

**City of Newburyport
Zoning Board of Appeals
July 10, 2018
Council Chamber**

The meeting was called to order at 7:11 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Maureen Pomeroy
Edward Cameron (Associate Member)

Absent:

Christopher Zaremba (Associate Member)
Renee Bourdeau

2. Business Meeting

a) Approval of Minutes

Minutes of the 06/26/18 meeting

Mr. Ciampitti made a motion to approve the minutes and Ms. Pomeroy seconded the motion.
The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Christopher Zaremba – absent
Edward Cameron – abstain

b) Request for Extension – 8 Ashland Street (2017-057)

Rob Germinara, owner asked for a six-month extension to a permit granted on 7/11/17. He intends to start work within the six months.

Mr. Ciampitti made a motion to approve the request for six-month extension and Ms. Pomeroy seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Christopher Zaremba – absent

Edward Cameron – approve

c) Request for Minor Modification – 333 Merrimac Street (2017-007)

Aileen Graf of Graf Architects presented on behalf of the owners. They would like to add a roof deck to the property that is still open in special permit. The roof deck would be above unit three, the rear unit. It would be a 12x14 deck with spiral staircase and is driven by tight outdoor space.

Mr. Cameron asked if abutters get notified of minor modifications. They do not.

Ms. Pomeroy asked if they had spoken with abutters. They have spoken with the two other unit owners, but not abutters.

The Board agreed that they would feel more comfortable with neighbor input, as they recalled neighbor input at previous hearings.

Chair Ramsdell noted the Board previously has not dealt with decks, but where this is on the roof and part of the bigger picture it made sense.

Ms. Pomeroy made a motion to continue the request to 7/24/18 to allow time for neighbor input and Mr. Ciampitti seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – absent

Edward Cameron – approve

d) Request for Minor Modification and Extension of Permit – 25 High Street (2016-029)

Aileen Graf of Graf Architects presented on behalf of the owners. The applicants were granted this permit roughly two years ago. They are requesting an extension as well as minor modification to meet budget. The changes include pulling back to a smaller footprint, maintaining existing bulkhead and fireplace, eliminating a kitchen addition, and decreasing size of the driveway side breakfast nook and mudroom addition. There were also minor changes to door and window locations and a dormer removed.

Chair Ramsdell questioned if the extension is needed or not. He noted legislature changed to three years for Special Permit, but the ordinance still reads two. However this Special Permit was granted prior to the legislature change.

Ms. Pomeroy made a motion to approve the request for a one-year extension and Mr. Ciampitti seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve
 Christopher Zaremba – absent
 Edward Cameron – approve

3. Public Hearings

2018 028

Address: 1 Inn Street, Unit 8

Appeal

Appeal of the denial of a request for issuance of a cease and desist letter by the Zoning Enforcement Officer dated 4/6/18 for noise and vibration in excess of what is allowed under the Zoning Ordinance due to operations associated with the property located at 35 Market Square

Attorney Adam Costa of Mead, Talerman and Costa LLC, 30 Green Street presented on behalf of Frances Gibbons. Attorney Costa had been in communication with the attorney for West Row Café today. The applicant is seeking to appeal a determination of the Zoning Administrator that stated that noise levels at the property in question fell within those limits allowed via the Newburyport Zoning Ordinance via section XI.G. She refused a cease and desist with regard to noise and vibration associated with the ventilation system on the roof. The client owns a condo unit in the building and noise has been problematic. Property owners were notified late last year and sought zoning enforcement, as the issue was not satisfactorily addressed. An attempted fix took place in February/March, then further zoning enforcement was requested and a cease and desist was refused. Michael Rosen of West Row Café has been communicating that a fix is under way to remove the ventilation from the roof and mount to the side of building instead to lessen vibration. Design complications and excessively hot temperature and OSHA guidelines for heat have delayed the resolution. They requested a continuance to allow time for post installation testing.

Motion to continue application 2018-028 to 8/14/18 made by Ms. Pomeroy, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
 Robert Ciampitti – approve
 Renee Bourdeau – absent
 Maureen Pomeroy – approve
 Christopher Zaremba – absent
 Edward Cameron – approve

2018 029

Address: 229 Water Street

Special Permit for Non-conformities

Construct a 9'x13' addition that would result in an upward extension of pre-existing non-conforming setbacks

Craig Douglas presented the application on behalf of Lauren Petty. The applicants are looking to construct an addition and not change the existing footprint. The addition would complete the architecture of the home and match the home's gambrel roof on the rest of the structure. They would add a dormer to meet egress for the room inside. The home is being resided with cedar shingles as well as a cedar roof. The addition would be approximately 153 s.f.

