

**City of Newburyport
Zoning Board of Appeals
April 23, 2013
Minutes**

The meeting was called to order at 7:10 P.M.
A quorum was present.

1. Roll Call

In Attendance: Ed Ramsdell (Chair), Robert Ciampitti (Vice-Chair), Duncan LaBay (Secretary), Jamie Pennington, Howard Snyder, Richard Goulet (Associate Member), Jared Eigerman (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of March 26, 2013 Meeting

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

The motion passed unanimously.

Votes Cast:

Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Jared Eigerman – approve
Richard Goulet – approve

Minutes of April 9, 2013 Meeting

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

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – approve
Duncan LaBay – approve
Howard Snyder – approve
Richard Goulet – approve

2013 018

Address: 39-41 Ashland Street

Special Permit for Non-conformities

Demolish and reconstruct pre-existing non-conforming single family house, decreasing the front year setback and adding more than the allowed 500 sf

Jamie Pennington – recused

Jared Eigerman – recused

Everett Chandler, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA represented the applicant, Caswell Development Ashland, LLC, 3 Graf Road, Newburyport, MA.

This hearing was continued from the April 9, 2013 meeting of the Zoning Board of Appeals.

The applicant is seeking to demolish the existing, non-conforming single-family home and construct a new, non-conforming single-family home. In addition to the construction of a new home, the applicant will be extending the driveway toward the rear of the property where a garage will be built. The proposed home's front yard setback is very similar to the existing home (and those surrounding it) with the exception of the proposed single-story bay window that extends approximately two feet into the front yard. The applicant was before the Newburyport Historical Commission in January 2013 with these plans. The Historical Commission determined on January 17, 2013 that the structure was not historically significant and demolition could move forward.

At the present meeting, Mr. Chandler addressed the concerns that the Board had raised at the April 9, 2013 meeting.

Concern: The topography of the lot presents a concern regarding the siting of the house and garage, the potential grading of the land to accommodate these structures, and how this grading could impact storm water runoff to the abutting properties.

Response: Mr. Chandler showed elevations to the Board which demonstrated where the new house and new garage would sit on the property, and the grading of the property. The elevations also provided more detail on the 23 x 23 single story proposed garage structure.

Concern: A question had come up during the previous hearing about the location of the chimney.

Response: Mr. Chandler indicated that the chimney is located 7 feet from the back corner of the house.

Concern: The amount of impervious surface on the lot is increasing with the proposed driveway wrapping along the side of the lot toward the back where the new garage will be placed. The Board wanted to see an alternative to impervious concrete on some, if not all, of the driveway.

Response: Mr. Chandler indicated that the proposed driveway will be pervious material, so there will be no issue with run-off. Additionally, the water will flow to the back corner with the slight retaining wall near the driveway

Chairman Ramsdell opened the hearing to public comment.

In favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #1:

Mr. Snyder asked if there was the need for any type of collector with the run-off (if any) going to the back corner.

Mr. Chandler said there was no need.

Mr. LaBay asked what type of pervious material.

Mr. Chandler indicated that the exact material had not yet been decided, but it will be pervious.

Mr. Snyder asked about the grading around the house.

Mr. Chandler referred to the elevations showing the pitches. He indicated there will be no change in the pattern of flow that exists today.

Deliberations:

Mr. Snyder said the applicant had addressed the concerns that the Board had brought up at the last meeting.

Mr. LaBay agreed with Mr. Snyder and noted his appreciation for the extra work that the applicant had done.

Mr. Goulet said the applicant provided a quick turn-around in addressing the issues and the result was good.

Chair Ramsdell agreed with his colleagues.

Motion to approve the Special Permit made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Howard Snyder – approve

Jamie Pennington – recused

Jared Eigerman – recused

2013 019

Address: 3 – 5 Pine Street

Special Permit for Non-conformities

The petitioner requests amendment of a special permit issued by the Board on 7/9/2012, incorporating structural, architectural, and other aesthetic modifications into the project so as to address the grievances of neighbors who appealed said special permit to Land Court.

Adam Costa, Esq. from Blatman, Bobrowski and Mead LLC, 30 Green Street, Newburyport, MA represented Mr. Gino Renaldi, 3-5 Pine Street Development, LLC at the meeting. The applicant is seeking a modification of a Special Permit granted in July 2012. On July 9, 2012,

the Board voted to grant Mr. Renaldi a Special Permit. Subsequently, a challenge was waged to the Special Permit in Land Court, in an action brought by several neighbors; the Board was named as a co-defendant. The modifications reviewed at the present meeting result from addressing the concerns of the neighbors.

Attorney Costa walked through the proposed modifications.

- Redesign southerly façade to include a recessed entryway. This modification will result in a reduction of approximately 24 sf in area on the first floor. In addition to the decrease in floor area, the proposed modification will add articulation and visual interest to the façade.
- Enclose the a portion of the front (westerly) façade of the home beneath the once-cantilevered overhang while also recessing/removing a portion of said façade so as to effect a reduction in building massing. This enclosure adds 28.9 sf of floor area to the structure, but the 125-foot setback of a portion of the same façade for a distance of approximately 17 feet reduces the overall floor area of the first and second stories by a combined 34.9 square feet.
- Remove the cantilevered overhang on the northern façade, which results in a flush exterior of the first and second floors of the structure (northerly façade).

Attorney Costa indicated that most of these changes are more aesthetic and they do not have a great effect on the relief granted by the Board from a Zoning perspective. There is no real change of intensification of non-conformities.

Chairman Ramsdell opened the hearing to public comment.

In favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #2:

Mr. Eigerman was pleased that a settlement had been reached. He made reference to Finding #3 where approval of the Special Permit application had been conditioned upon changes and enhancements that were detailed in a letter from the applicant's attorney dated June 11, 2012.

The changes that the Applicant agreed to construe at that time included:

1. Siding: Shingles added to the front, consistent with local homes
2. Existing clapboard siding to be caulked and painted in appropriate fashion
3. Shutters added to the front and sides as noted on sketches
4. Corbels added under the overhang rear addition
5. Fencing
6. Rear yard to be completed as set forth on sketched provided with a small deck leading down to an at grade patio
7. Sidewalk: Asphalt to the curtain and then brick to the entry
8. Driveway: Cobblestone pavers
9. Landscape and Fence:
 - Brick Paver sidewalk from back to front
 - Fence separating driveway from rear yard

➤ Landscaping as shown on sketches

It was not clear that the applicant and the neighbors had reviewed and made decisions regarding these previously proposed changes which were conditions of the original decision by the Board. Chairman Ramsdell asked the applicant if they needed a couple of weeks to determine, with the neighbors, whether the items listed were in or out of the current application.

Attorney Costa said that his recollection was that many of these conditions were less the consequence of the Board wanting these things done and more the Board responding to the neighbors. Attorney Costa talked about the potential of having a condition that these changes are stricken.

Deliberations:

Mr. LaBay said that whether the set of findings from last year would be included or excluded rests with the Board. He wants to be sure the neighbors agree. He didn't feel that there was a common agreement tonight and didn't feel that the Board could vote. He wants to make sure things are hashed out between the neighbors and the applicant.

Mr. Ciampitti asked if there was a signed settlement agreement and if the settlement interferes with things already conditioned.

Mr. Eigerman asked what we are doing with the nine conditions.

Attorney Costa indicated that if the Board is looking for more detail about the extent to which the original findings are affected, they can provide that.

Mr. LaBay said the only condition of the nine impacted, is the corbels because the overhang doesn't exist anymore.

Mr. Ciampitti said they need some new sketches and that an illustration will resolve a lot of the continuity problem.

Mr. Eigerman regrets that they have to do these additional sketches.

Mr. Ciampitti said it is the only way out; the Board doomed themselves with these conditions.

Attorney Costa said that addressing the neighbors' concerns continues to be the goal.

Attorney Costa requested a continuance and agreed to provide illustrative sketches of the current project.

