

**City of Newburyport
Zoning Board of Appeals
May 8, 2018
Council Chambers**

The meeting was called to order at 7:13 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Renee Bourdeau
Maureen Pomeroy
Christopher Zaremba (Associate Member)

Absent:

2. Business Meeting

a) Approval of Minutes

Minutes of the 04/24/18 meeting

Ms. Bourdeau made a motion to approve the minutes and Mr. Zaremba seconded the motion.

The motion passed unanimously.

Votes Cast:

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

b) Request for Minor Modifications of Special Permit for Non-conformities – Merri-Mar Yacht Basin

Tim DeCoteau, West Newfield, Maine presented the request on behalf of the applicants. He explained that business priorities changed, and they needed to slightly downsize the project. The structure would keep the same footprint, but now be two stories instead of 2.5 stories.

Chair Ramsdell clarified that they keeping the same footprint and same design, but taking off a layer.
Mr. DeCoteau confirmed that was the new plan.

Ms. Bourdeau made a motion to approve the request for minor modifications of Special Permit for non-conformities and Mr. Zaremba seconded the motion.

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings

2018 008
Address: 10 Ashland Street
Special Permit
Permit a two-family (Use #102)

Attorney Lisa Mead, Mead Talerma and Costa, 30 Green Street presented the application on behalf of Port Valley LLC. This hearing was continued from past meetings. 10 Ashland Street is in the R2 with frontage on both Ashland Street and Ashland Court. The property and existing structure meet all requirements for a two-family structure. The structure would be renovated into a two-family on the interior, with slight changes to the exterior. Changes to the exterior would include changing windows, doors, and garage doors. Living space would be increased by a total of 285 s.f. The bedroom count would increase from five to six bedrooms, with three in each unit.

Aileen Graf, architect presented the exterior changes and elevations of the existing single family and proposed two-family structure. The reproduction colonial built in 1987 would undergo cosmetic changes. Ms. Graf went over window configurations changes from one over one, to six over six, a door replacing a window, a window being removed, a small back deck expansion, a dormer window changed to be proportional, door on lower level, added basement sashes, and garage door change.

Attorney Mead brought the Board through the Special Permit criteria from Section X-H-7-A;

(1) The use requested is listed in the table of use regulations or elsewhere as in the ordinances requiring a special permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.

The request use as a two-family is listed in the table of uses.

(2) The requested use is essential and/or desirable to the public convenience or welfare.

The requested use is listed in the table of uses. The R2 district is modestly dense. The lot contains sufficient area and frontage. She noted that City Council recently expanded the R2 district, amending the ordinance due to the City's desire to continue two-family uses. The project is keeping to goals of the City's Master Plan, preserving character, diverse housing stock, and keeping the scale and character of neighborhoods. There is a mix of single, two and multi-family uses in the neighborhood. Attorney Mead presented a color-coded map breakdown of the mix.

(3) The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.

There is plenty of on-site parking. Using the Institute of Transportation Engineers' trip generation, there would be an estimated 10 trips per day. The addition of one unit would not cause congestion.

(4) The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area

or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare.

City services would not be overloaded. An increase of one bedroom is estimated to add 110 gallons per day in water and sewer usage, which will not impact either system. Storm water would not be impacts, as there would be no change to the structure.

(5) Any special regulations for the use, set forth in the special permit table are fulfilled.

There are no special regulations for the use.

(6) The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare.

The two-family use would not impair the integrity or character of the district. The use is consistent with the district and neighborhood, which contains a mix of housing types; single, two- and multi-family homes.

(7) The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.

The two-family use would not cause an excess of the two-family use. It is consistent with the varied housing types. The neighborhood has also seen two-family uses change back to single family.

(8) The proposed use is in harmony with the purpose and intent of this ordinance.

The two-family use is allowed by special permit. The property has sufficient lot area and frontage. The property is located in the second densest district and there are few lots that can handle the two-family use.

