

**City of Newburyport
Zoning Board of Appeals
Online Meeting
May 11, 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, Zoning Administrator Jennifer Blanchet, City Solicitor Jonathan Eichman and Note Taker Gretchen Joy.

2. Minor Modifications

37A Ashland Street (2007-012)

Mr. Moore moved to consider the request minor and approve the request for minor modification. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

3. Public Hearings

Michael and Lyuda Randall c/o Lisa Mead, Mead, Talerman & Costa, LLC

14 Highland Avenue 2021-15 - Special Permit for Non-Conformities

The applicant requested an extension. Mr. Moore moved to continue the public hearing to the May 25 meeting. Mr. Chagnon seconded the motion. The motion was approved by a 5-1 vote (Mr. Benik, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, no; Mr. Ciampitti, yes).

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

Mr. Ciampitti said he is qualified to vote on the applications. A Special Permit for two-family use for the adjacent lot was approved at the April 22 meeting. The Planning Board has not yet approved a Courts and Lane Special Permit for Leavitt Court.

Lisa Mead and Aileen Graf represented the applicant, who has submitted a revised design that is compliant with the DCOD Ordinance. The front porch and roof of the historic structure would be retained and not more than 25% of the exterior walls would be removed. Attorney Mead said the small house in the middle of a large lot is an aberration in the neighborhood. The existing lot coverage is 5% and would increase to 23.8%, which would be more in keeping with the neighborhood and less dense than some other properties. She said most properties in the neighborhood do not meet the dimensional requirements. The front-yard setback of the historic structure from Leavitt Court would be 5.7 feet. No new non-conformities would be created. She said the proposal would fit in with the neighborhood, where there are many two-family properties. Four new trees would be planted along Hancock Street on private property and an easement for their maintenance would be provided. The existing sidewalk would be replaced with brick.

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Aileen Graf said both units are slightly smaller than originally proposed. The existing covered porch on the historic structure would be retained, as would the rear wall. The new construction would be attached on both sides. The scale and height of the additions would be consistent with the neighborhood.

Mr. Ciampitti said a letter was submitted that was signed by 29 residents of Purchase, Madison and Hancock Streets. The hearing was opened to comments from the public. Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes the project in its current form. The historic house is still not recognizable. He said he agrees with concerns of the neighbors expressed in the letter dated May 2. He said the proposal would be too large and would not fit in with the neighborhood pattern. It would impair the integrity and character of Hancock Street.

Michael Sales said he is concerned with the massing of the proposal.

Luke Rood, 17 Lunt Street, said he supports the project. The landscaping would screen his property from the structures and the proposal would be more pleasing than the existing conditions. However, the project would be more consistent with the neighborhood if the two structures were separated.

Jon Growitz, 149 Merrimac Street, said the architect has designed a pleasing project and the lots need to be changed. The proposal would be attractive from the Rail Trail and would be a good addition to the neighborhood.

Mary Anne McCauley, 25 Madison Street, said the structure was a bus depot and she is concerned about contaminants from gasoline and asbestos. She said there has been no assessment of the ground under the building.

Stephanie Niketic, 93 High Street, said she agrees with the comments made by Mr. Kolterjahn and the abutters. The proposed scale, massing and design is not appropriate for the neighborhood. The public comment period was closed.

Mr. Ciampitti asked how the Board and abutters might be satisfied on the issue of contaminants in the absence a 21E letter. Attorney Mead responded that the issue is not germane to this application. The former bus depot was located on 21-25 Hancock Street. She said test pits were dug in 1988, when the use changed. The use of the property has not changed since that time and a hazardous materials assessment is not required. The Fire Department and City have oversight over the demolition of the building. The applicant must perform an asbestos assessment on the building prior to the demolition. The results would be provided to the Building Department. The proper process would be followed if asbestos were to be found.

Mr. Moore asked about the reduction in the size of the units. Unit A was originally 3,096 square feet and would now be 2,614 square feet. Unit B was originally 3,214 square feet and would now be 2,789 square feet.

Mr. DeLisle asked about the dimensions of the structure and if additional consideration had been given to a VI.6 Special Permit. The mean roof height would be 25 feet and the length of the structure would be 116 feet. Attorney Mead said the VI.6 Special Permit could not be presented to the Planning Board without the two-family use first being approved. The issue will be discussed at the next Planning Board meeting.

