

**City of Newburyport
Zoning Board of Appeals
May 13, 2014
Council Chambers**

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 – arrived after hearing #1
Howard Snyder
Richard Goulet (Associate Member)
Libby McGee (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of April 22, 2014 Meeting

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

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings (7 on the agenda)

2013 054 Address: 37 Middle Street Dimensional Variance Increase height of structure to 36.5' where 35' is allowed

2013 055 Address: 37 Middle Street Special Permit Convert mixed use building to multi-family (#103) with three residential units

2014 017**Address: 37 Middle Street****Dimensional Variance**

The petitioner seeks a dimensional variance with respect to side yard setbacks at the rear of the structure

Hearings 2013-054 and 2013-055 are continued from the November 12, 2013, January 14, 2014, January 28, 2014, February 25, 2014, and March 11, 2014 meetings. Robert Brennan Jr., PC represented BullDawg USA Realty I, LLC, petitioner, and Andrew de Bernardo, owner. Mr. Brennan began by stating they would like to request the dimensional variance application regarding height be withdrawn. Working with the Historical Commission and neighbors they have come up with an application for a new dimensional variance. The preferred design suggested by the Historical Commission does not involve an increase of height of a dormer facing Middle Street. This property is one of a series of multi-family structures on Middle Street. The lot is unique in that it stretches from Middle to Liberty Street. Onsite parking will be accommodated. The focus with the new application is expansion is the rear section of the building. The side setbacks are currently 4.5' and 1.7' and after the expansion would be less than one foot. The rear of the building will also be expanded 3' back. This would allow for a hallway to access a space in the rear of the building. It is a modest expansion and one that the Historical Commission preferred.

In regards to the Special Permit: The property is located in the B2 district, where a multi-family is the only permitted residential use. The property is currently mixed use with a business on the bottom floor and a residence upstairs and they wish to convert it to a multi-family (three-family) use.

- Multi-family use is permitted in the B2 district
- Multi-family use is essential and desirable to the public convenience and welfare
- The addition of two residential units would not create undue traffic congestion, have an impact on pedestrian safety, and will provide relief to on-street parking demands with proposed resident parking.
- Adding two residential units will not overload any public utilities
- The requested use will not impair the integrity or character of the district. The renovations will improve the historic aesthetic of the area.
- The requested use will not cause an excess of this use in the area that could be detrimental to the area. The neighborhood is a transition area between commercial and single, two-family, and multi-family uses.
- The proposed use is in harmony with the purpose and intent of the zoning ordinance.
- The proposed residential use will not be conducted in a manner as to emit any dangerous, noxious, injurious or otherwise objectionable hazards or pollutions.

In regards to the Dimensional Variance: The structure was constructed in 1811 and they have worked very hard with the Historical Commission to come up with a design preserving the original look.

- The proposed multi-family use is permitted in the B2 district by Special Permit.
- The lot is unique in shape and size. It is essentially a double lot onto Liberty Street, but is limited with setbacks. Without building upward, a modest expansion was needed.
- The side yard setbacks impose a substantial hardship on the Petitioner. The main portion of the existing structure is already non-conforming. The proposed reconstruction of the rear portion would increase the existing non-conformity, but not more than the main structure.
- The Petitioner has had no part in creating the unique conditions and circumstances that make the grant of a variance necessary.

- The requested variance will not constitute a grant of a special privilege that is inconsistent with the limitations on other properties in the district.
- The Petitioner proposes to expand the rear portion of the structure in line with the existing non-conforming side yard setbacks of the main portion of the structure. The other dimensional controls on the size of the structure and lot coverage will be met.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Susan Hochstedler, 39A Middle Street

Looking at the new proposal for the expansion of the back of the building, the windows will look right onto her deck. She will lose privacy and will lose quality of light. It will feel claustrophobic. She is entirely against moving from current footprint.

Bruce Bailin – 39C Middle Street

Agrees with Susan. The expansion is intrusive and would impact his sunlight.

Rowen Hochstedler – 39A Middle Street

Adding to Susan's comments – If the proposed setback is allowed, they will sit on their deck and be 4' from a neighbor's window. They will also have a reduction in sunlight. He also brought up an easement for 37 Middle Street that allows a 2nd means of egress onto Liberty Street. It may not technically encroach on the egress, but it will be close.

