

City of Newburyport Zoning Board of Appeals Application for a VARIANCE

Petitioner: Moseley Village Condominium Trust c/o Mark Griffin, Esq.

Mailing Address: 30 Green Street, Newburyport, MA 01950

Phone: 978-462-1514 Email: mark@finnic.com

Property Address: Moseley Place

Map and Lot(s): 72/12 Zoning District: R-II

Book and Page(s): 22323; 479

Owner(s) Name: Moseley Village Condominium

Mailing Address (if different): Same as above

The petitioner is requesting a Variance from section(s):
(Refer to the Zoning Determination form supplied by the Zoning Administrator)

- | | |
|---|--|
| <input type="checkbox"/> Dimensional Controls (VI) | <input type="checkbox"/> Parking (VII) |
| ___ Lot Area | |
| ___ Open Space | |
| ___ Lot Coverage | |
| ___ Height | |
| ___ Frontage | |
| | ___ Front Yard |
| | ___ Side Yard |
| | ___ Rear Yard |
| | ___ Lot Width |
| | <input type="checkbox"/> PIOD (XXI) |
| | ___ FAR |
| | ___ 2 ½ stories |
| | ___ Footprint expansion |
| <input checked="" type="checkbox"/> Modification of existing variance (please attach) | <input type="checkbox"/> Other: _____ |

Request:
Petitioners seek to amend an existing variance to eliminate condition 1.05 #5 relative to use of materials for parking and driveway areas.

All information contained within this application will become a formal part of the Zoning Board of Appeals proceedings and decision.

City of Newburyport Zoning Board of Appeals
Application for a VARIANCE

N/A - No Change to buildings

	Existing Dimensional Controls	Proposed Dimensional Controls	Required Dimensional Controls
Lot Area			
Frontage			
Height*			
Lot Coverage (%)**			
Open Space (%)***			
Front Setback			
Side A Setback			
Side B Setback			
Rear Setback			
Parking Spaces			
FAR****			

*Height is measured to *median* roof line.

**Total building footprint divided by the lot area expressed as a percentage.

***Area unoccupied by building, parking areas, or driveways expressed as a percentage of lot area. Pools, patios, and decks may be included in open space.

****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. 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, publication, 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 by the ZBA of this application as incomplete.

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


 for Mosely Village Condominium Trust.

CITY OF NEWBURYPORT, MA
ZONING DETERMINATION

APR# 2020-030

Name: Moseley Village Condominium Trust c/o Mark Griffin Esquire

Address: Moseley Place (72-12 -1/15) Zoning District(s): R2

Request: Modify condition of previously issued Variance regarding pavement material for driveway and parking areas.

ZONING BOARD REVIEW REQUIRED

Variance

- Dimensional Controls (VI)
 - Lot Area
 - Lot Frontage
 - Lot Coverage
 - Parking (VII)
 - Modification
- Open Space
- Height
- Lot Width

Sign Variance

- Signs (VIII)
 - Type
 - Lighting
- Front Yard
- Side Yard
- Rear Yard
- Size
- Location

Other

Special Permit

- Table of Use Regulations (V.D) #: _____
- Spacing (VI.D)
- In-Law Apartment (XIIA)
- Bonus for Multifamily Developments (XVI)
- Personal Wireless Communication Services (XX)
- Demolition Control Overlay District (XXVIII)*
- Wind Energy Conversion Facilities (XXVI)
- Other _____

Special Permit for Non-Conformities

- Extension or Alteration (IX.B.2)
 - Parking
 - Upward Extension
 - Open Space
 - Height
 - Lot Area
 - Use
 - Rear Yard
 - Lot Coverage
 - Side Yard
 - Lot Frontage
 - Front Yard
- Over 500 sf. increase (IX.B.3.c)
- Plum Island Overlay District (XXI-G)
 - FAR
 - Lot Coverage
 - Height
 - Setbacks
 - Open Space

PLANNING BOARD REVIEW REQUIRED

Special Permit

- Table of Use Regulations (V-D) # _____
- One residential structure per lot (VI.C)
- Open Space Residential Development (XIV)
- Water Resource Protection District (XIX)
- Federal Street Overlay District (XXII)
- Courts and Lanes (XXIII)
- Waterfront West Overlay District (XXIV)
- Towle Complex Redev. Overlay District (XXV)
- Downtown Overlay District (XXVII)*
- Other _____