Mr. Swanton asked if the approval of Leavitt Court is expected and if the applicant has considered separating the garage to reduce the massing. Andy Port responded that the Planning

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Board has indicated the Courts and Lanes Special Permit would be approved. Aileen Graf said the location of the garage has been discussed. The applicant wishes to provide a variety of living conditions.

Mr. Moore said it is understandable that the project would seem outsized in comparison to the existing small home on a large lot. He said multifamily housing is desirable. The proposal would be an improvement over the existing conditions. The massing and scale would not be more detrimental to the neighborhood. No new non-conformities would be created.

Mr. DeLisle said he supports the two-family use. He is concerned about the length, massing and scale but he thinks the proposal would be better for the neighborhood than the existing conditions. He said this would be a good location for a VI.6 project.

Mr. Swanton said the application has been improved with regards to the historic structure. He appreciates that the new construction is two stories and is 15% smaller than was originally proposed. He continues to be concerned with the scale and encouraged the applicant to consider a VI.6 Special Permit.

Mr. Chagnon said he also has an issue with the massing and he appreciates that the size of the structure has been reduced. He likes that the existing structure now appears to be less subordinate to the new construction.

Mr. Benik said the application meets the nine criteria for a Special Permit for Use. The proposal would not create any new non-conformities and would not be substantially more detrimental to the neighborhood than the existing conditions. The requirements for lot coverage, height and open space would be met and he does not find that the proposal would be inconsistent with the neighborhood.

Mr. Ciampitti said he appreciates that the scale and massing has been reduced. The height of the proposal would be consistent with the neighborhood. While not perfect, the current proposal is an improvement over the previous plans. He noted that the application triggers the Tree and Sidewalk Ordinance.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 27 Hancock Street (2021-02). Mr. DeLisle 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).

Mr. Moore moved to approve a Special Permit for Use for 27 Hancock Street (2021-03). 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. DeLisle, yes).

Caswell Restaurant Group, Inc. c/o Lisa Mead, Mead, Talerman & Costa, LLC
17-21 State Street
2021-18 - Appeal

Lisa Mead represented the applicant, who is appealing the Zoning Determination that the property is subject to the Downtown Overlay District. The applicant wishes to make the first floor-windows, which were installed around 1941, operable and is appealing the decision that this could not be done without a Variance. She said the owners of real estate should be able to predict the regulations that would apply to the property.

Attorney Mead said the determination of the Zoning Administrator is in error because the DOD cannot apply to structures or uses that were lawfully in existence prior to the passage of the DOD in 2014. She said the Zoning Act, G.L. c. 40A, is not retroactive. The property is

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conforming by dimension and use and its use as a restaurant would continue. The renovation to the building, which was constructed in 1820, would not trigger Site Plan Review. Attorney Mead said the City is attempting to apply a new zoning ordinance to a fully conforming building and use that existed before the enactment of the DOD Ordinance. The application of the DOD Ordinance contravenes G.L. c. 40A § 6.

G.L. c. 40A § 4 requires that a zoning ordinance is uniform for each class or kind of use or structure within the district. An ordinance fails to provide uniformity when it is so general in its grant of powers that the permit-granting authority has unbridled discretion to file its own requirements. The DOD requires a Special Permit for any new construction, alteration or demolition, regardless of whether the property is conforming or non-conforming, which leaves unfettered discretion to the Planning Board and contravenes the purpose of G.L. c. 40A § 4.

Finally, G.L. c. 40A § 3 mandates that no ordinance shall regulate the materials or methods of construction that are regulated by the State Building Code. The State Building Code has exclusive authority over the rehabilitation and maintenance of existing buildings. The Zoning Act does not govern the operation of windows.

City Solicitor Jonathan Eichman reviewed the opinion he provided to the City. He said Attorney Mead's first argument does not apply. The DOD Ordinance provides that the construction, alteration or demolition of a structure, and not the structure itself, constitutes a use that requires a Special Permit. The project consists of alterations to a building in the DOD. The proposed alteration of the sign requires a Special Permit and the change to the windows requires a Variance. The alteration of an existing historic structure is considered a change to its use.

Attorney Eichman said the Board should not consider the applicant's argument that the DOD Ordinance as a whole conflicts with State law and is invalid. The Board does not have the authority to decide on the validity of the Zoning Ordinance. The Zoning Administrator has no authority while reviewing permit applications to determine whether the Zoning Ordinance is valid under State law. The role of the Zoning Administrator is to make written determinations as to how the DOD Ordinance applies to proposed work. The Zoning Administrator has no authority to determine whether the DOD complies with G.L. c.40A.

