

City of Newburyport Zoning Board of Appeals Instructions for an APPEAL Application

Any person as defined by MGL Chapter 40A Section 8 that is aggrieved due to his inability to obtain a permit from the Inspector of Buildings under the provisions of this ordinance or by order or decision of the Zoning Administrator may take an appeal to the Zoning Board of Appeals. Appeals must be submitted within thirty (30) days from the date of the order or decision that is being appealed.

The application for an Appeal shall include a written memo addressing the following points:

- The grounds for filing the appeal;
- The facts relied upon that would support a finding that the petitioner was aggrieved by his/her inability to obtain a permit or enforcement action from the applicable administrative office;
- Reference the applicable laws and reasons why the petitioner should obtain the permit or enforcement action and;
- Describe the remedy the petitioner is requesting from the Zoning Board of Appeals.

The petitioner shall submit two (2) copies of this application, the required written documentation as described in the previous paragraph, and any additional supporting documents such as permit applications, zoning determinations, denial letters, requests for enforcement, etc. A .pdf file of all included documents must also be sent to planning@cityofnewburyport.com at the time of filing.

Filing fees:

An administrative fee of \$200.00 per application is required at the time of application, plus a publication and abutters notification fee of \$350 per project. Checks may be combined and issued to the "City of Newburyport."

City of Newburyport Zoning Board of Appeals Application for an APPEAL

Petitioner: _____

Mailing Address: _____

Phone: _____ Email: _____

Property Address: _____

Map and Lot(s): _____ Zoning District: _____

Book and Page(s): _____

Owner(s) Name: _____

Mailing Address (if different): _____

The petition for the Appeal is made under the Newburyport Zoning Ordinance section X.H-5 and M.G.L.s c.40A, s.8 & 15.

Brief description of Appeal:

Any advice, opinion, or information given by any board member or any other official or employee of the City of Newburyport shall not be binding on the Zoning Board of Appeals. It shall be the responsibility of the petitioner to furnish all supporting documentation with this application. The dated copy of this application received by the City Clerk or Planning Office does not absolve the petitioner from this responsibility. Failure to comply with the application requirements, as cited herein and in the Zoning Board Rules and Regulations may result in a dismissal by the ZBA of this application as incomplete.

By checking this box and typing my name below, I am electronically signing this application.

Petitioner

NEWBURYPORT ZONING BOARD OF APPEALS

Petitioner: Michael Gray

Property: 12-14 Harrison Street, Newburyport, MA

Date of Zoning Decision: August 11, 2020

MEMORANDUM IN SUPPORT OF NOTICE OF APPEAL

Pursuant to G.L. c. 40A, §§ 8 and 15, as well as Section X-H.5 of the Newburyport Zoning Ordinance, Petitioner Michael Gray (“Mr. Gray” or “Petitioner”) hereby files a Notice of Appeal of the August 11, 2020 Notice of Violation issued by the Office of Planning and Development with respect to his property located at 12-14 Harrison Street (the “Property”). A copy of the Notice of Violation that is the subject of this Appeal is attached hereto as **Exhibit A**.

The grounds for this Appeal are that: (1) the three-year moratorium on issuance of a building permit set forth in Section XXVIII-E.8 of the Zoning Ordinance is unenforceable because it is beyond the authority of the City of Newburyport to regulate non-conforming properties under Chapter 40A of the Massachusetts General Laws; (2) even if the three-year moratorium is generally enforceable, the Notice of Violation should be vacated because Mr. Gray did not intentionally demolish the Property; and (3) Section XXVIII-E.8 should not be enforced against Mr. Gray in these particular circumstances, where the facts show that enforcement would be unduly harsh and disproportional to the nature of the alleged violation.

RELEVANT BACKGROUND FACTS

Mr. Gray, along with Tracy Gray, is the owner of the Property. The Property, which was built in 1850, is a residential property located in the Demolition Control Overlay District (“DCOD”) and is listed on the Newburyport District Data Sheet as contributing to the Newburyport Historic District.

Mr. Gray sought to make certain renovations and alterations to the Property that would revert it from a two-family to a single-family and replace the gambrel roof line. Mr. Gray applied for a Special Permit for Non-Conformities, as the Property is a non-conforming property pursuant to G.L. c. 40A, § 6. The Special Permit was requested primarily because the project proposed an upward extension of the roof above the nonconforming rear and front setbacks. Although the Grays expected a major remodeling of the Property, they did not anticipate needing to take down any of the four exterior walls.

