

**City of Newburyport
Zoning Board of Appeals
July 12, 2016
Council Chambers**

The meeting was called to order at 7:15 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Duncan LaBay (Secretary)
Jamie Pennington
Richard Goulet

Absent:

Renee Bourdeau (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of the 06/28/16 meeting

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

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

3. Public Hearings

Public Hearing #1-5:

2016 005
Address: 4 Hillside Avenue and 15, 16, 17, 18, 19 Cottage Court
Special Permit
*Construct Multi-family homes with bonus units and with reduced separation between buildings; and
construct a private parking lot*

2016 040

Address: 4 Hillside Avenue and 15, 16, 17, 18, 19 Cottage Court

Dimensional variance

Variance from front yard setback where front porch encroaches on Cottage Court and Hillside Avenue

2016 006

Address: 12-14 Cottage Court

Special Permit

Construct a private parking lot

2016 007

Address: 18 Cottage Court

Dimensional variance

Construct a lodging house with insufficient lot area, side and front setback

2016 008

Address: 18 Cottage Court

Special Permit

Permit for a ten room lodging house (Use #106)

This hearing was continued from the 1/20/16, 4/12/16, 5/10/16 and 6/28/16 meetings. Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman represented the applicants. David and Ella Hall. The applicants have been working through details with the Planning Board mostly dealing with the storm water and safety. They are now in a position to hopefully close out hearing.

David and Ella Hall presented the changed made to plans since the Board last saw the project, including;

- Route One entrance has a gentler bend
- YWCA handicap access changed, which shifted the building about 18"
- Removed 2 parallel parking spaces close to egress of Route One
- Main parking lot –worked on vegetated swales, removed some parking spots and trimmed back solar panels
- ‘Emergency vehicle use only’ pinch point – four signs will be posted – and per fire it has grown to 20’ wide
- Snow storage area next to parking lot
- Hillside Ave – handicap access and maintaining grades of 5% or less. Sidewalk vegetation moved to the inside to accommodate
- Storm water pipe at 12-14 Cottage Court – water storage under parking
- Jones Family and Mr. Hall worked on timber frame solar canopy. They will be disassembling an existing barn and re-using in the frame
- Bike storage and utility room added to some units
- South Rise basement access moved

Ms. Mead gave a brief review of the project as a whole. Given the complexity of the application and still-moving pieces, they asked the Board to add/accept a number of conditions listed below;

- The Applicant shall be required to record sheet C-0 (Zoning Analysis Plan) dated July 5, 2016, sheet C-1 (Site Layout Plan) dated July 5, 2016, and the Applicant shall not be required to record

but shall be required to comply with sheets A0.1 – A8.2 (Architectural Plans) originally dated 2.1.16 revised dates 3.23.16 and 7.05.2016.

- Should the applicant find that there are pilot stormwater management technologies and design alternatives approved by the Commonwealth of Massachusetts that can improve storm water management and run-off water quality beyond that which is designed and approved as a Site Plan approval, then the Applicant may, prior to the issuance of a building permit, present such alternatives to the Planning Board for their review without the need for a further public hearing if the following conditions are met: 1. The new proposed system will be peer reviewed by the Planning Board's peer review consultant; and 2. The new design will not cause any change in building location, any substantive change in street, sidewalk, parking area or other impervious surface. In the event the changes exceed the limitations set forth immediately prior hereto, the Applicant shall be required to file a request for a modification with public notice and a public hearing.
- The Applicant may make improvements or changes related to stormwater management such as curbing, catch basin placement and final grading as they appear on these plans subject to final approvals from the Planning Board, so long as any relief provided by the Zoning Board is not changed.
- As the Applicant has received a residential density bonus based on the creation of market-rate rental housing as allowed by the Newburyport Zoning Ordinance, Section XVI-C(2), no units may be sold that would result in non-compliance with this provision. Twenty-five percent (25%) of the units must remain market rate rentals for a minimum of forty (40) years.
- The Fireman's Drive will be for pedestrian and non-motorized use and will only be accessible by emergency vehicles and golf-carts or similar maintenance type vehicles. There will be no vehicle parking of any type at any time on the Fireman's Drive.
- While the private portion of Cottage Court is intended for use by the residents of the Hillside Living LLC and its successor's and assigns, as well as emergency vehicles, said exemption shall not abrogate the rights of anyone having any right to pass and repass over the private way.
- The water quality structures located in both the private and public portions of Cottage Court shall be maintained by Hillside Living LLC, its successors and assigns.
- The onsite property manager will be responsible for managing, scheduling and overseeing any events scheduled for the Common House. The Common House facilities, outside area, kitchen area, indoor common area and guest rooms will be used to serve the interests and needs of Hillside residents only. The facilities will be used by the residents and their guests only. The Common House is not a public facility and may not be leased to the general public.
- The number of occupants allowed in the Common Room facility shall be limited to 60 persons for private functions and 100 persons for functions exclusive to the residents of Hillside.
- The kitchen area both inside and out will be managed and maintained by the on-site property manager.
- The outside area of the Common House will consist only of three tables and wood fired oven. There will be no fire pit. Once a usage baseline has been established a request for extended use can be discussed and the parties may modify and amend this document by mutual agreement.
- The Common House hours of operation would not extend beyond 9:00 p.m. Monday through Thursday and 9:45p.m. Friday & Saturday and Sunday.
- The Common House facility will be cleaned after each function.
- Functions at the Common House will be limited to social gatherings, educational use and will not include loud music.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Fred Hanson, 8 Cottage Court