Special Permit for Non-Conformities

- Extension or Alteration (IX.B.2)
 - Parking
 - Upward Extension
 - Open Space
 - Height
 - Lot Area
 - Use
 - Rear Yard
 - Lot Coverage
 - Side Yard
 - Lot Frontage
 - Front Yard
- Over 500 sf. increase (IX.B.3.c)

Smart Growth District (XXIX)

- Plan Approval

Site Plan Review (XV)

- Major
- Minor

HISTORICAL COMMISSION REVIEW REQUIRED

- Demo. Delay
- *Advisory Review

CONSERVATION COMMISSION REVIEW REQUIRED


Newburyport Zoning Administrator
Date: 03/09/2020

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

March 12, 2020

City of Newburyport Zoning Board of Appeals
Attn: Robert Ciampitti, Chairman
60 Pleasant Street
Newburyport, MA 01950

Re: Modification of Variance; 1-15 Moseley Place

Dear Mr. Ciampitti:

I represent the Moseley Village Condominium Trust (the "Trust") in the above matter. The Trust is the organization of unit owners for the Moseley Village Condominium. In that capacity the Trust is responsible for maintaining and repairing the common areas of the Condominium.

The original developer of the Condominium, Moseley Village, LLC, was granted a use variance to construct this multi-unit condominium development off of Moseley Avenue and Dorothy E. Lucey Avenue in or about 2002 (the "Variance"). The original variance was granted to allow a multi-unit use of the premises in the R-II Zoning District. This project also included two affordable units within it. The variance contained certain conditions associated therewith. In particular, Condition #5 of Section 1.05 of the Variance requires that "...textured paving or brick pavers should be used in the driveway and all parking areas within the site."

The driveway and parking areas constitute approximately 17,000sf of the site; this is a significant paving area primarily the layout and use of two "roundabout areas" to allow vehicles to turn around within the site. The original developer utilized textured paving for these areas. This material has not stood the test of time. I have included photos of the current state of the pavement; it is in deplorable condition and is in need of replacement. The dilemma faced by the Trust is that use of the materials in Condition #5 is not cost effective – especially in an association with two affordable units, which makes the Trust less able to incur significant special assessments.

The cost to maintain (not replace) the existing pavement is \$90,000 and this would provide for a 10 year life of the surface. The cost to retrofit the entire surface with brick pavers pursuant to Condition #6 would be approximately \$250,000. These costs and the benefits they provide are unreasonable to this community. The pavement itself is really only seen by the residents and their invitees as the units are set back from Moseley Avenue and the frontage is screened by trees. Accordingly, aesthetics do not seem like a sufficient reason to maintain this condition.

The Trust would like the flexibility to utilize traditional bituminous asphalt. This could be installed for the cost of \$60,000 but would provide a life of 20-25 years prior to replacement.

To that end, the Trust requests that the original Variance be modified in order to delete Condition #6 of Section 1.05 of the Variance.

Sincerely



Mark W. Griffin
MG

City of Newburyport

03/08/2020



160 0 80 160 Feet

1:960

Data Sources: Produced by Merrimack Valley Planning Commission (MVPC) using data provided by the City of Newburyport & MassGIS. MVPC AND THE CITY OF NEWBURYPORT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, RELIABILITY OR SUITABILITY OF THESE DATA. THE CITY OF NEWBURYPORT AND MVPC DOES NOT ASSUME ANY LIABILITY ASSOCIATED WITH THE USE OF THESE DATA.



Municipal Boundary	CFLROD	WWOD	Legend	B2	R2
Roads	DCOD	Water Resource Pn	Paved	B3	R3
Interstate	DOD	Zone A	Unpaved	GACM	WMD
Major Road	FSOD	Zone B	Hydrographic Feat.	HSRA	WMU
Local Road	IB-ROD	Zone C	Streams	HSRB	
Railroad	PIOD	Zone I	Stream	I1	
			Intermittent Str.		

