

**City of Newburyport
Zoning Board of Appeals
July 8, 2014
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 (Associate Member)
Libby McGee (Associate Member)

Absent:

Howard Snyder

2. Business Meeting

a) Approval of Minutes

Minutes of June 24, 2014 Meeting

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

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings (9 on the agenda)

2014 027

Address: 32-34 Woodland Street

Dimensional Variance

Relief from minimum lot area and front yard setback requirements for a three-family residence

2014 028**Address: 32-34 Woodland Street****Special Permit****Convert a two-family to a three-family**

Attorney Lisa Mead of Blatman, Bobrowski & Mead, 30 Green Street, Newburyport, presented on behalf of Richard J. Clunie & Kathryn M. Clunie Revocable Trust, owners. At the previous meeting, the board had concerns on the bulk and location of the proposed addition. The board suggested extending the connector between the structures, so 5.5' were added. The new structure was also moved closer to Dexter Street as suggested, as well as back from Woodland and in from the rear lot line. In addition, the structure was minimized in mass. Open space was increased and there was a reduction in square footage. While meeting the requirements for hardship with topography, after further analysis, there is also a corner lot hardship. Ms. Mead presented plans and renderings of the addition. The applicants received additional letters of support, which were passed out to the Board.

Chair Ramsdell opened the hearing to public comment.

In Favor:

David Cain, 23 Jackson Street

Was in support and in favor of the project. It would enhance the neighborhood. They take great care of their property.

Adam True, 6 Payson Street

An abutter. The plans look great and in character with the neighborhood.

Jim Solari, 28 Woodland Street

A great proposed project.

Mike Tobin, 4 Dexter Street

In favor of the project.

William/Deanna Swilling, 6 Dexter Street

In support.

Chris Ragusa, 33 Woodland Street

In favor. A good way to keep a Newburyport family in town.

Letters were presented from 4 Payson Street and 5 Dexter Street.

In Opposition:

None

Questions from the Board regarding Public Hearing #1 & #2:

None

Deliberations:

Mr. LaBay commented that the applicants provided answers to questions of massing and separation. Based on the hardship, he is in support.

Mr. Pennington agreed. The small changes dramatically improved the project. He is in support. It was refreshing to see such overwhelming support from neighbors.

Ms. McGee, Mr. Goulet and Chair Ramsdell agreed.

Motion to approve application 2014-027 for a Dimensional Variance made by Mr. Pennington, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2014-028 for a Special Permit made by Mr. Pennington, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

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

2014 035 Address: 22-24 Collins Street Special Permit Allow two-family use (#102)
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2014 036 Address: 22-24 Collins Street DCOD Special Permit Demolition of a single family home
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Attorney Mark Griffin presented on behalf of Michael & Stephanie Sergi, owners. The applicants are proposing to demolish a single-family structure and replace it with a new two-

family structure in the R3 zoning district. The existing structure is in poor condition, built in the late 1800s with a porch added on in 1930. Front setback and parking are currently non-conforming. With this project, setbacks would be improved and onsite parking would also be compliant, with a two-car garage on each unit. The owners plan to live in one unit.

Joel Gagnon of Architecture Residential Design, Haverhill, presented the site plan. The style of the project would be a New England village idea. The structures would not be identical, but two separate capes, joined by a garage.

Michael Sergi, owner, briefly spoke of his wife growing up in Newburyport as well as all three children attended Newburyport schools.. They are planning and hoping to construct a two-family to help defray the cost of the whole project by selling or renting the other side.

Attorney Griffin commented that abutters signed a petition in support of demolishing the existing home and the plan to build a two-family. There is broad neighborhood support.

Special Permit for Demolition in the DCOD:

Attorney Griffin stressed that there is no precedent for a full demolition under this special permit. He argued there is no reasonable use and no substantial market value taking into account renovations. To bring the foundation up to code, it would cost \$65,000. The total estimated cost of rehabilitation was determined to be over \$400,000. After adding in the value of the land, this project cost would be over \$735,000. The proper valuation after rehabilitation using the comparative sales approach is only \$510,000. It would not be worth it. Taking this into account, there is no substantial market value.

There is no reasonable use of the current structure. It is in poor condition, has lost many historic features, and the foundation has failed. It is unsafe and uninhabitable. The 1930s addition is also buckling and falling off the house.

The advisory report from the Historical Commission provides information on the significance of the home and relation to the neighborhood. According to Attorney Griffin the report was filed late, after seven days. This was an average home and not tied to any significant event, person or neighborhood.

