

**City of Newburyport
Zoning Board of Appeals
Online Meeting
January 11, 2022
Minutes**

1. Roll Call

Chair Robert Ciampitti called an online meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Mark Moore, Stephen DeLisle, Robert Ciampitti, Bud Chagnon and Ken Swanton and associate member Gregory Benik. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan, Zoning Administrator Jennifer Blanchet and Note Taker Gretchen Joy.

2. Public Hearings

22-24 Olive St LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

22-24 Olive Street

2021-044 - Special Permit for Non-Conformities

Mr. DeLisle recused himself from the matter. Lisa Mead and Ernie DeMaio represented the applicant. Since the previous hearing, an adjustment has been made to the proposal for parking. The parking area on Russia Street and its curb cut would be removed. The only curb cut on that street would be near the center of the building. A parking area on Olive Street would be enlarged for tandem parking.

Attorney Mead said that except for lot area and the Olive Street setback, which would not change, the proposal meets all dimensional requirements. She said the addition would be smaller than the existing structure and would be setback from it. It would not be within 25 feet of any lot line, which is better than the conditions on most properties in the neighborhood. She said no new non-conformities would be created and the addition would not be substantially more detrimental to the neighborhood than the existing conditions. The property would have more open space than other lots in the neighborhood. She said massing must be considered with regards to lot size. The lot is one of the largest lots in the neighborhood. While the non-conforming lot line is 70% of that which is required for two-family use, only two properties in the neighborhood are more conforming. The property at 20 Olive Street is 33% of that which is required. She said that according to the objective requirements of the standards and the ordinance, the proposal would not be significantly more detrimental than the existing conditions when compared to the existing structure and the neighborhood.

The hearing was opened to comments from the public. William Sheehan said he represents Carol Zamproga. He said some Board members had previously commented that the addition would be too large. He expected that the applicant had requested a continuance to address the comments of the neighbors, but this was not done. The lot is too small for a two-family structure, too close to Olive Street and too close to his client's house. He said the proposal is not for an addition, but rather for a second single-family house.

Mary Beth Pelletier, 11 Olive Street, said the proposal would substantially change the neighborhood, which was settled by the working class. The footprint of the structure would nearly double. A visual mass would be added that would be close to that of the existing home. There would be two large, two-story structures on a single lot.

Amy Badger, 21 Olive Street, said the neighborhood was settled in the 1700s and 1800s and the zoning ordinance is much more recent. The applicant has made very few changes to the

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proposal and is attempting to wear down the neighbors, as the NHC was worn down. The change in the proposal for parking would worsen the problem.

Heyward Adams, 18 Olive Street, said he agrees with the comments of the other neighbors. In the past, he has supported modest additions to other structures. The proposed expansion is not in keeping with the other modest neighborhood improvements.

Carol Zamprogna, 20 Olive Street, said the neighbors are looking for a more modest proposal. A 1,900 square foot addition would be too large.

Elizabeth Hallett, 23 Olive Street, said she agrees with the neighbors who have spoken. She is disappointed that no changes have been made to the size of the addition, which would be a separate dwelling and would be detrimental to the neighborhood.

Jim McCarthy, 17 Russia Street, spoke in favor of the project. He said it would comply with the requirements of the zoning code for light and air. The proposal was improved through the process with the NHC. The addition was made smaller and lower than the existing house and it respects the historic structure. He said the proposal would be better than the alternative of a large, single-family structure with a three-car garage, which could be done by right. He said the process has worked. The addition would not be out of scale with the neighborhood.

Micah Donahue, 16 Olive Street, said the zoning ordinance has been changed to address past mistakes that were wrong for the neighborhood. A reasonable compromise would be a 1,000 square foot, one-story addition that would not overwhelm the lot and would not block light and air.

Tom Kolterjahn, 64 Federal Street, said the Preservation Trust continues to oppose the application in its current form. The applicant has not changed the proposal, which would have a detrimental impact on the neighborhood. The size of the proposal should be substantially reduced. The public comment was closed.

Mr. Ciampitti asked Jennifer Blanchet if the addition could be constructed for single-family use with only a building permit as long as the lot size and setbacks are conforming for that use. Ms. Blanchet responded that she would reserve the right to review the figures, but it would appear that an addition with this form could be constructed with a building permit, as long as it would not extend any of the existing non-conformities.

Mr. Moore asked about the function of the hyphen. Attorney Mead said there would be living space on the second floor of the hyphen for the new unit. A common vestibule and living space for both units would be on the first floor.

