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October 23, 2017

By Hand

Ed Ramsdel, Chair
Zoning Board of Appeals
City of Newburyport
City Hall
60 Pleasant Street
Newburyport, Massachusetts 01950

Re: Amended Application for 34-36 Hancock Street (the "Property"); Assessor's Map: 25 Lot 73.

Dear Chair and Members of the Board;

Reference is made to the above-captioned matter. In that connection, you have previously received this firm's memorandum supporting the modification to the pre-existing non-conforming use at the Property which will be Lot 2. As you know it is the Petitioner's intention to divide the existing lot and create a single-family home which fronts on Chestnut Street. At the time of application, the City Council had proposed a zoning change whereby this Property would switch from a R-3 to a R-2 District but the lot area requirements for a single family in the R-2 were also proposed to change to mirror what the current R-3 single family home dimensional requirements were. However, prior to adoption of this zoning amendment last week, the City Council amended the proposed dimensional revisions to be consistent with the existing R-2 dimensional requirements for a single-family home.

As a result, the Petitioner is hereby amending its application to include a request for a variance from the lot area and frontage requirements for the to be created Lot 1. It is interesting to note, as you can see from the prior information which I provided to this Board, historically there was a dwelling located to the rear of the Neptune's building on Chestnut Street.

As you are aware, the proposal is to divide the Property into Lot 1 and Lot 2. Lot 1 would consist of 8,000 square feet (10,000 now required) with 83.59 feet of frontage (90 now required) on Chestnut Street. In all other respects Lot 1 complies with the dimensional requirements for a single-family home in the R-2 district¹.

¹ The front yard setback at 4.6 feet pursuant to section VI-G of the NZO whereby the new structure may be consistent with the average front yard setback surrounding the proposed structure.

REC-111-111
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OCT 23
Newburyport Planning Dept.
Newburyport, MA

Millis Office

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

II Zoning Requirements

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 [Z]oning [O]rdinance.. .” upon the following conditions:

1. Conditions and circumstances are unique to the Petitioner’s lot, structure or building and do not apply to the neighboring lands, structures or buildings in the same district.
2. Strict application of the provisions of th[e Zoning Ordinance] would deprive the Petitioner of reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures or buildings in the same district.
3. The unique conditions and circumstances are not the result of actions of the Petitioner taken subsequent to the adoption of th[e Zoning Ordinance].
4. Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.

Further, Section X-H(6)(D) provides that the following circumstances *may* be construed as establishing a basis for determining that a hardship exists within the meaning of this section:

- (1) Where by reason of exceptional narrowness, shallowness or unusual shape of a specific site at the time of the effective date of this chapter or to which this is amended, or by reason of exceptional topographic conditions or other extraordinary and exceptional physical situations or condition of such site of property, the literal enforcement of the requirements of this chapter pertaining to yards or other space relationships or total land area would result in exceptional practical difficulties or exceptional and undue hardship upon the owner of such property.

In the case at hand, the Petitioner’s Property is oddly shaped. You will see the westerly property line has a 14 +/- foot jog in it – something that is not similar to the surrounding properties. That particular jog is not the creation of the Petitioner.

By allowing the variance and the creation of a single-family building lot, the Board would not be bestowing a special privilege inconsistent with the other homes in the district. As noted previously, there was historically a dwelling in a similar location facing Chestnut Street. Further, the fabric of this neighborhood on Chestnut Street is single family homes. Indeed, the use of the club as an adjoining parcel is an abnormality. The property as it currently abuts Chestnut Street appears as a “missing tooth” if you will. By allowing a home to be constructed on the lot the street scape would be repaired and entirely consistent with the remainder of Chestnut Street.

Chestnut Street is replete with single family homes. Most of the lots on the northerly side of Chestnut Street are smaller to the proposed lot but for one. For example: 21 Chestnut is **5,800**, 19 Chestnut is **2,950**, 17 Chestnut is **5,900**, 15 Chestnut is **2,960**, 25 Chestnut is **5,710**, 42 Marlboro is **5,210**. Even on the opposite side of Chestnut, the lots are smaller than what is proposed: 14 Marlboro **5,400**, 30-32 Chestnut is **6,980**, 28 Chestnut is **7,029** and 24 Chestnut is the one outlier which is **12,129**. As you can see there would be no special privilege here and the proposed lot is entirely consistent with the remainder of the other lots on the street, indeed it is larger except for one.

