

**City of Newburyport
Zoning Board of Appeals
Online Meeting
February 8, 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

Caswell Restaurant Group, Inc. c/o Lisa Mead, Mead, Talerman & Costa LLC

17-21 State Street

2021-18- Appeal

The applicant requested a continuance. Mr. Moore moved to continue the appeal to the February 22 meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Derek Lively

28 Liberty Street, #5

2021-57 - Dimensional Variance

Mr. Moore moved to continue the public hearing to the February 22 meeting. Mr. Swanton seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Mike Bukhin and Anna Wallack c/o Lisa Mead, Mead, Talerman & Costa LLC

4 Plum Street

2021-59 – Special Permit for Non-Conformities

Jay Talerman and Jeff Allsopp represented the applicant, who is proposing to construct an addition to a single-family home that was built around 1800. The property is in the R-2 district and DCOD. The Historical Commission imposed the Demolition Delay, which was lifted after the applicant significantly reduced the size of the addition.

The property is non-conforming for lot area, frontage, coverage, open space, primary and secondary front-yard setbacks and rear-yard setback. The proposed addition would be built above a bump out that was constructed around 1924. With the exception of a 16 square-foot overhang above the door and a bay window, the work would be within the footprint of the existing structure. The lot coverage would be intensified from 57.5% to 57.9%, where 25% is the maximum allowed. The open space would be decreased from 11% to 9%, where 40% is the minimum required. The non-conforming primary front-yard setback and rear-yard setback would be intensified.

Attorney Talerman said the proposal would not be detrimental to the neighborhood. The addition would be subservient to the main structure. Small additions have been made to many homes in the neighborhood. Letters of support have been received from four abutters.

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No one from the public spoke in favor of or in opposition to the application. Mr. Moore asked about the changes to lot coverage and open space. Attorney Talerman responded that the increase in lot coverage and decrease in open space are attributable to the overhang and bay window, neither of which extend to ground level.

Mr. Swanton said he had concerns about the previous plans, but the current proposal is much better and he would support it.

Mr. Moore said the proposed addition is attractive and would work well with the existing home. Some non-conformities would be slightly intensified, but no new ones would be created. The proposal would not be detrimental to the neighborhood.

Mr. Chagnon said the addition is modest. Mr. Ciampitti said the proposal meets the criteria and the massing and scale of the addition would be appropriate.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 4 Plum 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).

Windward Shaw LLC, c/o Lisa Mead, Mead, Talerman & Costa LLC
44-46 Beacon Avenue
VAR-22-1 – Variance

Jay Talerman represented the applicant, who is seeking a Variance to construct a pool and pool house on a corner lot in the R-2 district. The existing single-family home is conforming due to the merger of two lots that have been held in common ownership since 1960. The property has a curved front yard and three side yards.

The pool would be located in the front-yard setback, which is prohibited under the Ordinance. The pool would also be located 5.5 feet from the side property line, where 6 feet is required. The pool house would be 15 feet by 24 feet, with a 15 foot by 12 foot covered seating area. It would be 11.5 feet from the front property line, where 25 feet is required. The side setbacks would be 6.2 feet and 6.4 feet, where ten feet is required for an accessory structure of the proposed size.

Attorney Talerman said the shape of the lot is unique in that it has five boundaries. The applicant did not create the shape of the lot. If the property were not on a corner, the pool would be in the side yard rather than the front yard. The applicant has agreed to retain the street trees at the request of the neighbors. It might be possible to locate the pool or pool house in a more conforming area, but this would require the removal of trees. Attorney Talerman said the proposal would have no negative impacts on the neighbors. The structure on the abutting property is not near the area in which the pool and pool house would be constructed. The Variance would not constitute the grant of a special privilege, as other structures in the neighborhood have non-conforming setbacks.

No one from the public spoke in favor of or in opposition to the application. Mr. Moore asked if the pool house could be located in such a way that it would not encroach on the setbacks. Attorney Talerman said any pool house, unless it were very small, would be within the setbacks. The structure would provide privacy for the adjacent neighbor.

Mr. DeLisle said that if the pool house were 22 feet by 24 feet, a six-foot setback would apply. He asked if a smaller pool house could provide the desired functions. George Haseltine

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responded that a patio and kitchen would be inside the pool house rather than outside, which would provide privacy for the neighbors.

Mr. Swanton asked about the size of the house. Mr. Haseltine said the house is 3,600 square feet. Mr. Swanton said the Board has approved Variances for pools on corner lots. Pools are behind fences and are not visible from the street. He said the proposed pool house would be a large structure with a 36 foot roof.

Mr. Chagnon asked about the size of the pool. Mr. Haseltine said it would be 15 feet by 32 feet, with two bump outs that would be 8 feet by 10 feet and 8 feet by 7 feet.

Mr. Benik said he is not certain the vigorous requirements of a Variance have been met. The size of the pool and pool house would make him uneasy about determining that the denial of a Variance would constitute a hardship.

Jennifer Blanchet said the Ordinance permits front yard fences that are no more than four feet in height. The applicant has proposed a six foot fence along the front property line, which would require a Variance.

Attorney Talerman requested a continuance. The applicant would be willing to reconsider the size of the pool and pool house. Mr. Moore moved to continue the public hearing to the February 22 meeting. Mr. Swanton seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton; yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Andrew Sidford/Andrew Sidford Architects

1 Atkinson Street

ZNC-22-1 - Special Permit for Non-Conformities

The applicant is proposing to construct a second story above an existing one-story addition at the rear of a single-family house that was built in the early 1800s. Approximately 90 square feet would be added to the structure. The footprint would not be changed. The proposal would raise the roof of the addition to the ridge height of the main structure and the gable would be continued. The siding and trim of the addition would match that of the existing structure.

The property is non-conforming for lot area, coverage, open space, frontage, front-yard setback, side-yard setbacks and rear-yard setback. No new non-conformities would be created. The side and rear yard setback non-conformities would be extended.

The hearing was opened to comments from the public. Mason Mitchell-Daniels, 28 Strong Street, asked about the size of the addition. She said she is concerned about privacy and asked about any new windows that would face her property. Mr. Sidford said the existing shed would be removed. The addition would not extend beyond the existing footprint. He said most of the new windows would be on the first floor and would face the yard.

Mr. Moore said the proposal is modest and he has no concerns about the massing and scale of the addition. He said it would not be more detrimental to the neighborhood than the existing conditions and no new non-conformities would be created.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 1 Atkinson 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).

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**Laura McLaughlin and Stephen Quish Jr., c/o Lisa Mead, Mead, Talerman & Costa LLC
303 High Street**

ZNC-22-2 - Special Permit for Non-Conformities

Jay Talerman represented the applicant, who is proposing to construct an addition to a single-family house that was constructed in 1875. The property is on a corner, with the primary front yard on North Atkinson Street. It is non-conforming for lot area, primary and secondary front-yard setbacks, rear-yard setback, lot coverage and open space.

The applicant is proposing to construct a two-story addition on the rear and side of the existing structure, with a one-story addition attached to it. A second story would be added over a side bump out. The additions would extend the primary front-yard setback and intensify the rear-yard setback from 13.3 feet to 11.3 feet, where 50 feet is required. The lot coverage would be increased from 22.8% to 27.2%, where 25% is the maximum permitted. The open space would be decreased from 61.7% to 59.9%, where 40% is the minimum required.

Attorney Talerman said no new non-conformities would be created. The addition would be stepped in from the main structure and would be subservient to it. It would be minimally visible from High Street. The addition would be architecturally compatible with the existing structure and the windows would be of the same style. Three letters of support have been submitted from abutters.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said he is concerned about the 27.2% lot coverage. Attorney Talerman said the 5% increase in lot coverage is attributable to the one-story addition and bump out, which are the most modest components of the proposal. The two-story addition would not result in a substantial increase to the coverage of the lot.

Mr. Swanton asked about the increase in living area. Attorney Talerman said approximately 500 square feet of living area would be added. Mr. Chagnon said the additional lot coverage would be 207 square feet.

Mr. Moore said no new non-conformities would be created. The proposal is thoughtful and the addition would not be detrimental to the neighborhood.