Finally, Attorney Eichman said Attorney Mead's third argument does not apply. The State Building Code does not apply to the method of operation of windows. There is no evidence on the way in which the State Building Code would apply to the project. The City has not yet determined which materials or methods of construction would allowable for the project under the DOD Ordinance. The Ordinance states that materials for replacement windows should match exactly those of the historic windows whenever reasonably feasible. It does not state that the materials must be exactly duplicated.

Mr. Chagnon asked how a change in windows is a use issue. Attorney Eichman said a building is a use of a property and a change to a building is considered a change in use.

Nancy Caswell said the indoor capacity of the restaurant in its previous location was severely limited in the past year and she chose to expand by moving to a new location. She said indoor dining requires operable windows and people want to sit next to windows for airflow. She read a letter of support for the project that was submitted to the Planning Office by Mark Welch as President of the Mary Alice Arakelian Foundation. She said the lease is contingent upon operable windows.

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The hearing was opened to comments from the public. Michael Sales said the former mayor is attacking an iconic treasure. He said the city benefits from architectural tourism. Many fought for the DOD Ordinance, the purpose of which is to protect special historic places. The applicant has chosen not to follow the procedures and instead is challenging the validity of the DOD Ordinance, which would put the protection of the downtown at risk.

Ben Harmon, 298 High Street, said the approval of the appeal would be an attack on the overlay district. Restaurants without functional windows are operating in the city. He said the applicant has not followed the proper process. The future protection of historic structures is at risk. The building is an iconic feature of State Street and should be preserved.

Tom Carleo, 109 Prospect Street, said the historical integrity of the city is important, as is economic vitality. An empty storefront does not do any good. The city needs to move forward and several businesses have not been able to succeed in their existing spaces. Modern amenities should be offered.

Blake Witherington, 78 Middle Street, said people value air flow and windows from the 1940s should be replaced with operable ones.

Glenn Richards, 6 Kent Street, said that with regards to the statement that buyers must know in advance what they are buying, he met with the Caswells informally and informed them that a change to the windows would require review. He said the matter being considered is not the windows, but rather the DOD Ordinance. The substance of the argument that the DOD Ordinance is invalid and should be thrown out, which would be a tragedy. The requirement for review does not mean that changes to the downtown cannot happen. He said Attorney Mead frequently argues before boards that they do not have unbridled authority. He finds it troubling she is now arguing that they do.

Mary Jo Anderson said she is in full support of the proposed changes, which are aesthetically pleasing.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes the appeal in strongest terms possible. The appeal is a challenge to the DOD Ordinance itself. The issue is not about windows. The DOD Ordinance was approved by City Council seven years ago and has worked successfully to preserve the downtown. The details of what should or should not be done to the property would be established through the DOD process. He encouraged the applicant to follow the procedures and work with the Historical Commission and Planning Board. He said that without the DOD Ordinance, there would be nothing to protect Newburyport.

Mike Santos, 32 Summit Place, said the discussion taking place is only about windows. Operable windows should be permitted. The request to allow air circulation is responsible.

Christopher Meyers, 2 Jefferson Court, said he is in favor of the petition to change the windows. The restaurants operated by the applicant are excellent. People will be afraid of spaces unless they are well ventilated.

Tom Droste, 77 Lime Street, said he moved to the city because of the applicant's restaurants. He said doors and windows could be replaced in an appropriate way to maintain the historical feel of the city.

Meghan Neely, 10 State Street, said she sees no reason why the request should be denied. The historical integrity of the windows would remain intact. Many people are hesitant to dine indoors. Local businesses should be supported and the decision would have an impact on employees and the local economy.

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Matt Pullen, 184 Middle Road, Byfield, said he supports Nancy Caswell and it would be reasonable to have operable windows. Fresh air is important for the health and safety of the public.

Jon Growitz, 149 Merrimac Street, said he is fully in support of the appeal. The applicant has made many contributions to the city. He said there was a lot of gray area in the comments from the City Solicitor. A business should not be held back by gray areas. Operable windows would supercede the gray areas.

Kelly Duncan, 17 Doe Run Drive, said she supports the applicant. She is in favor of open-air dining, which would contribute to a community feel.

