

**City of Newburyport
Zoning Board of Appeals
Remote Meeting
February 13, 2024
Minutes**

1. Roll Call

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

2. Request for Minor Modification

a) 22 Market Street

MM-24-1

Doug Deschenes represented the applicant, who is requesting a Minor Modification for 22 Market Street to allow for removal of the existing exterior sheathing in order to replace it with fire-rated sheathing. A portion of the sheathing has already been removed. The applicant is requesting after-the-fact approval to avoid zoning enforcement in addition to approval for the removal of the remaining sheathing.

Attorney Deschenes said the Building Inspector informed his client that fire-rated sheathing is required under the building code. The addition of the fire-rated sheathing over the existing sheathing would have pushed the siding out beyond the front door surround and its associated trim that his client is required to preserve. In addition, the condition of a significant portion of the existing siding was too poor to be retained. Attorney Deschenes said his client reviewed the Ordinance on the City website and did not find that he would be required to modify his permit before removing the existing sheathing.

The hearing was opened to comments from the public. Stephanie Niketic, 93 High Street, said the building has been open to the elements for nearly one and a half years. She would be surprised if the building has not rotted, which is serious business and not allowed under the DCOD. She asked about the applicant's plan for completing the project. The public comment period was closed.

Ben Legare said he is trying to work as quickly as possible. He did not foresee the need to buy extra parking spaces. He explained the other delays he has encountered. He said the building should be made tight to the weather in 30 days if he receives approval for the removal of the remainder of the sheathing. He said the project should be done by the end of the summer if he encounters no additional code violations.

Attorney Deschenes said the windows are not to be delivered for 24 weeks and his client would need to install a temporary covering over the window openings in order to make the building weather tight in the interim.

Mr. Swanton asked the reason the website does not include the 2021 revisions to the Ordinance. Andy Port said Municode is maintained on a regular basis. He is not aware of old information remaining on the City website. He said there is sometimes a delay of a few months in updating it.

Mr. DeLisle asked for clarification on the material that was removed. Mr. Legare said the existing sheathing was thicker than that which is currently available. Adding the fire-rated sheathing over the existing sheathing would prevent the siding from lining up with the trim that

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he is required to preserve. He must add a second layer of sheathing in addition to the fire-rated sheathing to obtain the historic one-inch thickness. With approval, he will remove the remaining sheathing that still existed when he was required to stop work.

Ms. Schow asked if the ZBA or NHC would have changed its decision if the removal of the sheathing had been a part of the original application. Attorney Deschenes said the NHC required the door surround and trim to be preserved. The applicant did not intend to remove the sheathing and the matter was not discussed.

Mr. Swanton said the process the applicant has followed has not been the best, but it is time to move on.

Mr. DeLisle said the request might not be considered minor because so much of the surface of the building has been impacted. However, the matter has been discussed in depth. Given that the applicant has promised to make the building weathertight within the next four weeks, he would be willing to let the work move forward.

Ms. Schow said it is significant that the applicant took steps to make the new sheathing the same thickness as the original to preserve the trim.

Mr. Benik said that he would view the request as minor given the circumstances. Mr. Ciampitti said the visible historic elements would be preserved.

Mr. Swanton moved to deem the request minor and to approve the Request for Minor Modification for 22 Market Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

3. Public Hearings

a) John Padden and Julie Christie c/o Lisa Mead, Mead, Talerman & Costa LLC 14 Payson Street

ZNC-23-22 - Special Permit for Non-Conformities

The applicant requested a continuance. Mr. Swanton moved to continue the public hearing to the March 26 meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

b) Max and Ashley Pilsmaker c/o Lisa Mead, Mead, Talerman & Costa LLC 42 Moulton Street

ZNC-24-1 - Special Permit for Non-Conformities

Lisa Mead represented the application, who is proposing to change the roofline on a single-family home that was constructed in the 1930s or 1940s. A two-story addition was constructed at the rear of the house in 2003. The property is in the R2 district. It is non-conforming for lot area, frontage and front-yard setback. The Historical Commission determined the structure is historically significant but not considered for preservation and the Demolition Delay was not imposed.

The applicant is proposing to raise the roofline of the front portion of the structure, which would upwardly extend the front-yard setback non-conformity. An additional 264 square feet of floor area would be created. The footprint of the structure would not change. Two dormers would be installed on the new roof. The median height of the structure would not change.

