

**City of Newburyport  
Zoning Board of Appeals  
March 26, 2019  
Council Chambers**

The meeting was called to order at 7:17 P.M.  
A quorum was present.

**1. Roll Call**

**In Attendance:**

Ed Ramsdell (Chair)  
Robert Ciampitti (Vice-Chair)  
Renee Bourdeau  
Maureen Pomeroy  
Edward Cameron  
Mark Moore

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of the 3/12/19 meeting**

Ms. Bourdeau made a motion to approve the minutes as amended and Mr. Cameron seconded the motion.

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell– approve  
Robert Ciampitti – approve  
Renee Bourdeau – approve  
Maureen Pomeroy – approve  
Edward Cameron – approve  
Mark Moore – approve

**3. Public Hearings**

**2018      064**

**Address: 193 High Street**

**Special Permit for Non-conformities**

*Remove existing later added shed/garage, construct new attached 3-bay garage, create formal paved parking area at rear of site, construct exit driveway on the western side of the building*

This application is continued from 2/20/2019. Ms. Pomeroy recused herself. Attorney Lisa Mead of Mead, Talerman and Costa LLC, 30 Green Street presented the application. In December the applicant appeared before the board and proposed an additional egress, 52 parking spaces in the rear of the building, and a rear garage addition of 1080 s.f. Letters of support from the Police Department, Fire Department, and DPS were presented. The applicants have made changes based on comments from the neighborhood.

The Board must find that 1. There will be no intensification or extension of an existing non-conformity or the addition of a new non-conformity and 2. The proposed change will not be substantially more detrimental to the neighborhood than the existing non-conforming structure or use.

The use of the property as a funeral home and residence dates back to 1927 and the addition of parking and a garage will not change the nature and purpose of the use that existed for years. Steve Sawyer, engineer, of The Morin-Cameron Group, Inc. explained changes made from the original design. The previously proposed one-way loop driveway was consolidated to an entry and exit in the existing driveway, and a redesign of the parking lot to now accommodate 38 spaces, including two handicapped spaces. There would be two bays of angled parking. He touched on a snow storage area, grading following existing contours, a 6' solid panel fence along the western property line, and storm water management. A fence would be added across the side of the property where the egress was originally proposed. He noted that 38 parking spaces would alleviate 850' of curb line parking. He also touched on headlight concerns and presented an actual survey contour showing headlights blocked by the 6' fence to 3 Dexter Lane, not considering vegetation. Light pollution would be mitigated. Other changes included the proposed attached garage. David Keery, architect, dropped the size to 996 s.f. and added articulation. The garage would not be visible from High Street.

There was a question of a change of use with the proposed rear parking. Attorney Mead used support case law *Powers vs. Building Inspector of Barnstable*, 363 Mass. 648 (1973). She also referenced more recent Land Court case with Newburyport's Port Rehab facility. Full analysis and explanation may be found in Attorney Mead's letter dated January 28, 2019 to the Board.

**Chair Ramsdell opened the hearing to public comment.**

**In Favor:**

*Attorney Mead submitted 85 letters of support.*

*Lawrence Twomey Jr., 6 Prince Place  
In support.*

*Esther Sayer, 10 Ship Street  
In support of original proposal.*

*Tony Pettigrew, 1 Lavalley Lane  
Has lived in Newburyport for 21 years and known the owners of the funeral home for three. Life in city is constantly changing. Neighbors knew this was a funeral home when they moved there.*

*Lou Sabino, 159 Crow Lane  
In support.*

*Frank Cousins, President Newburyport Chamber of Commerce  
Applauded the work Louis has done on the funeral home, as it is a valuable asset to the community.*

*Doug LeBlanc, 82 Cedar Street, Amesbury  
Previously lived at 193 High Street for many years. There is a desperate need for parking lot, in the winter especially. He selfishly did not want to give up the backyard and never pursued a parking lot.*

**In Opposition:**

*Bill Sheehan, of Maclean Holloway Doherty & Sheehan, PC, Peabody – representing Stephen Delisle & Brin Stevens, 195 High Street*