His concerns were storm water and catch basins. His house has been in the family for 80 years and they have has water issues. Mr. Hall explained that the Planning Board is still reviewing plans.

In Opposition:

Pam Jones, 49 Pond Street

Ms. Jones clarified what was being closed out tonight if the Board voted. Ms. Mead explained that matters before the ZBA would be closed out. Newburyport does not have zoning on ground-mounted solar panels; that is part of site plan review.

Don Little, 6 Cottage Court

There were many abutters all originally opposed, but the applicant seemed to have worked with them all. He was opposed to project in general, as it is a drastic change to the neighborhood.

Tom Joy, 51 Pond Street

Concerned this is a moving target to be voting on now.

Questions from the Board:

Mr. Ciampitti asked about the 'fireman's walk' / 'fireman's drive'. Ms. Mead explained they are separate things.

Deliberations:

Mr. Ciampitti thought relief sought within the Board's purview was well presented. The site plan review process has yet to be completed through the Planning Board. He commented on each application; 2016-005 - a rational case was presented for a great project.

2016-040 – revisions and supporting information help make case.

2016-006 – clear and persuasive and necessary.

2016-007 – lots are where they are and there few lots make sense with our original zoning. This is a small cog in bigger a machine.

2016-008 – one doesn't survive without the other. Would not support outside of project, but is part of the success of this project.

Mr. LaBay agreed with Mr. Ciampitti.

Mr. Pennington appreciated Mr. Ciampitti's comments. This is a very ambitious and exciting project.

Mr. Goulet agreed with his colleagues. The project has matured nicely. It is the result of a lot of hard work and neighborhood communication. Our role is zoning relief to move forward.

Mr. Ramsdell concurred. The applicant has done an excellent job laying out the project as a whole and supporting rationale. Site plan review will iron out details.

Motion to approve application 2016-005 with above conditions made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

Motion to approve application 2016-040 with above conditions made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

Motion to approve application 2016-006 with above conditions made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

Motion to approve application 2016-007 with above conditions made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

Motion to approve application 2016-008 with above conditions made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

Public Hearing #6:

2016 055

Address: 24 Spring Street

Special Permit for Non-conformities

Remove existing rear mudroom and rebuild with a second story, increasing width by 1'

The owner presented. The structure is a five-bedroom house with one small bathroom. There is an addition added much later than original house. Some of the home is not insulated with above ground plumbing for laundry, often freezing. The applicant is proposing to remove the existing rear mudroom and rebuild it slightly larger and add a second story onto it.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Ramsdell asked about the indication of potential slider doors. The applicants said there would not be any sliding doors on the new structure.

Mr. Goulet asked about exterior materials. They would be using clapboards.

Mr. Pennington asked for measurement clarifications, as it did not look like the second floor addition lined up to the existing structure.

Mr. Ramsdell commented that more detail as to the appearance of the addition would be useful. He had no problem with the application, but was not quite sure what he was voting on.

Deliberations:

Mr. LaBay commented on the electronic materials used/shown that were not printed for the file. He thought it appropriate to continue.

Mr. Ramsdell added that photos of the existing structure would be helpful as well.

Mr. LaBay added that they like to see dimensions, window placement, etc. in place. They need to know what they are approving.

Request to continue.

Motion to continue application 2016-055 to 07/26/16 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 – approve
Richard Goulet – approve
Renee Bourdeau – absent

Public Hearing #7:

2016 056

Address: 33 Erie Avenue

Special Permit for Non-conformities

Modify pre-existing non-conforming structure by removing same and building new structure more conforming

Lisa Mead or Blatman, Bobrowski, Mead and Talerman, 30 Green Street, presented the application on behalf of George Haseltine, Trustee of 33 Erie Ave Realty Trust. The structure is in the R2 district built in 1960. It is close to the street and side setback. They wish to remove the existing home and replace with a new single-family. The proposed structure would be non-conforming with front setback; though an improvement from the existing. The lot area is also non-conforming. Ms. Mead commented on the plans, stating 'dormers optional,' but there would be dormers. They would, however, like to keep a screened in porch as optional. Finally, Ms. Mead brought up the Council zoning change with regard to sidewalks and trees. There are no sidewalks on Erie Avenue. The applicant would add trees if needed.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. LaBay asked if the applicant had conversations with abutters. Yes, Mr. Haseltine had spoken to abutters, and they were in support.

