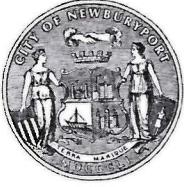


RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2018 OCT 30 PM 3: 28



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

RECORD OF PROCEEDINGS AND DECISION FOR A MODIFICATION TO A DIMENSIONAL VARIANCE

An application for a Dimensional Variance was filed by:

Frank Tagliaferri
18 Ashland Street
Newburyport, MA 01950

for property owned by **Frank and Jenna Tagliaferri** for the following request:

modify dimensional variance granted on 11/10/15 for changes related to landscaping

The application was filed at the City Clerk's Office on **10/01/18** under the Zoning Ordinance Section X-H.3 Powers of the Board and Section **VI.A Dimensional Controls**.

The application is for the premises at **18 Ashland Street** in the **R2** Zoning District, as indicated in the Newburyport Assessor's Office as map and parcel **68-149-A** and recorded in the Essex South District Registry of Deeds as Book and Page **31581-599**. The newspaper notices for the public hearing were posted on **10/08/18** and **10/15/18** in the Newburyport Daily News.

A public hearing was held for the above application on **10/23/18**. At the close of the public hearing on **10/23/18**, upon a motion made by Member **Maureen Pomeroy** and duly seconded by Member **Ed Cameron**, the Board voted to **APPROVE** the petition for the Dimensional Variance.

The following members present and voting, and voting as follows with respect to the petition:

| | | | |
|-----------------------|---------------|------------------------|---------------|
| Robert Ciampitti | <u>Absent</u> | Renee Bourdeau | <u>Absent</u> |
| Maureen Pomeroy | <u>Yes</u> | Edward Cameron | <u>Yes</u> |
| Mark Moore, Associate | <u>Yes</u> | Edward Ramsdell, Chair | <u>Yes</u> |

Having received the necessary two-thirds super majority vote or all the members of the ZBA, in accordance with M.G.L. c.40A, Section 10, as adopted, the petition for the Dimensional Variance was therefore **APPROVED**.

FINDINGS

After the public hearing, in accordance with the criteria set forth in the City of Newburyport Zoning Ordinance VI.A Dimensional Controls, the Newburyport Zoning Board of Appeals made the following findings:

1. The applicant is requesting a modification of the approved plans for 18-20 Ashland Street granted on November 10, 2015. He would like to modify the landscaping in the following ways:

- Corner of Ashland Street and Court: Rather than plant an Oak or Maple on the property at the corner to the left of the home, plant a smaller varietal due to the ground area, power lines, and salt tolerance. DPS and the Tree Commission have recommended a Columnar Sargent Cherry;
- Ashland Street Frontage: Place two street trees along Ashland Street side of the property;
- Ashland Court Frontage: Place two ornamental trees on the property itself along the Ashland Court frontage. The variance stated that spruce, hemlock, oak, or maple would be planted, but upon consultation with DPS and the Tree Commission, the applicant would like to plant evergreens, dogwoods, or other similar species; and
- Cedar Fence: Install a cedar fence as shown in the yellow line on the sheet labeled 'proposed variance modification' rather than the originally approved privet hedge along the shared property line with 20 Ashland Street.

2. The original grant of approval to allow the lot split that enabled the construction of the home at 18 Ashland stated that the existing structure, now known as 20 Ashland, would be turned into a single-family home and would be subject to exterior façade improvements.

3. The original approval (copy of site plan is included with application documents) for this project included specific conditions regarding the landscaping, tree size, and species to be planted, and the installation of a 3' tall privacy hedge along the shared property line with 20 Ashland Street. The applicant supplied emails of support from many of the abutters – these emails are identical to the ones provided at the 9/11 meeting.

4. The applicant at the September 11th meeting had sought these changes be treated as a request for a minor modification. The Board reviewed the request and determined that it was a major modification to the approved variance and directed the applicant to file the appropriate paperwork for a public hearing.

5. A significant purpose of the present hearing was to ensure that all of the abutters are aware of the proposed changes as the original process involved significant abutter input and the proposed modifications represent a visual change from what was originally granted.

6. After consultation with the Planning Office, the Newburyport Tree Commission, and neighbors the applicant proposed to make the following changes to the descriptive materials initially submitted in 2015 and also to changes submitted in anticipation of the Minor modification request;

- The street tree to the left of the house will be planted on the apron as requested. However, after consultation with the DPS and Tree Commission, a smaller variety than oak or maple was suggested due to ground area, power lines, and salt tolerance so a Columnar Sargent Cherry was deemed appropriate and will be planted in conjunction with the Tree Commission.
- The property tree on the Ashland St/Ashland Ct corner of the property will be planted as requested

and will be a species that grows to full height (i.e. not dwarf or ornamental).

