

**City of Newburyport
Zoning Board of Appeals
Online Meeting
February 23, 2021
Minutes**

1. Roll Call

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

2. Requests for Extensions

2) 35 Temple Street (2020-017)

Peter Carzasky requested a six-month extension in order to complete the project. He said the work was scheduled to begin last March but was delayed due to Covid-19.

Mr. Moore moved to approve a six-month extension of the Variance for 35 Temple 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. Ciampitti, yes).

3. Public Hearings

Michael Gray

12-14 Harrison Street

2020-067 – Appeal

Mr. DeLisle moved to accept the request to withdraw without prejudice the Appeal for 12-14 Harrison Street. 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. Ciampitti, yes).

Sherry Evans and Andrew Rosen c/o Adam Costa, Mead, Talerman & Costa, LLC

6-8 Savory Street

2020-078 – Appeal

Mr. DeLisle moved to accept the request to withdraw without prejudice the Appeal for 6-8 Savory Street. 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. Ciampitti, 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)

Ms. Webb moved to accept the request to withdraw without prejudice the application for a Dimensional Variance for 22-24 Oak Street, Lot 2. 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. Ciampitti, yes).

Ms. Webb moved to accept the request to withdraw without prejudice the application for a Dimensional Variance for 22-24 Oak Street, Lot 1. Mr. DeLisle seconded

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the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Ciampitti, yes).

Windward Shaw LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC
61 Purchase Street
2021 – 05 Dimensional Variance

The application was not properly noticed and the public hearing was continued to the March 23, 2021, meeting.

Caswell Development, LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC
27 Hancock Street
2021-02 – Special Permit for Non-Conformities
2021-03 – Special Permit for Use #102
21-25 Hancock Street
2021-04 – Special Permit for Use #102

Lisa Mead represented the applicant, who is proposing to develop two adjacent lots. The applicant is seeking a Special Permit for Use for 27 Hancock Street to convert an existing single-family home to a two-family dwelling and a Special Permit to modify a pre-existing non-conforming structure. The applicant is also seeking a Special Permit for Use for 21-25 Hancock Street. The existing commercial building, which is non-conforming for use, would be removed and replaced with a two-family dwelling.

Aileen Graf described the plans for the two proposed structures. She said the existing house at 27 Hancock Street is representative of the scale of the neighborhood. The rooflines of the proposed structures have been kept low to be in scale with the neighborhood. Clapboards would be combined with boarding to break up the façades. Landscape materials would be added to provide a buffer between the buildings and the Rail Trail. Two existing trees on Hancock Street would be removed and five new street trees would be added. The sidewalk on Hancock Street would be replaced with brick pavers. The front door for Unit A would face Hancock Street. The garage would be at the rear of the structure and the driveway would be on Hancock Street. The front porch of the existing house would be removed, which would improve the non-conforming setback. The front doors of Units B, C and D would be on Leavitt Court, a private way, and their garages would be accessed from this street.

Attorney Mead said two-family use is allowed in the R-2 zoning district by Special Permit. She said no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. The pre-existing non-conformity front-yard setback of 5.7 feet off Leavitt Court would be improved to 11.7 feet. She said greater density is acceptable on lots with sufficient lot area and frontage. The proposal would not create undue traffic congestion or unduly impair pedestrian safety. The commercial use that is inconsistent with the district would be removed. The proposal would not overload the public water, drainage or sewer systems and would not impair the integrity or character of the district. She said the proposal would be consistent with the varied types of houses in the neighborhood. Large, undeveloped lots are not found in the South End and the denser development would be more consistent with the lots in the

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neighborhood. She reviewed the conditions the applicant has proposed for the project, which include the installation of a six-foot cedar privacy fence between 27 Hancock Street and 29 Hancock Street, the planting of low shrubs at the end of the driveway and down-facing sconce lighting on the garages. The “no parking” signs along Hancock Street would stay in place. A letter of support has been submitted by the residents of 24 Hancock Street.

The hearing was opened to comments from the public. Drew Ward, 28 Hancock Street, Unit B, asked about the species of the street trees that would be planted and for confirmation that the “no parking” signs would not be removed. Attorney Mead said the applicant has no intention of petitioning the City for the removal of the signs. The street trees would be selected from the City’s approved list and no invasive species would be planted.

Ron Thurlow, 28 Hancock Street, Unit A, asked about the lighting plan and the maintenance of Leavitt Court. He said he is in favor of the removal of the two street trees that are in poor condition. Attorney Mead responded that information on any additional lighting would be included on the drawings submitted to the Planning Board and would be dark-sky compliant. She said Leavitt Court would remain a private street and would be maintained by the homeowner’s association.

