

**City of Newburyport
Zoning Board of Appeals
Online Meeting
March 9, 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 members Bud Chagnon and Gregory Benik. Robert Ciampitti was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

a) 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. She said the Board requested additional details on the landscape plan. The applicant, who is not required to provide this information, agreed to do so. The comments of the Parks Commission, Parks Department, and Tree Committee have been incorporated into the landscaping plan.

Aileen Graf reviewed the changes to the plans for the structures. The garage for one unit at 21-25 Hancock Street was detached from the structure, which would reduce its length from 123 feet to 93 feet. The length of the structure at 27 Hancock Street was reduced from 116 feet to 113 feet. The exposure of the historic structure was increased and its second story no longer would connect to the new sections of the building. Its four walls and roof rafters would be retained.

Five trees would be planted on the applicant's property along Hancock Street. A number of trees would be planted along the Rail Trail and would be supplemented with shrubs. The invasive species would be removed. Arborvitae would be planted along the privacy fence that would be added along border of the neighboring property. Ms. Graf said the proposed buildings would fill a void and would be an improvement to the neighborhood.

Attorney Mead said the current lot coverage for 21-25 Hancock Street is 22.3%. This would be increased a minimal amount to 22.5%. The amount of open space is 46%. This would be increased to 67% due to the amount of asphalt that would be removed. The lot coverage for 27 Hancock Street is 5%. The proposed lot coverage would be more consistent with the neighborhood.

Attorney Mead reviewed a comparison chart of lot and building sizes along Hancock Street Lot. She said the two new units would meet all dimensional requirements except for front-yard setback on Leavitt Court. The only request for 21-25 Hancock Street is to allow a two-family use. For 27 Hancock Street, the applicant is seeking approval for a two-family use and the modification of a pre-existing, non-conforming structure. She said most residents of the South End and certainly the neighbors believe the proposal would be an improvement over the existing conditions. It would be consistent with the district and neighborhood.

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The hearing was opened to comments from the public. Rob Jorgenson, 70 Purchase Street, said he is concerned about stormwater management and the scale of the proposal. In response to the comment made by Attorney Mead that the neighbors are in favor of the project, he said he does not believe the Purchase Street residents have been contacted. He said the dynamic of the proposal has not change. Two long buildings would be constructed to face each other and mirrored development does not occur in this part of town. He commented that scale figures have not been shown on the plans. He said the proposal would be precedent setting and he opposes it.

Tom Kolterjahn, 64 Federal Street, said the applicant has made only minor changes to the plans. The historic building would still not be recognizable and the Preservation Trust opposes the proposal. The project would be too massive for the street and would not fit in with the neighborhood. The shortening of one building by three feet is a token gesture. The architectural theme of the proposal should be in keeping with the structures of Hancock Street.

Stephanie Niketic, 93 High Street, said she agrees with the comments of the two other speakers. She said the ZBA should wait to hear the comments of the Planning Board before making its decision.

Jon Growitz, 149 Merrimac Street, said the project would be a pretty one and would be a good addition to the street. He said not all old structures need to be saved. The existing house is not representative of other houses on Hancock Street and is an eyesore. The public comment period was closed.

Mr. DeLisle asked about materials and drainage. The siding would be cementitious. It would be horizontal on the first floors with board and batten on the upper stories. The Planning Board is responsible for reviewing the drainage plans and the applicant must by law prevent water from flowing onto other properties.

Ms. Webb asked if the hearing should be continued while the City Solicitor determines if the proposal would require a Demolition Control Overlay District Special Permit from the Board. Andy Port said the matter is still under review and he would recommend a continuance.

Ms. Webb commended the applicant on the revisions to the plans and said the proposal would improve the neighborhood. She asked if the architect had considered the construction of detached garages in order to reduce the massing. Attorney Mead said the applicant is seeking a Special Permit for Use for 21-25 Hancock Street, which does not give the Board purview over scale and massing. The Board may only review the proposed design of 27 Hancock Street.

Mr. Swanton asked when the trees would reach the size that they are shown on the plans. Attorney Mead responded the canopies are shown at their mature size and would be 15 to 20 feet tall when planted. He also asked if the City has accepted Leavitt Court as a public way. Attorney Mead said frontage can be drawn from either a private or public way. Leavitt Court is a private street. It exists on the Assessor's maps and a recorded subdivision plan. The Planning Board is being asked to affirm this through a Special Permit for Courts and Lanes. The subdivision plan was recorded prior to the adoption of subdivision control regulations and it must be developed to meet Courts and Lanes standards in order for frontage to be taken from it.

Mr. Swanton said he developed a chart that shows the scale of the proposal has grown since the last meeting. Aileen Graf said that in the previous plans, the height of the buildings

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was reduced, which resulted in them having a larger footprint. The buildings have been shortened, which resulted in an increase in height. One unit now has three stories. The average size of the units is 3,000 square footage, which is not extreme for the neighborhood. She said one single-family house on the street is 6,000 square feet. When Mr. Swanton said he did not see this on the comparison chart, Attorney Mead said the chart showed only the size of the first floor. Mr. Swanton said that the lot is large but most other structures have small footprints in comparison to the proposed buildings. Attorney Mead responded that the question of scale would not apply to 21-25 Hancock Street.