*Concerns included; Argued the case law cited*

*Stephen Delisle, 195 High Street*

*Concerns included; argued the Powers test does is not passed, snow melt area proximity to historic barn on his property.*

*Arron Sturgis, Preservation Timber Framing, Berwick, ME*

*Concerns included; Barn condition, drainage, impact on neighborhood, loss of a great barn on the property at 193 High Street in recent years.*

*Brin Stevens, 195 High Street*

*Concerns included; Rogers Funeral home doe not have parking, cars still parking on street, decreased property value, illegal parking lot in use, suffocated neighborhood, altered lifestyles to accommodate neighbors, disruption of the neighborhood.*

*Sheryl Blair, 10 Dexter Lane*

*Concerns included; parking at the corner of Dexter Lane and High Street not safe, property value will drop.*

*Robin Blair, 10 Dexter Lane*

*Concerns included; at the last meeting the Board asked to have the applicants contact neighbors and that did not happen.*

*Joe Devlin, 3 Dexter Lane*

*Concerns included; sanctity and privacy of backyard, creation of an entirely new use with parking in rear of building, wooded yard with many trees to be lost, more intense use of parking lot in the past 4-5 months (photos presented of light pollution), concern with overhead lighting to be added as well, drainage issues to come, more than doubles space developed, creation of a whole new accessory use could be found, not approached by applicants. Mr. Devlin spoke to the Fire Chief regarding his support letter and he did not know the existing parking lot was illegal. The DPS director said yes to a new curb cut, but stated the applicants should talk to neighbors. This will not alleviate parking problems.*

*Ellen Carney, 189 High Street*

*Concerns included; have been accommodating to the applicants and their business, but have not had same reciprocation, ongoing industrialization of property.*

*Eric Goodness, 189 High Street*

*Concerns included; Funeral home been there for 90 years without a parking lot, there has been no permit for a parking lot at any time, there are six acres of uninterrupted canopy in the rear of the property and a parking lot would significantly change the hallowed area, narrow driveway for two way traffic and pedestrian traffic.*

*Tom Kolterjahn, 64 Federal Street, Newburyport Preservation Trust*

*Concerns included; The Trust is strongly opposed as it would be detrimental to a historic neighborhood, a modern three car garage and parking lot, abutters and neighbors are against the application, detracts from neighborhood.*

*Sharif Zeid, 192 Water Street*

*Concerns included; Detriment and intensity highly objective compared the Prince Place parking lot of 43 spaces and pictured putting that into backyard – this is powerful, precedent setting.*

*Nicole Devlin, 3 Dexter Lane*

*Concerns included; Moved away from sights and sounds of a parking lot after previously living on Pond Street, a dead end street in a quiet neighborhood would be lit up like a baseball field.*

*Stephanie Niketic, 93 High Street*

*Concerns included; High street is home to businesses and churches and this would be the first with parking, the plan expands and intensifies a grandfathered use, Historic High Street.*

*Jerry Litschke, 187 High Street*

*Concerns included; Majority of support tonight does not live in neighborhood.*

*Patricia Peknik, 4 Dove Street*

*Concerns included; irreparable damage will change the way people experience that stretch of High Street, High Street belongs to everyone.*

*Ian Stewart, 198 High Street*

*Concerns included; Convenience and not necessity, the funeral function will continue to prosper.*

*Mike Schwanz, 189 High Street Unit 2*

*Concerns included; recently moved here with a sense of security, precedent setting.*

*Heather Shand, 43 Warren Street.*

*Concerns included; the applicants can make due with parking that exists on street.*

*Rita Mihalek, 53 Warren Street Unit 219*

*Concerns included; Intrusion of shared mid-block green space, character of Historic district, paving, lighting, auto noise, pollution would be an aberration to neighborhood.*

*Maria Connor, 1 Dexter Lane*

*Concerns included; Size of parking lot is too big for the area, light pollution, property value being affected.*

**Questions from the Board:**

Mr. Cameron asked about the legality of current parking. Attorney Mead responded under site plan review, more than 10 spaces would be subject to major site plan review.