Eric Bannon, 22 Hancock Street, asked about the length of the buildings, which Attorney Mead provided. He said he would support the plans given the existing condition of the property.

Rob Jorgensen, 70 Purchase Street, said he is concerned that runoff from the site would impact his property. Rob Ciampitti said stormwater management is under the purview of the Planning Board. Andy Port clarified that under the City’s Stormwater Ordinance, runoff cannot flow onto adjacent properties. The stormwater management plan would be verified by the peer reviewer during the Planning Board process.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes the application. He said the Newburyport Historical Commission should be allowed to comment on the impact of the plans on the historic structure. He disagrees with the claims of the applicant that only 16% of the building would be removed. He said the historic structure would be no longer recognizable. The proposed structures would overwhelm the neighborhood and would not be compatible with the architecture of the street.

Stephanie Niketic, 93 High Street, said so little of the historic structure would remain that it should be considered a full demolition. The proposed structures should be smaller and simpler. They should complement the historic structures in the neighborhood rather than being detrimental to them. The proposed roof pitches and vertical boards would not be compatible with the neighborhood context. She would like for the Historical Commission to be allowed to review the project. She questioned if the intention of the Zoning Ordinance is not to prevent the construction of oversized and incompatible structures.

Chris Zybert, 60 Purchase Street, said he is also concerned about runoff. He said the intersection of Purchase Street and Hancock Street floods during heavy rain due to the construction of the Rail Trail. He asked about the plan for the trees behind the garage. Attorney Mead said the vegetation would be examined after the garage has been removed.

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It is likely that a fence would be installed. A decision its location would be made at that time.

Mr. Moore asked about the placement of the new street trees. Attorney Mead said only the two existing trees are shown on the plan. The new trees would be placed at the discretion of the City. The proposed landscaping for the entire site would be shown on a plan submitted to the Planning Board.

Mr. DeLisle asked about the percentage of the historic structure that is to be removed. Attorney Mead said the calculations were reviewed by the Zoning Administrator, who determined that less than 25% of the exterior walls would be removed. She said the proposal would not fall under either the DCOD or Demolition Delay and does not require review by the Newburyport Historical Commission. The historic structure is listed as contributing to the district, while the commercial building is an intrusion. Mr. DeLisle also asked about the management of stormwater. Jay Caswell reviewed the stormwater calculations and said the amount roof area and pavement would create less runoff than the existing conditions. The stormwater must be retained on site and would not run off onto adjacent properties.

Ms. Webb asked about the current status of Leavitt Court. Attorney Mead said it is a paper street. A subdivision plan with four lots on either side of the street was created in 1914. She said 27 Hancock Street is a corner lot and the frontage is derived from both Hancock Street and Leavitt Court. Ms. Webb asked if a green wall would be created between the buildings and the Rail Trail. Attorney Mead said a vegetative buffer would be created that would have expressions in all seasons to protect both the users of the Rail Trail and the homeowners, but it should not be considered a wall. Andy Port said it is under the purview of the Board to consider the proposed vegetation as a part of the Special Permit process. He recommended that more detail on the landscaping be incorporated into the plans rather than leaving the matter to the discretion of the Planning Board.

Mr. Swanton said he would be happy to see the area improved, but he is concerned about the scale of the proposal. The application is not supposed to be more detrimental to the neighborhood and these buildings are big. The units with their garages are each over 3,000 square feet. He asked how this scale and massing is sensitive to the neighborhood. Attorney Mead responded that the lots are larger than others in the neighborhood. Aileen Graf said a balance must be found between buildings' heights and their footprints. The applicant desired to keep the height of the structures down, but they could be made taller to reduce their length. She said the proposal is under the lot coverage requirements and added that there are structures on Hancock Street that are larger than 3,000 square feet.

Mr. Swanton also said the existing historic house would be swallowed up by the large building. He asked how it would be possible that not more than 25% of the structure would be removed when its left and right walls are being incorporated into the new building. Andy Port said that he intends to discuss the matter with the Zoning Administrator. He said he is not sure he agrees with the applicant's position that the proposal would not trigger the DCOD Special Permit process. He does not think that surrounding a historic structure with additions would be in keeping with the intent of the Ordinance.

Mr. Swanton asked how the Board could make a final determination, given that the

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Planning Board could require changes to the plans. Attorney Mead responded that the applicant would like to receive assurance that the Board would approve the two-family use before further refining the plans for the Planning Board, which would result in additional expense for the applicant.

Mr. Ciampitti asked if the Board members would be willing to proceed with their deliberations or if they first would require a further refinement of the plans. Mr. Moore said the existing structure is unsightly, the area is currently a sea of asphalt and two-family use is allowed in the district, but as the discussion progressed, several questions were raised and he is not sure he would be ready to vote at this time.

