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March 29, 2021

By Hand

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

Re: Special Permit for Non-Conformities  
25 Chestnut Street, Newburyport, MA (the "Property")  
Assessor's Map: 25 Lot: 70

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Damien and Jill Bailey, the owners of the Property (the "Applicant"). The Applicant is proposing to remove a portion of the existing structure and construct two small additions.

The Property is located in the R-2 zoning district and DCOD Overlay District of the Newburyport Zoning Ordinance (the "Ordinance"). It is a single family home. The Property is pre-existing nonconforming for lot area, front setback, side setback, rear setback, and lot coverage. The R2 district requires a minimum lot size of 10,000 square feet where the Property measures 5,792 square feet; a front yard setback of 25 feet where it is currently 3.8 feet; 10 foot side yard setbacks where the west side setback is 5.5 feet; a rear yard setback of 25 feet where it is currently 3 feet; and a maximum of 25% lot coverage where it currently is 35.7%.

While the original Structure is dated at approximately 1825 and is listed as contributory on the District Data Sheets, it has many non-historic additions as shown in the Building Department files and noted on the plans. Importantly, the Applicant proposes to remove 23.7% of the exterior walls, below the 25% threshold requiring a DCOD Special Permit.

Regarding changes to the existing non-conformities, the Applicant proposes to extend the west side setback, extend the front yard setback laterally along Chestnut Street, extend the rear yard setback, and increase the lot coverage from 35.7% to 38.1%. The rear addition will be 6.5 feet from the west side boundary, which is less intense than the existing 5.5 foot setback, but still considered an extension under the Ordinance. The front yard setback will remain at 3.8 feet but is being extended 8 feet by the new addition along the front of the structure facing Chestnut Street. The rear addition proposed is 18.5 feet from the rear boundary, which is non-conforming but much farther away from the rear boundary than the existing three foot rear setback located elsewhere on the property. Lot coverage will modestly expand from 35.7% to 38.1% as a result of the two small additions.

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Accordingly, the Applicant requires a special permit for non-conformities under Section IX-B(2)(A) of the Ordinance. This section allows the modification of a preexisting nonconforming single-family structure where the Board finds that:

1. There will be no addition of a new non-conformity; and
2. The proposed change will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structure.

1. As shown on the plans, there will be no addition of a new non-conformity. Certain existing non-conformities will be extended in a minor fashion, but there are no new non-conformities proposed.

2. The proposed changes will not be substantially more detrimental to the neighborhood than the preexisting nonconforming Structure. As the Board is aware, the term “substantially” means to a great or significant extent. The term “detrimental” means tending to cause harm. As a result, it is not enough for the proposal to be different than that which is around it but that it will to a great or significant extent cause harm to the neighborhood, as compared to the existing structure. See *McAleeer v. Board of Appeals of Barnstable*, 361 Mass. 317, 321 (1972).

As shown on the plans, the proposed additions are small, reasonable, and will have no negative impact on the neighborhood. In total, they would add a mere 246 square feet to the existing structure. One of these additions is a 11’ by 10’ addition to the west side/rear portion of the structure, effectively filling in an odd gap in its existing footprint. The other addition is an 8’ by 17’ addition to front/eastern side of the structure removing a portion of the existing deck. While these additions extend some existing non-conforming setbacks, they move none of them closer to the lot lines. They are either equal to or farther away than what currently exists.

Regarding the neighborhood generally, it is well known that many properties in the South End neighborhoods of Chestnut Street, Hancock Street, Marlborough Street, and Oak Street are undersized lots and have dimensional non-conformities. The Applicant, like many other property owners in this neighborhood, has a small non-conforming lot and structure, but will not exacerbate this by adding a negligible 246 total square feet to the structure and not worsening the existing non-conformities. Additionally, the use is remaining as single family which is the least intense use while some other uses near the property include more intense two family and social club<sup>1</sup> uses.

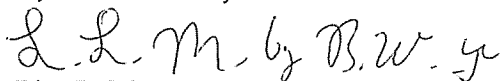
Based upon the foregoing, the Applicant requests that the Board find the proposed application is not substantially more detrimental to the neighborhood than the existing Structure and approve a Special Permit for Non-Conformities.

Thank you for your consideration.

Respectfully submitted,

Damien and Jill Bailey

By their Attorney



Lisa L. Mead

Attachment

cc: client

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<sup>1</sup> The Neptune Club directly abuts the Property to its rear.