The applicants submitted two letters in favor of the project.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Cameron asked how old the existing gambrel was. It was built in the 1950s. The home is a “C” shape. The wing and body are gambrel, with a flat roof on the side with the proposed addition.

Deliberations:

Ms. Pomeroy commented on the minor addition. She did not view this as substantially more detrimental to the neighborhood.

The rest of the Board agreed.

Chair Ramsdell noted that this project is not large enough to trigger the tree and sidewalk ordinance.

Motion to approve application 2018-029 made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell– approve
- Robert Ciampitti – approve
- Renee Bourdeau – absent
- Maureen Pomeroy – approve
- Christopher Zaremba – absent
- Edward Cameron - approve

2018	030
Address: 27 55th Street	
Special Permit for Non-conformities	
<i>Construct a second floor addition modifying a pre-existing non-conforming structure</i>	

Ken and Karen Letourneau presented the application. The applicants are requesting to add a second floor addition over an existing single story entryway that will house a 5’x12’ bathroom. The height will be less than the existing structure and the footprint will not change. FAR (Floor area Ratio) would increase from 36.7% to 39%.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Karen Letourneau, 27 55th street

There are two bedrooms on the second floor, and they are hoping to add a bathroom close to the bedrooms.

In Opposition:

Attorney Mark Griffin, Finneran and Nicholson representing Cornelius and Allison McCarthy, 29 55th Street

They McCarthy's are opposed to the request, however with conditions, they could support. The neighboring homes are located at the end of 55th street that dead-ends at the beach. The street is difficult for emergency vehicles to access and a vehicle on the applicant's property has exacerbated this. The applicant has been parking in the East corner of their lot, making for a difficult turning radius that also leads to trespassing onto the McCarthy property. There is plenty of space on west portion of the applicant's lot to fit two vehicles. Attorney Griffin noted that the application does not depict parking spaces. Mr. Griffin suggested adding a condition to the application that parking is to be confined to two spaces in the westerly portion of the lot. Attorney Griffin listed a number of deficiencies in the application including; no parking depicted, adjacent properties and buildings not shown, dimensional setbacks and graphic scale missing, floorplans not prepped by architect and do not have all measurements (and FAR is dependent on floor plans). On the application itself; numbers are uncertain based on plans, memo submitted is inadequate, no argument as to why they are entitled to a Special Permit through Special Permit criteria. Attorney Griffin argued that the application would be substantially more detrimental to the neighborhood and PIOD. It will exacerbate an existing parking situation, affect public safety, and threaten personal property. An additional bathroom on the taxed water and sewer systems on Plum Island is detrimental. He suggested a continuance for revised and amended plans.

Questions from the Board:

Mr. Cameron asked to hear from the applicant. Mr. Letourneau explained he is a registered professional engineer. FAR was taken from tax documentation. This is a new bathroom within an existing footprint. It would not exacerbate parking or population. He noted a June 7th email outlining concerns from the neighbors via Attorney Griffin. If they agreed to give the McCarthy's permanent right of way on their property, they would not be against this application. He noted that water and sewer use would not change. Emergency vehicle access is not an issue. Mr. Letourneau commented that the McCarthy's have an issue with them parking on their own property, which has nothing to do with a tiny addition on the opposite end of the house. They are taking advantage of the situation.

Mr. Cameron was wrestling with how parking relates to this minor addition. Mr. Cameron asked for clarification on a second bathroom on the first floor in the plans. The downstairs bathroom would be moved to simplify plumbing.

Chair Ramsdell asked what the parking issue has to do with building a bathroom on the second floor. Attorney Griffin commented that once the applicant opens up to a permit, they open up to the whole picture. He suggested this was more substantial than window placement or rooflines as part of another application. They are required to have two spaces, and they are not depicted.

Mr. Ciampitti commented that Attorney Griffin was not wrong in that the permit request opens "Pandora's box." Mr. Ciampitti asked why they do not park the two vehicles on the westerly portion of the lot. It was due to terrain and one vehicle not having four-wheel drive. Mr. Ciampitti was troubled to see where this could be solved with a parking condition.

Mr. Letourneau commented that since they have been in contact with Attorney Griffin they have been taking steps to avoid trespassing, and backing the vehicle in.

Mr. Ciampitti questioned whether it is the position of the Board to make the applicant compliant in parking in an otherwise minor project. The applicant indicated they have two spaces. There are other forums for trespass issues. Multiple things can be considered, but are not all deciding factors.

Ms. Pomeroy asked if there was any plan to become a two- family in the future. No, there was no plan for that.

Deliberations:

Mr. Ciampitti commented that this is a discretionary permit, where the Board must hear and consider everything and decide what weight it holds.

Ms. Pomeroy commented that although this was a bathroom, there would be no additional usage or expansion of use.

Mr. Cameron commenced that as far as the PIOD, it is really bedrooms that are factored in. He hoped the neighbors would work on something with parking. He was generally in favor.

Chair Ramsdell commented that we consider everything. The request is small and he also hoped they could sort the parking issue in this instance.

Motion to approve application 2018-029 made by Mr. Cameron, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – absent

Edward Cameron - approve

2018 031

Address: 339 High Street

Variance

Convert 2nd floor of existing detached barn/garage into an in-law apartment

2018 032

Address: 339 High Street

Special Permit for Non-conformities

Permit the upward extension of pre-existing non-conforming setbacks on the residential structure and an addition of over 500 s.f. for the construction of an in-law apartment in the existing second story of the detached barn

Convert 2nd floor of existing detached barn/garage into an in-law apartment

2018 033**Address: 339 High Street****Special Permit***Allow an in-law apartment (Use #109)*

Matthew Cummings, of Cummings Architects and Erik Kaminski of Kaminski Construction Management presented the application. Mr. Kaminski purchased this house in hopes of renovating and residing here with his family. They have approval from Newburyport Historical Commission on the project. The project involves restoration of an existing barn and adding an in-law to the second floor. Minimal work on the rear of the existing house would also be done. The lot is irregular and narrow. It is a corner lot with more frontage on Myrtle Avenue than High Street.

On the existing house is a rear “L” that they are hoping to raise up, align with the original home and preserve. A 5’x14’ addition would widen the rear of the structure. It would keep the same “L” shape and gable.

There is an existing barn on property that is beginning to deteriorate. The ground has risen up around it over the years. They hope to raise the barn up and work the foundation. They would like to add an in-law apartment to the second floor and park cars underneath. The Historical commission has approved this. The in-law apartment needs a variance since it would be in a detached structure. After much though, the only other good location to attach an in-law apartment addition would be on the High Street streetscape, which would not be desirable. In-laws would reside in the apartment to watch over young son.

Hardship argued for the variance was the shape of the lot being so narrow. There is really nowhere to attach an in-law that would not require relief also.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Jeanette Isabella, 1 Lime Street

Ms. Isabella questioned what happened to an in-law apartment that is not in use by an in-law. Chair Ramsdell noted the kitchen must be removed. The applicant must report to the building inspector that an in-law is living there.

Questions from the Board:

Mr. Ciampitti asked who would be living in the in-law apartment. Mr. Kaminski’s in-laws would be living there.

Mr. Cameron asked about sidewalk and tree ordinance. The applicants noted they did not exceed 50% of the current assessed value for the property with the project, so it was not triggered.

Chair Ramsdell asked about a chimney removed in plans. The applicants explained it was not in the front main house. With their exploratory permit, they discovered a decaying chimney that they brought down to roofline for safety in the rear of the home. They could add a false chimney if the Board desired.

Chair Ramsdell asked what led to the lot coverage exceeding the 15% maximum. The very small 5'x14' addition on the rear brought the lot coverage up.

Mr. Ciampitti commented that while lot area was otherwise sufficient, the applicants must comply with zoning on a long, narrow lot with frontage on Myrtle Avenue. They are trying to preserve a historic structure. He asked whether tearing down the barn would be considered if not approved. The applicants did not imply that, but they could do this after a one-year demolition delay. There are other towns that allow re-use of barns and accessory structures by Special Permit.

Deliberations:

Mr. Ciampitti felt this application has been vetted through the NHC and was a creative way to preserve a historic barn. The application is part of a discretionary review. Variance approval has strict requirements, and he felt he could find shape of the lot a hardship. Lot shape is unique in this case and the applicants are adversely affected.

Ms. Pomeroy appreciated what they are trying to achieve. She was having a problem with the lot shape hardship argument.

Chair Ramsdell was also having trouble with the hardship argument. Adding a % of lot coverage and adding an in-law in accessory structure in this case drove variances.

Mr. Cameron commented on the exceptional narrowness of the lot. This is NHC approved and the Newburyport Preservation Trust were commending of the work done. They are taking what is and making it more functional.

Chair Ramsdell clarified he did like everything proposed. The concern is how to get there with hardship. There is a viable use of the property without an in-law or adding lot coverage. However, he did not want to see the barn torn down.

Mr. Ciampitti commented that no opposition present is worth noting.

The applicants asked for a brief continuance until after the next application.

Motion to continue application 2018-031, 2018-032, 2018-033 until after the next application made by Mr. Ciampitti, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – absent

Edward Cameron – approve

The applicants returned and asked for the Board to consider approving the SPNC to permit the upward extension of pre-existing non-conforming setbacks on the residential structure and continuing the remaining applications.