Joe DiBiase, 15 Frances Drive, said he supports the appeal. The first provision of the Zoning Ordinance is to promote the health, safety and welfare of the residents. He said if buildings in the DOD are grandfathered, as Attorney Mead claims, then the city should do something to protect its historic structures. The Board should consider the recommendation of the Arakelian Foundation. The applicant's contention that open-air dining is needed in this location should be considered as well.

Beth Ann Schmidt, 485 Merrimac Street, said the issue at hand is an appeal of DOD Ordinance, which would be the end of preservation in the city. She said the applicant appears to be circumventing the process. Preservation is important and she is concerned about the legal precedent that would be set.

John Grohol, 55 Pleasant Street, said he supports the ability to open windows during the pandemic. The existing windows are contemporary and are not consistent with the historic district.

Joe Maloney, 158 Merrimac Street, said he supports a change in the windows to something more modern. Operable windows would enhance the downtown and update the space.

Erin McCloud, 7 Newhall Lane, said the issue being discussed is the windows. She said it is necessary to support small businesses and change with the times. The new windows would go better with the building.

Chris Johnston, 287 High Street, talked about the accomplishments of Nancy Caswell and said he has respect for her.

Kimberly Holliday, 20 Tremont Street, said the DOD Ordinance was put in place to protect the community. She asked for clarification on the issue that is before the Board. Mr. Ciampitti asked Attorney Eichman about the process. He responded that the matter before the Board is an appeal of the validity of DOD Ordinance. The applicant could have chosen to apply for a Variance but instead chose to challenge the Ordinance. Mr. Ciampitti confirmed that both options were available to the applicant. Attorney Mead said the Board on two occasions has not approved a Variance for the installation of operable windows. She said the question at hand is whether or not the DOD Ordinance applies to the application. The applicant is appealing the decision of the Zoning Administrator that a Variance would be needed.

Dianna did not give a last name or address. She said it would be sad to lose the windows, even if they are not original to the building. The applicant is trying to alter a building that should not be changed.

Anne Tuthill, 1 High Road, Newbury, said she is favor of the petition to change the windows for ventilation, which she said would be a reversible change.

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Stephanie Niketic, 93 High Street, said the issue at hand is the validity of the DOD Ordinance. She asked the ZBA to deny the appeal.

Laura Bentley said the applicant is a good person to revitalize the space. Many people are fearful and a safe environment for employees should be provided.

Luke Rood, 17 Lunt Street, said changing windows would not change the look of the downtown. The city is fortunate that the applicant has taken an interest in the community.

Mary Anne did not give a last name or address. She said she is in support of the DOD Ordinance and agrees with the comments of Ms. Schmidt and Ms. Holliday about preservation. She asked if the windows could be installed without harming the signs and if a ventilation system could be installed as an alternative. She said she is concerned about setting a precedent and losing the history of the city.

Paul Dennison said he is in support of the appeal. He said he moved here because of the charm of the downtown. The two storefronts that had originally existed in this location were joined in the past to create a façade necessary for the times. Operable windows are necessary for the health and safety of the guests.

Shelly Goff said she is the bar manager at Brine. She asked the Board to consider what the past year has been like for employees. Operable windows would make a big difference.

Fred Dur said he was lucky to have operable window in the Tannery and he is in support of the appeal.

Carla Cowles, 3 Broad Street, said she supports Nancy Caswell and it is vital to have open windows.

Dan Wilson, 7 Williamson Avenue, said the dilapidated and vacant building needs work. He does not believe the change to the windows would hurt preservation or that buildings would be torn down as a result.

Reg Bacon, 21 Strong Street, said the appeal is about the validity of the DOD Ordinance. A discussion of the windows should take place at a future meeting. The ZBA is not entitled to overturn the Zoning Ordinance. The proper procedure should be followed. He reviewed the history of the DOD Ordinance and said the community should not view preservation as a restriction.

Jay Caswell said the historic district was not approved because people were concerned about their rights. He said no one is going to take down buildings on State Street to create a strip mall. Property owners are not happy about their rights being taken away, especially by those who do not pay taxes. The Board should approve the change to the use of the windows.

Kimberly Holliday said that each application is considered individually. That other requests were not approved does not have a bearing on this application. The correct way to proceed would be to apply for a Variance. The public comment period was closed.

