

**City of Newburyport  
Zoning Board of Appeals  
Online Meeting  
January 12, 2021  
Minutes**

**1. Roll Call**

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

**2. Public Hearings**

**Michael Gray**

**12-14 Harrison Street**

**2020-067 – Appeal**

Attorney David Mack represented the applicant and requested a continuance to February 23. Ms. Webb moved to continue the Appeal to the February 23, 2021, meeting. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes; Mr. Chagnon, yes).

**Michael Shea/Figtree Kitchen Baker**

**3 Liberty Street**

**2010-084 – Variance**

Mr. DeLisle recused himself from the discussion. The applicant requested to withdraw the application. Ms. Webb moved to approve the request to withdraw the application without prejudice. Mr. Swanton seconded the motion. The motion was approved by a 4-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes).

**Windward Shaw LLC, c/o Lisa L. Mead, Mead, Talerman & Costa, LLC**

**68 Middle Street**

**2020-086 - Dimensional Variance**

Lisa Mead represented the applicant, who is seeking a Dimensional Variance for a two-car garage. She said the applicant wishes to move forward with the Variance request, despite having received a determination from the Zoning Administrator that it would not be needed. She said the applicant intended to withdraw the request but is concerned about the potential consequences of a discussion of the interpretation of the Ordinance. Andy Port said any such discussion would not delay this project, but the Planning Office does not object to the course of action the applicant wishes to follow.

Attorney Mead said the setbacks of the garage would be 3.5 feet and 3.9 feet, where 6 feet is required. The lot is narrow and oddly shaped. It slopes down at its rear and the garage would function as a retaining wall. The applicant had originally proposed to convert the main structure to three-family use, but reduced the number of units to two to appease the neighbors. She said the reduction in the number of units without the addition of the garage would create a financial hardship for the applicant. She said the plan has support from the direct abutters.

City of Newburyport  
Zoning Board of Appeals  
January 12, 2021

The hearing was opened to comments from the public. Fred Neidhardt, 70 Middle Street, said he supports the request. The applicant and neighbors worked hard to reach a compromise plan. Stephanie Niketic, 93 High Street, thanked the applicant for proceeding with the request and said she supports it.

The Board members discussed the project at length at the previous meeting and had few comments. Mr. DeLisle said the lot has a very odd-shape and the applicant would be deprived of the use of the square area at its end. A special privilege would not be granted because there are many accessory structures on Middle Street. Mr. Swanton said the proposal would help the neighbors and the city at large.

Mr. DeLisle moved to grant the Variance to the extent that it is needed. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**Elisa Bovee**

**6 Caldwell's Court**

**2020-087 - Special Permit**

The applicant is proposing to construct an in-law apartment above an existing garage. No changes would be made to the exterior of the structure. The interior has been framed but must be completed in order to be livable. The in-law apartment would be 627 square feet and would be occupied by the father of the applicant. There is room on the property for five cars and no changes are being proposed for the driveway. The proposal would not trigger the Tree and Sidewalk Ordinance.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said the apartment would not exceed the 900 square feet allowed and would be occupied by the applicant's parent. The amount of parking is sufficient. Ms. Webb said this type of housing is needed in the city. It would not impact traffic or overload the municipal systems. It would be compatible with the character of the neighborhood and would not impair the integrity of the district. Mr. Swanton said the garage is not visible from the street.

Ms. Webb moved to approve the Special Permit for 6 Caldwell's Court. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**Nicholas Piraino**

**21 Goldsmith Drive**

**2020-088 - Special Permit**

Ms. Webb recused herself from the discussion. Lisa Mead represented the applicant, who is proposing to renovate the first floor of an existing single-family house in order to create an in-law apartment that would be occupied by the owner's parents. The alterations would take place entirely within the existing structure and would have no impact on its dimensions. A bedroom, bathroom and a kitchen would be constructed. One parking space would be added to the right of the driveway. The garage doors would be removed and replaced by a door and a window. The gross floor area of the in-law apartment would be 651 square feet. The remaining area of the basement totals 212 square feet. The two direct abutters have submitted letters of support.

City of Newburyport  
Zoning Board of Appeals  
January 12, 2021

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said the proposal would be a good use of the existing structure. Mr. Swanton said the applicant has met the findings for a Special Permit.

Mr. Swanton moved to approve the Special Permit for 21 Goldsmith Drive. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Mr. DeLisle, yes; Mr. Chagnon, yes).

**Richard Morrill c/o Lisa Mead, Mead, Talerman & Costa, LLC**

**22-24 Oak Street**

**2021-089 - Dimensional Variance (Lot 1)**

**2021-090 - Dimensional Variance (Lot 2)**

Lisa Mead represented the applicant, who is proposing to split two merged lots into two separate lots in a new configuration. No changes would be made to the existing house, which would be located on Lot 1. A new single-family house would be constructed on Lot 2. The existing lot is 14,787 square feet. It is located in the R-2 District, where a minimum of 10,000 square feet of lot area is required. The proposed Lot 1 would be 6,889 square feet and Lot 2 would be 7,898 square feet. A Variance for lot area would be required for each lot. A Variance would be required for Lot 1 for front-yard setback, although no changes would be made to the structure. The existing setback is 7 feet where 25 feet is required. The proposed structure on Lot 2 would be non-conforming for front and rear yard setbacks, a condition that would also require a Variance.

