

**City of Newburyport  
Planning Board  
June 7, 2023**

The meeting was called to order at 7:00 PM.

**1. Roll Call**

Planning Board Attendance: Alden Clark, Beth DeLisle, Bob Koup, Heather Rogers, Rick Taintor and Richard Yeager

Absent: Jamie Pennington

Planning Director Andy Port and note taker Caitlyn Marshall were also present.

**2. Public Hearings**

- a) Richard and Janet Bornemann c/o Lisa Mead, Mead, Talerman & Costa, LLC  
8 Avon Avenue  
Special Permit (PBSP-23-1)***

Attorney Lisa Mead was representing the owners of 8 Avon Avenue. Attorney Mead stated that the clients would like to create two single family homes on one lot. They need a special permit from board. They live in the R2 zoning district. There is a single family home on the property from 1869. There is frontage on Alberta and Avon. Frontage is primarily on Avon Avenue. It is conforming for lot area for a single-family home. Attorney Mead then went over data. She then proposed a two-story addition in the rear of the existing single family home and to add another single family home on the lot. She stated the front yard setback is pre-existing non-conforming. They will construct a new one and a half story single family home. She stated it met all of the two family lot requirements.

Aileen Graf from Graf Architects then stated the existing home is a two story saltbox. She proposed a small addition off rear of the home, taking on similar form as the main form saltbox. The addition supports the main living space. The addition will be similar in shape. The second structure proposed is a single story home that will create single floor living. It will be a cape like structure. Since it is a single story the footprint is enlarged. It is 18.5 feet in building height. They will use high quality materials, cedar shingles, double pain windows, etc. There will be a brick chimney down the center. She then went over the renderings. She stated most of the neighborhood has similar structures.

Attorney Lisa Mead stated the shed behind the garage would be removed. The structures in the neighborhood are larger than what is being proposed. She then went over the VI.C Special Permit requirements. Both structures comply with

setback requirements except for the non-conforming structure. They met criteria (a) and (b). She then stated the applicant would put in more vegetation if needed. Parking will be off street parking in both driveways. She stated it is not feasible to subdivide the lot. It does not have a historic data sheet, but the home was constructed in 1869 and adding a second unit would take away from saltbox structure. Keeping both structures of similar size serves the neighborhood better in massing and size. She also stated the applicants will do the donation of \$20 per square foot into the Affordable Housing Trust Fund. They have four letters of support on file.

Rick Taintor asked Aileen Graf to clarify on the image that seemed to show the peak of the new building being at the same elevation as the soffit of the existing building.

Aileen Graf stated the existing building is at 20.9 feet.

Rick Taintor then asked if the ridge of new building is at the soffit of the existing building.

Aileen Graf stated the existing ridgeline 23.4 feet. The new structure's ridge height is 23.2 feet on the front piece. The existing home sits closer to the street. The ridge may be in the same line vertically.

Richard Yeager asked if there was a historic structure there before?

Attorney Lisa Mead stated there may have been another structure based on the garage. There is no evidence of that. There is no Form B and it is not on district data sheets.

Public Comment opened.

Jim Kilroy of 6 Avon Avenue stated he already signed in support for this project. His only question was about the two-level retaining wall. He wanted to make sure it would not be disturbed.

Attorney Mead stated there is no work proposed on that side of the house. Nothing will happen to the retaining wall.

Tina Ross stated she lives across the street from 8 Avon Avenue. She stated even though it is not a historic house, this use to be a hunting ground in Newburyport. There are a lot of fir trees. She stated the applicants would be taking one of the fir trees down to put in asphalt parking. She stated the area is unique in character because of the old trees. She also stated she hates the parking. She then asked what are you asking the variance for? She stated she is trying to understand the VI.C ordinance. What is the variance now for?

Rick Taintor stated there is no variance being requested. The zoning ordinance provides a special permit process to allow two single-family structures rather than a two-family home. There can be two dwellings on a single lot. This provision allows this to happen.

Attorney Lisa Mead stated that DPS Director Wayne Amaral looked at the fir tree. He is worried about the tree and power lines. The applicants will plant another tree. The tree has to come down for an abundance of reasons.

Rick Taintor asked for clarification about what is shown on the plan as existing and proposed.

Richard Bornemann of 8 Avon Avenue stated that tree is leaning towards his house. He has already emailed a tree guy.

Megan Rowley of 2 Alberta stated the additional structure will fit in nicely. The natural buffer between the properties will stay intact.

Public Comment closed.

Rick Taintor stated he disagreed with Attorney Mead's interpretation with how to compute an average setback. He stated the board should decide what the ordinance means.

Director Port stated that the block is either referring to one side of street or both sides.

Rick Taintor stated there is an alternate plan presented with building moved a few feet closer to street.

Attorney Mead stated she has the alternate plan. She also has a letter with how it met other criteria.

Beth DeLisle stated she thinks the block can be the one side of the street. The existing structure needs to be included in the calculation of average setbacks. She has concerns about separate and distinct rear yards. She doesn't know the distance between the two structures.

Rick Taintor clarified. He asked for general thoughts about the plan. He asked if it is equally or more beneficial to the neighborhood.

Richard Yeager stated he liked the two single-family homes compared to a larger two family structure. He thought it was a good solution.

Heather Rogers stated that she agreed. She thinks it could remain where it is. If the structure came closer to the street it would be more crowded.

Alden Clark agreed. He stated he liked the design with the cape and building materials fitting in with the character of the neighborhood.

Bob Koup agreed two structures of this scale are vastly preferable to one large structure. He was confused by paragraph (b) criteria and how that applies. If there are reasons why the tree has to come down there should be some provision that a new tree be planted in front of the new structure.

Rick Taintor stated they should incorporate the existing building in the determination of average setback and make that part of precedence. He then stated the ordinance allows the board to be more restrictive than what the criterion says. The applicant proposed having a larger setback than the average. The proposed setback is 45.5. With his calculation the maximum setback is 35.6 feet. The conditions of approval would state that the Board requires the setback to be increased from 35.6 feet to 45.5 feet.

Bob Koup stated he thought that appropriate based on the site plan.

Beth DeLisle asked if they are relying on section (d)? Does this allow us to overrule?

Rick Taintor stated yes.

Beth DeLisle asked if they were not following 2 and subsection (a)?

Rick Taintor stated yes.

Beth DeLisle stated she didn't know that the language in section (d) allowed the board to not follow section 2 or (a).

Attorney Mead stated the board needed to read it consistent with the rest of the ordinance. She stated the provision tells them they don't have to comply with two family dwelling setbacks. An average plus ten feet can be done. There may be times where you don't want two structures at the front. It may be appropriate to not have it so far back. This provision was put in here to allow you to create a site plan that is appropriate for VI.C.

Rick Taintor then listed conditions to be included in the approval.

1. Construct new building as shown in architecture plans.
2. No increase in building height for the proposed structure.
3. No future subdivision of this lot.
4. Add a tree (conifer) as directed by DPS Director.
5. On the plan it says to show existing conditions, so that notation needs to be removed from plan.

Alden Clark made a motion to approve the special permit including the five conditions and requiring additional front setback as shown on the plan. Beth DeLisle seconded the motion. Five members voted in favor. One member voted against.

**Motion Approved.**

*During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.*

**3. General Business**

***a) Review draft recommendation – ODNC00141\_02\_27\_2023 Zoning Amendment Short Term Rental Units***

Rick Taintor asked the board how to proceed with the recommendation.

Beth DeLisle stated that in regards to the owner’s absence from owner occupied STRU, if they could call it 120-day absence allowance and not call it “non residency.” She stated they have not talked about eliminating owner occupied STRU where someone can be absent.

Rick Taintor stated the intent is to keep the 120 day absence allowance if they are only talking about the owner’s primary residence. If there is a second unit the owner would have to be there for a longer period of time. He then suggested changing the wording.

Bob Koup stated that in the previous versions of the amendment, all of them required the owner be present when the STRU was rented. This language says 120 days related to owner occupied. He suggested remaining consistent with previous proposals. In regards to the second unit on the same property, the owner should be present.

Rick Taintor stated that Bob Koup wants the absence allowance eliminated altogether. He stated he was not sure if everyone agreed with that. He tried to capture all points of view.

Bob Koup stated all of this needs to be looked at through the filter of the goals of the amendment, including minimum impact on the neighborhood. He suggested reinforcing the owner being present in real time.

Alden Clark stated that he agreed, but thinks a second building on lot is considered investor owned. If requiring owner to be present it is not like investor owned.

Rick Taintor stated that investor owned STRU is not allowed in that district.

Bob Koup discussed owner occupied STRU compared to investor owned STRU. He suggested a 120 days absence allowance for an owner occupied unit but eliminating it if they are renting out the second unit.