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Attorney Mead said the addition would be a minor one. It would allow the second-story of the front of the house to be better connected to its rear portion. The lot is one of the largest in the neighborhood and would be able to accommodate the addition. There are houses of many sizes and styles in the neighborhood. The house with the addition would not be one of the largest or the smallest on the street. Letters of non-opposition have been received from two direct abutters.

Mr. Swanton said no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. The proposed addition would be small and it would not stand out in the mixed neighborhood.

Mr. Benik said the addition would be minor and would fit comfortably on the large lot. It would add architectural coherence to the structure. The neighborhood is in transition and the addition would not be incompatible with it in terms of size, scale or massing.

Mr. Swanton moved to approve a Special Permit for 42 Moulton Street. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Benik, yes; Ms. Schow, yes).

c) Daniel & Audrey McCarthy

13 Laurel Road

VAR-24-2 - Variance

ZSP-23-8 - Special Permit for Two-Family Use

The applicant is proposing to convert a single-family house to two-family use. A Special Permit is required for the change in use. The proposal would create new setback non-conformities for the left side yard and frontage, which would require a Variance. The existing structure is 14.3 feet from the left side lot line. The side-yard setback requirement for single-family use is ten feet and 20 feet for two-family use. The property has 100 feet of frontage. The frontage requirement is 90 feet for single-family use and 120 feet for two-family use.

The applicant is not proposing to make any changes to the exterior of the existing structure, which is made up of two units. One unit is the 1,400 square-foot original ranch-style structure that was constructed in 1963. A new 2,500 square-foot unit was created in 2006 when a second story was constructed above the existing garage and house. The new unit was occupied by the two adults and four children and in-laws moved into the original section of the house. Each unit has its own driveway and garage.

When it was constructed in 1963, the right front corner of the house was 18.5 feet from the front lot line. In 2006, the applicant was issued a Special Permit for the upward extension of this front-yard setback non-conformity.

Dan McCarthy said he and his wife are now retired and live alone in the structure. They would like to be able to use the vacant unit for rental income to afford the property taxes. Their alternatives would be to move or to use the space as a short-term rental unit. He said another house in the neighborhood, which is at 101 Ferry Road, was converted to two-family use. He has spoken with all of the abutters and none have opposed the change in use.

Ms. Schow asked about the conditions that are unique to the lot and do not apply to other properties in the district. Mr. McCarthy said the shape of the lot is unique. The house is on a

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cul-de-sac and the front lot line is curved. The size of the lot is large enough to accommodate the two-family use, but the frontage is not adequate.

Mr. Swanton said two-family use is allowed in the district. There are other two-family structures on the street. The neighbors support the application. He could support the Special Permit. With regards to the Variance, he said he does not think the strict application of the Ordinance would deprive the applicant of the reasonable use of the property. He is concerned about setting a precedent.

Mr. DeLisle said he is concerned owners of other single-family structures in the R2 district could construct large additions and then request Variances for two-family use, even if the setbacks are not adequate. He said the relief would constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.

Mr. Benik said the lot is unique and the relief would not grant a special privilege. Ms. Schow reviewed the nine criteria for a Special Permit for two-family use.

Mr. Ciampitti said the applicant did not lay out the lot or put in the road. The geometry was created by the developer and each lot on the cul-de-sac is different. The neighbors do not object to the proposal. The applicant has made an argument for a hardship. Applications are taken individually and decisions of the Board do not set a precedent.

Mr. DeLisle moved to approve a Variance for 13 Laurel Road. Mr. Benik seconded the motion. The motion failed by a 2-3 vote (Mr. Swanton, no; Mr. Ciampitti, yes; Mr. DeLisle, no; Mr. Benik, yes; Ms. Schow, no).

Mr. DeLisle moved to approve a Special Permit for Two-Family Use. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

d) Patrick Delaney c/o Lisa Mead, Mead, Talerman & Costa LLC

3 Frances Drive

VAR-24-1 - Variance

ZNC-24-3 - Special Permit for Non-Conformities

ZSP-24-1 - Special Permit for In-Law Apartment (Use #109)

Lisa Mead represented the applicant. She said plans have been revised and the zoning determination was revised. She requested to withdraw the Variance application without prejudice. Mr. Swanton moved to accept the request to withdraw the Variance application without prejudice. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

The applicant is proposing to construct a garage with living space above it. The structure was constructed in 1966. The property is in the R1 district and is non-conforming for frontage and right side-yard setback. The existing non-conformities would not be altered or extended. A Special Permit is needed for the construction of an addition greater than 500 square feet.