Mark Cordeiro – 35 Middle Street

He does not approve of the expansion. He is concerned about light loss and claustrophobic feeling the expansion will bring. He was for the project when the height variance was requested, but not the current variance submitted.

Kathy Scanlan – 39B Middle Street

Agrees with her neighbors. It is an infringement on her privacy. There will be loss of sunlight. There will be some trees that will have to go. It will leave neighbors feeling claustrophobic. She questioned whether it will make emergency exit more difficult and is concerned with the right of egress.

Questions from the Board regarding Public Hearing #3, #4, #5:

Mr. Ciampitti asked about the easement and whether it is meant as a second means of egress or designated for any safety reason. Mr. Brennan answered that it provides access to Liberty Street for #35 and #39 Middle Street. It has not been determined whether they will be relocated, but they respect them and will not get rid of them by any means. The plans note a 3.5' easement and can provide exact language if needed. They have no intention of extinguishing.

Mr. LaBay asked for clarification that the easement is for right of passage as opposed to safety. Mr. Brennan answered, yes.

Mr. Ciampitti asked if the proposed parking would interfere with the easement. Mr. Brennan answered no, parking will not interfere. They plan to mark the egress with bricks or posts.

Mr. LaBay asked whether on the East side of the lot, the easement would run into or under the proposed deck. Mr. Brennan answered no, it starts at edge of the proposed deck.

Mr. Snyder asked about the expansion and blocked light for neighbors. Mr. Brennan showed on the plans the existing conditions and proposed conditions. He noted that the bricks are failing in the back part of the building and would need to be reconstructed anyway. They wish to rebuild the back of the building matching the setbacks of the front of the building.

Mr. LaBay asked for clarification on the parking plans. Mr. Brennan pointed out areas of parking. There would be tandem parking for each of three units. A parking area of 36.5' x 10' would be paved.

Mr. Goulet asked about the trees that would be affected. Mr. Brennan answered that they had no plans of removing trees. According to the owner, there is one small tree that would be to be removed on the side next to #35.

Mr. Ramsdell made mention of a letter from Linda Smiley from the Historical Commission.

Mr. Brennan commented that after having met with neighbors one concern expressed was having wall extended closer and full-length windows. He appreciates their concerns. There is only a proposed hallway extended toward #39, and they have discussed putting in only transom windows to accommodate light coming into hall, but maintaining privacy for neighbors.

Mr. Snyder commented that he would like to see a side elevation because of neighbors concerns with light and shadow. He was also concerned about the impact of value for abutters. He would like to better understand the impact on abutters before voting.

Mr. LaBay expressed that he had the same concerns as Mr. Snyder. He also could not visualize without a walkthrough or photos.

Mr. Goulet shared the same concerns as his colleagues.

Deliberations:

It was decided that the board would like to see a side elevation and photos to better understand the loss of sunlight, privacy, and value that neighbors are concerned about.

Motion to withdraw application 2013-054 for a Dimensional Variance without penalty or prejudice made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – non-voting, recused

Howard Snyder– approve

Richard Goulet – approve
Libby McGee – non-voting

Motion to continue 2013-055 for a Special Permit and 2014-017 for a Dimensional Variance to the May 27, 2014 meeting made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – non-voting, recused
Howard Snyder– approve
Richard Goulet – approve
Libby McGee – non-voting

2014 015

Address: 3-5 Opportunity Way

Dimensional Variance

The petitioner seeks a variance for lot coverage, rear, front, and side yard setbacks in order to construct an addition

Lisa Mead, of Blatman, Bobrowski & Mead, LLC, 30 Green Street, Newburyport presented the application on behalf of Gary Swerling, Trustee, Packaging Realty Trust. The applicants are proposing an addition at 3-5 Opportunity Way, in the I1 district. The applicants have been at this property since 1994. They conduct both international and domestic business and employ over 100. They currently lease offsite storage that will soon be unavailable. Building this addition will allow them to continue to grow their business and consolidate their operations to one site. The 87,851 sq ft structure is located on a Z shape lot and wetlands. They looked at purchasing a lot behind theirs, but it is wetland area and cannot be expanded on.

To proceed with the addition, the applicants require a variance for rear yard setback, side yard setback, front yard setback along with lot coverage. The variances would allow for a rear yard setback of 4.2' where 50' is required, a side yard setback of 31.3' where 50' is required, a front yard setback of 37.6' where 50' is required and lot coverage of 53% where 40% is required.

- The project would consist of several additions to the existing industrial structure, which is a by-right use in the I1 district.
- There are two main conditions/circumstances that make this property unique and difficult to expand on. A portion of the property to the west, north and east include wetland resource area. The lot shape is odd at the rear lot line.
- The soil condition and odd shape restrict the size and location of any addition.
- Neither the soil condition nor shape of the property is of the Applicant's own doing.
- The property and circumstances surrounding the need to expand are unique. The use of the property for industrial purposes is consistent with the remainder of the district.
- The proposed structure is in harmony with the remainder of the industrial district. Aesthetically, the additions will be consistent with other structures in the area. The additions will not have any negative affect on the public health or safety, nor will it place a greater demand on public services and/or utilities.

Ms. Mead showed plans for the proposed additions. She noted there would be adequate fire access around the building. Taylor Turbide, one of the engineers on the project was with her for any technical questions.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #4:

Mr. Goulet asked to hear about drainage. Ms. Mead stated that they would still need to go through major review with the Conservation Commission. Preliminary work has been done, but nothing is set in stone. Mr. Turbide stated that they are not into intense design yet. All drainage will be onsite. Minimal parking pavement will be added. All runoff will be clean. They will have storm drainage in front and infiltration in back.

Deliberations:

Mr. Ciampitti stated there have been lots of instances with dramatic zoning relief in the Industrial/Business Park. There will hopefully be a future revision of this district. This is a modest expansion given what they have seen in the past. Wetlands are the most powerfully felt hardship. This is an adaptive textbook example of expansion.

Mr. LaBay agreed. He noted that counsel provided great materials and appropriate reasoning.

Mr. Pennington echoed his colleagues. He noted that this project will still be scrutinized by the Conservation Commission and Planning.

Mr. Snyder agreed.

Mr. Goulet agreed. He appreciated that the fire access concerns were addressed. This is a sensible project.

Mr. Ramsdell concurred.

Motion to approve application 2014-015 for a Dimensional Variance made by Mr. Ciampitti, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder – approve
Richard Goulet – non-voting
Libby McGee – non-voting

2014 016**Address: 43 Fair Street****Special Permit for Non-conformities**

Raze and rebuild existing addition and construct a new addition to connect the existing garage to house resulting in an intensification of pre-existing non-conforming rear and side setbacks and lot coverage

2014 019**Address: 43 Fair Street****Special Permit**

Demolition of an existing late 19th century rear ell addition

Mark Griffin, 11 Market Square, presented on behalf of Michael D. Lavoie and Deanna L. Lavoie, owners. The applicants are proposing to demolish and reconstruct a rear addition, as well as connect an existing garage to the house. The structure is a single-family located on a small, corner lot in the R3 district. The original structure was built in 1737 and the addition that they propose to demolish was added in 1800's. The applicants originally filed with the Historical Commission pursuant to the Demolition Delay Ordinance. During the process with the Historical Commission, the Demolition Control Overlay District (DCOD) was enacted and this applicant was informed they would be subject to the new requirements. The applicants had worked with the Historical Commission on original plans for the structure and left the roof as is instead of raising the height. An advisory opinion from the commission states that they recommend proceeding with the current plan.

Scott Brown, architect showed the board on the plans the 19th century addition and 1st period structure differentiation. The Lavoie's had goal of also connecting a two-car garage with a mudroom. They plan to keep the height down with a modest addition. Another goal was to correct some inadequate ceiling heights. Some are only at a height of 6'2". Another goal was to finish the existing attic. In order to make this space usable, they need to build new stairs, as the current set are more like a ship ladder. The best possible place for the staircase is the back rear corner in the ell addition and would go from the basement to the attic space. Both the roof and foundation of the ell addition needed significant work and it did not make sense to save middle section in this case.

Mr. Lavoie spoke briefly and informed the board that they have lived in town since 1990. They wanted to move back downtown and really admired this property. They decided that it would be worth the investment to update the home to modern living standards.

Mr. Griffin commented that this is the application for Special Permit under new DCOD ordinance. The intent of the ordinance is to prevent building demolition that is substantial with a historical structure. It is not intended for mere alteration. The applicant has not sought to destroy any of original structure, only the addition from 19th century. Low ceiling heights and inadequate stairways make the home uninhabitable in modern standards. The applicant is sensitive to inside historic structures and this was the least intrusive direction with renovations.

