

**City of Newburyport
Zoning Board of Appeals
May 9, 2017
Council Chambers**

The meeting was called to order at 7:12 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Richard Goulet
Renee Bourdeau
Maureen Pomeroy (Associate Member)

Absent:

Robert Ciampitti (Vice-Chair)

2. Business Meeting

a) Approval of Minutes

No minutes to approve.

b) Request for minor modification – 2 Storey Avenue (2017-079 and 2017-080)

This request was continued from 5/2/17 to allow time for the applicant to reach out to the abutters and notify them of the request for minor modification. The Board has required the applicant to show that all of the abutters have signed off as to their awareness of this request and the meeting time. The applicant is seeking to modify approved plans from February 2015 including; Revising the vehicular access off of Storey Avenue, removing one parking space along the building, remove the handicap access ramp at the entryway, and add granite curbing around the new building at the parking area, interior changes, Storey Avenue window changes, entry materials changed, trash enclosure changes, and changes to the roof from gables to shed roofs behind the parapet walls.

Craig Douglas, 2 Moseley Ave, represented the applicants. Mr. Douglas made phone calls to the list of abutters. He spoke to Susan LaBay (4 Ferry Rd) and Bill Morrill (1 Ferry Rd). The two had some concerns about the changes. He mentioned several abutters that did not call back were in the process of moving (4 Storey Ave, 10 Ferry Rd). He left messages and did not hear back from other abutters. There was discussion amongst the Board as to whether the level of notification was sufficient.

Mr. Ramsdell asked if paper notices were left for abutters that he left voice messages for. He did not.

Ms. Bourdeau commented that the number of items of concern with the two neighbors he met with concerned her.

Mr. Ramsdell asked what the changes were after input from neighbors. The only change was signage on the building.

Mr. Goulet went through the listed the changes and reasons for them. He has no significant issue

Ms. Bourdeau clarified conditions.

Mr. Douglas noted that all the concerns he heard are included in the original conditions. The applicants would be willing to add two more conditions regarding a fence change on Mr. Morrill's property line and sign lighting.

Conditions resulting from additional concerns addressed with neighbors;

- Attic to be used for storage and not a future apartment
- No permanent stair to attic to be added in the future
- Trash enclosure
 - To remain locked except during trash pickup
 - Containers to remain closed whenever possible to discourage birds/vermin and to contain odors as much as possible
 - Keep neat and clean as much as possible from loose trash and spills
 - Any condensers that are not located in the trash enclosure to be located on the low roof above the seating area and enclosed on the sides
- Any site lighting required should be directed predominantly downward and should not create any glare for neighboring houses
- Muted paint color.
- Assistance from Famous Pizza Civil Engineer/Surveyor will be provided to locate a new fence on the contiguous property line between Famous Pizzas and I Ferry Road that will start roughly at the clipped corner of the rear wall and run the length of the property toward Ferry Road.
- Assistance from Famous Pizza will be provided to address installing some kind of retaining wall below the existing property fences to prevent the erosion of neighboring property into Famous's property and to correct the collapse of the existing fences that is already in progress.

Ms. Bourdeau made a motion to approve the request for minor modifications with above conditions resulting from neighbor concerns and Ms. Pomeroy seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – absent
Richard Goulet – approve
Renee Bourdeau – approve
Maureen Pomeroy – approve

c) Request for minor modification – 4 Elmira Avenue (2017-072)

Scott Brown, architect represented the applicant. Modifications include front yard setback change from 12' to 14.6' (Elmira), front yard setback change from 20' to 20.3' (Moseley), rear yard setback change from 17.9' to 17.1', square footage of garage change from 21'x22' to 22'x22', garage side setback change from 7' to 6.3', and garage rear yard setback from 14.8' to 8'. The chimney would be moved from the left to the right side, two windows removed from the first floor on the right side, and a bulkhead added to the rear. Mr. Brown said that Mr. Kutcher was supposed to have been contacting abutters regarding the changes.

Mr. Ramsdell commented most of these changes are 1' or less.

Ms. Bourdeau thought the changes were minor.

The rest of the Board agreed.

Jen Sweet, 10 Chain Bridge Drive

Abutters not contacted and she was sure that other abutters were not aware. The variances were extreme to begin with and minor changes were not minor to neighbors. She noted there were many conditions including pre-construction conditions that have not yet been started.