City of Newburyport

03/08/2020



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Municipal Boundary	CFIROD	WWOD	Legend	B2	R2
Roads	DCOD	Water Resource Pk	Paved	B3	R3
Interstate	DOD	Zone A	Unpaved	GACM	WMO
Major Road	FSOD	Zone B	Hydrographic Featu	HSRA	WMU
Local Road	IB-ROD	Zone C	Sireams	HSRB	
Railroad	PIOD	Zone F	Stream	I1	
			Intermittent Str		

1 MOSELEY PL UNIT 1

Location 1 MOSELEY PL UNIT 1

MBLU 72/ 12/ 1/ /

Owner BERTRAND PAUL D

Assessment \$527,100

PID 102365

Building Count 1

Current Value

Assessment			
Valuation Year	Improvements	Land	Total
2020	\$527,100	\$0	\$527,100

Owner of Record

Owner BERTRAND PAUL D
Co-Owner BERTRAND ANN M T/E
Address 1 MOSELEY PL UNIT 1
 NEWBURYPORT, MA 01950

Sale Price \$425,000
Certificate
Book & Page 28902/0534
Sale Date 09/01/2009
Instrument 00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
BERTRAND PAUL D	\$425,000		28902/0534	00	09/01/2009
QUINLAN DONNA	\$436,389		25592/0123	00	03/31/2004
MOSELEY VILLAGE LLC	\$0		16927/0302		02/28/2001

Building Information

Building 1 : Section 1

Year Built: 2003

Living Area: 1,911

Building Attributes	
Field	Description
STYLE	Condominium
MODEL	Res Condo
Stories:	2
Occupancy	1

Interior Wall 1:	Drywall/Sheet
Interior Wall 2:	
Interior Floor 1	Carpet
Interior Floor 2	Hardwood
Heat Fuel:	Gas
Heat Type:	Forced Air-Duc
AC Type:	Central
Ttl Bedrms:	3 Bedrooms
Ttl Bathrms:	2 Full
Ttl Half Bths:	1
Xtra Fixtres	
Total Rooms:	7
Bath Style:	Modern
Kitchen Style:	Modern
Kitchen Grd	
Grade	Average +20
Stories:	2
Residential Units:	14
Exterior Wall 1:	Clapboard
Exterior Wall 2:	
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Cmrcl Units:	0
Section #:	0
Parking Spaces	0
Section Style:	0
Foundation	
Security:	
Cmplx Cnd	
Xtra Field 1:	
Remodel Ext:	
Super	

Building Photo



(<http://images.vgsi.com/photos/NewburyportMAPhotos/A01\00\45\08.jpg>)

Building Layout

BAS[1150]

FUS[761]

UBM[1060]

FGR[282]

FOP[40]

PTO[120]

(http://images.vgsi.com/photos/NewburyportMAPhotos/Sketches/102365_)

Building Sub-Areas (sq ft)			<u>Legend</u>
Code	Description	Gross Area	Living Area
BAS	First Floor	1,150	1,150
FUS	Upper Story, Finished	761	761
FGR	Garage, Attached	282	0
FOP	Porch, Open	40	0
PTO	Patio	120	0
UBM	Basement, Unfinished	1,060	0
		3,413	1,911

Extra Features

Extra Features				<u>Legend</u>
Code	Description	Size	Value	Bldg #
FPL1	FIREPLACE 1 ST	1 UNITS	\$3,200	1

Land

Land Use

Use Code 1021
Description CONDO

Land Line Valuation

Size (Acres) 0
Depth
Assessed Value \$0

Outbuildings

Outbuildings	<u>Legend</u>
No Data for Outbuildings	

Valuation History

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$499,800	\$0	\$499,800

02-045

Page 1 of 6

City of Newburyport Zoning Board of Appeals
Record of Proceedings and Decision for an Use Variance

CITY OF NEWBURYPORT
OCT 11 11 21 AM '02

An application for a: Use Variance

Establish seven (7) two-family units on one (1) lot.

Was filed by: Symes Associates, Inc.

50 Dodge Street

Beverly

MA

01915



For property owned by: Moseley Village, LLC.

The application was filed at the City Clerk's Office on: 5/17/02 under the Newburyport Zoning

Ordinance Section X-H.3 Powers of the Board and Sections: X-H-6. A.