In regards to the request for a Special Permit for Non-Conformities, the applicants would like to connect the existing garage with their home. The structure is in the R3 district on an undersized single-family lot. The home is currently non-conforming with regards to setbacks. The garage is currently stand-alone. Once a connector is added, the garage must conform to setbacks and become part of the structure as a whole. Adding the connector will not be more detrimental. The footprint is changing in a minor way and lot coverage is going up only 3.5%.

Mr. Ramsdell noted that he had a 20 day advisory opinion from the Historic Commission.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Jane Batchelder, 25 Prospect Street

She expressed concern about density. She wanted to ensure that the garage was staying as is and the connector would be no higher than garage. She also wanted to make sure the new addition would be in the same footprint.

Questions from the Board regarding Public Hearing #5 & #6:

None

Deliberations:

Mr. Ciampitti commented on the DCOD portion and how it can be cumbersome in practice. The reconstruction of the addition is a reasonable adaptive use of historic structure for generations to come. The proposed connector of the garage and house is modest and is a minimal alteration.

Mr. Ramsdell agreed. The thought process is the same with DCOD in this situation as it has been. The ordinance is not as different as it appears at first glance.

Mr. LaBay noted that the SPNC was all triggered by a connection of the home to the garage. There is clearly no significant impact on neighbors. In regards to the DCOD, this is a perfect first case. The request is supportable.

Mr. Pennington agreed. This is relatively modest and natural. Ells are the relief typically for kitchens, stairs, etc. and he is in support.

Mr. Snyder had nothing to add.

Motion to approve application 2014-016 for a Special Permit for Non-conformities made by Mr. LaBay, seconded by Mr. Pennington.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– approve
Richard Goulet – non-voting
Libby McGee – non-voting

Motion to approve application 2014-019 for a Special Permit for Non-conformities made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– approve
Richard Goulet – non-voting
Libby McGee – non-voting

2014 018

Address: 42 Carter Street

Special Permit for Non-conformities

Reconstruct a garage on pre-existing non-conforming foundation

Jason Rivera, owner presented. He purchased the property three years ago. It had been renovated last in the 1970's. The house was built in 1950. He is a history buff and put an extensive amount of work inside and now wants to put the same care into the outside to fences, gardens, and a foundation in which a garage could be built. There is currently a shed on foundation. He is an artist and into antique cars and would like a place to work and store.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #7:

Mr. Ramsdell asked if they any elevations of the garage. Mr. Rivera responded that he had no architectural drawing with him. He commented he would take aesthetics into account, adding windows and a small cupola. He also noted that major abutters are in support.

Ms. McGee commented that the drawings were not to scale. Mr. Rivera responded that the physical drawing is not to scale, but the measurements are. There would be a 16' wide single garage door.

Mr. Snyder asked if this would be a private art studio and one that he would not be running a business out of. He responded that it would not be for business. He donates to art auctions and builds furniture for friends and family. Mr. Snyder also asked if they would be replacing the concrete pad. Mr. Rivera responded that the concrete that is there would undergo some exploratory digging and they may need to replace some or all of it.

Ms. McGee asked about materials used. Mr. Rivera responded that they would use vinyl siding and architectural shingles that matches the house.

Mr. LaBay asked if they had spoken with abutters. Mr. Rivera responded that yes, they all seemed very much in favor. Mr. LaBay also asked if there would be a loft space in the garage. Mr. Rivera responded that no, there would be a tall roofline.

Deliberations:

Mr. Pennington commented that this application was straightforward. He wished the drawings had some more detail. It is a reasonable plan. He liked that there would be one large door bringing the garage down visually. He was prepared to support.

Mr. LaBay commented that the concrete pad suggested something was there in the past.

Mr. Snyder had nothing to add.

Mr. Ciampitti had nothing to add.

Motion to approve application 2014-018 for a Special Permit for Non-conformities made by Mr. Pennington, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Howard Snyder– approve
Richard Goulet – non-voting
Libby McGee – non-voting

Adjournment

Motion to adjourn made by Mr. Snyder, seconded by Mr. Goulet at 9:30 PM.

The motion passed unanimously.

Votes Cast:

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

Respectfully submitted, Katie Mahan - Note Taker