On May 26, 2020, following a review by the Newburyport Historical Commission (“NHC”), the Zoning Board of Appeals (“ZBA”) issued the requested Special Permit for Non-Conformities for the Property. A copy of the Special Permit is attached hereto as **Exhibit B**, and the NHC’s memo recommending approval of the project is attached as **Exhibit C**. In connection with issuing the Special Permit, the ZBA specifically found that the proposed renovations to the Property would not result in the addition of any new non-conformity and would not be substantially more detrimental to the neighborhood than the preexisting non-conformity.

Construction commenced in early August, and it soon became clear that the structure was in substantially worse condition than the Grays believed. Attached hereto as **Exhibit D** is a report from Daniel Webb, the structural engineer on the project, explaining the structural deficiencies of the existing walls and opining that “the structural deficiencies of the framing rendered the sections [of the exterior walls] that are intended to remain, unsuitable to be used as a component of the renovated structure.” As a result, a decision was made that three of the exterior walls could not be preserved and had to be removed.¹ The construction team also

¹ Also attached hereto as **Exhibit E** is a letter from the project architect, Barry Ganek, concurring with Mr. Webb’s assessment.

concluded that, based on the changes made by prior owners to the walls in the past, the walls no longer retained a historic quality. The decision to tear down three of the exterior walls was made in the field, based on the honest belief that it was consistent with the permits that had been approved by the NHC and the Building Department and was not altering any historic element of the Property. Most importantly, the existing walls were not structurally sufficient to support the framing design reflected in the engineering drawings.

On August 11, 2020, the Office of Planning and Development issued a Notice of Violation (the “Notice”) stating that Mr. Gray had demolished more than 25% of the building walls without first obtaining a Demolition Special Permit. The Notice required the Grays to cease work immediately and schedule a meeting “...to discuss the next steps.” Mr. Gray immediately complied and ceased construction.

GROUND FOR APPEAL

I. The Three-Year Moratorium in Section XXVIII-E.8 of the Ordinance is Unenforceable.

Section 6 of Chapter 40A, as well as Section IX-B of the Zoning Ordinance, expressly states that a zoning ordinance shall not apply to structures or uses lawfully in existence prior to publication of the first notice of public hearing with respect to such ordinance. Section 6 governs the extent to which changes to a prior nonconforming structure may be subject to a zoning ordinance. The only condition that the statute places on making changes to a prior nonconforming structure is that a permit for such changes must be accompanied by a finding that the changes will not be substantially more detrimental to the neighborhood than the existing nonconformity. The statute further provides that, if a property owner seeks to alter a prior nonconforming single or two-family residential structure to change its use for a substantially

different purpose or for the same purpose in a substantially different manner, zoning ordinances do not apply if such changes do not increase the non-conforming nature of the structure.

Here, the Property is a prior non-conforming residential two-family property pursuant to Section 6. The Special Permit process is the extent of zoning oversight that the City of Newburyport may conduct with respect to alterations made on a prior non-conforming structure. Mr. Gray obtained a Special Permit authorizing him to perform work on a non-conforming structure. The ZBA expressly found that the proposed work would not increase the non-conformity of the Property and would not be substantially more detrimental to the neighborhood than the existing non-conformity. Those findings end the inquiry into the proposed renovations, and any attempt to apply further zoning controls, including Section XXVIII-E, to Mr. Gray's Property is inconsistent with G.L. c. 40A, § 6.

II. Mr. Gray Did Not “Intentionally” Demolish the Property.

The three-year moratorium in Section XXVIII-E.8 only applies when “an historic building or structure has been intentionally demolished without a DCOD-SP having been first obtained.” Therefore, the Ordinance evidences an intent not to impose the severe sanction of a three-year moratorium on construction at the property unless there is evidence that the individual subject to the sanction actually intended to demolish a historic structure.

