created. The project would not overload public utilities. The project would not impair the integrity or character of the neighborhood. This would not cause an excess of two-family use in the neighborhood. The use is in harmony with the purpose and intent of the zoning ordinance and would not cause any environmental hazard or nuisance.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Lindsey Barlow, 3 Oakland Street

Has lived across from the property for 17 years and lived in 8 Oakland when it was two-family. She was pleased one of the driveways would be removed. This will fit well with the neighborhood.

Amy Casey, 4 Walnut Street

This project will improve the neighborhood. The applicants have taken feedback from neighbors and made changes.

Stephanie Nikotich, 93 High Street

She commented that the applicants other project at 386 High Street has been built as promised. The same type of planning and preservation would happen here. This seems like a good process.

Jim McCarthy, 17 Russia Street

Was in favor and wished all applications were this sensitive.

Corey Scrupps, 253 Merrimac Street

Was in favor and commented on a great job on other projects and promises.

In Opposition:

None

Questions from the Board:

Mr. Goulet questioned a brick walkway at the corner becoming accessible. It would be.

Deliberations:

Mr. Pennington commented that preparation goes a long way. This was well thought out and criteria were met. He prefers the XI-C to attached homes.

Mr. Goulet remarked that the case had been made strongly with an appropriate comprehensive package. He also favored the XI-C approach.

Ms. McGee agreed and commented on an incredible package.

Mr. LaBay agreed with his colleagues. He appreciated level of preparation and noted the lack of opposition from the neighborhood.

Chair Ramsdell concurred. This was an excellent presentation and with strong groundwork. He also noted the dimensional variance was short by under 3%.

Motion to approve application 2015-018 for a Dimensional Variance 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 - approve

Motion to approve application 2015-019 for a Special Permit with 20 stipulations; 18 of which were provided in writing as well as (19) Moving the structure 6” further back and (20) replacing 20’ of chain link fence in the yard made by Mr. Pennington, seconded by Ms. McGee.

The motion passed unanimously.

Votes Cast:

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

Adjournment

Motion to adjourn made by Mr. Goulet, seconded by Ms. McGee at 10:30 PM.

The motion passed unanimously.

Votes Cast:

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

Respectfully submitted, Katie Mahan - Note Taker