Mr. Moore said the purpose of the DOD Ordinance is to protect the integrity of historic buildings. The applicant contends that the DOD would not apply to this property because it was enacted after the building was erected and the use was commenced. He asked to which buildings the DOD would apply. Attorney Mead said historic district ordinances are usually adopted under general bylaw provisions because that allows them to be retroactive. The Ordinance may or may not apply to any building in the DOD that existed prior to its adoption, depending on what is being requested. The applicant in this case is not proposing to change the use or the structure.

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The applicant is proposing to modify the windows for the same use. In this particular instance the DOD Ordinance does not apply.

Mr. DeLisle said G.L. c. 40A § 6 shall apply to any reconstruction, extension or structural change. He asked if this is not a structural change. Attorney Mead said the section was updated to apply to any change or substantial extension of use. The applicant is not seeking to change the use. The use would not be substantially different in manner or substantially different in extent. The use would still be conforming. The DOD Ordinance does not apply.

Mr. DeLisle asked Attorney Eichman the reason that the discussion is focused on uses and not structures. Attorney Eichman said Attorney Mead contends existing structures or uses are protected and a change in the windows is not a change in use. However, the Ordinance defines alterations very broadly and includes changes to windows and doors. Alterations requested after the DOD Ordinance was enacted require a Special Permit and all special permits are essentially use special permits. He would agree with Attorney Mead that the Ordinance might not apply to a non-conforming structure, but that is not the case here. He said the Ordinance does apply. The Ordinance protects the structure from further change, and a change requires a Special Permit.

Mr. DeLisle asked if the ZBA has the authority to nullify an ordinance that has been passed by City Council. Attorney Eichman said in this particular appeal, the applicant is contending the DOD Ordinance is invalid under G.L. c. 40A § 4 because it conflicts with State law. The ZBA does not have the jurisdiction to make this decision. He said the application of G.L. c. 40A § 6 would be within the Board's jurisdiction but the appeal is misguided with respect to the application of G.L. c. 40A § 3.

Mr. Swanton said he would like to see the building brought back to life, but the Board does not have a Variance application in front of them that would allow this. He asked why the applicant did not follow the process for installing new windows instead of appealing the Zoning Determination that the property is subject to the DOD Ordinance. Attorney Mead said if the appeal is upheld, the applicant would receive a building permit to install the windows. A Variance would require that the applicant is able to argue that the topography and soils are different than that of surrounding properties. She said the applicant had two choices and believes the Zoning Enforcement Officer is incorrect. Mr. Swanton said he likes windows that open and he wants the restaurant to succeed but he does not want to say that the Ordinance passed by City Council is unlawful.

Mr. Chagnon said it appears that the decision pivots around the word use. Attorney Eichman said the application of G.L. c. 40A § 6 could be looked at in a different way and he does not believe it comes down to the question of it being a use. The Ordinance requires a Special Permit for an alteration to a structure. Mr. Chagnon said the applicant makes a formidable argument that the use of the building would not change.

Mr. Benik asked if the applicant is prepared to go through the Planning Board review process. Attorney Mead said that process applies to the sign, not the windows. Mr. Benik said that in order to rule in the favor the applicant, the Board must decide the DOD Ordinance is invalid. He said he is troubled with making a decision that is in conflict with City Council.

Mr. Swanton said he would be more comfortable approving a Variance for the windows and he wishes the applicant had chosen this option. He said the DOD Ordinance is the only thing to protect the downtown and he is concerned about undermining the Zoning Ordinance.

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Mr. Ciampitti asked if the DOD Ordinance would be disavowed if the Board were to agree with one of the positions of the applicant. Attorney Eichman said if the Board were to accept the applicant's argument, the same argument could be used for other properties and would act as diminution of DOD Ordinance. Mr. Ciampitti said the appeal has implications that reach further than just this project. He asked if the applicant would consider, as some Board member suggested, continuing the public hearing to submit a Variance application. Attorney Mead said the applicant would be inclined to request a continuance for this purpose.

A poll was taken on granting a continuance for the purpose of allowing the applicant to prepare a Variance application for operable windows. Mr. Moore said it would have been preferable for the public to argue for a Variance request rather than attacking the validity of the law. Mr. DeLisle said he could be in support of a Variance. Mr. Swanton said the consideration of a Variance application would be preferable to overturning an important bylaw. Mr. Chagnon and Mr. Benik were in agreement.