(9) The proposed use shall not be conducted in a manner so as to emit any dangerous, noxious, injurious or otherwise objectionable fire, explosion, radioactive or other hazard, noise or vibration, smoke, dust, odor or other form of environmental pollution.

Construction would primarily be on the interior, having little to no impact on the neighborhood in this way.

Attorney Mead noted that zoning applications should be treated individually before the Board, but pointed out a substantially similar application recently approved for 31 Johnson Street. She noted that inconsistency among decisions may be an indicator of discrimination or arbitrary decision-making.

Attorney Mead presented the Board with comparisons of the two applications;

- Both applications in R2 district, both for Special Permit for Use, both create 10 trips per day

- At 31 Johnson Street, an additional 4 bedrooms would be added, while at 10 Ashland Street, one would be added

- 31 Johnson Street was a complete tear down and rebuild, where Ashland Street would be primarily interior renovations

- 31 Johnson Street would add a considerable amount more of livable square footage, than 10 Ashland Street's 285 s.f.

The applicants felt that 10 Ashland Street better met Special Permit criteria than 31 Johnson.

The sidewalk and tree ordinance would be triggered with this project. DPS recommended new concrete sidewalk with granite curbing on Ashland Street and no sidewalk on Ashland Court. No trees were recommended.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Brooks Patterson, 19 Ashland Street

Concerns included; the application not changing since last withdrawn and re-submitted, the property is impaired by wetlands and topographical changes and lot size would not be met if this were considered, the Ashland Street and Ashland Court neighborhoods are very different, Intensifying the property with parking and traffic, the existing home was designed and built for single-family use and is surrounded by single-family homes, two-family homes in the neighborhood are historic and have been preserved or restored with approvals, no single family homes have been changed to tow-family homes on lower Ashland Street, undesirable precedent setting, new doors leading to "nowhere" or perhaps later patios, applicant failing to supply information on high quality materials to be used, over 41 residents have expressed they would like 10 Ashland Street to remain a single-family use. Not one person has spoken in support. The voice of the people must not be discounted. The street is very busy with businesses at the top and bottom and there is also the imminent renovation of the Mersen building on Merrimac Street. Preservation of neighborhood character is more important than housing diversity. He noted 26 Ashland Street, a former school house that was razed and replaced with a multi-family home in the 1970s and stressed the importance of not letting this happen again. This is predatory development.

Jenna Tagliaferri, 18 Ashland Street

Concerns included; parking, busy street, no backyard, Ashland Court plowing and safety

Jane Snow, 9 Coffin Street

Concerns included; Revival of Mersen building, traffic, parking lot exit to Ashland Court, no use of yard due to wetlands

Frank Tagliaferri, 18 Ashland Street

Read a letter from Kevin Delahanty, 27 Ashland Street;

Concerns included; disturbing trend of fiscal windfall before historic preservation, this is not affordable housing, damage to neighborhood, traffic, no yard, precedent setting, damage cannot be undone

Ted Jones, 18 Dawes Street

Concerns included; Infill and neighborhoods being destroyed

Steve Hunt, 24 Ashland Street

Read a letter from Robert and Elizabeth Groskin, 22 Ashland Street;

Concerns included; negative community input, wetland limitations, density

Rob Germinara, 2 & 8 Ashland Street

Read a letter from Jill Tierney, 13 Ashland Street;

Concerns included; respect to abutters, true two-family homes at 5-7 and 11-13 Ashland Court, traffic Each project should be taken into account individually. This is a contractor coming in to cash out. The Board must make a discretionary decision.

