

**City of Newburyport
Zoning Board of Appeals
Online Meeting
June 14, 2022
Minutes**

1. Roll Call

Chair Rob Ciampitti called an online meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Rob Ciampitti, Bud Chagnon, Ken Swanton and Gregory Benik. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan, Zoning Administrator Jennifer Blanchet and Note Taker Gretchen Joy.

2. Election of Officers

Mr. Chagnon nominated Mr. Swanton for the position of Vice Chair. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

3. Public Hearings

Douglas C. Deschenes

22-24 Market Street

ZNC-22-13 - Special Permit for Non-Conformities

ZSP-22-1 - DCOD Special Permit

ZSP-22-2 - Special Permit for Hotel/Inn Use

The applicant requested a continuance. Mr. Swanton moved to continue the public hearing to the June 28 meeting. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Joseph Cohen and Robin Wallace c/o Lisa Mead, Mead, Talerman & Costa LLC

4 79th Street

VAR-22-3 - Variance

ZNC-22-6 – Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is seeking a Variance to allow for the creation of a third-story and Special Permit for Non-Conformities to allow for a third floor and a second-story deck, which would extend an existing non-conformity.

Attorney Mead said the applicant is seeking a waiver of the criteria for a Variance and Special Permit for Non-Conformities under the ADA and the fair housing law. The applicant is requesting for a portion of the hearing to be held in an executive session. Mr. Ciampitti said the Board may enter into an executive session to discuss the physical condition of the applicant when the disclosure of information in a public session would violate the applicant's right of privacy. Deborah Ecker of KP Law confirmed the Board could discuss the nature and extent of a disability in an executive session. The Board would then return to a public session to discuss the application without the disclosure any confidential medical information. Mr. Ciampitti reviewed the procedures for entering into an executive session.

Mr. Swanton moved to enter into an executive session pursuant to M.G.L. C. 30A Section 21(a)(1) to discuss the physical condition or mental health of an individual in relation to the matter of 4 79th Street. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

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Upon the conclusion of the executive session, the public hearing was resumed. Attorney Mead presented the application for 4 79th Street. The property is non-conforming for lot area, frontage, front-yard setback, side-yard setback, rear-yard setback, lot coverage and FAR. The existing use as a two-family residential structure is also non-conforming.

Attorney Mead said the existing structure is composed of two units. The first floor is a rental unit. Ms. Wallace has owned the property since 2007 and is proposing to permanently occupy the second floor unit with Mr. Cohen and their two children. A Special Permit for Non-Conformities is needed for the intensification of the FAR and extension of the side-yard setback non-conformity. A Variance is needed for the creation of third-floor living space. Attorney Mead said that under the ADA, the Board could agree to waive the local bylaws to approve a request for an accommodation for an individual with a disability. The ADA coordinator has affirmed the applicant has a disability. Attorney Mead said the modifications would be reasonably necessary to accommodate the disability and to afford the individual the use of housing of his choice.

Architect Kevin Latady reviewed the proposed changes to the structure. He said the entry area is small and the hall to the bedrooms and bathroom is narrow. The height of the third floor ceiling ranges from 6.6 feet to 3.6 feet. The size of the existing structure is 1,986 square feet. An elevator and larger entry area would be added on the first floor, increasing its size from 874 square feet to 929 square feet. The second floor would increase from 982 to 990 due to the addition of the elevator. The second-floor deck would be expanded to allow for outdoor space. The third floor would be increased from 130 square feet to 560 square feet. The ridge beam would be raised to allow for the construction of a dormer to increase the height of the ceiling. An accessible bedroom and bathroom would be added on the third floor. The FAR would increase from 52% to 68%, where 25% is the maximum allowed. The second-story deck and third-floor living space would upwardly and laterally extend the side-yard setback non-conformity.

Attorney Mead said the application meets the criteria for a Variance and Special Permit for Non-Conformities. The existing living space is not sufficient to accommodate the medical needs of the applicant. Other alternatives were explored and were found to create more impacts by adding pilings and covering vegetation. The 560 square feet to be added would be the minimum amount needed to meet the medical needs of the applicant. The third story would be constructed above an existing second-story deck.

Attorney Mead said the odd shape of the lot would prevent living space from being added on the second floor. The literal enforcement of the provisions of the ordinance would create a hardship, as the applicant would not be able to live in the home. The proposal would not be detrimental to the public good, as the space mostly already exists and the roof is simply being raised on a portion of the structure. She said it would not derogate from the intent of the ordinance. She displayed a series of photographs of houses on the island with third-floor living area. The proposed living area would be above the floodplain.