Mr. Chagnon asked if the gully by the Rail Trail would be filled. Attorney Mead said there would still be a drop along the Rail Trail, as there is today.

Mr. Moore asked about the height of the new detached garage. Aileen Graf said that because the setbacks would be met, the height of the garage would not be limited to 14 feet. It would be one story with a dormer.

Mr. DeLisle said he would be comfortable with the two-family use for both applications. He said some issues must be resolved before he could support a Special Permit for 27 Hancock Street. Ms. Webb said there is unfinished business with both the City Solicitor and the Planning Board. Mr. Swanton said he would approve of the two-family use but would like to have decisions from the Planning Board and City Solicitor before moving forward. The scale is still a consideration for him. Mr. Chagnon said he does not have an issue with the scale or two-family use, but he would agree with waiting for input from the City Solicitor and the Planning Board.

Attorney Mead asked the Board to vote on the matter of two-family use for 21-25 Hancock Street. Mr. Swanton said he does not have an issue with the two-family use, but does not want to vote until the Planning Board had made Leavitt Court a street and he can be assured that frontage could be derived from it.

Attorney Mead requested a continuance for both applications. Mr. Chagnon moved to continue the public hearing for 27 Hancock Street to the April 13 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).

Ms. Webb moved to continue the public hearing for 21-25 Hancock Street to the April 13 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).

**b) Louisa Tanner and John Watkins c/o Lisa Mead, Mead, Talerma & Costa, LLC
260 Northern Boulevard
2021-07 - Special Permit for Non-Conformities**

Lisa Mead and Scott Brown represented the applicant, who is proposing to add a second story to a home in the R3 zoning district and the Plum Island Overlay District. The property is non-conforming for side-yard setbacks, front-yard setback, lot coverage and FAR. Two single-family structures are located on the lot. The FAR is derived from the square footage of both structures, and both have basements that are included in the FAR calculations. The non-conforming FAR would be intensified. The existing FAR is .47 where .25 is permitted, and the proposed FAR would be .51. Changes are being proposed for only one of the structures.

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The applicant is proposing to replace the spiral staircase that accesses the second floor with conventional stairs to increase safety and add a second-floor bathroom. The alteration would be within the existing footprint and the addition would be less than 500 square feet. The first floor layout would be reconfigured to increase the number of bedrooms from two to three. The style of the roof would be changed and its median height would be increased. The existing height is 23 feet and the proposed height would be 24.3 feet. The size of the exterior decks would be reduced. The vinyl siding would be replaced with white cedar shingles and new aluminum-clad windows would be installed. The roof would be metal and rot-resistant material would be used for the trim. Three letters of support were provided.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle asked for additional information on the increase to the FAR. The second floor would be increased in size to match the footprint of the first floor. The stairs would add 112 square feet to the structure. The master bath and closet would account for the remainder of the new square footage. If the structures were on pilings rather than foundations, the existing FAR would be .26 for the property and the proposed FAR would increase to .29. No work is to be done to the second dwelling unit.

Ms. Webb asked if the first-floor bedroom would be converted to two bedrooms. She asked if a closet and window would be needed to classify the new space as a bedroom. Lisa Mead and Andy Port both responded that adding one bedroom for a total of three is allowed under the ordinance.

Mr. Swanton asked if the FAR calculation includes both houses on the one lot. He commented that the FAR is already greater than that which is allowed and the applicant is proposing to exceed it further. He said the property as it exists exceeds the FAR significantly. He asked if the structure could be made more livable without increasing the FAR. Attorney Mead responded that it would not be possible to change the stairs without increasing the FAR. She added that the standard for FAR is different for Plum Island than the remainder of the city because the lots are smaller. A variance is not required to increase a non-conforming FAR. She said the proposal would not be substantially more detrimental to the neighborhood or PIOD than the existing conditions. Mr. Swanton said the applicant is increasing both the FAR and adding a bedroom. He said the Board must decide if increasing the size of a structure that already exceeds the FAR requirement would be detrimental to the PIOD.

Mr. Moore asked about the change to the decks. The amount of deck and stairs to be removed is 101 square feet and 56 square feet of new deck and stairs would be added.

Mr. DeLisle said he is not concerned with the increase in the FAR in this situation because the work is being done on the second floor above an existing foundation. He said the expansion would not be substantially more detrimental to either the neighborhood or PIOD. Ms. Webb agreed with this assessment. Mr. Swanton said he does not like intensifying the density on a property that is already over the dimensional requirements and he cannot support the application. Mr. Chagnon said the change would be a modest one and he could support it. Mr. Moore said the property is unique and the proposal is thoughtful. The Board has the authority to allow an increase to the FAR by a Special Permit. He said the proposal would not be detrimental to the PIOD or the neighborhood. He said a vertical expansion would be preferable to a horizontal one. The increase to the FAR would be fractionally worse than the existing conditions and would provide increased usable space and safety.