Deliberations:

Mr. LaBay thought this was a well-presented request. He did not see any issues and thought it appropriate.

Mr. Ciampitti agreed.

Mr. Ramsdell brought up the sidewalk and tree issue. He could agree with the fact that there were no sidewalks needed. But with regard to trees; he did not agree that the Board should be making decisions on trees.

Ms. Mead commented that the trees are on property, not in the right of way between sidewalk and street.

There was discussion on the Board not being able to tell an applicant to get approval from another body. The new zoning ordinance has presented a bit of a conundrum in which the Board could not agree on.

Condition;

-In accordance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance the Board found that requiring construction of a sidewalk under these provisions was not appropriate as none currently exists nor is there space for one. In addition although it was evident that there is also no public land setback for the planting of trees the applicant indicated that two trees would be planted along Erie Avenue on the applicant's property.

Motion to approve application 2016-056 with condition above made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed.

Votes Cast:

Ed Ramsdell– no

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – absent

Public Hearing #8:

2016 057

Address: 37 Bromfield Street

Dimensional Variance

Construct a detached garage approximately 14'x24' within the required side yard setback and in excess of lot coverage requirements

Request to continue to 09-13-16.

Motion to continue application 2016-057 to 09-13-16 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 – approve

Richard Goulet – approve

Renee Bourdeau – absent

Public Hearing #9-10:

2015 058

Address: 47 Oakland Street

Dimensional Variance

Modification to variance granted in 1984 that allowed a lot split to allow for construction of an addition in the rear if the structure

2015 059

Address: 49 Oakland Street

Dimensional Variance

Modification to variance granted in 1984 that allowed a lot split to allow for construction of an addition in the rear of the structure

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman, 30 Green Street, presented on behalf of Chris Horan, applicant. Aileen Graf, architect was also in attendance. These properties, in the R3 zoning district each containing a half-house, received dimensional variances in 1984 to provide relief for sidelines, front yard, frontage and area requirements. The 1984 variance also imposed a condition that the roofline must be maintained. The applicant would like to remove a portion of the rear of the structure on 47 and 49 Oakland and add a two-story addition. The home is a mirror image of itself and the proposed additions would also mirror each other. The Preservation Trust and the Planning Office made comments on the application, which have been addressed by the applicant. Ms. Graf went over changes including chimneys remaining, window changes, connectivity and massing.

The hardship argued is that this is an interior lot with adjoining lots containing similar non-conformities. The 1984 lot configuration is exactly the same as today.

Letters from immediate abutters in support of project were submitted.

Ms. Mead also brought up the sidewalk and tree ordinance, saying the sidewalk would be replaced with concrete and the applicants would add one tree.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Scott McDonald, 38 Tyng Street

The neighbor was in support and commented on Mr. Horan's professionalism.

John Martin, 51 Oakland Street

It was the intention of previous owners for the new owners to fix the property up. He was in support.

In Opposition:

Tom Kolterjahn, 64 Federal Street, Newburyport Preservation Trust

Mr. Kolterjahn thanked the applicants for changes made. The chimney was a big concern, but they are keeping both. He did commented that this application is taking a "2nd bite of the apple" requesting a change from the 1984 approvals. He was opposed to the size as well.

Questions from the Board:

Mr. Pennington asked if this was a single-family in 1984. No, at the time it was a two-family.

Mr. Ramsdell asked about the sidewalk replacement. Ms. Mead responded that the applicants would need to pull a sidewalk permit and intend to use concrete as it now is. Mr. Ramsdell was again not comfortable approving sidewalks and trees.

Deliberations:

Mr. Pennington commented on an excellent job presenting changes that were strong improvements. He was happy to see the applicant interaction with the Preservation Trust.

Mr. LaBay asked Mr. Ciampitti's thoughts on Mr. Kolterjahn's comment on "2nd bite of the apple." Mr. Ciampitti thought this no more of a 2nd bite than any other modification. This did not seem like a special privilege.

Mr. Ramsdell commented that they could not find original findings from 1984.

Mr. Goulet was glad massing was addressed and was comfortable approving the application.

Mr. LaBay commented that the variance interior lot hardship with adjacent non-conforming lots was sufficient.

Condition;

-In accordance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance the Board found that requiring construction of a concrete replacement sidewalk under these provisions was appropriate as was the planting of one tree.

Motion to approve application 2016-058 with above condition made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed.

Votes Cast:

Ed Ramsdell— no

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – absent

Motion to approve application 2016-059 with above condition made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed.

Votes Cast:

Ed Ramsdell— no

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – absent

The meeting adjourned at 9:40pm

Respectfully submitted, Katie Mahan - Note Taker