Conditions;

-The historic rear ell of the residential structure shall be allowed to be elevated as proposed in the plans. If, during the process of lifting this ell, the applicant finds that any portion of the building needs to be removed other than those identified in the plan set submitted, this case be remanded back to the ZBA and the NHC for further demolition review.

-A false chimney will be constructed to maintain the look of the structure where an existing chimney has been removed (see #7 above).

-The applicant shall submit a construction cost estimate with the application for a building permit. Should this estimate be equal to or exceeds 50% of the current assessed value for the property, i.e. \$420,300, then the applicant must comply with the following recommendations: Install a new brick or concrete sidewalk along the Myrtle Avenue frontage as well as one or two new street trees at the back of the sidewalk on the private property and install new granite curbing and a new brick or concrete sidewalk along the High Street frontage. If the applicant's estimated cost of construction be less than this amount, the applicant is not required to comply with the stated recommendations.

Motion to continue applications 2018-031, 2018-033 to 8/14/18 made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Christopher Zaremba – absent
Edward Cameron - approve

Motion to amend and approve application 2018-032 inclusive only of request to lift pre-existing non-conforming structure made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Christopher Zaremba – absent
Edward Cameron - approve

2018 038

Address: 2 Oakland Street

Special Permit for Non-conformities

Construct a one-story breakfast room and mudroom addition

David Keery of Keery Design presented the application. The applicants started the project design about a year ago and at time using the R3 zone, which has since changed to the R2 zone. The application is for a one-story breakfast room addition for an expanding family that has lived there for five years. The home is part of a VI-C development. The lot is non-conforming with regard to lot area, lot coverage, front yard

setback and rear yard setback. Pictures of existing conditions and elevations were presented. The applicants did not see this as substantially more detrimental to the neighborhood as neighbors would be unaffected by views or shadows. It is a minor request.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Corey Scrupps, 253 Merrimac Street

In favor; Nice design, use of space, good neighbors.

Tom Hopp, owner

Lived here for five years and the home is tight with three kids. This will allow a small expansion.

Four letters of support from abutters were presented.

In Opposition:

None

Questions from the Board:

Ms. Pomeroy asked if the same materials as the existing home would be used. Yes, they would use the same.

Deliberations:

Mr. Ciampitti commented on the well-presented application. The application does appear to be substantially more detrimental to the neighborhood. He commented on the plans on abutter sign off sheet and wished more applicants used this.

The rest of the Board agreed.

Chair Ramsdell commented that the sidewalk and tree ordinance was not triggered.

Motion to approve application 2018-038 made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – absent

Edward Cameron - approve

2018 039

Address: 8 Charron Drive

Special Permit

Allow an in-law apartment above new attached garage

Michael and Tracey Joyce, owners presented the application. The request is to build a new garage 20'x29' conforming to setbacks, with an in-law apartment above it.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Michael Kennison, 6 Charron Drive

Concerns included; size of the addition is ¾ the size of the existing house, water drainage, slope onto his property, not essential or desirable to the public, all houses are evenly spaced on the street and this will be compromised, not confident where property lines are.

Questions from the Board:

Mr. Cameron clarified with the applicants that the garage conforms to setbacks. He asked if they have had someone look into runoff. They had not, as they were only here is the in-law apartment request. The structure conforms to all setbacks. Mr. Cameron asked who would be living in the in-law apartment. Mr. Joyce's mother would reside there.

Mr. Cameron asked the applicants if granted relief if they would be willing to consult a third party on runoff. The applicant did not feel it was necessary to bring in engineer.

Ms. Pomeroy asked if they would be re-doing the driveway. They would be. She understood neighbor concerns and asked if they would be amenable to conditions that the slope of driveway goes away from the neighboring property. Yes, they would be amenable to that and rain barrels for water collection.

Chair Ramsdell asked what the driveway was now. It is asphalt. They would widen it for the two-car garage. He asked if they would be willing to make the new driveway a permeable surface such as pavers to reduce runoff. The applicants would prefer asphalt to fit in with the rest of the neighborhood.

Mr. Ciampitti commented that the engineered plans were stamped so he felt comfortable with the lot lines.

The applicant suggested adding a line of arborvitaes between the lots to help with drainage. The neighbor was willing to talk about this.

Mr. Cameron and Ms. Pomeroy thought a third party to look at drainage and runoff issues may alleviate neighbor concerns.

Kate Newhall-Smith brought up a recent application where a condition was added to slope the driveway away from neighboring properties.

The applicants considered accepting conditions to add rain barrels, use pavers for the new driveway, and consult a third party on drainage, but ultimately asked for a continuance. They would consult with the building department on getting started on construction of the garage that could be built by right.

Motion to continue application 2018-039 to 8/14/18 made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – absent

Edward Cameron - approve

The meeting adjourned at 10:09pm

Respectfully submitted, Katie Mahan - Note Taker