The application is for the premises at: 70 Moseley Avenue

in the RII Zoning District, as indicated on the Newburyport Assessors Office as

Map and Parcel Numbers: 72/012 which is recorded in the Essex South District

Registry of Deeds as Book and Page Number: 16927/0302

The newspaper notices for the public hearing were posted on: 7/2/02 and 7/9/02

A public Hearing was held for the above application on: 10/1/02 at 7:15 p.m., at which time the

Zoning Board of Appeals heard the petition for a Use Variance. After the close of the hearing, upon motion

made by member Edward Ramsdell and duly seconded by Member Duncan LaBay

the Zoning Board of Appeals on: 01-Oct-02 voted to: Approval with Conditions

the petition for the Use Variance of: Symes Associates, Inc.

The following members present and voting and voting as follows with respect to the petition for an Use Variance.

Brian Clancy	<u>Yes</u>	Robert Ciampitti	<u>Yes</u>
Jeffrey Stone	<u>Absent</u>	Nancy Noyes, Associate	<u>Absent</u>
Edward Ramsdell	<u>Yes</u>	Duncan LaBay, Associate	<u>Yes</u>
David Tierney	<u>Yes</u>		

The motion having recieved the necessary two-thirds super majority vote, or all the members of the ZBA, in accordance with M.G.L. c.40A, s.10, as adopted, the petition for the Use Variance was therefore, Approved.

The decision was filed with the Newburyport City Clerk and sent registered mail to the applicant, and sent regular mail to the Parties in Interest and the abutting Municipalities on: 10/11/02

Undersigned [Signature] of the Zoning Board of Appeals.
Date: 10/11/02

A TRUE COPY ATTEST
[Signature]
John F. Moak, City Clerk
Newburyport, Massachusetts

City of Newburyport Zoning Board of Appeals
Record of Proceedings and Decision for an Use Variance

Certification of the City Clerk: I John Moak John Moak, City Clerk of the City of Newburyport,
hereby certify pursuant to M.G.L.s Chapter 40A, Section 11, that the decision for the property known
as 70 Moseley Avenue

was filed in the Office of the City Clerk on: 10/11/02 and that twenty days have elapsed after the
decision was filed and NO APPEAL has been filed.

John F. Moak

Date: Nov. 14 2002

Newburyport City Clerk

Pursuant to MGL's Chapter 40A, Section 11 this decision was filed in the Office of Planning and
Development on: 10/11/02

Appeals shall be made pursuant to M.G.L.'s Chapter 40A, Section 17 and filed within (20) twenty days
after the date of filing of this decision in the Office of the City Clerk.

A TRUE COPY ATTEST

John F. Moak
John F. Moak, City Clerk
Newburyport, Massachusetts

Page

City of Newburyport Zoning Board of Appeals
Record of Proceedings and Decision for an Use Variance

Notification of a Decision for an Use Variance

CITY
NEWBURYPORT
OCT 11 11 21 AM '02

Case # 2002 045

Property: 70 Moseley Avenue
Applicant: Symes Associates, Inc.
50 Dodge Street
Beverly

MA 01915

This letter confirms that the Zoning Board of Appeals decision to Approval with Conditions
the request for an Use Variance for the above property. The Use Variance was for the following:
Establish seven (7) two-family units on one (1) lot.

In accordance with the above, this letter will serve as a formal notification of the foregoing action of the Zoning Board of Appeals for this property. A copy of this letter, the record of the proceedings, findings, conditions and documents submitted with the application are on file at the City Clerk's office. This decision, record of proceeding, findings and conditions have been forwarded to the applicant.

Appeals of the Zoning Board of Appeals shall be made pursuant to M.G.L.'s Chapter 40A, Section 17 and filed within (20) twenty days after the date of filing. This decision was filed with the City Clerk on:

10/11/02

Undersigned [Signature]

, Newburyport Zoning Board of Appeals

Date: 10/11/02

A TRUE COPY ATTEST

[Signature]
John F. Moak, City Clerk
Newburyport, Massachusetts

City of Newburyport Zoning Board of Appeals
Record of Proceedings and Decision for an Use Variance

Findings for a Use Variance

Case # 2002 045

Property: 70 Moseley Avenue

Applicant: Symes Associates, Inc.