Here, Mr. Gray did not “intentionally” demolish the Property. Mr. Gray obtained a Special Permit for Non-Conformities, following review by both the ZBA and the NHC, and he believed that obtaining such a permit was all that he was required to do with respect to permitting work on his non-conforming property. In addition, Mr. Gray determined that the substantial alterations made to the walls in the past had removed any historic characteristics of them. This is not a case where Mr. Gray knowingly demolished either his entire property or

aspects of his property that he knew to be historic, nor is it a case where Mr. Gray deliberately ignored the requirements of the Zoning Ordinance. Therefore, there is simply no basis to conclude that Mr. Gray “intentionally” demolished a historic structure, and the three-year moratorium should not be applied to him.

III. Enforcement of Section XXVIII-E in These Circumstances Would Be Unduly Harsh and Disproportionate to the Alleged Violation.

Even if the Office of Planning and Development and/or the Zoning Administrator did not exceed their authority in issuing the Notice of Violation, Section XXVIII-E.8 should not be enforced against Mr. Gray in these particular circumstances, where the facts show that enforcement would be unduly harsh and disproportional to the nature of the alleged violation. As set forth in Section II, the facts do not support a finding that Mr. Gray intentionally demolished a historic structure. Nor do the facts evidence any kind of bad faith or other misconduct on the part of Mr. Gray. To the contrary, Mr. Gray attempted, in good faith, to comply with the Ordinance, as he sought and obtained a Special Permit for Non-Conformities before proceeding with his renovation. Removal of the walls – a decision made in the field during construction – was only done as a result of the walls’ poor structural condition and with the understanding that erecting new walls was entirely consistent with the structural drawings approved by the Building Department and design approved by the NHC.

Moreover, imposition of the maximum penalty under Section XXVIII-E.8 will result in a lengthy delay of a project that will, in the end, dramatically improve the Property and, as the NHC stated, restore some of the historical features to the Property that prior construction had eliminated. Barring Mr. Gray from doing any further renovation work at his property for three years in these circumstances is an overly severe sanction that will not benefit the City or its residents.

RELIEF REQUESTED

For all of the foregoing reasons, Mr. Gray respectfully requests that the ZBA determine that Section XXVIII-E.8 of the Zoning Ordinance is unenforceable or, if it finds that it is enforceable, determine that Mr. Gray did not violate the Ordinance because he did not intentionally demolish the Property. In the alternative, to the extent that the ZBA concludes that Mr. Gray did violate the ordinance, Mr. Gray requests that the ZBA determine, in light of all the circumstances, that the imposition of the three-year building permit moratorium would be unfair and unduly burdensome, and grant permission to the Grays to resume construction immediately.

Respectfully submitted,

Michael Gray,

By his attorneys,

 /s/ David B. Mack
David B. Mack, Esq.
dmack@ocmlaw.net
Stephanie R. Parker, Esq.
sparker@ocmlaw.net
O'Connor, Carnathan and Mack LLC
Landmark One, Suite 104
1 Van de Graaff Drive
Burlington, MA 01803
(781) 359-9000

EXHIBIT A



CITY OF NEWBURYPORT
OFFICE OF PLANNING AND DEVELOPMENT
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

NOTICE OF VIOLATION

Under the City of Newburyport Zoning Ordinance (section X-F violations) and the decisions and permits issued thereunder:

To: Michael Gray
12 Harrison Street
Newburyport, MA 01950

Site: 12 Harrison Street

Date: August 11, 2020

Notice: It has come to the attention of the Office of Planning and Development that you or your agents are in violation of the Newburyport Zoning Ordinance.

Reported Activity:

Based on site observation on August 10, 2020 and reports of prior demolition it is apparent that the scope of demolition is in violation of that represented in your zoning review request materials, ZBA Special Permit for Non-conformities (2020-037) and Historic Commission Demo Delay (04/09/20) applications as well as that allowed for under XXVIII Demolition Control Overlay District (DCOD) and associated building permits issued thereunder.

"XXVIII-D Definitions

2. Demolition of a building or structure: Demolition of greater than twenty five (25) percent of all exterior walls of a building structure, measured based upon their total surface area, regardless of the visibility of such walls from a street, way or public body of water."

Required Action:

Immediately cease demolition and secure the structure from the elements and vandalism. Then contact the Newburyport Zoning Administrator to schedule a meeting with the authorities having jurisdiction to discuss the next steps.

Failure to cease the above referenced demolition in excess of Special Permits issued under the NZO is subject to section X-G, Prosecution of Violations, and upon issuance of an Enforcement Order may incur a penalty for violations of up to \$300.00 per day for each offense.