Mr. DeLisle said the plans seem to be taking a step in the right direction, but many questions and concerns must be addressed before he would be ready to vote. He said he is also concerned about the massing of the proposal.

Ms. Webb pointed out that the Office of Planning and Development recommended in the staff report that the matter be continued until the Planning Board has reviewed the project and both Boards have agreed on a final site plan. Andy Port said it would make sense for the Board to continue the matter until it has received a plan that includes the landscaping, sidewalk and street trees.

Mr. Swanton said he has several concerns. He has an issue with the scale of the proposal, as the buildings would be the largest in the South End. He would like to hear the comments from the Planning Board and receive a landscaping plan. He would also like to know the outcome of the discussion on the percentage of demolition of the historic structure and the need for a DCOD Special Permit.

Ms. Webb said the massing is caused in part by the attached garages. She said there are not many attached garaged in the neighborhood and she would like to know what the proposal would look like without the garages.

Mr. Ciampitti asked for a straw poll about the Board's inclination to move forward with the application for the change of use. Ms. Webb said two-family structures would be appropriate for the neighborhood and she could support the Special Permit for Use.

Mr. Moore said he does not have a problem with the two-family use, but the massing and scale are issues for him. He said he would not find it sufficient for the applicant to return with simply more information on the landscaping. He thinks the buildings are too long. He would like to receive an advisory opinion from the Historical Commission.

Mr. DeLisle said he does not have a problem with the two-family use. The change from commercial to residential use would be positive for the neighborhood. He said he is also concerned about the length of the structures.

Mr. Swanton said the two-family use is allowed in the district and the lots are large, but he is concerned with the scale and massing and the applicant's position that less than 25% of the walls of the historic structure would be removed. Mr. Ciampitti said he does not have an issue with the use change, but the proposed buildings would be too long and would not be in scale with the neighborhood.

Mr. Benik asked about the proposed lot coverage and the number of two-family structures in the neighborhood. Attorney Mead reviewed the figures and said the amount of open space would be greater than for other properties in the neighborhood. She said there

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are five two-family dwellings on Hancock Street.

Mr. Ciampitti said the Board could proceed with a vote or could continue the matter until a presentation has been made to the Planning Board and a refined plan has been provided. Attorney Mead requested a continuance to the next meeting to prepare a landscaping plan and address the issues raised by the Board.

Mr. Moore moved to continue all matters relating to the two applications to the March 9 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. Ciampitti, yes).

Brendon Johnson and Krystina Creel Johnson
65 Curzon Mill Road
2021-06 - Dimensional Variance

Mr. Moore recused himself from the application. The applicant is proposing to add a 12-foot extension to an existing garage and construct a master bedroom above it, resulting in the creation of a new side-yard non-conformity. The proposed setback would be 16.6 feet where 20 feet is required. The existing garage is 20.3 feet from the property line. The applicants said the existing garage is not large enough for their two cars.

No member of the public spoke in favor of or in opposition to the application. Mr. DeLisle asked if the applicants had considered other alternatives. Architect Steve Tedesco said he looked at angling the extension of the garage to keep it within the setback, but this would make it difficult to maneuver the cars into the garage. Two cars could not be comfortably parked side by side in a narrower garage. Widening the right side of the garage would block the view of the house and would not solve the length issue.

Mr. Swanton said the shape of the lot is regular and asked if there are slope or soil conditions that would provide the basis for a hardship. Mr. Tedesco said the house is situated on the lot in an unusual manner. Andy Port said that while the shape of the lot is rectangular, the orientation of house with regards to the lot lines could provide a basis for a hardship. Mr. Chagnon asked if the size of the garage is being driven by the plans for the room above it. He said the plans shows a 20'-3" vehicle in the garage with 7'-6" in front of it and 3'-0" behind it, which is much larger than the existing 23-foot garage.

Mr. DeLisle said that while the plan appears to have been well thought out, he would have difficulty supporting it. The way in which the house is situated on the lot would not be sufficient to meet the criteria for a Variance.

Ms. Webb, Mr. Swanton, Mr. Chagnon and Mr. Benik were in agreement that the applicant has not demonstrated the existence of a hardship and has not meet the requirements for a Variance.

Mr. Ciampitti said that although the criteria for the hardship perhaps have not been clearly articulated by the applicant, he could support the proposal. Four letters of support have been received and no neighbors have not spoken in opposition to the application.

The applicant requested a continuance to March 23. Ms. Webb moved to continue the public hearing to the March 23 meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Ciampitti, yes).

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3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the February 9, 2021, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Ciampitti, yes; Mr. Chagnon, yes).

Mr. Webb moved to adjourn the meeting at 9:50 p.m. Mr. Moore seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker