

**City of Newburyport
Zoning Board of Appeals
Senior Community Center
January 23, 2024
Minutes**

1. Roll Call

Vice Chair Ken Swanton called a hybrid meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Ken Swanton, Bud Chagnon, Stephen DeLisle and Gregory Benik. Associate member Lynn Schow attended remotely. Rob Ciampitti was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

**a) Matthew and Kayleigh Withington c/o Lisa Mead, Mead, Talerman & Costa LLC
1R Horton Street**

ZNC-23-29 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to construct a one-story addition on the side of an existing two-unit condominium building in the R2 district and the DCOD. The property is non-conforming for lot area, frontage, front-yard setback, both side-yard setbacks and lot coverage.

The public hearing was continued from the November 28, 2023, meeting, at which time the Board members had expressed their concerns about the proposed setback and lot coverage. The left side-yard setback would have decreased from 9.8 feet to 1.8 feet. The lot coverage would have increased from 30.5% to 34.2%.

The applicant revised the plans based on the comments from the Board. The addition was moved away from the side-yard boundary and was shifted towards the rear property line. The proposed left side-yard setback was improved to 3.1 feet. The proposed lot coverage was decreased to 33.3%. The addition was moved as far as would be possible from the side-yard property line without creating a rear-yard setback non-conformity.

Attorney Mead said the Fire Department and Building Inspector reviewed the plans and neither had concerns. She said the Board's public safety issues have been addressed. It is not unusual in the South End for structures to be close to the property line. The 156 square-foot addition would allow the applicant to have a dining room table on the first floor of the unit.

Mr. Chagnon said no new non-conformities would be created. The applicant listened to the comments of the Board. The increase in lot coverage would not be as great as had been originally proposed. The addition would now be acceptable.

Mr. Benik said the applicant addressed the safety concerns of the Board. The proposal would not be more detrimental to the neighborhood than the existing conditions. The neighborhood is dense and the addition would not be out of character.

Mr. DeLisle said the proposed lot coverage was reduced a little to 33.3%. He said he would now be more inclined to support the proposal than he had been at the prior meeting, but it is still a tough application.

Ms. Schow said she appreciates the effort the applicant made to address the Board's concerns about safety.

Mr. Swanton said the South End is dense. While many older houses are not far from their lot lines, this is new construction. It is rare for the Board to receive applications in which a non-conformity would be intensified. He is concerned that if the Board were to approve the

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intensification, others in the already dense neighborhood would want to do the same. He said the applicant has taken a step in the right direction, but he still is reluctant to support the proposal.

Mr. Benik moved to approve a Special Permit for 1R Horton Street. Mr. Chagnon seconded the motion. The motion failed by a 3-2 vote (Mr. Swanton, no; Mr. Chagnon, yes; Mr. DeLisle, no; Mr. Benik, yes; Ms. Schow, yes).

b) Matt Healey

87 High St

ZSP-23-7 - Special Permit for Non-Conformities

The Board voted at the previous meeting to hire a consultant. This has been done, but the report will not be ready until next month and the hearing will be continued. The public hearing was opened.

Lisa Mead represented the applicant. She said she opposes the Board discussing the matter at the January 9 meeting, prior to the opening of the public hearing, and taking public comment. She reviewed the history of the property. The house and carriage house were constructed in 1799. The applicant purchased the property in 2022. Permits had been issued in 2007 to a prior owner that would have allowed the carriage house to be reconstructed and reoriented, and converted to a separate residence. The property has changed hands three times since then. The permitted work was begun but not completed. The carriage house was reoriented. The concrete foundation for the addition was poured and a concrete slab was added for the use of the first floor of the carriage house as a garage.

Attorney Mead said the applicant wishes to complete the work that was permitted in 2007. The addition that had been approved would be constructed at the rear of the carriage house. She said the Special Permit issued in 2007 did not lapse, as construction commenced within two years and the permit runs with the land.

Attorney Mead said the carriage house is collapsing due to inadequate repairs. The applicant wishes to save the structure, which she said would only be possible by dismantling and reconstructing it. More than 25% of the structure's exterior walls would be removed, which is defined as demolition under the Ordinance, and a DCOD permit is required. She reviewed the DCOD and the Special Permit criteria, and said the project meets the requirements of the DCOD.

Architect Andy Sidford said the intent is to preserve as much of the interior of the structure as possible. By 2007, some first-floor posts had rotted and framing members had been covered to provide structural support. He said some interpretation on the original design of the structure is needed, as it has been changed over the years. The plans call for the addition of insulation to the building's exterior in order to preserve the interior sheathing.

Kyle Whitehead of Mink Hill Timber Frames said he agrees with the findings of the report made in 2008 by Aaron Sturgis. The condition of the structure has deteriorated further since then. He intends to save as much of its fabric as possible. The structure would be documented before it is taken down. A skin would be added to the outside of the structure and the walls would be insulated. The exterior panels that would be added to protect the structure could be removed if this were desired in the future. The roof system would be salvaged and restored.