Chair Ramsdell noted existing conditions states there are 30 existing parking spaces. Attorney Mead responded that they are here to permit parking spaces. The zoning code enforcement officer is not going to issue enforcement while permitting is in process. The next step would be major site plan review.

Mr. Ciampitti's thoughts were that the application did not pass the three-prong Powers test in comparison to the Welch case. He and Attorney Mead went back and forth on the case law.

Mr. Moore asked if hearses have always gone to the rear of the building. Previous to the barn coming down in 2015, the hearses would use the side door. Mr. Moore asked Mr. Devlin when the light pollution photos were taken. They were taken in January and February 2019.

Chair Ramsdell asked about light mitigation. Cars are now parked in gravel with no fence. Car lights would be screened behind a proposed fence. There is no proposed tree removal. Storm water mitigation can be simply handled.

Ms. Bourdeau commented as an engineer that they would often show what makes them look good. She felt that with a 6' fence, lights go over it, but the way it was presented was deceiving. There would be potential for cars and lights to be seen over the fence.

Chair Ramsdell asked regardless of the legality of the lot, how would traffic be drawn in off of High Street and make them utilize the lot. He suspected clients would not park in the rear. Attorney Mead commented it would be more convenient for elderly and infirmed.

Mr. Cameron asked about the garage and shape change and articulation added. The last bay is now smaller and brought down. The garage meets all dimensional requirements.

**Deliberations:**

Mr. Moore saw many arguments. He felt the existing use was the linchpin.

Ms. Bourdeau pointed out that it was suggested that the applicants meet with neighbors to come to an agreement. Zero to 30 parking spaces is pretty clearly substantially more detrimental to the neighborhood. She was not in support of any parking in the rear of the facility.

Mr. Ciampitti commented on the legal cases mentioned and thinking about standards robotically. Attorney Mead outlined three standards. The Welch case passed the Powers test and upheld the Board's decision. The third prong in regard to impact on the neighborhood is where he felt we depart in this analogy, as the light pollution and cars cannot be mitigated with a policy as in the nursing home. The Welch case interprets the Powers case and he felt the third prong failed. The room felt very passionately with the folks closest to this.

Mr. Cameron agreed with his colleagues. He took abutter concerns seriously. This is clearly a big change and you cannot undo light and vehicle disturbance. This is a historic neighborhood. He understood the applicant's request, but the business can continue to be viable. He did not have as much of a reaction against the garage.

Chair Ramsdell commented on the vast majority of the public having specific concerns and examples of the effects of this application. In the comparison to the nursing home case, the fundamentals are the same, but that was a vast lot versus a tight space here. He was not happy with 30 informal spaces and where they may have come from. Hearse parking versus 38 proposed spaces are very different.

Mr. Ciampitti asked if the Board wanted to look at the garage versus the parking separately.

Mr. Cameron would not be inclined to vote on the garage tonight.

Chair Ramsdell not comfortable separating the application and voting on the garage tonight. Much of the evening has been related to parking without focus on the garage.

Mr. Ciampitti noted if it had been just the garage, much more attention and detail would have been discussed.

Ms. Bourdeau would like to focus on the garage only and noted there may be public comment on that as well.

**Motion to bifurcate application 2018-064 separating the request for garage addition from formal paved parking area made by Mr. Ciampitti, seconded by Mr. Cameron.**

**Votes Cast:**

Ed Ramsdell– yes  
Robert Ciampitti – yes  
Renee Bourdeau – yes  
Maureen Pomeroy – recused  
Edward Cameron – yes  
Mark Moore – yes

**Motion to approve application 2018-064 with regard to the formal paved parking made by Mr. Ciampitti, seconded by Mr. Cameron.**

The motion failed unanimously.

**Votes Cast:**

Ed Ramsdell– no  
Robert Ciampitti – no  
Renee Bourdeau – no  
Maureen Pomeroy – recused  
Edward Cameron – no  
Mark Moore – no

**Motion to continue application 2018-064 with regard to the proposed three bay garage to 4/23/19 made by Ms. Bourdeau, seconded by Mr. Cameron.**

**Votes Cast:**

Ed Ramsdell– yes  
Robert Ciampitti – yes  
Renee Bourdeau – yes  
Maureen Pomeroy – recused  
Edward Cameron – yes  
Mark Moore – yes

**2019 009**

**Address: 14-16 Charles Street**

**Dimensional Variance**

*Construction of a one-car garage resulting in non-conforming lot coverage*

This application is continued from 2/26/2019. Attorney Mark Griffin requested to withdraw the application without prejudice.