Mr. DeLisle said some increased massing would be visible from High Street. The stepping back of the addition would help alleviate this. The proposal would not be substantially more detrimental to the neighborhood than the existing conditions.

Mr. Benik said the massing and size of the addition would not be inconsistent with the neighborhood.

Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 303 High 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).

**Brad Kutcher
344 Merrimac Street
VAR-21-3 - Variance**

ZNC-21-8 – Special Permit for Non-Conformities

Mr. Chagnon recused himself from the matter. Nick Cracknell represented the applicant, who is seeking a Variance and Special Permit to convert an existing non-conforming two-family

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structure to a single-family home and to construct a separate single-family structure on the property. The property is in the WMD district. It is 13,892 square feet, where 15,000 square feet is required for two-family use. The proposed project does not meet the requirements for front and rear-yard setbacks. The applicant is proposing to add more than 500 square feet to a non-conforming lot.

After the December 28 meeting, the location of the proposed building was staked and the applicant met with the neighbors on the site. In response to comments made at the hearing and the site visit, the site plan was revised and the stipulations were updated. The location of the proposed house was moved 22 feet away from Merrimac Court, which would make the intersection less crowded and would provide better access to the driveway across the street. The change in location would increase the proposed front-yard setback at the corner of the house from 3.84 feet to 5.5 feet.

The existing driveway behind the primary structure would be made narrower to accommodate two cars across rather than three. The existing barn would be removed and replaced with grass instead of the driveway that was shown on the previous plans. Shade trees along Union Place were added to the plans and a privacy fence was added along the opposite boundary. A decorative fence would be installed on Merrimac Court.

A view easement would be granted to the abutter at 342 Merrimac Street. The mature elm tree would be preserved and protected during construction. A restriction would be placed on the deed that would limit the two structures to single-family use and would prohibit the upward expansion of the principal dwelling. The water and sewer improvements would include an extension of the line to the existing structure at 11 Union Place. An easement would be granted to the City for the portion of the street that is on the applicant's property. The exterior of the historic structure at 344 Merrimac Street would be restored and a Preservation Restriction would be placed on it.

The planned elevation of the proposed structure was raised one foot so that its first floor would be six feet above the level of a 100-year flood. A wetland scientist has delineated the boundary to the buffer zone and the Conservation Administrator has written a letter stating that no permitting other than erosion control measures during construction would likely be required. The applicant would submit a construction management plan and would install the fencing prior to occupancy.

Mr. Cracknell said the shape of the lot is unique. It is bounded on three sides by public streets and is narrow, with no side yard. The grant of a Variance would not be a special privilege, as the proposal is similar to the recent project at 342 Merrimac Street. The public benefits include the preservation restriction, the on and off-site improvements, the density restriction and a payment to the Affordable Housing Trust.

The hearing was opened to comments from the public. Ken Okaya, 348 Merrimac Street, said he supports the application. The primary residence would be significantly improved and good use would be made of the land behind it.

Steve Sheppie, 3 Currier's Landing, said he appreciates that the neighbors have been engaged in the process, but he is uncomfortable with the increased density. He said the swale periodically has running water in it.

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Property owners Sam and Michelle Kimball, 344 Merrimac Street, said they have given a lot of thought to the whole neighborhood. The VI-C process would allow them to accelerate the improvement of the historic structure. Contractor Brad Kutcher said the Kimballs have taken the time to meet with the neighbors and have listened to their concerns.

Alana Reynolds, 2 Merrimac Court, said she is in support of the plan. The applicant has addressed her concerns about the overloading of the water and sewer systems. The relocation of the proposed house alleviates her concern about density on Merrimac Court.

Daniel Dehner, 346 Merrimac Street, said he supports the proposal. He said the construction of a single-family house would be more desirable than an addition to the primary structure.

Cynthia Blatt, 11 Union Place, said she also supports the proposal and it would improve the neighborhood. The public comment period was closed.

Mr. Moore said the location of the stakes appeared to show that the proposed structure would be closer to the street than the applicant stated. Mr. Cracknell said the corners were staked before the plans were revised.