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The hearing was opened to comments from the public. Jared Eigerman, 83 High Street, said the Zoning Enforcement Officer is still reviewing the documents and the City has not yet determined if additional zoning relief is needed. The Board should review the conditions that were imposed in 2007. He said the abutters were notified of the demolition of the structure and it was not understood the applicant intends to save as much of its fabric as possible. He said at the January 9 meeting, no public testimony was taken on the merits of the application. Only a discussion about the hiring of an expert took place. He added the NHC report is supposed to pertain to the historical significance of the structure only. The Chair wrote about his personal opinion on the condition of the structure, which was not authorized by the Historical Commission and is not appropriate under the Ordinance. He concluded by saying the value of the structure in the Assessor's records is not the same as an appraisal, and the Board should pay attention instead to the expert's conditions report.

Marc Cendron, 91 High Street, said the property is very significant. The carriage house is an integral part of this important historical property. The house had previously been restored in an authentic manner to the standards of the early 19th century. A subsequent owner took the interior of the house apart and made it modern. Exterior additions were made that were not historically valid for the house. The formal gardens were replaced with a swimming pool. The proposal for the carriage house, which has not yet been greatly changed, would be the last step in the destruction of the historically significant property. He said the carriage house would be modernized in such a way that any historical evidence would largely disappear. It instead should be preserved the best way possible.

Andrew and Karen Horan, 85 High, said their interest is in the preservation of the historic privacy. The existing vegetative border is essential for privacy and they are concerned it would be damaged by the extensive construction that would take place very close to it. The structure would be six inches closer to the property line than the existing structure, which is already close. They would like conditions placed on the Special Permit related to the protection of the hedge.

Rita Mihalek, 53 Warren Street, read the recommendations of Linda Miller and Tom Kolterjahn, co-presidents of the Newburyport Preservation Trust. They wrote that the second-growth timber in the structure is very strong and should be repurposed and reused. The resources in the structure are too valuable to waste and no building of this quality should be destroyed. Outbuildings such as this are important to the city and are being lost at an alarming rate. The Preservation Trust supports obtaining a third-party appraisal and a detailed restoration plan by an expert on timber-framed structures.

Stephanie Niketic, 93 High Street, said the carriage house was moved without permission in 2007. The permitting was done after the fact. The Special Permit from 2007 included special conditions that supported the concerns of the abutters. The carriage house was to be converted to a guest house and no further subdivision on the property was to be permitted. Both the main house and the guest house were to remain in common ownership and the carriage house was not to be rented. She asked the Board to reaffirm these conditions if the Special Permit issued in 2007 is to be considered valid. She said the carriage house should not be used as a short term rental unit. The public comment period was closed.

Lynn Schow asked if the moving of the structure closer to the property line would be allowed under the permit that was issued in 2007. Attorney Mead said there is no intention to

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move the structure beyond what was approved in 2007. More clarification is needed on the intention of those plans.

Mr. DeLisle moved to continue the public hearing for 87 High Street to the February 27 meeting. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Benik, yes; Ms. Schow, yes).

c) 27 Carter Street LLC c/o Lisa Mead, Mead, Talerman & Costa LLC

27 Carter Street

ZNC-23-33 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to construct a second floor above an existing one-story section of a single-family house that was constructed around 1870. The property is non-conforming for lot area, frontage, lot coverage, front-yard setback and both side-yard setbacks. There is one parking space where two are required.

The roof would be removed from the existing one-story addition at the rear of the property and a second story would be constructed above it. The footprint of the structure would not change. The addition would increase the size of the structure by 220 square feet. The side-yard setback non-conformities would be extended.

Attorney Mead said only 38 square feet of new wall area would be visible from Carter Street. The roof of the addition would be lower than that of the main structure. The addition would be clad in red cedar clapboards and corner boards would be installed. The Historical Commission recommended that the pitch of the roof of the addition be lower than what had been proposed and the applicant agreed.

Attorney Mead said only two lots in the neighborhood are smaller. The neighborhood is dense and the increase in the size of the structure would be modest.

Mr. DeLisle said no new non-conformities would be created and the proposal would not be substantially more detrimental to the neighborhood than the existing conditions. He said the proposal would improve the structure.

Mr. Benik said the proposal would be compatible with the neighborhood in terms of size, scale and massing.

Mr. Swanton said the increase in size would be modest and the non-conformities would not be intensified.

Mr. Chagnon moved to approve a Special Permit for 27 Carter Street with the condition the applicant shall install a new sidewalk in accordance with DPS specifications. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Benik, yes; Ms. Schow, yes).

3. Business Meeting

a) Minutes

Mr. DeLisle moved to approve the minutes of the January 9, 2024, meeting. Mr. Chagnon seconded the motion. The motion was approved.

b) Other Business

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The Board suspended its request to receive input from the City Solicitor on short-term rental unit applications. No applications have yet been received. The Board will have the opportunity to obtain input before it must make a determination on an application.

4. Adjournment

Mr. DeLisle moved to adjourn the meeting at 8:43 p.m. Mr. Benik seconded the motion. The motion was unanimously approved.