**Motion to withdraw application 2019-009 without prejudice made by Ms. Bourdeau, seconded by Ms. Pomeroy.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell– approve  
Robert Ciampitti – approve  
Renee Bourdeau – approve  
Maureen Pomeroy – approve  
Edward Cameron – approve  
Mark Moore – approve

**2019 013**

**Address: 3 Donahue Court (aka 26 Toppans Lane, Lot 4B)**

**Appeal**

*Appeal of the 12/11/18 Notice of Violation from the Zoning Administrator in regards to plantings*

This application is continued from 2/20/2019. The Board decided to continue the application as the applicant was not present this evening and may be withdrawing it.

**Motion to continue application 2019-013 to 4/9/19 made by Mr. Cameron, seconded by Ms. Bourdeau.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell– approve  
Robert Ciampitti – approve  
Renee Bourdeau – approve  
Maureen Pomeroy – approve  
Edward Cameron – approve  
Mark Moore – approve

**2019 014**

**Address: 346 High Street**

**Dimensional Variance**

*Split lot that contains two single-family homes under condo ownership to create a lot with non-conforming lot area, frontage, and front and side yard setbacks*

**2019 015**

**Address: 346A High Street**

**Dimensional Variance**

*Split lot that contains two single-family homes under condo ownership to create a lot with non-conforming lot area, lot coverage, frontage, and front yard setbacks*

This application is continued from 2/26/2019. Attorney Mark Griffin presented the application. The properties were part of a VI-C permit in 2004. The properties are in the R2 zoning district and DCOD. The unit at 346 High Street is a 1787 historic home and a second residential unit was built at 346A High

Street. The two dwellings have condominium ownership, which is a confusing situation for buyers, insurance companies and banks. The overall lot is being utilized as a two family. Two family use dimensional controls were used for existing conditions. Non-conformities include front and side setbacks, lot area. The proposal includes no construction or demolition. Although this is a lot split, it is different from those seen in the past. It is not out of character for the neighborhood, neighbors are in favor, and a letter of support was submitted. Attorney Griffin went over neighboring property lot sizes and many are smaller or similar. There are some VI-C strings attached and the petitioners are happy to have conditions carried forward or propose additional conditions and deed restrictions. The valuation of the properties is likely to go up, and tax base would increase, benefiting the City. Conditions are circumstances are unique to the applicant's lot, structure or building and do not apply to the neighboring lands, structures or buildings in the same district. The existing lot is unusual to the district in that it is the only lot in the surrounding neighborhood with two single-family structures on it. Strict application of the ordinance would deprive the applicant of reasonable use of the lot, structure or building in a manner equivalent to the use permitted by the owners of neighboring properties in the same district. The surrounding lots are single-family ownership. This is the cleanest form of ownership and avoids potential for issued like disputes and obtaining financing. The unique conditions are not the result of actions taken by the applicant subsequent to the adoption of the ordinance. The VI-C application took place in 2006 by the original owner.

**Chair Ramsdell opened the hearing to public comment.**

**In Favor:**

*None*

**In Opposition:**

*Stephanie Niketic, 93 High Street*

*Concerns included; \ hardship is the zoning vehicle which allowed the second house to exist in the first place, can foresee a long line of applications to do the same thing, historic preservation restriction as part of VI-C.*

**Questions from the Board:**

Mr. Cameron asked what would have prevented the developer back in 2006 from creating two lots. Attorney Griffin noted a lot split may generate opposition. This may have been a way around it. Public benefit was not part of VI-C at that time. Hardship argument noted in the memorandum – it can be financial as well. Not being able to have single-family ownership is argued. Personal financial hardship cannot be argued, but anyone owning these units would have hardship.