Motion to approve the continuing the hearing for a Special Permit to the May 14, 2013 meeting made by Mr. Snyder, seconded by Mr. Labay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Howard Snyder – approve

Jamie Pennington – approve

<p>2013 020 Address: 38 Liberty Street Dimensional Variance The petitioner requests dimensional variances for lot area, frontage, lot width, lot coverage, open space, and setback requirements for the purpose of modifying lot lines.</p>

2013 021

Address: 43-45 Middle Street

Dimensional Variance

The petitioner requests dimensional variances for lot area, frontage, lot width, lot coverage, open space, and setback requirements for the purpose of modifying lot lines.

The Board handled the questions and deliberations associated with Public Hearings # 3 and #4 together, but voted on them separately. Adam Costa, Esq. from Blatman, Bobrowski and Mead LLC, 30 Green Street, Newburyport, MA represented applicants for Public Hearing #3 (Robert J. Bramberger and Kathleen A. Seekamp, 38 Liberty Street, Newburyport, MA) and the applicant for Public Hearing #4 (T. Kevin Banningan, Trustee of the Middle Street Condominium Trust, 43-45 Middle Street, Newburyport, MA). These two applications are for abutting properties. The owner of Middle Street ("Lot 1") would like to sell a small, narrow portion of his land to the owners of Liberty Street ("Lot 2"). The portion of land is approximately 212 square feet and lies along the eastern lot line of Lot 2 (the "Spur"). This strip of land, measuring 44' in length and between 4.65' and 5' in width, is labeled as "Parcel A" on the submitted plans.

Both of the lots are developed and are considered pre-existing, non-conforming structures. Once the sale of Parcel A is complete and property boundaries are modified, the protections offered to pre-existing, non-conforming structures are lost, thereby necessitating the applications for variances for both properties. Attorney Costa cited *Glidden v. Zoning Board of Appeals of Nantucket*, 77 Mass. App. Ct. 403, 407 (2010) as it pertains to the loss of the protections associated with pre-existing, non-conforming structures and the need to obtain variances. The case states that when the boundaries of a lot with a pre-existing, non-conforming structure are modified, the lot will need a variance. Attorney Costa also stated that there have not been any cases since "Glidden" that dispute this course of action.

Attorney Costa indicated he is asking for quite a bit of Zoning Relief to do something quite minimal. The condominium building will need variances from the Ordinance's lot area, frontage, lot width, lot coverage and front and side yard setback requirements. Because the single family home is no longer a permitted use in the B-2 Zoning District and no dimensional standards are applicable thereto, it will need variances from all of the Ordinances dimensional requirements including those for lot area, frontage, lot width, lot coverage, open space and front-, side- and rear-yard setbacks.

Attorney Costa stated that applying for and receiving a variance is "safer" for his clients. Upon the expiration of the 20-day appeal period, the property has vested rights. If his clients were to obtain special permits for the lots, then the statute of limitations is six years, leaving the property owners much more vulnerable to enforcement actions.

Chairman Ramsdell opened the hearing to public comment.

In favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #3:

Mr. LaBay asked Attorney Costa to review the requirements.

In responding to this question, Attorney Costa read from pages 2 and 3 of the letter submitted to the Zoning Board of Appeals on March 29, 2013. He indicated they will have to go through ANR as well after this process. He summarized, after reading from this letter, that the issuance of variances to the applicants is not only justified by compliance with conditions of the Zoning Ordinance, but also, an improvement on the conditions as they exist today. Denial of the variances furthers no public policy, no intention or objective of the Zoning Ordinance and no practical purpose.

Deliberations:

Mr. Pennington indicated that it meets the test and he feels comfortable.

Mr. Snyder agreed that it meets the 4 conditions and he is in favor.

Motion to approve the Dimensional Variance made by Mr. Pennington seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Howard Snyder – approve

Jamie Pennington – approve

Motion to approve the Dimensional Variance made by Mr. Pennington seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Howard Snyder – approve

Jamie Pennington – approve

Adjournment

Motion to adjourn made by Mr. LaBay, seconded by Mr. Snyder at 8:10 PM.

Respectfully submitted, Jennifer Lamarre - Note Taker