50 Dodge Street

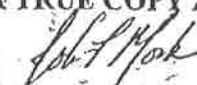
Beverly

MA 01915

After the Public Hearing in accordance with the criteria set forth in the City of Newburyport Zoning Ordinance Section X-H-6 Use Variance. The Zoning Board of Appeals finds as follows:

1. Circumstances ARE related to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but NOT affecting generally the zoning district in which it is located.
2. The literal enforcement of the provisions of this ordinance WOULD involve substantial hardship, financial or otherwise, to the petitioner or appellant.
3. Desirable relief, as granted, WILL be without substantial detriment to the public good and WITHOUT nullifying or substantially derogating from the intent or purpose of this ordinance.
4. Conditions and circumstances ARE unique to applicant's lot, structure or building and DO NOT apply to the neighboring lands, structures, or buildings in the same district.
5. Strict application of the Ordinance WOULD deprive the applicant 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.
6. The unique conditions and circumstances ARE NOT the result of actions of the applicant taken subsequent to the adoption of the Ordinance.
7. Relief, if approved, WILL NOT constitute a grant of special privilege inconsistent with the limitations upon other properties in the District.

A TRUE COPY ATTEST


John F. Moak, City Clerk
Newburyport, Massachusetts

City of Newburyport Zoning Board of Appeals
Record of Proceedings and Decision for an Use Variance

Conditions for a Use Variance Case Number: 2002- 045

Applicant Symes Associates, Inc.
50 Dodge Street
Beverly MA 01915

Property Moseley Avenue

The following conditions do not limit any other rights and remedies the City of Newburyport may have.

- 1.01 As a condition of the Use Variance, the petitioner shall record a certified copy of this Use Variance in the Essex South District Registry of Deeds and send a copy of such recording to the Zoning Board of Appeals.
- 1.02 As a condition of the Use Variance, the construction and or use of the premises shall conform to the following conditions, plans, and any revisions, as approved by the Zoning Board of Appeals. Approved plans shall bear the signature of a Zoning Board member and the stamp of the City Clerk indicating the date of filing of the plans with the decision.
- 1.03 This decision will lapse if the Use Variance is not exercised within one year.
- 1.04 No Use Variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the City Clerk of Newburyport, is recorded in the Essex South District Registry of Deeds, Salem, Massachusetts, and is recorded and noted on the owners's certificate of title, within sixty to ninety days after the filing with the City Clerk. The fee for recording or registering shall be paid by the owner or applicant.
- 1.05 As a condition of approval the following conditions are incorporated.
 1. A permanent conservation restriction is placed on the area shown on the submitted plans as a "no-cut" zone. Further, a management plan for fencing, general maintenance and use of the area should also be included.
 2. Other than removal of deadwood or for new tree planting, no work or disturbance shall take place outside the silt-fence and haybails or areas shown as included in the "no-cut" area. This area shall be marked and restricted for access prior to any earthwork on the property;
 3. Two (2) affordable housing units, as defined under the affordable housing statute MGL. 40B, shall be located within the existing and restored farmhouse;
 4. Natural materials should be used on the building exteriors to better match Newburyport's unique historic character and architectural style;
 5. As shown on the original design plans, textured paving or brick pavers should be used for the driveway and all parking areas within the site;
 6. A decorative fence less than 42 inches in height should be used where shown on the plans;

A TRUE COPY ATTEST


John F. Moak, City Clerk
Newburyport, Massachusetts

City of Newburyport Zoning Board of Appeals
Record of Proceedings and Decision for an Use Variance

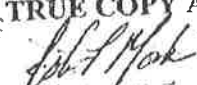
Condition 1.05 continued

7. At least twelve (12) white pines, at least 6 feet in height, should be added to each area shown on the plans as supplemental planting areas within the "no-cut" areas;
8. The Applicant shall provide the Planning Office with a detailed construction schedule and inspection fees required to hire an independent engineering consultant to monitor project construction. An on-site meeting shall be held with this consultant prior to work commencing on the project.
9. City Solicitor to review the Conservation Restrictive Covenant, the Management Plan and the Master Deed.

1.06: In accordance with the following plans and drawings, the Use Variance is approved:

1. Attachment A. Assumed lot # with minimum setbacks. Revised 09/23/02
2. Plans labels "Site Plan "Moseley Village" in Newburyport, MA Dated March 19, 2002; revised Septemebr 12, 2002 as drawn by Hayes Engineering. Pages 1 through 4.
3. Plans labeled "Project Moseley Avenue. Newburyport, MA" numbered as A-0.0, A-1.1, A-1.2, A-1.3, A-1.3.

A TRUE COPY ATTEST


John F. Moak, City Clerk
Newburyport, Massachusetts