- Because the finished home now has sewer, water, and gas lines underground in the area to the right of the driveway and a large existing street tree already exists adjacent to that area, the original layout for three trees will need to be modified. Three trees will still be planted, but the orientation will be such that one tree will be on our property adjacent to Ashland Ct and two other trees will be planted along the fence towards the street between the applicant's property and 3/5 Ashland Ct. The large shade tree adjacent to Ashland Ct will be of a variety that grows to full height (i.e. not dwarf or small). The other two trees will be planted so as to attempt to form more of a screen to the Mersen parking lot and will be of an evergreen variety (Spruce, Hemlock, other?) that again will not be dwarf or a low variety.
- Instead of a hedge running the entire length between the 18/20 properties the applicant proposes to plant the planned privet hedge for the first 30% of the span from the sidewalk to 10ft past the edge of the house and the rest would be a 4'-6' professionally installed fence. Now that the home is built there is a grade difference between Lot 1 and Lot 2 of approximately 4 feet. This relatively steep slope now makes the planting of a full span hedge on Lot 1 problematic due to the lack of sufficient level ground (necessitating a full long hedge to be either planted on a significant slope or well-off the property line) and the existence of 2 very large existing trees already flanking the front and rear property lines. In particular the existing 30' spruce with several other smaller trees at the back of the property renders hedge installation/viability all the way to the rear property line impractical. Furthermore, it is only the first 15-20% of this property division that is visible from the street so whether or not the rest of the divider was fence or hedge should have no ramifications as to the look or view to anyone other than the residents of 18 or 20 Ashland St.
- include plantings (in addition to those already installed) based upon the 2015 variance grant around the property including in front of the Ashland St facing fence and flanking the driveway will be included.

7. There is a substantial hardship, financial or otherwise which results from the literal enforcement of the applicable zoning restrictions with respect to the land and structure for which the variance was sought. Literal enforcement imposes a significant hardship upon the property.

8. The relief sought will be desirable and without substantial detriment to the public good. It is desirable to develop the property consistent with the growth patterns of the neighborhood that are replete with lots and houses, such as the one being proposed.

9. Strict application of the Ordinance would deprive the applicant of reasonable use of the lot and building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structure, or structures in the same district.

10. Relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Ordinance.

11. The unique conditions and circumstances are not the result of the actions of the applicant taken subsequent to the adoption of the Ordinance.

12. Relief will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the District. There are other properties where relief has been granted for various reasons within this zoning district.

13. Evidence was presented and the Board found that the proposed change continues to be in conformity with the neighborhood and will not be substantially more detrimental to the neighborhood than the pre-existing non-conforming structure.

14. In accordance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance the Board found that these changes to the project do not trigger the requirements of the ordinance relative to sidewalks and trees.

PLAN REFERENCES

This permit is approved based on the following plans and/or documents:

- "Proposed Variance Modification" submitted to the Board on 10/23/18 showing hand revisions on the original 18-20 Ashland Street Site Plan dated October of 2015 detailing proposed fence, trees, and plantings

Any alterations to these plans shall require subsequent approval by the Zoning Board of Appeals.

CONDITIONS OF APPROVAL

This Zoning Board approval represents a schematic approval for the project. This approval does not represent a final approval of the utility design and details or fire safety measures, as applicable. 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 following conditions do not limit any other rights and remedies the City of Newburyport may have.

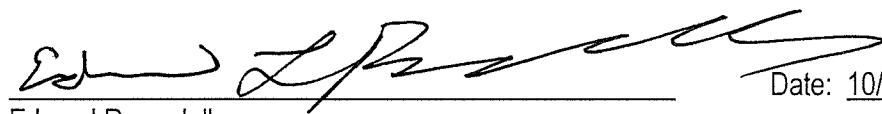
1. Recording of Approved Plan(s): The applicant/developer shall record this Variance approval, subject to its conditions, along with all referenced plans, at the Southern Essex District Registry of Deeds and notify the Zoning Board of Appeals of such recording. This Variance will not take effect until this recording bearing the certification of the City Clerk of Newburyport has been completed and noted on the owner's certification of title. The fee for recording or registering shall be paid by the owner or applicant.
2. Modifications to Approved Plans: The applicant, property owner, and their successors or assigns, shall adhere to the 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 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.
3. Provision of Construction Documents to DPS: Prior to applying for a permit to conduct site work, including tree clearing, and/or a Building Permit, the applicant, owner, his successors or assigns, shall provide construction documents showing water and sewer utilities, details, and design at the 25%, 50%, and 75% design phase to ensure compliance with Newburyport Department of Public Services standards for water and sewer utilities. The applicant shall provide documentation to the Building

Commissioner with the application for a Building Permit illustrating that the project, as designed, has been reviewed and approved by the Water, Sewer, and Engineering Divisions.