Special Permit for Use:

- The proposed use is a two-family use. The existing single family would be demolished and a two-family would be built in its place.
- The requested use is essential and desirable to the public convenience and welfare. The existing home is an eyesore in the neighborhood with otherwise attractive homes. The street will be dramatically improved.
- The requested use would not create undue traffic congestion or unduly impair pedestrian safety. Required parking will be provided and there would be no significant increase of traffic.
- The requested use will not overload public water, drainage or sewer systems. The addition of one dwelling will not have a significant impact.
- There are no special regulations for this use.
- The use would not impair integrity or the character of the district nor be detrimental to the health and welfare. The R2 zoning district is primarily intended for single and two-family use.

- The project will not cause an excess of that particular use. Adding a two family would not be excessive in this neighborhood.
- The proposed use is in harmony with the purpose and intent of the Zoning Ordinance. The project will meet all dimensional requirements and is in harmony with the district.
- The proposed use will not emit any dangerous form of pollution. This will be a two-family home meeting all public health and safety codes.

Chair Ramsdell commented that the NHC can comment on anything, not just what is outline in the DCOD. As far as late filing, it was his understanding that if they did not file within 20 days the board may disregard it if they so chose. If the ZBA wants an expert's assistance, they may hire within seven days of filing. This should really read within seven days of the hearing, and an amendment is being worked on.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Everett Chandler, 34 Winter Street

This would be a very good re-use of a property and appropriate infill. It is a fantastic opportunity.

Chris Ragusa, 278 High Street

This would be a great project behind his house. He is a builder also and can see this home is in dire disrepair.

In Opposition:

Bill Harris, 56 Lime Street

This is the first DCOD Special Permit application after an Ordinance came after two years of debate that something needed to be done to protect the Newburyport Historic Register. Its job is to protect historic buildings with criteria. He does not defend the demolition of the later addition, but the existing building is historic and should be preserved. The NHC only has power to delay demolition by one year. There are lower cost repairs available than those discussed tonight. The older part of building does have historic value. And could be worked with. It is ridiculous to say there is 'no reasonable use.'

Stephanie Niketic, 93 High Street

Had an argument on the value of the property. It was said that it is under contract for \$445,000. All of the arguments from the attorney were based on a purchase price that has not been paid yet. The assessor database of neighboring properties of similar homes and years built, assessed values are in the range of \$275-375,000. It is not fair to base arguments on an 'over-purchase' price.

Questions from the Board regarding Public Hearing #3 & #4:

Mr. Ciampitti asked the attorney to comment on Mr. Harris's comments on alternatives of preservation, restoration, and rehabilitation. Mr. Griffin answered that they had taken into account the NHC report. Mr. Griffin reviewed the numbers and market value once more. Mr. Gagnon commented that performing a renovation to code, replacing the entire roof, dormers, siding, and fixing water damage, you are left with only an original banister and spindle. It would be a total rebuild of structure. There would be no point in salvaging.

Mr. Pennington asked for clarification on the numbers used in the presentation.

Mr. Ciampitti commented on that if they chose to overpay it skews the analysis. There was discussion on 'highest and best use.'

Mr. Pennington asked about the parking lot not being purchased. Mr. Griffin answered that the existing garage is on the next lot and would not be moved. There will be parking added as part of the project.

Mr. LaBay asked about the existing garage. Mr. Griffin commented that it was used, but never owned.

Mr. Pennington asked for the square footage per unit. Mr. Griffin answered there would be approximately 2300 sq. ft. per unit.

Mr. Ramsdell asked for more detail in the defects of the current structure and foundation. Mr. Griffin reviewed the structural engineer's report with the board.

Deliberations:

Mr. Pennington was ok with the two-family use. It is a large lot and compatible with the neighborhood.

Mr. LaBay agreed.

Mr. Ciampitti agreed. On the fence as far as DCOD. There is no precedent.

Mr. Pennington commented that the board should not worry about precedence setting in this case. This one has the additional dynamic of a two-family replacing a single-family. A three-family, while having more hurdles to jump for a variance might be a better use, while preserving the historic structure. Because the building is in the middle of the lot, it would be hard to get another unit on without demolishing. DCOD is complex and he was still thinking.

Ms. McGee agrees with the two-family use. She was open to the expertise of colleagues as far as DCOD.