"XXXVIII-E 8. Additional penalties for unauthorized demolition: In addition to any other penalties under applicable law, without prior written approval by the SPGA, no building permit shall be issued for a period of three (3) years with respect to any premises at which an historic building or structure has been intentionally demolished without a DCOD-SP having been first



CITY OF NEWBURYPORT
OFFICE OF PLANNING AND DEVELOPMENT

60 PLEASANT STREET • P.O. BOX 550

NEWBURYPORT, MA 01950

(978) 465-4400

WWW.CITYOFNEWBURYPORT.COM

obtained in compliance with the this section. Such three-year period shall commence after the date upon which such demolition has been completed or suspended, whether voluntarily or by legal compulsion. For purposes of this subsection, "premises" shall mean both (a) the lot upon which the demolished historic building, structure, or architectural feature was located, and (b) all abutting lots under common ownership or control of such lot at the time of demolition."

Appeals arising under the enforcement of this ordinance shall be taken pursuant to M.G.L 40A within thirty (30) days from the date of the order by filing a notice of appeal, specifying the grounds thereof, with the City Clerk, who shall forthwith transmit copies thereof to such officer whose order or decision is being appealed and to the Zoning Board of Appeals.

If you do not understand the requirements of Zoning Ordinance of the City of Newburyport the Zoning Administrator and the Office of Planning and Development and its staff will make every effort to assist you in complying with the law. Additionally, you can find links to the relevant zoning regulations on the City of Newburyport website at:

<http://www.cityofnewburyport.com/Planning/>

Questions and communications regarding this Notice may be directed to:

Jennifer Blanchet
Newburyport Zoning Administrator
& Enforcement Officer
978-465-4400 x 1227
Jblanchet@cityofnewburyport.com

EXHIBIT B

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA



SO. ESSEX #329 Bk:38772 Pg:597
07/31/2020 11:51 AM PERMIT Pg 1/5
eRecorded



2020 JUN 22 PM 12:56

CITY OF NEWBURYPORT
ZONING BOARD OF APPEALS
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

**RECORD OF PROCEEDINGS AND
SPECIAL PERMIT FOR NON-CONFORMITIES DECISION**

APPLICANT: Michael J. Gray
12 Harrison Street
Newburyport, MA 01950

PROPERTY OWNER: Michael and Tracy Gray

FILE NO.: 2020-037

PROPERTY ADDRESS: 12 Harrison Street

DECISION DATE: 05/26/20

MAP/PARCEL(S): 26-35 and 26-37

BOOK/PAGE: 15062-0203

ZONING DISTRICT: R2

PROCEDURAL HISTORY

An application for a Special Permit for Non-Conformities pursuant to Section IX.B.2 Extension or Alteration of the City of Newburyport's Zoning Ordinance was made by the above-referenced owner and filed with the Zoning Board of Appeals (ZBA) on 03/20/20 for the following request: *renovations and alterations to include reverting pre-existing non-conforming two-family to single-family and replacing the gambrel roof line and ell at rear at a higher elevation*

Notice of the public hearing was published on 04/27/20 and 05/04/20 in the Newburyport Daily News. A public hearing on the application was held at Newburyport City Hall on 05/12/20 and continued to 5/26/20.

Upon a motion to approve, made by Ed Cameron and seconded by Mark Moore, the Board voted as follows:

Robert Ciampitti, Chair	<u>Yes</u>	Edward Cameron	<u>Yes</u>	Mark Moore	<u>Yes</u>
Stephen DeLisle	<u>Yes</u>	Rachel Webb	<u>Yes</u>	Ken Swanton, Assoc.	<u>Not Voting</u>
Walter Chagnon, Assoc.	<u>Not Voting</u>				

Having received the necessary two-thirds super majority vote of the Zoning Board of Appeals, in accordance with M.G.L. Chapter 40A Section 9, as amended, the petition was therefore **APPROVED**.

PLANS AND DOCUMENTS

This Special Permit for Non-Conformities application was accompanied and augmented by the following plans, drawings, documents, and submittals, which are hereby incorporated into this decision:

- “Proposed Site Plan, 12-14 Harrison Street, Newburyport, MA” prepared by GA Consultants, Inc. and dated March 6, 2020; and
- “12 Harrison Street, Newburyport, MA” prepared by Ganek Architects, Inc. dated May 6, 2020 and consisting of pages A.01- A.02, A1.1-A1.7 and S-0, S-2, S-3 and S-4 all dated April 28, 2020.