Mr. Swanton asked if changes had been made to the proposal other than for parking. Attorney Mead said the change to the parking is the only change that has been proposed. Mr. Swanton said the applicant intends to remove the fence to improve the sight lines. He asked if a new fence could be installed in the future. Attorney Mead said one could be as long as a condition would not prohibit it.

Mr. Moore said that while no new conformities would be created, the size, scale and massing continue to be a problem for him. The hyphen would be a connector between two separate buildings.

Mr. Swanton said he agrees with Mr. Moore. He made his comments at the previous hearing and the applicant has not changed the proposal. Mr. Chagnon said he is concerned about the overwhelming lack of support from the neighbors. Mr. Benik said the lot is significantly

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undersized for two-family use. He said the addition of 1,800 square feet would be detrimental to the neighborhood.

Mr. Ciampitti said that while he is moved by the comments of the neighbors, the standard that the proposal must be substantially more detrimental to the neighborhood than the existing conditions is a high one.

The applicant requested to withdraw the application without prejudice. Mr. Moore moved to accept the request to withdraw without prejudice the application for 22-24 Olive Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Alfred G. Clifford
156 State Street
ZNC-21-4 - Special Permit for Non-Conformities
ZSP-21-1 - Special Permit

Mr. DeLisle recused himself from the matter. William Sheehan represented the applicant. He said the existing use has been established as light manufacturing, as opposed to the retail/trade use that was specified in the original application. The requested relief no longer includes a Variance.

The applicant is proposing to demolish the existing non-conforming commercial structure and replace it with a new four-unit multifamily dwelling with an accessory structure. The property is in the B-1 district. It is non-conforming for lot area, lot coverage, frontage, side-yard setbacks and rear-yard setback. The existing commercial use is not permitted in the district.

Four of the existing non-conformities would be eliminated. The lot coverage would be improved to 40%, one side-yard setback would be improved to 29.6 feet, the second side-yard setback would be improved to 10.3 feet and the rear-yard setback would be improved to 20 feet. The proposal would reduce the two remaining non-conformities. The existing frontage is 90 feet, where 120 feet is required for multifamily residential use and 200 feet is required for light manufacturing. The lot area is 16,764 square feet, where 20,000 square feet is required for multifamily residential use and 50,000 square feet is required for light manufacturing.

A stormwater management plan has been designed according to the recommendations of the City Engineer. The runoff from the roof and driveway will be diverted into the City stormwater system.

The project will have 6,497 square feet of open space, of which 5,013 square feet will be grass. Trees and shrubs will be planted along the property line and a new fence will be added for privacy. The applicant will work with the abutters on the placement of the screening materials. The existing boundary trees would all be preserved. A brick sidewalk would be installed along State Street.

The proposed project would have a density of 4,191 square feet of land per unit. Mr. Clifford said that of the four-unit multifamily structures in the city, 87% have less than this amount. The average density of four-unit multifamily structures is 2,218 square feet of land per living unit. The Smart Growth Overlay District, which allows a density of 2,000 square feet of land per dwelling unit, begins across the street from the property. On lower State Street, 61% of the properties are multifamily and 90% of the frontages are non-conforming.

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Changes were made to the plans based on the concerns of the neighbors. The third-floor dormer on the rear unit was eliminated, reducing the square footage of the unit. No windows from this unit would look towards 162 State Street.

Attorney Sheehan said no new non-conformities would be created and the project would not be more detrimental to the neighborhood. The existing use is not permitted in the district. The project would be in keeping with the neighboring homes. The issues of drainage and privacy have been addressed. Sufficient parking would be provided. The project would not impact traffic or pedestrian safety. The footprint of the building would be 6,761 square feet, which is smaller than the 7,600 square foot existing structure. The building would be the same height as 162 State Street and would be lower than 152 State Street.

The hearing was opened to comments from the public. Linda Dolmatch, 152 State Street, Unit 1, said the fourth unit would create too much density and would impact the privacy of the abutters. Three units would be better.

Gary Hojell, 152 State Street, Unit 2, said the structure and pavement would take up most of the property and the owners of the units would likely want to have patios. He estimates the proposed coverage would be 70% and the natural drainage would be reduced by 45%. The density and proximity of the units would create a loss of privacy and light.

Ann Marie Vega, 162 State Street, Unit 2, said the properties in the immediate neighborhood are substantially less dense. She said the Board should not consider the applicant's financial concerns. The proposal would have a substantial impact on the abutters. She is concerned about privacy, especially on the second floors of the neighboring homes.

