



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

www.mtclawyers.com

May 24, 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 and Dimensional Variance
316 High Street, Newburyport, MA (the "Property")
Assessor's Map: 66 Lot: 7

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Arthur Russo (the "Applicant"), the owner of the Property, relative to a proposed addition to the northern side of the existing single family structure on the Property.

The Property is a corner lot located in the R-2 zoning district and DCOD Overlay District of the Newburyport Zoning Ordinance (the "Ordinance") at the corner of High Street and Forrester Street. Having the longer frontage, the Forrester Street side is the primary front yard, making the side opposite to it the rear yard. The Property is pre-existing nonconforming for lot area and front setback on the High Street side. The R2 district requires a minimum lot area of 10,000 square feet where the Property has 9,361 square feet and a front yard setback of 25 feet where it is currently 1.2 feet.

The original Structure was constructed in 1740 according to the Assessor's Records, and on the District Data sheets it indicates the structure was constructed around 1775. It is listed as Contributory to the district. Regardless, this project is removing 13.1% of the existing walls, less than the 25% that would require a DCOD Special Permit.

Regarding the Applicant's proposed addition, it will have a front setback of 13.1 feet from the High Street side, thus extending the existing non-conformity. It will also total 515 square feet which also triggers a special permit for non-conformities. Last, it will be 10 feet from the rear yard boundary where 25 feet are required, thus creating a new nonconformity and requiring a variance.

Special Permit for Nonconformities

The Applicant requires the special permit for nonconformities 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 nonconformity; and**

Millis Office

730 Main Street, Suite 1F
Millis, MA 02054
Phone 508.376.8400

2. The proposed change will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structure.

1. As noted above, the Applicant is also requesting the required variance for the creation of a new conformity regarding the rear yard setback. However, in addition to the Variance, a Special Permit remains required because of the extension of the front yard non-conformity on the High Street Side and the addition totaling over 500 square feet. Provided the Board grants the requested variance, this requirement will be met.

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 *McAleer v. Board of Appeals of Barnstable*, 361 Mass. 317, 321 (1972).

As shown on the plans, the proposed addition is a reasonable extension to the existing structure and will have no negative impact on the neighborhood. Concerning the extension of the front yard setback, it does not intensify it. Instead, the addition will be setback much further at 13.1 feet while the existing structure has a mere 1.2 foot setback and is almost on the sidewalk of High Street. Indeed, nonconforming front yard setbacks are common in this portion of High Street as there are many structures located much closer to High Street than the R-2 District’s 25 foot front yard setback would otherwise require.

Through design and the existing conditions, the addition will also create minimal disruption to the appearance existing structure. Its design is complimentary to the form of the existing structure and is matching the materials used on the different sides of the structure as the High Street side will have clapboards and the northern side will have shingles. There is an existing fence off of the structure that continues along High Street up to the Property’s boundary before changing direction along the rear yard. This fence will partially screen the addition. There are also street trees and other plantings on or around the High Street side that will provide partial screening of the proposed addition as well.

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 Nonconformities.

Variance

Pursuant to Section X-H(6) of the Zoning Ordinance, “[t]he [Z]oning [B]oard of [A]ppeals shall have the power. . . to grant. . . a variance. . . from the terms of this zoning ordinance. . .”. Here, the grant of a variance by the Board is consistent with the standards of G.L. c. 40A, § 10 and said Section X-H(6) due to the property being a corner lot under the Ordinance and the existing conditions preventing any other location for an addition from being feasible.

If this were not a corner lot, the rear yard would be a side yard and the addition would be conforming as to side yard setback because 10 feet are required and it is proposed to be 10 feet from the boundary. The lot is laid out with multiple gardens, plantings, and an ornate back yard and driveway. If this addition were proposed off any other portion of the structure, these striking landscaping conditions would be diminished to the detriment of both the Applicant and the public in general who can view these features when driving and walking along Forrester Street. Instead, these unique conditions will be preserved by building the addition on the northern side of the structure.

Additionally, this Board shall recall that G.L. c. 40A, § 10 includes “circumstances relating to the soil conditions, shape, or topography of such land or structures...”. Here, due to the shape and location of the existing structure, in existence since the late 1700’s, the Applicant is left with few options as to how they could construct an addition without needing zoning relief. As aforementioned, the structure is nearly on top of the High Street sidewalk which does not allow many options for functional additions due to the more stringent requirements placed on corner lots. There is also a garage structure in use at the rear corner of the lot. Any addition to the eastern side of the single-family structure makes accessing this garage impossible without significantly altering the lot as it would block the existing driveway path to the garage. The Applicant would be forced to destroy a significant portion of the back yard’s unique landscaping of this Property which would significantly diminish much of what makes this property distinctive and contributing to the surrounding neighborhood.

Further, while the lot was originally designed to provide access and egress onto High Street (curb cut still in existence but not used) over the years, the access and egress to the Property has been provided off of Forrester Street in a much safer manner. This change of access and egress for public safety purposes would also need to change back to the original configuration should relief not be granted.


Indeed, the proposal does not derogate from the intent and purpose of the Ordinance as the location of the proposed addition is located in a position to cause the least amount of disruption to existing conditions of the Property as possible. But for this being a corner lot, the set back at issue would be conforming, and the addition would not require a variance.

The proposed addition will not be detrimental to the neighborhood as there will be no negative impacts on any neighbors as a result of the granting of the variance. Surveying the northern portion of this part of the High Street neighborhood there appear to be numerous structures that are nonconforming with side or rear setbacks including those on other “corner” lots. It is not a stretch to say that it appears there are as many nonconforming structures as conforming ones along this side of High Street in this portion of the City. The Applicant would certainly not be receiving any special privilege if the Board grants a variance.

As a result, the Applicant requests the Board grant a variance for rear yard setback.

Thank you for your consideration.

Respectfully submitted,
Arthur Russo
By his Attorney



Lisa L. Mead
Attachment
cc: client