Mr. LaBay commented that what is done tonight is not necessarily precedence setting. He was uneasy about the face value numbers. There may be a creative way to evolve the current structure into a two-family.

Chair Ramsdell concurred. Two-family use is appropriate. He asked if the client be interested in allowing the board to hire an expert to look at the numbers.

Mr. Pennington was not opposed to additional analysis. However, there are so many open-ended areas where different people would give different numbers. It's not an easy decision to decide if that structure should be preserved.

Mr. Ciampitti did not think the board would learn anything new calling in experts. He was prepared to decide this evening and could support based on the presentation.

Mr. Goulet pointed out with a historic preservation, there was very little left to restore. It would be more of a re-build.

Mr. Ciampitti agreed. It would be almost secret, unseen preservation to bones of a structure within modern walls.

Mr. Pennington pointed out the neighborhood support. There are also not many single floor living dwellings in town, and this one is well done where it can be. It also takes care of a dilapidated building.

It was decided that a vote tonight was appropriate based on the presentation.

Motion to approve application 2014-035 for a Special Permit made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2014-036 for a DCOD Special Permit made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

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

2014 037

Address: 14 Rawson Avenue

Special Permit for Non-conformities

Construct a 1 ½ story addition (18' x 22') to a pre-existing non-conforming single family home

Matthew Trail, owner presented the application. The property is at the corner of Rawson Avenue and Farrell Street. They are proposing an addition on the right side of the structure extending 18'. The depth would be the same as the current structure. The space would be used for a mudroom, closet, garage, and bedroom. Abutters have signed off on the project. The family plans to live in the home for a long time.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #5:

None

Deliberations:

Mr. Pennington commented that this is a very reasonable expansion that follows the roofline of the house.

Mr. Ciampitti agreed. It is both rational and modest. They kept in mind massing, scale and consistency with the neighborhood.

Mr. LaBay agreed. The lot is non-conforming in many ways. It is a minimal change that he could support.

Motion to approve application 2014-037 for a Special Permit for Non-conformities made by Mr. LaBay, seconded by Ms. McGee.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder– absent

Richard Goulet – non-voting

Libby McGee – approve

2014 038

Address: Route 1 (parcel 1)

Special Permit

Allow six residential units (Use #103)

2014 039

Address: Route 1 (parcel 2)

Special Permit

Allow six residential units (Use #103)

Lisa Mead of Blatman, Bobrowski & Mead LLC, 30 Green Street presented on behalf BC Realty Trust, petitioners, and CA Investment Trust, owners. This project consists of two identical applications on two separate lots, Parcels 1 & 2 on Route 1. A six-family structure is allowed in the R3 zoning district by permit. The entrance would be approximately 370 feet from the northern edge of Hill Street. MA DOT are preliminarily ok with this. Newburyport Fire has no issue with the number of units or entryway. Although the project is on two separate lots, it is really one proposal as a whole.

Special Permit for Use:

- The requested use of a multi-family is allowed by Special Permit in the R3 zoning district.
- The requested use is essential and/or desirable to the public convenience and welfare. This project would provide more diverse housing, while not over-using the lot or over-taxing the neighborhood. Increased housing near the train station is in line with the City's desires.
- The requested use will not create undue traffic congestion, or unduly impair pedestrian safety. The traffic would be minimal compared to the road size. Engineers say 40 cars would go in and out per day with this type of development. Ample parking is exceeded with the project. MA DOT is preliminarily ok with this proposal.
- The requested use will not overload public utilities. There are 48 proposed bedrooms. This calculates out to .0023% of what the sewer plant processes each day and would hardly have an affect. Stormwater from roofs will be treated on site. There is very sandy soil. The site is also lower than neighboring sites.
- There are no special regulations for the use.
- The request will not impair the integrity or character of the district. It is consistent with city planning. Along Hill Street there are many uses. It will complement the industrial and commercial uses across Route 1.
- The requested use will not cause excess in the neighborhood. There are no other residential uses immediately on Route 1.
- The requested use is in harmony with the purpose and intent of the ordinance. The dwellings are planned to be rental type housing as of now. The City providing more diverse housing is in their plan.
- The proposed use will not emit noxious, dangerous hazards. It will be used as residential housing.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Robert Cronin, 126 Merrimac Street

City Councilor. Believed it unreasonable that the hearing started at 9:45pm. The legal notice provided to residents was two-sided, with the difference of only one letter. Confusion set in with many because they did not 12 units were bring proposed.