Throughout its deliberations, the Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, as made at the public hearing.

FINDINGS

In order to grant a Special Permit for Non-Conformities, the Board must first determine that the applicant’s project meets specific criteria, as provided in Section IX-B of the NZO. These criteria and the Board’s project specific findings for each are enumerated here:

1. There will be no addition of a new nonconformity. The applicant proposes renovations and alterations to include reverting pre-existing non-conforming two-family to a single-family structure and replacing the gambrel roof line and ell at rear at a higher elevation.
2. The proposed change will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structure or use. This structure is an important contributor to the overall impression on a visitor to Newburyport’s South End. The proposal will result in improvements to the existing condition and not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure or use.

STANDARD CONDITIONS

In view of the foregoing findings, the Zoning Board of Appeals hereby grants a Special Permit for Non-Conformities subject to the terms and conditions stated below:

1. Recording of Decision and Approved Plans: The applicant shall file this decision with the Southern Essex County Registry of Deeds (or Land Court if registered land) and a copy of the decision stamped with the recording information (Book/Page or Land Court document number) shall be included with the application for any related Building Permits. To ensure compliance with this decision, site/construction plans issued to any contractors shall make clear reference to this written decision and conditions of approval contained herein.
2. Permit Lapse: This permit will lapse after two years from the date of granting and shall no longer be valid if a substantial use has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause, within this period. Excluded from any lapse period is the time required to pursue or await the determination of any appeal taken pursuant to MGL Chapter 40A Section 17.
3. Provision of Construction Documents: The applicant shall provide documentation to the Building Commissioner and Zoning Administrator with the application for any related Building Permits illustrating that the proposed work has been reviewed and approved by the Water, Sewer, and Engineering Divisions of the City’s Department of Public Services (DPS).

4. **Curb Cuts:** Any new driveway curb cuts that have egress to the public right of way must be approved by the Director of Public Services or Designee in advance of construction.
5. **Fire Department Review and Approval:** The applicant, owner, successors, or assigns shall be responsible for designing the utilities to meet City standards and ensuring compliance with fire codes prior to commencing work under this approval. The applicant shall provide documentation to the Building Commissioner and Zoning Administrator with the application for any related Building Permits illustrating that the proposed work has been reviewed and approved by the Newburyport Fire Department (NFD).
6. **Stormwater Management Permit:** If the project involves more than 10,000 square feet of land disturbance, the applicant, owner, his successors or assigns, shall obtain a Stormwater Management Permit under the City of Newburyport Stormwater Management Ordinance (Code of Ordinances, Chapter XVII) from the Department of Public Services prior to beginning any site work, including tree clearing and/or regrading. The applicant shall provide a copy of said permit to the Building Commissioner and Zoning Administrator with the application for any related Building Permits.
7. **Modifications to Approved Plans:** The applicant, property owner, and their successors or assigns, shall adhere to the above referenced and approved plans which are incorporated herein by reference. Should the applicant and/or property owner determine that a plan(s) needs to be modified, they shall notify the ZBA and Office of Planning and Development (OPD) of the proposed modifications in writing and obtain approval from the ZBA (or OPD as specified herein) for such modifications prior to making any changes in the field. The OPD shall determine whether such modifications are minor or major (material) in nature. The ZBA shall schedule a public hearing for review and approval of any changes deemed major or material in nature to the permit originally issued. Any major or material alterations or changes to the above referenced plans shall require prior approval by the ZBA. Minor changes may be approved in writing by the OPD without further review by the ZBA. The determination as to whether an alteration or change in plans is material and therefore subject to ZBA review shall be made at the discretion of the OPD.
8. **Site Lighting:** All lighting fixtures, including but not limited to, signage, building, parking lot, site, decorative, and security, shall feature cut off fixtures so that the lights are pointed downward reducing light pollution and glare onto abutting properties.
9. **Hours of Construction:** The developer shall take reasonable care not to disturb surrounding properties and property owners during construction. Construction work shall be limited to the hours between 7 a.m. and 5 p.m. Monday through Friday and 8 a.m. and 4 p.m. on Saturday.
10. **Permit Compliance Contact Form:** No site work or construction related to this permit shall begin until a Permit Compliance Contact Form is completed and submitted to the Office of Planning and Development.
11. **Trees and Sidewalks:** The applicant shall be responsible for compliance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance. If the cost of the project exceeds more than 50% of the physical value of the entire property, the applicant shall obtain the written approval from the Newburyport Tree Warden and Department of Public Services with respect to plans and specifications for (1) the reconstruction, repair, and/or replacement, where appropriate, of all city-owned sidewalks actually adjoining the project Property, in accordance with Sections 12-54 and 12-55 of the Newburyport Code of Ordinances; and (2) the planting, preservation, and/or replacement, where appropriate, of