Mr. Moore asked about the provision of an alternate plan that would include an expansion off the back of the existing house. Mr. Cracknell said an addition could not be done by right. It would be necessary to place it at an awkward angle to the house. It would not be a better solution for the house or the street.

Mr. Swanton asked if an addition could be constructed without a Variance. Mr. Cracknell said he is not sure if the addition could be made with a Special Permit, as it would intensify the non-conformity. Mr. Swanton asked why the new structure could not be setback further from the street. Mr. Cracknell said the proposed front yard would be consistent with the neighborhood. Mr. Swanton asked if it is known that the Historical Commission would accept the Preservation Restriction. Mr. Cracknell said the applicant began the process with the Zoning Board and the position of the Historical Commission is not yet known. Mr. Swanton said he asked the Chair of the Planning Board about the purpose behind the change to the Ordinance. He said he was told the purpose was to increase lot area so as to not have negative infills. He said he is uncomfortable that a proposal involves so many Planning Board issues. The Ordinance has recently been changed and it appears the Planning Board members have different opinions about its intent.

Mr. Moore said considering a VI-C Variance after the recent change to the Ordinance gives him pause, but the intent of the change must be considered. The two-family use of the property is existing and the lot is close to the 15,000 square foot required size. He does not think a reasonable alternative exists. The lot is narrow and unique, which is not the fault of the applicant. A similar Variance was granted to an abutter and would not be a special privilege. He appreciates the care that was taken to address the concerns of the abutters. He said no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions.

Mr. DeLisle said he agrees that the revised application meets the criteria for a Variance. The property is unique in that it is fronted on three sides by streets. The strict application of the Ordinance would deprive the applicant of the 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,

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structures or buildings in the same district. The abutter was allowed to proceed with a similar proposal.

Mr. Swanton said he has discomfort with the proposal and he wishes the applicant had first brought it to the Planning Board. He said there is much to like about the proposal, however, and he could support it lukewarmly.

Mr. Chagnon said the applicant has met the hurdle for a Variance and a Special Permit. The strong support of the abutters is a weighty factor. Mr. Benik said the previous approval of the application for 342 Merrimac Street is a significant factor. Mr. Ciampitti said he was moved by the strong support of the neighbors. He reviewed the draft list of stipulations.

Mr. Moore moved to approve the Variance application for 344 Merrimac Street with the final draft of conditions the Planning Office provided and the Chair reviewed. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Mr. Benik moved to approve the Special Permit for Non-Conformities for 344 Merrimac Street with the final draft of conditions the Planning Office provided and the Chair reviewed. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the January 25, 2022, meeting. 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).

b) Updates from the Chair and Planning Director

The Board members discussed a request from Mr. Ciampitti to restate the language of Section 4.3 of the ZBA Rules and Regulations. The regulations currently state that meetings are normally limited to four hearings and exceptions may be made in cases where hearings are continued. The proposed change would subject continuances to this requirement. Agendas would be limited to four public hearings and one continuance. A simple majority vote of the Board would be required to add to the agenda continuances that would exceed the five-item limit.

Mr. DeLisle asked if minor modifications would be included in the limit. Mr. Ciampitti said the language pertains to public hearings. The addition of a minor modification to the agenda would be at the discretion of the Planning Office.

Mr. Swanton said the issue is not the number of agenda items, but rather their complexity. He said a limit should be placed on the length of a meeting. A new agenda item should not be started after 10:30 p.m. Mr. Ciampitti said attendees should not have to sit through a meeting, only to have an item continued due to the lateness of the hour.

Mr. Moore said it is possible to control the continuance calendar. Continuances do not have to be scheduled for the next meeting. Mr. Benik said he does not like the idea of a bylaw. The Board has the discretion to adopt the practice of concluding agenda items by 11:00 p.m. The Board members were not in favor of setting a time limit for applicant presentations.

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Mr. Moore moved to adopt a by-law that would limit agenda items to five applications and continuances, with the grant of relief at the discretion of Chair. Mr. Chagnon 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).

4. Adjournment

Mr. Moore moved to adjourn the meeting at 10:34 p.m. Mr. Benik 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).