Rick Taintor asked if anyone strongly disagreed with Bob Koup's point?

Heather Rogers asked for clarification on renting the second unit for STRU.

Rick Taintor stated one STRU can be rented at any given time.

Heather Rogers stated if the renters of the STRU aren't there, who cares which STRU is rented.

Bob Koup referred to previous amendment proposal.

Heather Rogers stated if the owner leaves for 120 days no one is there.

Rick Taintor asked if there is a difference in leaving for 120 days and renting the second unit?

Alden Clark asked about licensing for specific STRUs.

Beth DeLisle stated a person could only get one license. She suggested to have someone available 24 hours a day for all different categories. A compromise could be 60 days. They are there most of the time.

Bob Koup referred to previous amendment again. He suggested including second structure on lot as investor owned. Owner occupied units only refer to units that are the owner's primary residence.

Rick Taintor stated that would be prohibiting an owner of a duplex in renting second unit in residential neighborhoods.

Bob Koup stated yes.

Heather Rogers stated that she is struggling because she does not see it as an investor unit.

Alden Clark suggested categorizing them that way but don't call them an investor owned unit so they don't get restricted in R2.

Bob Koup stated the goal is to protect the neighborhoods. He suggested limiting uses allowed in certain neighborhoods or in describing how they operate, the owner has to be responsible to neighborhood.

Director Port suggested saying there is still concern that remains in terms used and the extent in which the owner of the STRU can be away. Maybe have someone physically present to address concerns.

Rick Taintor stated they have lost something in categorizing everything as an owner occupied unit. We prefer the previous approach which is to look at the second unit on same lot differently.

Alden Clark stated that covers it. He suggested there must be an operator present.

Rick Taintor stated that gets into licensing.

Director Port brought up the idea of someone on property versus someone a call away.

Bob Koup stated that he previously sent information that addressed all of this.

Heather Rogers suggested looking at a property with two structures and then look at a single family. If this single family home goes vacant 120 days, both are unoccupied and unmonitored. She suggested language be put in that says upon 120 days a notification to abutters that says who is responsible to respond.

Rick Taintor stated that is a licensing issue.

Bob Koup stated he wants language added in that is more specific on parking.

Heather Rogers stated she is not a fan of the length of time this ordinance has dragged on and the level of emotion it has created in city. She thinks some neighborhoods would comply and yet there are neighbors who do not want this in their back yard. If a home is in full compliance, she suggested a "three strikes you're out" system.

Bob Koup stated the neighborhood needs to have input in the process. Wish it was not special permit process, but it is unfair to drop this into the middle of a neighborhood without any defined licensing or enforcement process. "Three strikes you're out" puts responsibility on neighbors.

Director Port suggested being clear there is concern from some members on board. He then asked how does the board define if there are too many STRU in a neighborhood? He suggested a special permit.

Rick Taintor said he would add another sentence to say other members support owner right of STRU.

Heather Rogers stated she was opposed to those sentences. Neighbors just don't want it.

Bob Koup stated neighborhood input is preferred. He is concerned about not having limitation of number of units in neighborhoods.

Rick Taintor brought up the issue of existing STRUs and the mixed opinions on the board.

Beth DeLisle stated she wanted wording changed.

Bob Koup stated if something is not a special permit process and it limits the number of STRUs on a block.

Rick Taintor stated this would mean that whoever is the first one in gets in. There is no other way than special permit.

Heather Rogers stated to go back to neighborhood input. She wanted to add in language to represent her view.

Rick Taintor added it in.

Bob Koup wanted to add in more language about abutter input.

Rick Taintor stated he would revise the memo and come back to it in two weeks.

Director Port stated the City Council wants to know the Planning Board's input as soon as possible, but they are currently working on budget.

***b) Approval of minutes***

- ***4/19/2023***
- ***5/17/2023***

Alden Clark made a motion to approve the April 19, 2023 minutes as amended. Bob Koup seconded the motion. Five members voted in favor. One member abstained.

Alden Clark made a motion to approve the May 17, 2023 minutes. Beth DeLisle seconded the motion. Four members vote in favor. Two members abstained.

***c) Other updates from the Chair or Planning Director***

No updates.



#### **4. Adjournment**

Alden Clark made a motion to adjourn. Heather Rogers seconded the motion. All members voted in favor.

#### **Motion Approved.**

Meeting adjourned at 8:59 PM

Respectfully submitted – Caitlyn Marshall