4. Fire Department Review and Approval: Prior to applying for a permit to conduct site work, including tree clearing, and/or a Building Permit, the applicant, owner, his successors or assigns, shall provide construction documents at the 25%, 50%, and 75% design phase to ensure compliance with fire safety codes and regulations. The applicant shall provide documentation to the Building Commissioner with the application for a Building Permit illustrating that the project, as designed, has been reviewed and approved by the Newburyport Fire Department.
5. 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 construction. The applicant shall provide a copy of said permit to the Building Commissioner with the application for a Building Permit.
6. Hours of Construction: The applicant/owner 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 6 p.m. Monday through Friday and 8 a.m. and 5 p.m. on Saturday, unless a specific waiver is requested. The Zoning Board of Appeals and the City Marshal shall approve such waiver.
7. Validity of Approval: The rights authorized by this Variance shall lapse is not exercised within one year form the date of granting. If a substantial use has not commenced, unless for good cause and/or if construction has not commenced except for good cause, within this one year period this Variance shall no longer be viable. 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.
8. The Board approved and adopted as conditions the plan changes outlined above in section 6 regarding trees, plantings, fencing, etc

This decision was filed with the Newburyport City Clerk on **10/30/18** and sent registered mail to the applicant and by regular mail to the Parties in Interest and the abutting Municipalities.

Undersigned Chair of the Zoning Board of Appeals,



Edward Ramsdell

Date: 10/30/18

CERTIFICATION OF CITY CLERK

I, Richard Jones, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A, Section 17, that the decision for the property known as **18 Ashland Street** was filed in the Office of the City Clerk on **10/30/18**. Twenty (20) days have elapsed since the decision was filed and NO APPEAL has been filed. Appeals must be filed on or before **11/19/18**.

Newburyport City Clerk

Date: _____

- Brooks Patterson
19 Ashland St

(Notes w/
discussions
w/ applicant)

Items Requested To Be Included In Proposed Plan

Approved Variance Plan

Good Neighbor Natural Cedar
Board Fence not more than 6' high

Rebated Evergreen
Screening Trees To
Accomodate Utility
Line & Block Newly
Exposed Views Down
Ashland Court



Set back
front of house

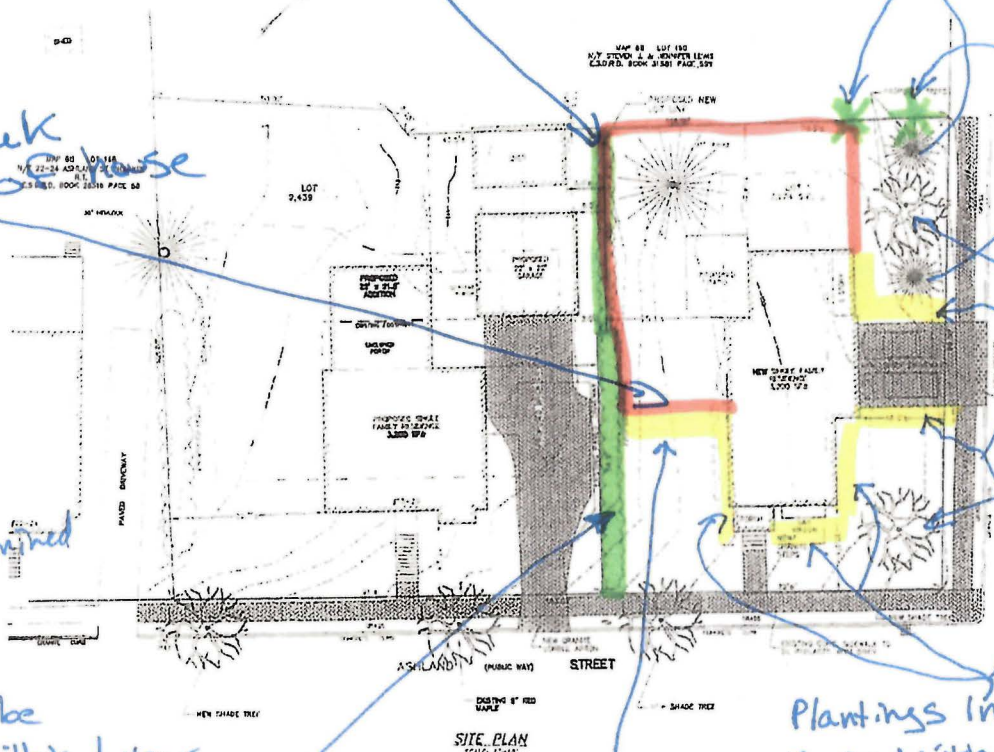
Tree
Determined
City

Does Not Have
To Be Maple or
Oak, As Long
As They Reach
the same
Mature Height

must be
planted within 1 year
approval by ZBA
plant materials
die within first
years must be replaced

Install Privacy Hedge
Per Approved Plan

Plantings In
Keeping with
Rendering That
36" Native
Species
Abutters Approved



| | |
|--|---|
| | <p>SITE PLAN FOR ZONING BOARD OF APPEALS 18-20 ASHLAND STREET NEWBURYPORT, MA</p> |
| | <p>PREPARED FOR: DENNIS R. & JUDY A KEATING 36 MOSSELEY AVE, NEWBURYPORT, MA 01850</p> |

SHEET 2 OF 2
DATE: OCTOBER 20, 2013
APPROVED:

GRAPHIC SCALE