Andy Simonds, 25 Ashland Street

Concerns included; infill, contractors profiting, detrimental to neighborhood, makings of a disaster, neighbors against the project

Mary Gibney, 11 Ashland Street

Read a letter from Colin Gibney, 11 Ashland Street;

Concerns included; not essential or desirable to the neighborhood, boosting personal profit for the contractor, residents in opposition, traffic and parking issues, best to preserve as single-family, topographical limitations

Linda Lambert, 58 Merrimac Street

Concerns included; neighborhood opposition, hopes the Board includes neighborhood opposition in decision, as they normally do

Charlie Tontar, 29 Jefferson Street

Mr. Tontar cited section X-H-7-A, which states that the Board "shall find ALL of the following general conditions to be fulfilled." Criteria #6 for consideration of a special permit; "not impair integrity or character of the district or adjoining districts" is a subjective statement that the ZBA must judge. He stated that the Board should give due weight to abutters

-Request; substitute judgement for judgment of neighbors

-Question; 31 Johnson Street application – how many abutters came before ZBA in opposition

Tom Kolterjahn, 64 Federal Street, Newburyport Preservation Trust

The Trust strongly opposes the project, as it is detrimental to the historic character of the neighborhood and there are many residents in opposition

Pam Kipp, 11 Tremont Street

Concerns included; neighborhoods being destroyed, developers profiting on inferior work. Urged the Board to consider statements of neighborhood

Attorney Mark Griffin representing Brooks and Amy Patterson, 19 Ashland Street

Attorney Griffin noted the initial application to now are an almost identical application. This project is inconsistent with the growth patterns of the neighborhood. The Special Permit is a discretionary permit with nine criteria to meet. The Board can still deny even if the application meets the nine criteria. They must take into account neighboring structures and uses and growth patterns in neighborhood. He asked the Board to focus on criteria #2 "essential or desirable." This use is not desirable for the neighborhood or in keeping with the neighborhood.

He noted the argument made on similarities to the 31 Johnson Street application. Attorney Mead stated that the application should be treated as a "controlling precedent" contrary to law. She argued abuse of discretion if the Board were to deny this Special Permit, citing specific cases. The cited cases were arguably not similar to this situation. Attorney Griffin urged the Board to be very careful applying this argument as it has a "slippery slope" nature. He also highlighted a difference between the applications not discussed; 31 Johnson Street had no abutter opposition.

Spencer Purinton, 61 High Street

Agreed with neighbors. The Board must start listening to neighborhoods.

Attorney Mead response to some of the comments;

-Ms. Graf explained architectural materials; not much change; wood clapboards maintained, window changes to insulated glass or Marvin level, simulated divided light, detailing of casing, maybe 1" to improve casings. Proposal to have shutters as well. Roofing – if needs replacement, would be 30-year architectural shingles, garage doors going to single car doors of wood or fiberglass that are bolder with more profile. Patio is not part of application; no outdoor space. Introduction of door to exit building. Expansion of deck similar in materials.

-Lot area meets requirements. There was a proposed zoning amendment related to how lot areas are calculated with City Council that failed at the last meeting.

-This is an entirely different application than the original, as they are not changing the exterior. Much of the criteria is objective.

- No suggestion that this is affordable housing. This is a diverse housing type that fits in this neighborhood.

-There are certainly comparisons between Johnson and Ashland Streets.

-Abutters bought into a mixed neighborhood

Questions from the Board:

Chair Ramsdell asked Mr. Griffin about discussion of the high importance of wetlands and topography. The argument made is this is being presented as a very large lot with large area. It complies with lot area in the ordinance, but wetlands make it not usable.

Chair Ramsdell asked Mr. Kolterjahn how this impairs the historic nature of the area. He explained that it is detrimental to the historical character of the neighborhood. The houses in lower section of Ashland Street are primarily single-family homes. By chopping up this house, it will increase the density of the property, which is detrimental to the character of the neighborhood. The infill aspect is detrimental. It will be "death by a thousand cuts," gradually changing the neighborhood.

Deliberations:

Mr. Ciampitti began by saying that the Special Permit, with respect to the applicants, is a discretionary standard. The Board was being asked to measure and weigh a matrix of objective criteria comparing the project to 31 Johnson Street. What is missing is non-objective. When the 31 Johnson Street application was heard, there was no opposition. There is a dissimilarity here with Special Permit criteria #6 "impair integrity or character of district." He could not support the application. While there were powerful objective arguments, there were other considerations. He had to blend a sense of fit and neighborhood sense. The 41 individuals against the project was a powerful number and impossible to ignore.

Ms. Bourdeau noted she was not present for the 31 Johnson Street application. She explained that in January, she had been in favor of the application. She cited the following reasons; the original application was very different last year. The applicant was sent away to address concerns multiple times and most had been addressed and reworked. The January application came back with no variances, and just a Special Permit. What was lost was the opposition to the two-family use. Typically what the Board wants to see is addressed concerns and reworking. What has been brought today had much stronger argument that was muffled by a focus on architectural changes. She noted a comment that Attorney Mead had about "abutters bought into a mixed neighborhood" and countered that abutters also bought into a single-family home that lot. She could not support the application.

Ms. Pomeroy agreed with the summarization of her fellow members. She was also initially supportive of the earlier application with changes made. She felt strong arguments from abutters were made with regard to Special Permit criteria #2 and #6. She could not support.

Mr. Zaremba noted he was not voting member when the original application was presented. Every property and application is unique he did not like the argument for precedent. He could not ignore abutters in opposition; they know more than anyone how the project will affect residents.

Chair Ramsdell noted the massive outpouring of opposition. He had a problem understanding how not changing a structure externally is impairment or detriment to the neighborhood.

Motion to approve application 2018-008 made by Mr. Ciampitti, seconded by Ms. Bourdeau.

The motion did not pass.

Votes Cast:

Ed Ramsdell– yes

Robert Ciampitti – no

Renee Bourdeau – no

Maureen Pomeroy – no

Christopher Zaremba – no

2017 009

Address: 15 Eagle Street

Special Permit for Non-conformities

Construct an addition increasing the pre-existing non-conforming open space and lot coverage

Attorney Lisa Mead, Mead Talerma and Costa LLC, 30 Green Street presented on behalf of the applicants. The application is continued from a previous meeting. The property is located in the R2, formally R3 district. A garage on the property would be razed, and an addition put on the back of the home. The property is non-conforming with regard to lot area, frontage, and front yard setback. No new non-conformities would be added and there would be no exacerbations. Less than 25% of the exterior would be removed, so it did not trigger the DCOD. There are slight changes with regard to the roofline and the applicants are in front of the Historical Commission for demolition delay. The Board meets tomorrow. Attorney Mead suggested conditioning any approval that if there are any changes made due to Historical Commission the applicants must come back to board. Attorney Mead noted more than 500 s.f. would be added.

Exterior elevations were presented showing two Nantucket style dormers, one on each side. The dormers are offset as a suggestion from the Historical Commission. The addition would be slid toward the middle. Rooflines would change slightly.

No new non-conformities would be created. The project would not be substantially more detrimental to the neighborhood. The applicant has been responsive to ZBA and Historical Commission.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Stephanie Niketic, 93 High Street

Questioned whether third floor space was counted as livable in application. It was not, as it is considered a half story. She noted improvements have been made, but the process with the Historical Commission is not yet complete. The Preservation Trust reiterates retention of historic homes. She asked the Board to keep that in mind that a 1550 s.f. Historic home is doubling in size.

Questions from the Board:

Ms. Bourdeau noted she would be interested in additional feedback from the Historic Commission.

Chair Ramsdell commented that there was a statement from staff in the staff report that approved, to consider including a condition if anything changes.

Ms. Pomeroy mentioned the staff comment on a condition that construction cost estimates be submitted to see if the sidewalk and tree ordinance would be triggered. If it were triggered, per DPS the concrete sidewalk was to be replaced.

Mr. Zaremba asked if the removed addition was of similar age to the home. It was. He asked that with the garage removed if there were driveway changes. The driveway would be a little smaller.

Deliberations:

Ms. Bourdeau commenced that the addition does seem large in mass and volume.

Mr. Ciampitti commented that while there is some mass to it, it is not inappropriate. It pays correct tribute to the architectural integrity. The Historical Commission review is important and he felt with the added condition he could support.

Ms. Pomeroy echoed Mr. Ciampitti's comments.

Mr. Zaremba agreed. He appreciated the garage being removed.

Chair Ramsdell could support with the staff recommended condition.

Conditions;

-If the meeting with the Historical Commission results in any changes to the plans submitted with this application the applicant must return to the ZBA to seek appropriate modification.

-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. \$242,100, then the applicant must comply with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance and the following recommendation of the DPS: replace the existing concrete sidewalk and curbing with a new concrete sidewalk and curbing. If the applicant's estimated cost of construction be less than this amount, the applicant is not required to comply with the stated recommendation.

Motion to approve application 2018-009 with above conditions made by Ms. Bourdeau, seconded by Mr. Zaremba.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell— approve

Robert Ciampitti – approve

Renee Bourdeau – approve
Maureen Pomeroy – approve
Christopher Zaremba – approve

2018 021

Address: 28 Basin Street

Special Permit for Non-conformities

Remove existing 10'x14' shed and replace with 16'x24' new shed increasing pre-existing non-conforming lot coverage and floor area ratio

Joseph Padellaro presented the application. Mr. Padellaro was applying to replace an existing 10'x14' shed with a new 16'x24' shed. He has had a shed on property for 30 years.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Chair Ramsdell commented that the applicant was replacing a shed with a slightly larger shed.

Deliberations:

Ms. Pomeroy noted that no new non-conformity would be added and this would not be substantially more detrimental to the neighborhood.

The rest of the Board agreed.

Motion to approve application 2018-021 made by Ms. Bourdeau, seconded by Mr. Zaremba.

The motion passed unanimously.

Votes Cast:

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

2018 022

Address: 35 Marlboro Street

Special Permit for Non-Conformities

Modify a pre-existing non-conforming structure by adding a mudroom which is more in compliance than the existing non-conformity

Attorney Lisa Mead of Mead, Talerman and Costa LLC, 30 Green Street presented the application. Thomas Baillie and Ann Domigan, owners were also present. The property is non-conforming with

respect to frontage, East side setback, and front yard setback. The proposed garage in back meets all setback requirements. The proposed mudroom does not add any new non-conformity and is not substantially more detrimental to the neighborhood. The mudroom is more in compliance with the existing front yard setback and meets side setback requirements. The mudroom runs 10' further to the rear. It is 88 s.f. of heated space; a modest addition.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Tom Baillie, 35 Marlboro Street

The way the house is constructed cannot, they move the mudroom back further to conform to front yard setback.

In Opposition:

None

Questions from the Board:

Mr. Ciampitti asked if the materials would be consistent with the existing home. Yes, they would use double hung windows, wood clapboards, PVC trim.

Ms. Bourdeau clarified that if there was no mudroom, they would not need to be before ZBA.

Ms. Pomeroy bought up a comment in the staff report on an outdoor shower not included in the request. Attorney Mead stated that there is no roof on the shower and does not need to conform to setbacks.

Chair Ramsdell commented that the staff recommended including a condition on the outdoor shower.

Deliberations:

Mr. Zaremba commented on the minor, well thought out changes. He did not see it as substantially more detrimental to the neighborhood.

The rest of the Board agreed.

Condition;

The applicant, owner, successors or assigns shall not install a roof over the proposed outdoor shower. Should they wish to construct a roof over said shower, they shall notify the Board of the proposed modifications in writing and obtain approval from the Zoning Board of Appeals for such modifications prior to making any changes 'in the field'. The Board shall then determine whether such modifications are minor or major in nature and shall subsequently schedule a public meeting or hearing, respectively, to review the proposed changes.

Motion to approve application 2018-022 with above condition made by Ms. Bourdeau, seconded by Mr. Zaremba.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell— approve

Robert Ciampitti – approve

Renee Bourdeau – approve
Maureen Pomeroy – approve
Christopher Zaremba – approve

The meeting adjourned at 9:55pm

Respectfully submitted, Katie Mahan - Note Taker