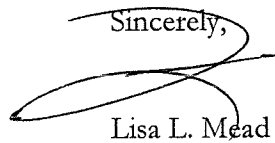
Providing the modest relief to allow the creation of a single-family home lot is entirely consistent with the street scape and fabric of the neighborhood. The construction of a home on the proposed lot will be consistent with the historic use of the Property as well. Importantly, the provision of a single-family home lot will provide a buffer to the club use on the remainder lot for those other homes on Chestnut Street.

The creation of this lot will also not derogate from the intent and purpose of the NZO. Specifically, section I-C of the NZO provides, among other factors: The purpose and intent of this ordinance is to promote the health, safety, convenience and general welfare of the inhabitants of the City of Newburyport, to conserve the value of property, with due consideration for the character of the zones and their peculiar suitability for uses. Here there is no question that the addition of a single-family home in this empty space to provide for a continuous streetscape and separate the club use which fronts on Hancock Street will help conserve the property values in the neighborhood and is entirely consistent with the character of the residential zoning district as it historically existed and exists today. Therefore, the granting of this request will not derogate from the intent or purpose of the NZO.

As to the requirements of X-H.6.Q regarding sidewalks and trees. The Petitioner will be removing the paved sidewalk and install a new brick sidewalk. There are currently two street trees in front of the lot on Chestnut Street.

Should you have any questions or concerns, please contact me at (978) 463-7700.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa L. Mead". The signature is fluid and cursive, with a large loop at the end.

Lisa L. Mead

Attachment
cc: Client

City of Newburyport Zoning Board of Appeals
Application for a VARIANCE

Petitioner: George Haseltine, Trustsee c/o Lisa Mead, Mead, Talerman & Costa LLC

Mailing Address: 30 Green Street, Newburyport MA 01950

Phone: 978 463 7700 Email: lisa@mtclawyers.com

Property Address: Lot 1 of 34-36 Hancock Street

Assessor's Map and Lot(s): Map 25 Lot 73 Zoning District: R-2

Book and Page(s): 3375/587 Years owned land: _____

Owner(s) Name: Neptune Veterans Firemens Association

Mailing Address (if different): 34-36 Hancock Street

The petitioner is requesting a Variance from section(s):

Use Regulations (V)

Parking (VII)

PIOD (XXI)

- ___ FAR
- ___ 2 ½ stories
- ___ Footprint expansion

Dimensional Controls (VI)

- Lot Area ___ Front Yard
- ___ Open Space ___ Side Yard
- ___ Lot Coverage ___ Rear Yard
- ___ Height ___ Lot Width
- Frontage

Other: _____

Request:

Variance for lot area and frontage for new single family home.

	Existing	Proposed
Ground Floor Square Feet	NA	1178
Number of Floors	NA	2
Total Square Feet	NA	2130
Use	NA	101

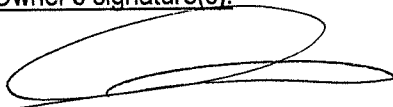
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	Existing Dimensional Controls	Proposed Dimensional Controls	Required Dimensional Controls
Lot Area	26714	8,000	10,000
Frontage	208.70	83.59	90
Height	32	21.5	35
Lot Coverage (%)	16	19.5%	25%
Open Space (%)	32	50%	40%
Front Setback	12	4.6	25
Side A Setback	10.2	10.7	10
Side B Setback	59	10.5	10
Rear Setback	2.4	61.4	25
Parking Spaces	>40	2+	2
FAR*	NA	NA	NA

*FAR is only applicable in the Plum Island Overlay District (PIOD).

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. Every application for a Variance shall be made on this form, which is the official form of the ZBA. 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. The petitioner shall be responsible for all expenses for the filing, publishing, and legal notification. Failure to comply with the application requirements, as cited herein and in the Zoning Board Rules and Regulations may result in a dismissal of this application as incomplete.

Petitioner's and Owner's signature(s):



10/23/17