Chair Ramsdell clarified hardship did not have to do with lot shape and topography. He could understand why someone would want to do this, but VI-C was the vehicle used in 2006. He was sympathetic with what they want to do, but having trouble justifying it.

**Deliberations:**

Ms. Pomeroy appreciated the reasons, but was not seeing hardship arguments.

Ms. Bourdeau agreed. This was nor a burden put on after, they knew they bought into a condominium.

Mr. Cameron was in the middle. There would be no construction or demolition, and he was sympathetic to the reasons.



Mr. Moore was stuck on hardship. The logic makes sense, but they were purchased as condominiums.

Chair Ramsdell agreed. VI-C did not happen many decades ago, and this was fairly recent.

The applicants requested to withdraw without prejudice.

**Motion to withdraw application 2019-014 without prejudice made by Ms. Bourdeau, seconded by Mr. Moore.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell– approve  
Robert Ciampitti – recused  
Renee Bourdeau – approve  
Maureen Pomeroy – approve  
Edward Cameron – approve  
Mark Moore – approve

**Motion to withdraw application 2019-015 without prejudice made by Ms. Bourdeau, seconded by Mr. Moore.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell– approve  
Robert Ciampitti – recused  
Renee Bourdeau – approve  
Maureen Pomeroy – approve  
Edward Cameron – approve  
Mark Moore – approve

**2019      017**

**Address: 8 Toppans Lane**

**Dimensional Variance**

*Modify previously granted variance that created a non-conforming side setback in to allow an increase in height that conforms to dimensional requirements*

This application is continued from 2/26/2019. Attorney Lisa Mead presented the application. The Board requested more refinement in the application, which was provided. The property is in the R2 zoning district and DCOD. The structure is not contributory or more than 75 years old. In 1970 a sideline setback variance was granted, otherwise it complied with dimensional controls. The application is to increase height to the garage attic to have greater headroom. The house will remain attic space and will house mechanicals. This is an extension of a variance for a 6' taller roofline on the garage. They would not increase living space at all. The house sits in bit of a depression. Houses next door sit slightly higher. Hardship argued was the same hardship existing today as did in 1970, the depression in the property and rear lot line. Letters of support of both neighbors were submitted. This is a rather large lot that meets front, southerly side and rear setbacks. Attorney Mead asked the Board to consider if they added onto the home within dimensional requirements not affecting the 1970 variance that they would not have to come to the board.

**Chair Ramsdell opened the hearing to public comment.**

**In Favor:**

*None*

**In Opposition:**

*None*

**Questions from the Board:**

Mr. Cameron asked if we approve the request for the variance without the proposed condition what would happen. The applicants would have to come back for any changes.

**Deliberations:**

Ms. Bourdeau was in support of the project without the proposed condition.

Chair Ramsdell commented that the property is under a variance and that the Board would not be willing to adjust a variance.

The rest of the Board agreed.

**Motion to approve application 2019-017 made by Ms. Bourdeau, seconded by Mr. Cameron.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell – approve  
Robert Ciampitti – approve  
Renee Bourdeau – approve  
Maureen Pomeroy – approve  
Edward Cameron – approve  
Mark Moore – non-voting

**2019      018**

**Address: 5 Olive Street**

**Special Permit for Non-conformities**

*Construct an addition to the rear of a pre-existing non-conforming two-family home*

This application is continued from 3/12/2019. Attorney Mead provided materials revising dimensions to reflect the R2 zoning district and clarify questions of two-family. The assessor card from 1959 stated that this structure was a two-family. A building permit from 2011 also said, “repair of two family”. The City Assessor thought that perhaps in 2017 when they hired out a contract assessor, they changed this based on a drive by. It has been corrected with the City Assessor.

**Motion to approve application 2019-018 made by Ms. Bourdeau, seconded by Mr. Cameron.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell – approve  
Robert Ciampitti – approve  
Renee Bourdeau – approve  
Maureen Pomeroy – approve

Edward Cameron – approve  
Mark Moore – non-voting

**The meeting adjourned at approximately 10:42pm**

**Respectfully submitted, Katie Mahan - Note Taker**