The hearing was opened to comments from the public. Lela Wright, 55 Reservation Terrace, said she supports the application. If the Board does not agree to provide a waiver, the shape of the lot itself would meet the hardship requirement.

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Mike Caponigro, 11 82nd Street, said his concern is that the street should be kept clear for public use and access, especially when construction vehicles would be on the site. He has had difficulty accessing his property in the past.

Georgia Papanickolas, 6 79th Street, requested that the Board deny the permit. She said there is no hardship for the dimensional variance requested.

Betsy Merriam, 6 Basin Road, said she supports the plans. A disabled person and his family should be able to enjoy the island.

Harriet Nezer, 6 Point Road, said she is sympathetic to the applicant but the proposed changes far exceed the FAR. She said the needs of the applicant could be accommodated on the first and second floors of the structure.

Steve Nezer, 6 Point Road, said the existing FAR is twice what it should be. The structure is larger than the size of the average home on the island. He said he has personal knowledge that one of the examples shown by Attorney Mead does not include third-floor living space.

Applicant Robin Wallace spoke of the importance of the proposal to her family. The public comment period was closed.

Mr. Swanton asked if the structure would be the applicants' permanent residence and if the first floor is rented. Attorney Mead said the applicants have resided in temporary housing since 2019 in anticipation of the renovation of the structure. She said it is a two-family structure and the applicants choose to live in the upper unit. The first floor unit will be used to generate income. Attorney Ecker said the applicant could not be forced to use the first floor. It is a two-family structure and the applicant chooses to occupy the upper unit.

Mr. Chagnon asked if consideration had been given to converting the structure to single-family use. Attorney Mead said no consideration is being given to changing the status of the structure.

Mr. Benik asked if the Board is guided in its deliberations by the ADA test rather than the zoning requirements. Attorney Mead said her position is that the ADA allows boards to waive local ordinances. The ADA states that it overrides the local ordinance in order to provide reasonable and necessary accommodations. Attorney Ecker said the ADA does not provide a waiver from the zoning. Boards must still review the criteria to determine if the request is reasonable and necessary for the use and enjoyment of the property. Boards must also determine if the request would fundamentally alter the zoning scheme, in which case the modification could be determined to be unreasonable. She said there is not an exemption, but rather room for some give and take.

Mr. Swanton said the property is already far denser than allowed by the ordinance. He said he does not like adding density to the fragile ecosystem but his heart goes out to the applicant. He said the situation is unusual and he could support the Variance and Special Permit requests, rather than providing a waiver.

Mr. Chagnon said he could support the application, although the density is much greater than would normally be considered

Mr. Benik said the proposal is reasonably necessary to accommodate the needs of the applicant. Alternatives have been explored and the application is reasonable to accommodate the applicant's disability. He does not believe the City could find that the nature or purpose of

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zoning ordinance would be altered. He said the ADA requirements have been satisfied and he does not find it necessary to review the criteria under the zoning ordinance.

Mr. Ciampitti said that while the Board must protect the fragile island environment, it has been demonstrated in this case that empathy and accommodation is appropriate. Spatial requirements are needed that would not be possible due to the shape of the lot. He is satisfied that the applicant has satisfied the requirements for the Variance. With regards to the Special Permit, the applicant provided examples of third-story living spaces and they are not without precedent. He would support the application under its specific and unique circumstances.

Mr. Swanton moved to approve the application for a Variance for 4 79th Street. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Mr. Swanton moved to approve the application for a Special Permit for Non-Conformities for 4 79th Street. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Barbara Gordon c/o Lisa Mead, Mead, Talerman & Costa LLC
7 Oak Street
ZNC-22-15

Lisa Mead represented the applicant, who is proposing to remove a single-story addition at the rear of a non-conforming single-family home. A new two-story addition would be constructed in its place, adding 531 square feet to the structure. The property is in the R2 zoning district and the DCOD. It is non-conforming for lot area, frontage, front-yard setback, rear-yard setback, both side-yard setbacks and lot coverage.

The rear-yard setback is 13.46 feet, where 25 feet is required. This non-conformity would be upwardly extended. The left side-yard setback would decrease from 9.46 feet to 9 feet, where 10 feet is required. The lot coverage would increase from 26.69% to 38.91%, where a maximum of 25% is permitted.