The applicant requested a continuance. Mr. Swanton moved to continue the public hearing to the June 8 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).

Cashman Park LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

146-150 Merrimac Street

2021-22 - Special Permit (Use #405)

Lisa Mead and Aileen Graf represented the applicant, who is proposing to convert a professional office building to a mixed-use structure. The structure is location in the WMD and DCOC zoning districts. The existing use is not permitted in the WMD. The ground and first floors would remain as office space. Four one-bedroom condo units would occupy the second and third floors. The existing exterior stairwells would be enclosed to create living space on the upper two floors. A roof deck would be located above this area. The required 14 parking spaces would be provided.

Attorney Mead reviewed the nine criteria for a Special Permit for Use. She said there would not be any new non-conformities or extension or alteration of existing non-conformities. The property would become conforming, because mixed use is allowed in this section of Merrimac Street, while the current use is not. Six letters of support or non-opposition were received.

The proposal triggers the Tree and Sidewalk Ordinance. There is no room for street trees, but the Tree Committee recommended that trees should be planted along the streetscape within the property line. Attorney Mead said some of the parking lot would be converted to landscaping. A brick sidewalk would be installed.

The hearing was opened to comments from the public. Kimberly Holliday said no letters of support were submitted from tenants in the building and many were unaware of the proposal. Sherry Bonder said she is a tenant in the building. She is a therapist who has been working with families in the community for decades. She said safe spaces for clients are not easy to create. The loss of rental space for mental health practitioners would come at a cost to the community. The public comment period was closed.

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Mr. Chagnon asked if those who wrote letters of support were aware of the roof deck. Attorney Mead responded that all but two of the letters were from people on the riverside of the project.

Mr. Moore said the presentation was thorough. The provision of vital services is worthy of comment but is not a concern of the Board. Mr. DeLisle said the application meets the criteria for a Special Permit for Use. He thanked the members of the public for their comments. Mr. Benik said the proposal meets the criteria and he would support it, although the comments raise questions for the broader community. Mr. Ciampitti said the Board is sympathetic to the comments of the public but is limited by what is within its purview.

Mr. Moore moved to approve a Special Permit for Use for 146-150 Merrimac Street with the conditions that the recommendations of the DPS and Tree Commission regarding trees and sidewalks shall be implemented prior to the grant of the occupancy permit. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Swanton, absent; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Benik, yes).

Eric Primack

7-9 Hancock Street

2021-23 - Special Permit for Non-Conformities

The applicant is proposing to construct an addition to a two-family structure. The property is pre-existing non-conforming for front-yard, side-yard and rear-yard setbacks. The structure currently consists of a three-story section in the front, a single-story rear section with a pitched roof and an enclosed porch. The roof of the rear section would be removed and a second story with a flat roof would be added. The footprint of the structure would remain the same. Mr. Primack said the proposal would not intensify the non-conformity or create any new non-conformities. The 374 square-foot addition would allow for a second-story bathroom in each unit. Currently each unit has one bathroom on the first floor. The vinyl siding would be removed. The wood clapboards would be repaired or replaced. The wood trim would be retained and repaired where necessary. The cedar shakes on the rear section would be removed and replaced with clapboards, which would also be used on the addition. No changes would be made to the enclosed porch.

The hearing was opened to comments from the public. Tom Kolterjahn, 64 Federal Street, said the applicant is to appear before the Historical Commission on May 11. He asked that the Board continue the public hearing to allow the applicant to complete the process with the NHC.

Glenn Richards, said the NHC has been working with the applicant to preserve the historical features of the structure. The Commission members did not object to the addition. The public comment period was closed.

Mr. Chagnon ask about the reason for the flat roof. Mr. Primack said he does not want the addition to interfere with the third-floor windows.

Mr. Moore said the proposal is modest and the addition would fit well with the existing building. Mr. DeLisle said the proposal would be an improvement over the existing conditions.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 7-9 Hancock Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr.

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Ciampitti, yes; Mr. Moore, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Swanton, absent; Mr. Benik, yes).

3. Business Meeting

a) Minutes

Mr. DeLisle moved to approve the minutes of the April 22, 2021, meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Swanton, absent; Mr. Benik, yes).

4. Adjournment

Mr. Moore moved to adjourn the meeting at 12:15 p.m. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. Moore, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Swanton, absent; Mr. Benik, yes).

Respectfully submitted,
Gretchen Joy
Note Taker