Roy Bean, 162 State Street, Unit 1, said he is also concerned about density. The density of the four-unit proposal would be .1045 acres per unit, while the density of a three-unit development would be .139 acres per unit. This would be more in keeping with the other properties in the neighborhood. He also has concerns about privacy, especially on the second floors of the abutting units.

Jim McCarthy, 17 Russia Street, said he supports the project. It would have the appearance of other properties on the street. The frontages would be more consistent, which would improve the streetscape. The residential use would be excellent for the area, as the rotary will in the future become a village center.

Corey Prince, 152 State Street, Unit 3, said he is happy with the accommodations that have been made but he remains concerned about density. He said the ridges of the structure would create a solid line. The property is not in the SGOD.

Thomas Pelsue and Barbara Oswald, 158 State Street, said they support the change to residential use. They like the architecture of the proposal and that a brick sidewalk would be installed. They said, however, that the project does not have any support from the direct abutters. The fourth unit would create too much density. The public comment period was closed.

Mr. Moore asked about the material of the driveway, which would be asphalt. He also asked if there would be any variation in the roofline of the building. Mr. Clifford responded that the area between the gables would be lower. He also said that the property is a unique one, with a high front-end cost. Three units would not be economically viable. He said he could sell the property to one of the commercial interests he bid against to buy it.

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Mr. Swanton said the neighbors do not object to the multifamily use but are concerned about density. It appears the property would be denser than the others in the neighborhood. Mr. Clifford responded that the other properties are not similar. The single-family house at 168-170 State Street was converted to three condo units and has a large backyard. At 152 State Street, the back three units are in the R-2 district and were built on Cherry Street. He provided the density for other townhouses in Newburyport. Mr. Swanton said a comparison should be made to the structures in the neighborhood, not townhouses in other parts of the city.

Mr. Chagnon asked about the height of the structure. The highest ridge height would be 29.8 feet and the highest eave height would be 19.6 feet. Mr. Clifford said that except for the end unit, the height would be like that of a standard two-family home.

Mr. Benik asked if concrete could be used instead of asphalt. Mr. Clifford said he would consider it. The exterior of the structure would be maintenance-free composite materials.

Mr. Moore said the drainage issue has been addressed and changes have been made in response to concerns about privacy. The proposal would improve some non-conformities. He said he is not concerned about density. The lot is large and there are buffer zones. Multifamily use is desirable. The size and massing would not be detrimental to the neighborhood. The proposal would result in a negligible impact to traffic and would not overload city systems. It would not impair the character of the district, where multiple uses already exist.

Mr. Swanton said he does not have an issue with the multifamily use but he is concerned about massing. The proposal would be denser than other properties in the neighborhood and the abutters think it would be too dense.

Mr. Chagnon said he does not think four two-story units would be much denser than the existing neighborhood. He does not think eliminating the fourth unit would make a difference. He said the style of the building is tasteful. He appreciates that changes were made to the plans for screening in response to comments from abutters.

Mr. Benik said he agrees with Mr. Moore and Mr. Chagnon. The proposal would not be detrimental to the neighborhood and he would support it.

Mr. Ciampitti said he appreciates the concerns of the abutters. The proposal might be more detrimental for some abutters with regards to their views and privacy. He said he would support the proposal if the applicant were to agree to further address the privacy issues. He would like the applicant to submit a revised landscape plan.

Mr. Clifford said he would be willing to work with the abutters and to improve the plan with additional fences and plant materials, but he would be opposed to providing a revised plan for review at a future meeting. Mr. Moore said consideration should be given to additional screening around the end unit. Mr. Benik said he would like the applicant to return to the next meeting with a revised plan, while Mr. Chagnon said the existing plan is sufficient. Attorney Sheehan said the applicant will endeavor to work with the abutters to improve the planting plan.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 156 State Street with the conditions that the applicant shall submit to the City Engineer for approval a grading design for the driveway, parking and walkways that is consistent with the Newburyport Stormwater Management Ordinance prior to the issuance of a building permit and the applicant shall agree to address additional screening concerns as they arise. Mr. Chagnon seconded the

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motion. The motion was approved by a 4-1 vote (Mr. Moore, yes; Mr. Swanton; no; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Mr. Chagnon moved to approve a Special Permit for Use #103 for 156 State Street with the conditions that the applicant shall submit to the City Engineer for approval a grading design for the driveway, parking and walkways that is consistent with the Newburyport Stormwater Management Ordinance prior to the issuance of a building permit and the applicant shall agree to address additional screening concerns as they arise. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

**David and Patrice Antczak c/o Lisa Mead, Mead, Talerman & Costa LLC
161 Water Street**

ZNC-21-12 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to construct a second story over a one-story addition that the Board approved at the June 22, 2021, meeting. The structure was built in 1875 and is located in the WMD and the DCOD. The property is non-conforming for frontage, lot size, front setback, one side setback and height. The addition would upwardly extend the west side setback, which is 5.1 feet where 10 feet is required.