The addition would be clad with wooding clapboards and shingles to match the existing structure. The ridge height of the proposed addition would match that of the existing structure. Attorney Mead said the proposed addition would be more in keeping with the style of the historic structure than the existing additions that are to be removed. The amount of living space would remain below the average for the neighborhood.

No one from the public spoke in favor of or in opposition to the application. Mr. Swanton asked about the increase in lot coverage. Attorney Mead said the size of the footprint would increase to allow the addition of a staircase without impacting the roof of the historic structure.

Mr. Swanton said no new non-conformities would be created and the proposal would not be substantially more detrimental to the neighborhood than the existing conditions. Mr. Chagnon agreed that the proposal would fit with the neighborhood. He said he appreciates that the appearance of the existing home would be maintained. Mr. Benik said the proposal is modest and would enhance the neighborhood.

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Mr. Swanton moved to approve a Special Permit for Non-Conformities for 7 Oak Street. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

George Croteau
173 Northern Boulevard
ZNC-22-16

The applicant is proposing to add living area to an existing garage. The property is non-conforming for area. The accessory structure is non-conforming for front-yard setback and side-yard setback.

The front and rear walls of the garage would be raised four feet. Its height would not change. The front and side-yard setback non-conformities would be upwardly extended. Exterior stairs would be added to access to the second story of the garage, which would increase the FAR from 20% to 21%, where 25% is the maximum permitted. The living area would be used as a recreation space for the seven children in the family. A half bath would be added.

No one from the public spoke in favor of or in opposition to the application. Mr. Croteau said in response to a question from Mr. Swanton that the garage would not be a separate dwelling unit and would not be used as a rental property. Mr. Swanton said that under these conditions the proposal would not be detrimental to the neighborhood. The FAR would not be increased above the amount that is permitted.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 173 Northern Boulevard with the condition that the accessory structure shall not be considered a separate dwelling unit or be used as a short-term rental unit. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

John M. Guilfoil
427 Merrimac Street
ZNC-22-17

The applicant is proposing to add living space and a one-car garage to a single-family structure. The property is non-conforming for area, front-yard setback and rear-yard setback.

Mr. Guilfoil said the first floor of the structure was used as a salon and the second floor was a rental unit. The commercial use was not permitted in the district. He is proposing to convert the property to conforming single-family use. The front of the property is currently paved for the parking of seven cars. A front yard would be created and a driveway would be installed. A mudroom would be added to provide first-floor storage space. The garage would be set back to allow for the parking of one car in front of it. The proposed location of the garage would extend the rear-yard setback non-conformity. The setback would decrease from 20.3 feet to 17 feet, where 25 feet is required.

No one from the public spoke in favor of or in opposition to the application. Mr. Swanton asked if the addition could be reconfigured so that the garage would not extend the non-conformity. Mr. Guilfoil said the architect intended to use the available space to the right of the

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structure and to improve the appearance of the property. Mr. Chagnon asked about the right side-yard setback. Mr. Guilfoil said the setback would be reduced but would remain conforming.

Mr. Swanton said the proposal would be an improvement over the existing condition. Mr. Chagnon said the reduction in rear-yard setback would be acceptable. He said the proposal would be an improvement to the neighborhood. Mr. Benik said there is much to support in the project.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 427 Merrimac Street. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Arthur and Sandy Manley c/o Lisa Mead, Mead, Talerman & Costa LLC
257-259 Water Street
ZNC-22-18

Lisa Mead represented the applicant, who is proposing to construct an addition at the rear of a structure in the Ag/C district and DCOD. The structure was built as a single-family house in 1875 or 1898. It was later divided into two units, which is a non-conforming use. The property is non-conforming for lot area, lot coverage, frontage, front-yard setback, both side-yard setbacks and rear-yard setback.

The applicant is proposing to revert the structure to single-family use. A new second story would be constructed above the existing first floor at the rear of the property, which would result in the upward extension of the non-conforming side and right rear-yard setbacks. There would be no change to the footprint. An existing shed would be removed, improving the lot coverage from 21.5% to 19.9%.

No one from the public spoke in favor of or in opposition to the application. Mr. Swanton commented that it is helpful when the existing and proposed conditions are shown on the same page. He said the proposal would improve the property in several ways and would not be detrimental to the neighborhood. No new non-conformities would be created. The remaining Board members were in agreement.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 257-259 Water Street. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

4. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the May 24, 2022, meeting. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

b) Updates from the Chair and Planning Director

None

5. Adjournment

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Mr. Swanton moved to adjourn the meeting at 10:41 p.m. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).