

FINNERAN & NICHOLSON, P.C.
ATTORNEYS AND COUNSELORS AT LAW
30 GREEN STREET
NEWBURYPORT, MASSACHUSETTS 01950
(978) 462-1514
FACSIMILE (978) 465-2584
E-MAIL: CASES@FINNIC.COM
WEBSITE: WWW.FINNERANNICHOLSON.COM

December 20, 2017

Newburyport Planning Board
Attn: Bonnie Sontag, Chairman
60 Pleasant Street
Newburyport, MA 01950

Re: 11 Center Street DOD Special Permit
2016-SP-04
Request for Minor Modification

Dear Chariman Sontag:

I represent Paul and Doris Grillo in the above matter. This letter is in support of the request for Minor Modification which was submitted by Aileen Graf, AIA, along with amended elevations and floor plans. The proposal is to re-design parts of the proposed addition to remove 2 windows, remove the sunroom and build as a covered porch, remove the balcony and replace with a double hung 6/6 window and eliminate the 4 ½” jog in the foundation at the mudroom. None of these changes affect the existing structure.

The Petitioners have submitted this amendment as a Minor Modification rather than a new application requiring publication and notice. As you know, the Planning Board has broad discretion in determining whether to reopen a hearing for additional evidence and it has an inherent power to reconsider their decisions with or without doing so. See AJP Real Estate v. Planning Board of Edgartown, 81 Mass. App. Ct.1134 (2012) citing Stowe v. Bologna, 32 Mass. App. Ct. 612, 615 (1992). In the instant case, there is no compelling reason to reopen this special permit and, in fact, there are specific reasons to deal with this as a Minor Modification.

First, it was contemplated in the original permit decision that amendments to the plan might be made. The Planning Board – acting upon the recommendation in the Historical Commission Advisory Report – included a Special Condition #10 to address this issue. It reads as follows:

Modifications to Plans: Any changes to the approved plans must be submitted to the Office of Planning & Development in writing and (sic) approved by the Planning Board with additional advisory review by the Newburyport Historical Commission if the changes pertain to elements affected by the DOD Advisory Report submitted by the Historical Commission on 09/07/2016. (emphasis added)

In this case none of the proposed changes pertain to elements which the Historical Commission found to be important in their Advisory Report. The Advisory Report is very focused on the changes to the existing home, especially the installation of the shed dormers. It is also focused on keeping the addition as subservient to the existing structure as opposed to having it taller and/or larger than what exists. The Report indicates the Commission was in favor of the Petitioners' design because the dormers were setback from the line of the front gable and the ends are stepped in from the center so as to make them less visible from Center Street. There is no substantive discussion in the report relative to the design of the addition – other than to ensure it is smaller than the existing structure.

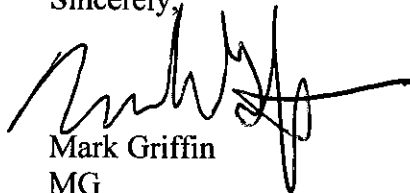
Accordingly, since the proposed plan changes do not affect elements which were the subject of the Advisory Report the Planning Board is free to exercise its discretion to treat this change as a Minor Modification.

Finally, where the changes will not be a substantive amendment which affects the original decision or which grants relief which is different from that originally granted the Planning Board can properly modify the permit without notice and hearing. See Huntington v. Board of Appeals of Hadley, 12 Mass. App. Ct. 710 at n.4 (1981).

For the aforementioned reasons the Petitioners request the Planning Board grant their request for a Minor Modification to change the plans as submitted.

Let me know if you have any questions.

Sincerely,



Mark Griffin
MG