Mr. Ramsdell explained there is no technical requirement for re-notification on minor modification requests.

Mr. Kutcher commented that there are no building permits in place yet. He began making contact with neighbors today at the recommendation of Nick Cracknell, but did not get to all abutters. They will clear trees first, and then add the driveway and fencing.

Mr. Goulet commented that the original conditions do not change. With respect to the neighbor's concerns, he was comfortable with strong conditions and the modifications are minor.

Mr. Ramsdell commented that the garage would grow by 1', but all other modifications are contractions of the project.

The rest of the Board agreed.

Ms. Sweet, still concerned was directed to see the zoning code enforcement officer and building inspector if she had concerns over the project staying within approvals.

Ms. Pomeroy made a motion to approve the request for minor modification with conditions of the original approval and Ms. Bourdeau seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – absent

Richard Goulet – approve

Renee Bourdeau – approve

Maureen Pomeroy – approve

3. Public Hearings

Public Hearing #1:

2017 040 Address: 101 Lime Street Special Permit
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Demolish 2-story addition and construct new 2-story addition and garage

Travis Sumner presented the application. They would like to demolish a section of the house built later on and replace with a new addition to house a great room and master suite. They would build a garage as well. The Historical Commission reviewed approved the project and submitted comments last week. They were in general supportive of the project and would recommend that wood, true divided lite windows be used on the addition, and wood siding be used on the addition.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Ramsdell commented that the addition is good sized. He asked why and how the project does not overload the structure. The applicant commented that the lot can handle the addition and is not that much larger than what is on there now. There is better flow, and it is more attractive architecturally.

Mr. Goulet clarified what was to be housed inside the new addition. A mudroom, pantry, bathroom, great room, laundry, and master suite are proposed.

Ms. Bourdeau commented on the materials used being a concern of NHC. The applicants were willing to accommodate the recommendations.

Mr. Pomeroy asked if it is a single family. Yes, it is currently single family. But in the past has been a two-family and four-family.

Deliberations:

Mr. Goulet commented that the footprint is growing, but the site can accommodate it and there is little visual impact.

Ms. Bourdeau commented that it is rare to see a big addition with no variance requested. NHC gave their blessing.

Ms. Pomeroy commented that they agreed to the suggestions of the NHC.

The sidewalk and tree ordinance would not be triggered in this instance.

Conditions;

NHC recommendation of the following conditions:

-Windows on Addition: Material to be wood, true divided lite, with a muntin patterning that matches those of the front façade of the main structure, which is 6/6. The windows shall not be tinted nor shall they be coated with any application that renders a mirror-like reflection.

-Façade of Addition: Material to be cementitious siding on the new addition only. Vinyl siding shall not be used.

-Architectural Details on Addition: All architectural details on the new addition shall be of natural materials.

Motion to approve application 2017-040 with above conditions made by Ms. Bourdeau, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
 Robert Ciampitti – absent
 Richard Goulet – approve
 Renee Bourdeau – approve
 Maureen Pomeroy - approve

Public Hearing #2

2017	041
Address: 19-21 Cushing Avenue	
Dimensional Variance	
<i>Reconfigure two lots into three lots where one structure does not meet the required front yard setback</i>	

Attorney Lisa Mead presented the application. The applicant is proposing to reconfigure two existing lots into three. The applicant is proposing to retain the home at 19 Cushing Avenue and demolish the home at 21 Cushing Avenue. A garage at 19 Cushing would be moved to another location on the lot. 19 Cushing is a corner lot, and must meet the front yard setback for both Cushing Avenue and Hardy Street. The proposed configuration will result in 19 Cushing having insufficient front yard setbacks on both streets. All other dimensional controls will be met on each of the three proposed lots. Ms. Mead stressed that the applicants could also remove and rebuild 19 Cushing Avenue to conform to all dimensional controls, but they wish to remain in the existing home. Both proposed empty lots would meet dimensional controls.

The hardship argument for hardship was based on X-H6D(2) corner lot provision. Attorney Mead asked that the Board apply the existing zoning ordinance in regards to variance ‘hardship’. The City solicitor recently opined that the provision may not be lawful. Councilor Eigerman has sponsored a zoning amendment to remove this section contained with the variance criteria. Ms. Mead argued that the Board does not have authority to not follow the approved ordinance. There will be no changes to the existing home at 19 Cushing Ave, except moving the garage. They are merely changing one lot line creating new lot.

