



Mead, Talerman & Costa, LLC  
Attorneys at Law

30 Green Street  
Newburyport, MA 01950  
Phone 978.463.7700  
Fax 978.463.7747  
www.mtclawyers.com

June 8, 2021

VIA Electronic Mail  
In Hand Delivery

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

Re: Request for Zoning Relief:  
3 57<sup>th</sup> Street, Newburyport, MA (the "Property")  
Assessor's Map: 76, Block: 296

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Windward Shaw, LLC who is re-constructing and renovating for the owners, John and Hayley Suminski, (collectively the "Applicant"). The Applicant will be removing and reconstructing the single family home upon the Property. The Property is pre-existing non-conforming. The Applicant requests a Special Permit for non-conformities under section XXI-G(4)(b) of the Ordinance for FAR over the maximum allowed.

The Property is in the R3 zoning district and PIOD overlay district. There is a single family home on the property. The Property includes 4,900 square feet of area where 12,000 square feet are required, 70 feet of frontage where 120 feet are required, a left side setback of 10.6 feet where 20 feet are required and a rear setback of 15.1 feet where 20 feet are required. The Lot Coverage is 21.3% where 20% is required. Otherwise, the Property is in conformance with the zoning requirements. There are currently two bedrooms in the single-story structure and has 814 square feet of living area.

The Applicant proposes to remove the existing structure which does not meet any of the performance standards and regulatory strictures of the Wetlands Protection Ordinance and Regulations for Plum Island, nor meet the purpose of the PIOD. Further, the existing structure is not FEMA compliant. The new structure will meet all FEMA requirements as well as the City of Newburyport Wetlands Protection Ordinance and Regulations for Plum Island and be consistent with the purposes of the PIOD, namely

*"...reduce damage to public and private property resulting from flood waters; ensure public safety by reducing threats to life and personal injury; eliminate costs associated with the response and cleanup of flooding conditions; avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and*

*Millis Office*

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

*impact areas of the community beyond the site of flooding; prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding; eliminate new hazards to emergency response officials; and, limit the expansion of nonconforming single and two-family structures so as to prevent the exacerbation of existing problems with density and intensity of use.”*

Additionally, the proposed structure will meet all of the setback requirements for the PIOD thereby eliminating the non-conforming rear and side setback non-conformities, will reduce lot coverage over existing conditions to 16.3% thereby eliminating that non-conformity and will increase open space on the Property to 55.7% over the current condition of 35%. As noted in the reduction in lot coverage, the proposed structure is smaller in footprint than the existing structure and there is a reduction in at grade coverage overall. However, the proposed structure will increase the FAR to 28.9%. The proposed renovations will add 191 square feet over the allowed 25%.

A proposed increase in FAR is subject to review by the Newburyport Zoning Board of Appeals (“Board”), finding that the “change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood or the PIOD.” Ordinance § XXI-G(4)(a).

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 increase of over the allowed FAR by 191 square feet is “substantially more detrimental” to the neighborhood or the PIOD than the existing condition. Of note, and to reiterate, the actual lot coverage will be reduced in the proposed conditions by 5%. The size of the footprint of the home is reduced. Further, the entire structure will now meet the local wetlands requirements as well as the FEMA construction requirements. There will continue to be only 2 bedrooms. Importantly, while the 191 is an insignificant amount of square footage over the 25%, it has a very large impact on the livability of the home, given the relative small nature of the structure.

To determine whether the proposed change is substantially more detrimental than the existing nonconforming structure, the Board may consider conditions in the neighborhood generally, as compared to the subject lot upon which the changes will be made. See *Graf v. Akin*, Mass. Land Ct., 2018 WL 6738179 (2018). In *Graf*, the defendant sought a special permit to raze a one-story garage and replace it with a two-story structure; an immediate abutter objected. *Id.* at \*1. The zoning board found no substantial detriment to the neighborhood and the abutter appealed to the Land Court. *Id.* The Land Court judge determined that the zoning board correctly found that there was no substantial detriment, particularly where the board noted that the nonconformities were not unique to the defendant’s property and the objecting abutter’s own garage was within the side-yard setback. *Id.* Further, the proposal was compatible with garages and residences on the street and in the broader neighborhood. *Id.*

Here, the Applicant will be lifting the structure and making it compliant with the purposes of the Ordinance. The entire structure will meet all of the dimensional requirements of the Ordinance<sup>1</sup> – an improvement over existing conditions - but for the relief being sought. As you can see from the attached photographs, currently the 814 square feet of living space is quite small, and it goes without saying, that the structure does not meet the current wetlands or FEMA requirements. As you can see from the attached photographs, several of the homes in the area have started to convert to become compliant and more flood resilient – consistent with the purpose of the PIOD.

---

<sup>1</sup> Except lot area and frontage.

Based upon the foregoing, the Applicant respectfully suggests that the reconstruction and improvements to the structure resulting in an increase in FAR to 28.9% is not substantially more detrimental to the neighborhood or the PIOD given that the remainder of the dimensional requirements will be met and the structure will become FEMA compliant and resilient in accordance with the purpose of the PIOD.

Thank you for your time and consideration.

Respectfully submitted  
Windward Shall LLC  
By their Attorney

A handwritten signature in black ink, appearing to read "Lisa L. Mead". The signature is stylized with a large loop at the top and a long horizontal stroke extending to the right.

Lisa L. Mead

Attachment  
cc: client