street trees along all public rights-of-ways actually adjoining the project Property, in accordance with article VI of chapter 12 of the Newburyport Code of Ordinances. Said improvements shall be completed prior to project closeout and final signoff from the Zoning Administrator for related building permits.

12. Submission of As-Built Plans: One hard copy and one .pdf copy of foundation as-built plan shall be provided to the Office of Planning and Development and Building Department upon foundation completion. One hard copy and one .pdf copy of as-built site plan stamped by a professional engineer shall be submitted to the Office of Planning and Development at the completion of the construction.

SPECIAL CONDITIONS

In addition to the foregoing standard conditions, the Zoning Board of Appeals hereby grants approval subject to the special conditions stated below:

1. The applicant shall submit to the Planning Office prior to the issuance of a building permit, revised plans that show the side roof deck has been omitted from the structure.

CONCLUSION AND DECISION

For all of the reasons stated herein, the petition for a Special Permit for Non-Conformities is therefore **APPROVED**.

APPEALS

Appeals shall be made within twenty (20) days after the date of filing of this decision in the Office of the City Clerk directly to a court of competent jurisdiction in accordance with the provision of M.G.L. Chapter 40A Section 17.

SIGNATURE OF THE BOARD

Electronic signatures appearing on this decision are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

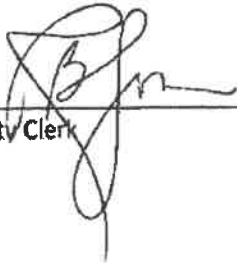


Rob Ciampitti, Jr. Chair

June 22nd, 2020
Date

CITY CLERK CERTIFICATION

I, Richard B. Jones, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A Section 17, that the Special Permit for Non-Conformities decision for the property known as 12 Harrison Street was filed in the Office of the City Clerk on 6/22/2020.
Twenty (20) days have elapsed since the decision was filed and no appeal has been filed.


City Clerk

7/27/20
Date

EXHIBIT C



CITY OF NEWBURYPORT
HISTORICAL COMMISSION
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

Demo Plan Review

Meeting Date 14 May, 2020

Property Address 12 Harrison

Applicant: Michael J. Gray

Project description:

Demolish existing rear section(s) and build a new addition on the same footprint. Part of the original gambrel gable elevation will be restored, and the rear elevation will be adjusted accommodate a proposed roof deck.

Plan(s) of Record:

Demolition Application dated 10 December, 2019 (nhc_demo_application.pdf); revised plans as shown in "12_harrison_street_progress_set_200506.pdf" dated 6 May 2020; and photographs in the file "12_harrison_street_photos_04-22-20.pdf" of 22 April, 2020.

Significance of the historic building/structure proposed for (partial) demolition:

This property is listed on the Newburyport District Data Sheet as contributing to the National Historic District, and is described in an accompanying "Form B" compiled by the Massachusetts Historical Commission. In 1980, when that survey was done, the house still maintained much of its characteristic 18th Century appearance.

The relative importance of such historic building/structure to its setting within the District:

This structure is an important contributor to the overall impression on a visitor to Newburyport's South End. This area contains many older structures, but few this old and, until relatively recently, as well preserved. The house is also quite visible from the Newburyport Rail Trail, which directly abuts it to the Northwest.

Recommendation to SPGA:

While the NHC voted to allow the project, it was not a unanimous decision and we had several reservations. The two main justifications for allowing the project are:

- Since the time of the historic survey (1980-81), several poorly designed and executed additions and alterations were made which have seriously degraded the historic

qualities which are seen in the 1980 photograph. The commission agreed that the changes proposed by the applicant would, to some degree, have the effect of reversing some of those changes in a favorable way. The aspect as seen from the Rail Trail in particular would be improved.