Tim Loring, 26 Hill Street

Brought up an Ordinance in place since 2010 that changed what could be built within three times the height of the wind turbine. 500' from the turbine is where the new project is proposed. He believes you may not build in this area. The Ordinance was put in place for safety reasons and the liability would be unreasonable.

Mr. Ciampitti commented that it would be inverse condemnation if the City could tell someone they cannot build on their own land. It would be unprecedented.

Mike Stanton, 10 Hill Street

Also concerned with proximity to the wind turbine and the city's liability for those in 12 units' health or safety.

Patty Spalding, 5 Bricher Street

Not happy in the way neighbors were notified. She also believe this lot to be (1) 1.5 acre lot and not two separate parcels. It was confusing to have one legal notice on the front and one on the reverse side of one piece of paper, when this should have been advertised as one project on one lot. The project is too dense for the location. The traffic would be a catastrophe waiting to happen. The tree loss from the neighbors' barrier from the wind turbine was also a concern - the noise and erosion. She believes the units to be in the non-buildable area near the turbine. She is a member of the Highland Cemetery Commission and they are concerned with erosion. The neighborhood is primarily single family homes.

Jason Lacroix, 14 & 14R Hill Street

Represents the abutting property. Aside from the wind turbine issues, the existing slopes are very steep and there are many mature trees. The trees are the only buffer between flicker of the wind turbine and noise from the industrial park. Abutters will look at the new roofline. Also concerned with discharging gas, oil, etc. into abutter yards. Also wants to know when the lot was split into two. Concerned that rental units are not consistent with the neighborhood plan and the project is too dense for the area.

Lucien Lacroix, 14R Hill Street

Concerned with privacy. The yard would look onto the roof and into the windows. Route 1 is also very dangerous to have parking entrances and exits.

Judy Lacroix, 14R Hill Street

Concerned with fumes from new structures and more from trains and the wind turbine flicker with the loss of trees. Twelve units is too many for that area.

Mike Stanton, 10 Hill Street

Shocked with the lack of information. Concerned with traffic in the cemetery with cut-through, noise, too many units, and sidewalks.

Ann Webber, 15 Cherry Street

Concerned with runoff onto her property, flooding, traffic, and the density of the units.

Steve Shapiro, 2D Hill Street

Not happy with the notification process and information availability. It does not fit the neighborhood and he is opposed.

Jacqueline Kieras, 22 Hill Street

Agrees with neighbors. It's too dense and a major safety concern.

Gary Robinson, 12 Hill Street

Character does not fit in with the neighborhood. Traffic is a concern.

Lexie Loring, 26 Hill Street

Concerned with the safety and welfare of the neighborhood and homes.

Eileen Shapiro, 2D Hill Street

A letter was read sharing the same concerns as neighbors.

Jennifer Lacroix, 14 Hill Street

Concerned about her property, erosion, tree loss, and wind turbine flicker.

Councilor Cronin asked that any decision be held until the Ordinance that discussed the wind turbine is reviewed.

Ms. Mead commented:

- This application was no different and on file at City Hall. The legal notice was sent the same way.
- The project is on one lot, proposed to be split into 2. Neighbors would not ordinarily be notified of a lot split such as this.
- The City cannot control a rental versus a condo complex.
- Regarding vegetation, she will ask the engineer to show cuts to vegetation and where the retaining wall is.
- MA DOT will not authorize the entrance/exits until all City approvals are met.
- Regarding fireplaces, woodstoves, etc., they would propose a deed restriction to prohibit these.
- She will get clarifications on sidewalk plans.

The applicants asked for a continuance to August 12, 2014.

Motion to continue application 2014-038 for a Special Permit and 2014-039 for a Special Permit 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– absent
Richard Goulet – non-voting

Libby McGee – approve

2014 040

Address: 178 Water Street

Dimensional Variance

Construct an accessory garage with non-conforming setbacks

2014 041

Address: 178 Water Street

Special Permit for Non-conformities

Construct a 161 s.f. addition along a pre-existing non-conforming front setback line

Due to time, the applicants asked for a continuance to the July 22, 2014 meeting.

Motion to approve application 2014-040 for a Dimensional Variance 2014-041 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– absent

Richard Goulet – non-voting

Libby McGee – approve

Adjournment

Motion to adjourn made by Mr. LaBay, seconded by Ms. McGee at 11:05 PM.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder– absent

Richard Goulet – approve

Libby McGee - approve

Respectfully submitted, Katie Mahan - Note Taker