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Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 260 Northern Boulevard. Mr. Chagnon seconded the motion. The motion was approved by a 4-1 vote (Mr. Moore, yes; Mr. Swanton, no; Ms. Webb, yes; Mr. DeLisle, yes, Mr. Chagnon, yes).

**c) David and Lara Maher c/o Lisa Mead, Mead, Talerman & Costa, LLC
7 Shandel Drive**

2021-08 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to demolish an existing single-family home and replace it with a new single-family structure. The property is on a corner lot with a curve. It is non-conforming for rear-yard setback, which is 14.8 feet where 25 feet is required. The rear-yard setback non-conformity would be intensified to 10.1 feet. Attorney Mead said that at the time the house was constructed, there was no definition of a corner lot. The lot had a front yard and two side yards at that time. When the definition of corner lot was added around 2012, the property became non-conforming. She said the proposed structure would meet the dimensional requirements if that lot line were still considered a side yard. She said the proposal would be consistent with the neighborhood. Most of the structures on Shandel Drive appear to be approximately 10 feet from the side lot lines. The height of the proposed structure would be 24 feet.

The application triggers the Tree and Sidewalk Ordinance. The Tree Commission has recommended that one large street tree be planted. DPS has not yet confirmed that the existing sidewalk is adequate. Attorney Mead said the applicant would comply with the decision of the DPS.

The hearing was opened to comments from the public. Stephanie Niketic, 93 High Street, said she is concerned with the uniform application of the zoning ordinance. She said the application has been presented as the extension of an existing non-conformity, when it is not. She said that after the existing structure has been removed, the proposed structure would be a new one with a new non-conformity. Attorney Mead responded that in Newburyport, the Zoning Enforcement Officer can allow the removal and rebuilding of a pre-existing non-conforming structure and the Zoning Ordinance has been interpreted in this way for many years.

Mr. DeLisle clarified that the lot line between 9 Shandel Drive and 7 Shandel Drive is the rear lot line. Mr. Swanton asked if the neighbor at 9 Shandel Drive has commented on the proposal. Attorney Mead responded that the abutter did not comment during the public hearing. She said George Haseltine has spoken with most of the neighbors and they had no objection to the proposal. Mr. Swanton commented that the size of the house is consistent with others in the neighborhood. Mr. Chagnon asked about the placement of the structure on the lot, given that the foundation would be newly constructed. Scott Brown responded that the new garage would be larger than the existing one, which would bring the structure closer to the lot line.

Mr. DeLisle said he could support the application, as no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. The other Board members also indicated they would support the application.

Ms. Webb moved to approve a Special Permit for Non-Conformities for 7 Shandel Drive. 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).

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**d) David and Brienne Matter c/o Lisa Mead, Mead, Talerma & Costa, LLC
10 Reilly Avenue**

2021-09 - Special Permit for Non-Conformities

Lisa Mead and Aileen Graf represented the applicant, who is proposing to demolish an existing single-story home and replace it with a two-story structure with an attached garage. The property is non-conformity for lot area, frontage and front-yard setback. The front-yard setback non-conformity would be intensified vertically and would be reduced. The width of the existing structure in the front-yard setback is 36 feet and the width of the proposed structure in the front-yard setback would be 21 feet. Attorney Mead said the parking would be moved into a garage nearer the center of the lot. The amount of open space would be reduced from 81.2% to 60.7%, where 40% is required. The height would be nine feet under the requirements for the district. The applicant submitted five letters of support.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said the proposal would not create any new non-conformities and would not be more detrimental than the existing conditions. He said it would fit in with the neighborhood, where there is a mix of housing styles and sizes. Ms. Webb said she supports the application. Mr. Chagnon said the proposal would be an improvement for the neighborhood.

Ms. Webb moved to approve a Special Permit for Non-Conformities for 10 Reilly Avenue. 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).

**e) Chris Authier
9 Woodland Street
2021-10 - Variance**

The applicant requested a continuance. Mr. Swanton moved to continue the public hearing to the March 23 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).

3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the February 23, 2021, meeting. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, abstain; Mr. DeLisle, yes; Mr. Chagnon, yes).

b) Discussion on Development Restrictions

Andy Port said in 2011, changes were made to the Zoning Ordinance through which structures on Plum Island could be increased in size through the Special Permit process, while a Variance is needed in the remainder of the city. Two proposals were recently submitted to City Council that could impact the type of development that could take place on the island. One relates to the Conservation Commission regulations. It is expected that a subcommittee would be reviewing this proposal until the fall. A proposal for a change to PIOD that would prohibit further growth or expansion has been withdrawn.

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c) Other Business

Mr. Moore thanked Ms. Webb, who has submitted a letter of resignation, for her service on the Board.

4. Adjournment

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

Respectfully submitted,
Gretchen Joy
Note Taker