- Throughout the review process, the applicant has shown a willingness to work with the commission and has made several modifications which are significant improvements to his original plan. These can be seen on the “progress set” plans.

During the review, the applicant, their legal counsel and their architect agreed to two further changes:

- The vertical corner boards will be reduced in width from 8” to between 5 and 6 inches.
- The applicant agreed to consider, for the old, original part of the structure, using window sash in a 12 over 8 configuration, which is clearly shown in the Form B photograph, with full divided lights. This style is available in the specific Anderson model that the applicant has chosen.

Not discussed during the hearing, but nonetheless recommended by the commission, is that shutters NOT be placed on the old structure as they are not historically appropriate. Also, several members of the commission were opposed to the addition of ANY roof decks, but especially those that are highly visible from public ways.

The Building Commissioner and SPGA (Zoning Board of Appeals) should require that all the agreed-to changes shall be mandatory and enforced.

The NHC does not take a position regarding other zoning decisions for this project, such as the conversion from 2-family to single-family occupancy, but it should be noted that the property, as it looked in 1980, presents the aspect of a single-family dwelling. It is very likely that the unfortunate changes made since 1980 were done to enable a conversion to a 2-family dwelling.

Glenn Richards, Chair

Newburyport Historical Commission

25 May, 2020

Corrected & Revised 27 May 2020.

EXHIBIT D

August 24, 2020

Jennifer Blanchet
Zoning Administrator & Enforcement Officer
Office of Planning & Development
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

RE: 12 Harrison – Structural Evaluation

Dear Jennifer,

Webb Structural Services, Inc (WSS) has been retained as the engineer of record for the 12 Harrison Street project.

It was WSS's understanding that the original intention of the project was to leave, as much as practical, portions of the original building's exterior walls and reinforce or replace the framing as needed. This strategy was defined before the interior finishes were removed, exposing the existing framing for structural evaluation.

WSS visited the site to review the exposed structure on July 24, 2020 and found the existing framing to be in far worse condition than anticipated.

As in most historical buildings, the structural system is not appropriate to support the present building code-prescribed loading required for current use. The exposed original timber framing was undersized and of poor construction quality. Age and poor maintenance have left sections of framing compromised. Significant sections of the framing were also compromised by rot and insect damage. The conditions were further compromised by poorly executed modifications to the building's framing as part of past renovations. These conditions were widespread throughout the building and would require major reinforcement, if not complete replacement of the larger sections of framing.

It is WSS's opinion that the structural deficiencies of the framing rendered the sections that are intended to remain, unsuitable to be used as a component of the renovated structure. The appropriate approach to achieve the proposed scope of work is to completely remove the existing framing and replace them with a completely new structure.

I hope this answers your questions relating to the structural aspects of the building at the 12 Harrison Street project. Please contact me with any further questions.

Regards,



Daniel Webb, P.E.
Webb Structural Services, Inc.

EXHIBIT E

August 24, 2020

Office of Planning & Development
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

Attention: Jennifer Blanchet
Zoning Administrator & Enforcement Officer

Re: 12 Harrison Street

ganek architects
Incorporated

Dear Ms. Blanchet,

As Architect of Record, working with Michael Gray on the renovation design of his 12 Harrison St. home, it was Mr. Gray's and our intention to retain as much of the existing structure as would be possible while making the house structurally and functionally sound. While the submitted drawings included the necessary installation of new floor and roof structure, we had hoped to retain as much of the existing exterior walls as possible.

Early in construction, the interior finishes of the exterior walls were removed exposing existing structural elements. What was found was compromised wood framing including poorly executed patched areas of wood studs and sheathing due to rot, insect and previous fire damage.

It is our opinion that leaving or attempting to patch/reinforce the damaged structural framing would not be the appropriate or practical solution, nor would it be compliant with current building code requirements. Due to the extent of the compromised framing, we recommend full replacement of the exterior wall structure.

Please contact me with any questions you may have concerning this project.

Respectfully,
Ganek Architects, Inc.



Barry Ganek AIA LEED AP
President

One River Road
Carlisle, MA 01741

t 978.371.9001
f 978.371.9005
www.ganekarchitects.com