Attorney Mead said that due to the high cost of construction, the applicant decided it would be economically efficient to add a second story. She said no new non-conformities would be created and the addition would not be detrimental to the neighborhood. The addition would be minimally visible from Water Street and would be subservient to the historic structure. It would be lower in height and narrower in width than the existing structure.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle asked if the application would trigger the DCOD. Attorney Mead said that the application must be considered together with the previous one. A larger portion of the rear wall would be removed, but the project would remain under the threshold for a DCOD Special Permit even when considered as a single addition.

Mr. Chagnon asked about the size of the addition. Attorney Mead responded that 315 square feet would be added on each of the floors.

Mr. Moore said the addition would be modest and subservient to the existing structure. He has no concerns about its size, scale or massing.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 161 Water Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton; yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

**Cavan and Nancy Dunn c/o Lisa Mead, Mead, Talerman & Costa LLC
3 O Street**

ZNC-21-10 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to construct an addition to a non-conforming single-family three bedroom house. The property is in the R-3 district, the AG/Con district and the PIOD. It is non-conforming for front-yard setback.

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The applicant is proposing to change the existing flat roof over the two-story section of the structure to a pitched roof. A second-story screened porch would be added over the roof of the existing one-story section. The indentation in the shape of the structure would be filled. The living area would be increased 497 square feet within the confines of the existing footprint. The front-yard setback non-conformity would be upwardly extended. The other dimensional requirements remain conforming. The FAR would increase from 15% to 17%.

No one from the public spoke in favor of or in opposition to the application. Mr. Moore asked about the addition of piles. Mr. Brown said three new piles would be added to support the deck and stairs.

Mr. Swanton said the lot is a large one and the proposal would remain under the FAR requirement. Mr. DeLisle said the proposal would nicely update the structure. Mr. Moore said the change would be a good one. No new non-conformities would be added. The proposal would not be more detrimental to the neighborhood than the existing conditions.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 3 O Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Patrick and Jessica Murray c/o Lisa Mead, Mead, Talerman & Costa LLC

17 Turkey Hill Road

ZNC-21-11 - Special Permit for Non-Conformities

Lisa Mead and Aileen Graf represented the applicant, who is proposing to add a second story to a split-level home that was constructed in 1979. The footprint would not change. The height of the roof would increase from 16.1 feet to 22.1 feet. The proposal would add 1,029 square feet of living space. The property is a corner one and has two front yards for zoning purposes. The primary front yard is on Henderson Circle. The property is non-conforming for primary front yard setback, secondary front yard setback and rear yard setback. The rear yard setback non-conformity and both front yard setback non-conformities would be extended.

Attorney Mead said no new non-conformities would be created. The proposal would not be detrimental to the neighborhood, which is in transition and is made up of homes of a mixture of sizes and styles. Many two-story homes exist on Henderson Circle. Additions have been made to many houses on Turkey Hill Road and several split-level structures have been converted to two stories. The house would not be the largest or the smallest in the neighborhood.

No one from the public spoke in favor of or in opposition to the application. Mr. Swanton said there are many two-story structures in the neighborhood. Mr. Moore said the proposal would not be detrimental in terms of size, scale or massing. Mr. Ciampitti said the proposal meets the criteria and would be beneficial to the neighborhood.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 17 Turkey Hill Road. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

3. Business Meeting

a) Minutes

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Mr. Swanton moved to approve the minutes of the December 28, 2021, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

b) Updates from the Chair and Planning Director

A review of 40B rules and regulations and a discussion of a proposed fee increase were tabled. Mr. Ciampitti said the City Council is considering a new ordinance for short term rental units that would require both a license from the Licensing Commission and a special permit from the ZBA. The Planning Board intends to strongly urge the City Council to require only a license. Mr. Ciampitti said an extremely lengthy amount of time would be needed to review permit applications for the city's 158 short term rental units. The Board members were in agreement with his opposition to the requirement of a special permit. He will convey the sentiments of the Board to the City Council.

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 11:11 p.m. Mr. Moore seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).