Attorney Mead said the size of both proposed lots would be comparable to others in the neighborhood. She displayed information on the sizes of lots along Beacon Avenue. She said the existing lot is oddly shaped, and the two new lots would be as well, although they would be more uniform than the existing conditions. She said the odd shape would not be the fault of the applicant and would provide the basis for a hardship. She said the Variance would also provide a relief from financial hardship for the applicant. The house on Lot 2 would be occupied by his daughter. The applicant wishes to age in place. The splitting of the lot would help him remain financially independent and his daughter would be close by to provide assistance when he needs it.

Attorney Mead provided information on the history on the property. The applicant purchased the lot with the house in the 1960s and the lot along Beacon Avenue at a later date. She said that when the zoning was changed from R-3 to R-2, one of the lots would have been non-conforming. The two lots were merged for zoning purposes at that time because they were owned by the same person. Each lot has a separate deed and they remain as two tax parcels.

Attorney Mead said the proposal would not derogate from the purpose of the Ordinance and would not be detrimental to the neighborhood. The single-family use of both lots would be consistent with the neighborhood. The sizes of the two lots would also be consistent with others in the neighborhood. The lots would not be the largest or smallest on the street. The applicant submitted five letters of support from neighbors.

No one from the public spoke in favor of or in opposition to the application. Ms. Webb asked for information on the size of the lots along Oak Street. Attorney Mead said she did not gather this information, but they appear to be larger than the lots on Beacon Avenue. Mr. Swanton asked if the house on Lot 2 could be designed in such a way that a Variance would not

City of Newburyport  
Zoning Board of Appeals  
January 12, 2021

be required. Attorney Mead said the proposed house is of a standard size, which would be the most economical to construct. She said the applicant would be willing to reduce the size of the house to meet the setback requirements. Mr. Chagnon asked if the splitting of two tax parcels would result in the creation of four lots. Attorney Mead explained this would not be the case. She said the role of the ZBA is to approve the dimensions of the lots. The Planning Board would be responsible for approving an ANR plan.

Andy Port questioned if the applicant has proved a hardship. He also said the Planning Office is concerned about the precedent that would be set by the approval of the request to split the lot into two undersized ones. Attorney Mead said the decisions of the Board do not set precedents, although she and other attorneys often attempt to argue that they do. She said each application is unique and judged on its own merits. The decision would not be precedent setting.

Mr. DeLisle said the purpose of downzoning is to create less density. He is not convinced that the applicant would be able to meet the four parts of the Variance test. Ms. Webb said the City Council downzoned the district to prevent increased density. The proposal does not meet zoning requirements. The two lots would be significantly undersized. She does not see that a hardship exists. Mr. Swanton said he is concerned about the number of similar requests that could be made throughout the city. He questioned the need for zoning if proposals that do not meet its requirements are approved. Mr. Chagnon said he is also concerned about the creation of two undersized lots and the non-conformities proposed for Lot 2.

Attorney Mead asked for a continuance in order to provide the Board with additional information. Mr. DeLisle moved to continue the public hearing to the January 26, 2021, meeting. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**18 Strong Street LLC c/o Peter Zanni, Manager**

**18 Strong Street**

**2020-091 - Special Permit for Non-Conformities**

The applicant is proposing to add a second floor to a single-story 8' x 15' addition to a non-conforming structure. The structure is non-conforming for the rear-yard setback. The non-conformity would be upwardly extended. The footprint of the structure would not be changed. The roof, trim and siding of the addition would match the existing materials. The application would not trigger the Tree and Sidewalk Ordinance. Letters of support were received from several neighbors.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said the application would not create any new non-conformities.

Ms. Webb moved to approve the Special Permit for Non-Conformities for 18 Strong Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**3. Business Meeting**

**a) Minutes**

Mr. Swanton moved to approve the minutes of the December 8, 2020, meeting. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

City of Newburyport  
Zoning Board of Appeals  
January 12, 2021

**b) Review of Draft Decisions**

**12-14 Harrison Street (written approval)**

Ms. Webb moved to approve the draft decision for 12-14 Harrison Street as written. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**68 Middle Street (2020-053)**

Mr. Chagnon moved to approve the draft decision for 68 Middle Street as written. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**32 Franklin Street (2020-081 and 2020-082)**

Mr. Chagnon moved to approve the draft decision for 32 Franklin Street as written. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

Ms. Webb moved to adjourn the meeting at 9:10 p.m. Mr. Swanton seconded the motion. The motion was unanimously approved.

Respectfully submitted,  
Gretchen Joy  
Note Taker