As far as the street tree and sidewalk ordinance, it was recommended that no sidewalks be added and as long as no trees are coming down, none should be added. Staff notes suggest that if trees on the newly created lots come down, a new tree be planted Applicants have worked with neighbors and have (8) letters of support.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Christopher Heath, 12 Cushing Avenue

Concerns; directly across the street, continue to add more and more to the City, hopes that single family homes will be placed on lots. He is in support of his neighbors as long as they build and not sell to a developer.

Jen Sweet, 10 Chain Bridge Drive

Not opposed, but concerns included; 'elephant in the room' of the legal opinion from the City solicitor, hardships should be sparingly exercised, misleading application, what will be housed on the new lots.

Mr. Ramsdell commented that vacant lots are vacant until proposed to build something on them. The building commissioner would establish whether it meets zoning or not. As far as the City solicitor's letter, unfortunately the Board does not get to rewrite or dismiss parts of the existing ordinance.

Travis Sumner, 101 Lime Street

Suggested a condition that the two empty lots must meet setbacks when building. Mr. Ramsdell noted that by the nature of it that is true.

Stephanie Niketic, 93 High Street

Concerns included; the amendment to the ordinance and the City solicitor's letter. While City Council moves toward the amendment, cases filed after that date can be considered. Ms. Mead noted that MA General law says it is not until the proposed amendment is advertised for public hearing.

Questions from the Board:

Mr. Ramsdell clarified the only relief they are asking for is the front setback of an existing structure.

Ms. Bourdeau commented this is atypical and there is an existing house that they are not adding to.

Deliberations:

Ms. Pomeroy commented that this is a variance for what is existing. Any development of other two lots would have to come back if they do not meet requirements.

Mr. Goulet agreed.

Ms. Bourdeau commented that the lot size is always a concern, and these lots are meeting requirements.

Mr. Ramsdell clarified that the City solicitor did not say the ZBA should not apply the provision.

Mr. Goulet agreed. The City solicitor input is just one piece of input. City Council and the public still have to weigh in on this.

Motion to approve application 2017-041 made by Ms. Bourdeau, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell— approve

Robert Ciampitti – absent

Richard Goulet – approve

Renee Bourdeau – approve
Maureen Pomeroy - approve

Public Hearing #3:

2017 042

Address: 190 State Street

Sign Variance

Remove existing free-standing sign and replace with new

Dave, owner of Newburyport Signs presented the application. He would remove the old 'Leo's' sign in rotary. And replace with a new internal lit LED sign, less than half the size of the existing sign. The sign would like the pizzeria as well as new tenants at 190 State Street.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Theodorous Leonidas, Leo's owner

In favor

In Opposition:

None

Questions from the Board:

Mr. Ramsdell brought up hardship. Signs are important in this area of the rotary to noticeably alert drivers to what businesses are in that location. The sign will be double sided. Mr. Ramsdell noted that with free-standing signs the Board tends to look for simplicity in a name and/or logo of a company and not advertising.

Ms. Bourdeau commented that the traffic circle is the only place in the City where interior lit signs seems fitting. She also clarified that concrete footings would be below grade and site lines from exits would not be blocked.

Mr. Goulet asked about landscaping under sign. There would be landscaping.

Ms. Pomeroy clarified that there would be an internal LED light, with no blinking or flashing.

Mr. Ramsdell commented that he hoped in the future the Board would have criteria to follow on allowable lumens.

Mr. Goulet asked for a description of materials. LED lighting, Lexan panels, and steel poles skirted in aluminum would be used.

Deliberations:

There was discussion on the upper signs and was decided that the font and text should be consistent with white text, black background and one additional color.

Conditions;

- The upper panels identifying the ground floor businesses will be on a white background with the principal lettering color being black - one subordinate accent color is permitted if needed.
- Only the tenants/businesses names will be on the sign - no additional advertising is permitted on the sign.
- Lower panels identifying upper floor tenants will be reverse illuminated (lettering illuminated from behind with the background opaque).
- The sign may be internally illuminated because safety at this particular location (directly adjacent to traffic circle) requires ready identification from the traffic lanes.

Motion to approve application 2017-042 with above conditions made by Ms. Bourdeau, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – absent
Richard Goulet – approve
Renee Bourdeau – approve
Maureen Pomeroy - approve

The meeting adjourned at 9:12pm

Respectfully submitted, Katie Mahan - Note Taker