The addition would be constructed on the left side of the structure, which is the opposite side of the non-conformity. It would create 618 square feet of new living space. The addition would increase the size of the single-family home from 2,260 to 2,868 square feet. The front of the addition would start back from the front of the existing house. Its width would be narrower

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than the existing parking area. A 700 square-foot in-law apartment would be connected to the rear of the addition.

Attorney Mead said the lot is large and can accommodate the addition. The proposed lot coverage would be 9.5%, where 20% is required. Many houses in the neighborhood have two car garages with living space above them.

Mr. Swanton said no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. The lot is large and the addition would be set back on it. There are other large houses in the neighborhood. The neighbors are supportive of the application.

Mr. DeLisle reviewed the nine criteria for the Special Permit for an In-Law Apartment and determined the proposal would meet the requirements.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 3 Frances Drive. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

Mr. Swanton moved to approve a Special Permit for an In-Law Apartment for 3 Frances Drive. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

e) Joel and Meredith Luebcke c/o Lisa Mead, Mead, Talerman & Costa LLC

8 Jefferson Court

VAR-24-3 - Variance

Lisa Mead represented the applicant, who is proposing to construct an addition to a single-family home that was built in 1985. The property is non-conforming for frontage. It is in the FEMA flood zone and the 100-foot and 200-foot riverfront areas.

The addition would consist of a 364 square-foot single-car garage that would be connected to the house with a 246 square-foot mudroom. Attorney Mead said the only place on the property that the garage could be constructed would be in the front-yard setback. The existing front-yard setback is 31.2 feet. The proposed front-yard setback would be 14.2 feet, where 30 feet is required. A Variance would be required for the creation of the new non-conformity.

Attorney Mead said the lot is oddly shaped. The road is curved, which reduces the front-yard setback. If the road were straight, the distance between the house and the property line would be greater and the garage could be added without the need for a Variance. She said the lot shape and soils conditions are unique in the R1 district. Most of the lots in the district do not border the river.

Attorney Mead said the literal enforcement of the Ordinance would cause a hardship by requiring the applicant to construct the addition at the rear of the property, closer to the flood zone. The Conservation Commission has approved the application. In the 200-foot riverfront area, redevelopment shall not be closer to the river than the existing conditions or 100 feet, whichever is less. On the left side of the property, there are steep slopes. The ground significantly drops off at the midpoint of the foundation. Open space on the side of the property would allow for better drainage. The septic system is located on this side of the house. The applicant could not build over the septic system and the system could not be moved to another

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portion of the site due to the presence of ledge. These conditions are not the fault of the applicant.

Attorney Mead said the Variance would not constitute the grant of a special privilege. Other houses in the neighborhood are directly on the property line or located in the front-yard setback. The garage would lessen congestion on the street. The proposal would be beneficial to the neighborhood because a car would not be parked in the driveway, where it would block the view of the river. The addition would be in keeping with the aesthetic nature of the neighborhood.

Attorney Mead said it would be a hardship for the applicant not to have a garage. Weather conditions along the river are harsher than in other parts of the city. The garage would shelter the applicant from the elements when moving between the house and the car and would protect the applicant's investment in the vehicle. Other properties in the neighborhood and the district have garages.

The hearing was opened to comments from the public. Jeff Caswell, 3 Jefferson Court, said he is in favor of the application and the addition would be consistent with the neighborhood. The public comment period was closed.

Mr. Swanton said if the septic system were moved to the front of the house, the garage could be constructed in the side yard, which is 40 feet wide, and a Variance would not be needed. Attorney Mead said she thinks there is ledge in front of the house.

Mr. DeLisle said he wants to receive more data on the presence of ledge and the opinion of the Conservation Commission on building the garage in a different part of the property.

Mr. Benik said the denial of a garage and mudroom would not constitute a hardship. The applicant would not be deprived of the reasonable use of the property.

Mr. Swanton said he could not support the application. He said the Board has not approved Variance requests from other applicants for garages, and some of those would not have intruded as far into the setback as the current proposal.

Ms. Schow said the lack of a garage would not create a hardship and would not deprive the applicant of the reasonable use of the property.

The applicant requested a continuance. Mr. DeLisle moved to continue the public hearing to the March 26 meeting. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the January 23, 2024, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 10:53 p.m. Ms. Schow seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Ms. Schow, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes).