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By Email

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Rob Ciampitti, Chair
Zoning Board of Appeals
City of Newburyport
City Hall
60 Pleasant Street
Newburyport, Massachusetts 01950

Re: Request for Special Permit for Non-Conformities; (REVISED REFERENCE)
12 Horton Street, Newburyport, MA (the "Property")
Assessor's Map: 18 Lot: 12

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Lisa Adams and David Miller the owners of the Property (the "Applicant"), who is proposing to renovate and add onto this single family home. The Applicant seeks a Special Permit for Non-Conformities.

The Property is located in the R2 zoning district and the Demolition Control Overlay District ("DCOD"). The structure was built in or around 1890 and is listed as contributory on the District Data Sheets. The Property is non-conforming for area, 4,870 where 10,000 feet is required; frontage, 54 feet where 90 feet is required; side setback, 5.7 feet where 10 feet is required; and front setback of 5.6 feet where 25 feet is required.

The Applicant proposes to remove the existing second story bump out on the rear of the structure and construct a second story addition over the first floor bump out on the rear of the structure in its place. The work will include reconstruction of the existing second floor bump out as well. The addition will be within the same footprint as the current structure.

The westerly side setback non-conformity will be intensified by an upward intensification. There will be a roofline change as a result of removing the second floor rear bump out, for which the Applicant has submitted a release from the Historic Commission for Demolition Delay.

The Applicant will be removing 16% of the existing exterior walls and therefore a DCOD Special Permit is not required.

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As a result, the Applicant will require a special permit to modify a pre-existing non-conforming structure with less than 500 square feet (190 new square feet on the second floor) on a lot with insufficient area and insufficient frontage.

Special Permit for Non-Conformities

The Applicant requires a special permit for nonconformities pursuant to Section IX.B.(2)(A) of the Ordinance. The Property is located in the R2 zoning district and is a pre-existing nonconforming.

Section IX-B(2)(A) allows for the modification of a pre-existing nonconforming single-family structure where the Board finds that:

- A. there will be no addition of a new non-conformity**
- B. the proposed change will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structure.**

As to the first requirement, no new non-conformity is being created. The westerly side setback non-conformity will be intensified by an upward intensification. No new non-conformity is being created. Indeed the foot print of the structure will remain unchanged.

The next finding the Board can make is that the proposed change will not be substantially more detrimental to the neighborhood than the existing structure. Here, the proposed addition adds a mere 190 new square feet to the living space in the home. While there will be an upward extension, said extension will be constructed over the existing first floor enclosed three season room and will incorporate the space within the existing second floor bump out that is also being reconstructed. The added second floor will include a gable end which will be obviously smaller and subservient to the existing two story home. However, the proposed second floor addition will match and compliment the existing architectural style of the home. Importantly, the most distinctive architectural features of the home which are visible from Horton Street will remain as is.

There is no change to the footprint and therefore no change to the open space or lot coverage calculation. There is no outward intensification of the non-conformities and no further impact on the adjacent properties.

It is of note that the term “substantially” means to a great or significant extent. When used in the context of the ordinance the Board would have to make a finding that the proposed renovation and expansion upward was “substantially more detrimental” to the neighborhood. Here, based upon the size of the change to the second floor addition and the architectural design and resulting character of the home as compared to the existing conditions, the proposed change cannot be found to be *substantially more detrimental* to the neighborhood than the existing structure.

Finally, while not specifically related to the criteria of the Board, it should be noted that the proposed renovations by the Applicant were not by choice. The proposal is occasioned by an emergency situation that occurred earlier this year. In February 2021, while visiting family in California, the furnace in the home failed. Soon thereafter, a pipe in the second-floor bathroom froze and water began to flood down to the first floor and basement. A neighbor who had been periodically checking on the house for the Applicant, discovered what was by then extensive flooding with damage to much of the first floor and standing water in the basement. He quickly turned off the water and informed the Applicant.

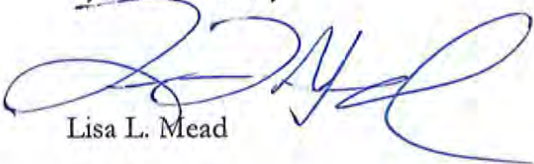
The Applicant's were unable to determine how long the flooding had been going on, but it likely was over several days. The water damage was remediated but the damage that the remediation company discovered was extensive—all the floors on the first floor, along with many of the walls and ceilings needed to be removed. The damage on the second floor was mostly in the bathroom, but the house was and still is uninhabitable.

Opening the walls uncovered old electrical wiring that needs to be removed and brought to code as well as vermiculite in some areas. Given the extensive repairs needed, the Applicant's decided to rebuild all interior staircases to bring them up to code, which will require moving walls on the first and second floors, losing some living space. The goal in extending the back of the second floor of the house over the existing first floor bump out is to recapture the lost square footage sufficient enough more to add a second full bathroom.

Based upon the foregoing, the Applicant's requires the Board approve the request for a Special Permit for Non-conformities.

Please do not hesitate to contact me at 978-463-7700 if you have any questions.

Respectfully submitted
Lisa Adams and David Miller
By their Attorney


Lisa L. Mead

Attachment
cc: client