

**City of Newburyport
Zoning Board of Appeals
Online Meeting
March 23, 2021
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 Robert Ciampitti, Stephen DeLisle, Mark Moore, Ken Swanton and Bud Chagnon and associate member Gregory Benik. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

193 High Street

2019-042 - Appeal

Mr. DeLisle recused himself from the matter. Lisa Mead represented the applicant, who has requested an extension. Attorney Mead said a trial related to the application is scheduled for November. Mr. Moore moved to continue the Appeal for 193 High Street to the December 14, 2021, meeting. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Benik, yes).

Brendon Johnson and Krystina Creel Johnson

65 Curzon Mill Road

2021-06 - Dimensional Variance

Mr. Moore recused himself from the matter. The applicant requested an extension to April 27. Mr. Swanton moved to continue the public hearing to the April 27, 2021, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Benik, yes).

Windward Shaw LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

61 Purchase Street

2021-05 - Dimensional Variance

Lisa Mead represented the applicant, who is proposed to install a swimming pool within the front-yard setback. The property is located on a corner and has two front yards for zoning purposes. The setback from Neptune Street would be 15 feet, where 25 feet is required. Attorney Mead said the setback requirement would be six feet for the pool if the house were not located on a corner lot. She also said the property dips down and significantly rises in the back corner. Most of the lots in the neighborhood are flat, which would make this lot unique. The pool would be located in the area of the lot that would require the least amount of excavation. Attorney Mead said the pool would not be detrimental to the neighborhood, as it would be located 30 feet from the rear property line and would be bordered by streets on two sides.

The applicant is also proposing to reconstruct the fence that borders the property along both streets. The proposed six-foot fence would be taller than the existing fence. The applicant did not install the existing fence. According to the ordinance, a fence on a corner must be set back 20 feet from the intersection of the two property lines. Attorney Mead said that because

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cars park along the street, drivers must creep beyond the fence in order to be able to see traffic and the fence would not block the site lines. City Engineer Jon-Eric White provided a written response that indicated the fence would not create a situation that is different from other intersections in the neighborhood. He recommended that the Variance be approved and a stop sign be added.

Attorney Mead said the granting of the Variance would not constitute a special privilege, would not cause harm to the public good and would not derogate from the purpose of the ordinance. The application does not trigger the Tree and Sidewalk Ordinance.

The hearing was opened to comments from the public. Mary Anne MacCauley, 25 Madison Street, said she is concerned about construction noise. She said the demolition of the home last summer caused noise problems on a normally quiet street. She said is concerned construction would be taking place at 21 Hancock Street at the same time. She does not think there is sufficient space on the property to buffer the noise of the social activity of a pool.

Andrew Willemsen, 78 Purchase Street, said the two foot change in elevation at the back corner of the lot would not create a hardship. He said he is concerned about noise from the pool, as a bedroom in his home overlooks the side yard. The public comment period was closed.

Mr. Swanton asked about the construction timeline. Attorney Mead said the excavation and concrete work would take two weeks. The pool would only be four feet deep, which would require less excavation than a deeper pool.

Mr. Chagnon asked if the applicant had considered locating the pool at the rear of the property. Attorney Mead said the pool would then intrude on the rear-yard setback. Also, more excavation would be required in this part of the lot. The pool would be 14' x 18' and would be 15 feet from Neptune Street and 25 feet from Purchase Street.

Mr. Moore said construction noise is not within the purview of the Board. The topography of the lot presents challenges and the applicant has met the conditions for a Variance. The size and depth of the pool would be reasonable. The applicant is not to blame for the location of the house on a corner. Pools and fences exist in dense neighborhoods. Mr. DeLisle said its position on corner is a unique feature of the lot, although he is not convinced the topography creates a hardship. He agrees with the City Engineer that the fence would not be an issue. Mr. Swanton said the Board has approved several pools on corner lots and it is not the fault of applicant that the property has two front yards. He said the construction of the pool would not be a long-term project due to its size and depth. Mr. Chagnon said the size of the pool would be modest. Mr. Benik said the corner lot is a unique situation.

Mr. Moore moved to approve a Dimensional Variance for 61 Purchase Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes).

Chris Authier
9 Woodland Street
2021-10 - Variance

Mr. Benik and Mr. DeLisle recused themselves from the matter. The applicant chose to proceed with a minimum board. The applicant is seeking a modification to a Variance. In 2015, a Variance was granted to replace a non-conforming garage with one with an increased height. The applicant is proposing to modify the garage by adding a dormer in order that it might be

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used as a home office. The Zoning Administrator has determined that the granting of the prior relief was not necessary. The height of the garage is less than the 15 feet allowed. The proposed dormer would be within the setbacks and no additional relief would be required for its construction.

The hearing was opened to comments from the public. David Ouellette, 7 Woodland Street, said he is a direct abutter to the applicant and they share a driveway. The access to the garage is within a right-of-way over a portion of his property. He said he supported the application of the prior owners for the reconstruction of the one-story garage. The prior owners agreed that garage would contain no windows, doors or skylights on the side facing his property to protect his privacy. The applicant has agreed to the same, but he is concerned a future property owner might wish to add windows to that side of the garage or change its use, overburdening the right-of-way over his property. He asked that the approval of the requested Variance be based on certain conditions: 1) there shall be no change to the exterior of the structure from what was depicted on the approved plans, including the installation of windows or dormers, without approval from the Board at a public hearing, 2) only the home occupation use of the garage would be permitted and 3) the garage would only be used by occupants of 9 Woodland Street and would not be used by visitors or for the delivery of mail or packages. The public comment period was closed.

Mr. Moore asked about a revision that was made to the application. Mr. Authier responded that the size of the dormer was slightly reduced. Mr. Swanton asked if a Variance would be needed for the construction of a dormer on the other side of the structure. Andy Port said that only work which is shown on the approved plans would be allowed. A public hearing would be required for the addition of a dormer on the other side of the garage. Mr. Chagnon asked if permission would be needed for a change in use. Mr. Port said the garage could not be used as an accessory dwelling unit without additional permission. The Board could add a condition limiting the use to that of a home office if it chooses. Mr. Ciampitti clarified that any change to the structure or its use would only be permissible with additional relief. Mr. Ouellette asked if a skylight could be added without permission and if an architect could use the office for client visits. Andy Port said any change in use that would result in customer traffic would require review. With respect to the installation of a skylight, he said that if a further modification were to be sought, the Planning Office would review the application for compliance with the approved plans. In response to a question from Mr. Swanton, the applicant said he would not object to a condition that would prohibit the addition of a skylight on the left side of the garage.

Mr. Moore moved to approve the modification of the Variance for 9 Woodland Street with the conditions that there shall be no skylight on the left side of the garage and only home office or accessory use of the garage would be permitted. Mr. Swanton seconded the motion. The motion was approved by a 4-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes).

Stephen Catalano
41 Franklin Street
2021-11 - Special Permit for Non-Conformities

The applicant is proposing to remove a 3' x 4' landing and stairs on the side of the structure and

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construct an 8' x 10' mudroom is the same location. The pre-existing non-conforming front and rear yard setbacks would be extended. No new non-conformities would be created. The addition would be sided with clapboards to match the existing house and the windows would be of the same style. Two letters of support were received. The applicant does not trigger the Tree and Sidewalk Ordinance.

No one from the public spoke in favor of or in opposition to the application. Mr. Chagnon asked if a roof deck would be added above the mudroom. Mr. Catalano said the roof of the mudroom would have a very slight pitch and there are no plans for a roof deck.

Mr. Moore said the proposal is a modest one. No new non-conformity would be created and the addition would not be more detrimental to the neighborhood than the existing conditions. Mr. Chagnon said the proposal would improve upon the existing conditions. The remaining Board members were in agreement.

Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 41 Franklin Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes).

Kathleen Klose

42 Prospect Street

2021-12 - Special Permit for Non-Conformities

Mr. Swanton recused himself from the matter. The applicant is proposing to construct an 80 square-foot, two-story addition at the rear of the structure. The stairwell would be enclosed to the second story. Ms. Klose said the stairs are steep and are not in compliance with the building code. The two-story addition would allow the stairs to be reconfigured. The addition would extend the non-conforming rear yard setback and increasing the non-conforming lot coverage from 29.2% to 30.7%.

No one from the public spoke in favor of or in opposition to the application. Mr. Moore said the proposal is a modest one. No new non-conformity would be created and the addition would not be more detrimental to the neighborhood than the existing conditions. Mr. Chagnon said the proposal would improve upon the existing conditions. The remaining Board members were in agreement.

Mr. Benik moved to approve a Special Permit for Non-Conformities for 42 Prospect Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Benik, yes).

Bujana Lena & Dritan Tola

5 Truman Way

2021-13 - Special Permit for Non-Conformities

The application is proposing to add a second story to a pre-existing non-conforming structure. The 1,148 square-foot addition would upwardly extend the non-conforming front-yard setback. A 370 square-foot, single-story addition that conforms to the setbacks would be constructed at the rear of the structure. The siding and windows would match those on the existing structure. Ms. Lena said there are many two-story structures in the neighborhood. Two letter of support were submitted.

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The application triggers the Tree and Sidewalk Ordinance. The Tree Commission recommended that two street trees be planted. There is no existing sidewalk.

No one from the public spoke in favor of or in opposition to the application. Mr. Moore and Mr. Swanton asked the applicant to review the dimensions of the structure. The structure when the construction is complete would be approximately 2,300 square feet with the garage and approximately 2,000 square feet without the garage. Its height would be 25'-8", which is approximately the same height as the structure to the right of the property. The structure to the left of the property is higher.

Mr. Moore said no new-nonconformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. Mr. DeLisle said there are many two-story structures in the neighborhood. Mr. Chagnon said that while the proposal is not modest, it would be acceptable. Mr. Benik said the height of the proposed addition would be consistent with other structures in the neighborhood and would be an improvement to the home.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 5 Truman Way with the condition that two new street trees shall be planted. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes).

3. Business Meeting

a) Minutes

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

b) Update on Newbury/Plum Island MVP Project "Exploring Fiscal Implications of Sea Level Rise"

Andy Port said expansion is taking place on the island, which some view as an issue. The PIOD was created as a condition of funding for the water and sewer project. In 2011, the PIOD was amended to allow the FAR threshold to be exceeded by a special permit rather than a variance. The Town of Newbury has undertaken a project to create new flood maps for the island. Two or three public meetings are to be held between April and June to begin a dialogue on the fiscal implications of sea level rise.

During a recent storm, four houses in Newburyport were jeopardized by erosion, and it might have become necessary to shut off the sewer system to 18 homes. Erosion will continue to occur and is caused by more factors than just the jetty. A revetment has been added to protect the water and sewer plant.

Mr. Moore asked if other communities have stopped development through zoning. Mr. Port said there have been many different responses to sea level rise. The island is the most vulnerable section of the city. The Boards and City Council should decide how much expansion is reasonable. He questioned if the city should invite more residents to a hazardous zone.

Mr. Chagnon said the Board must interpret the ordinance as written and it would be the responsibility of City Council to change the ordinance. Mr. Port said the ordinance was written to encourage limits on grown on the island. The Board could conclude that the

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expansion proposed in some applications could be detrimental to the district under the existing ordinance. Mr. Swanton said that as the ordinance is written, it is the Board that must decide how much growth would be substantially more detrimental to the PIOD. Mr. Ciampitti said that unless City Council changes the ordinance, the role of the Board is to make decisions based on the tools at its disposal, and discretion is the biggest tool available. The Board will look for continued guidance from the Planning Department on developments that should be considered.

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 10:10 p.m. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Benik, yes).

Respectfully submitted,
Gretchen Joy
Note Taker