

**City of Newburyport
Zoning Board of Appeals
Online Meeting
May 12, 2020
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 and Rachel Webb and associate members Ken Swanton and Bud Chagnon (non-voting member). Ed Cameron was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan, and note taker Gretchen Joy.

2. Business Meeting

a) Minutes

Mr. Moore moved to approve the minutes of the April 28, 2020, meeting as submitted. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, absent).

b) Request for Minor Modification

**18 Ashland Street
(2015-054 and 2018-058)**

Brad Kutcher described the modifications requested to a variance that was granted in 2015. A shed at the rear of the property was to be retained but is in poor condition. It would be removed and not replaced. The exposure of the siding would be increased to 3.5” to match that of the original house. The set of stairs proposed for the front entrance would be reduced in length. A retaining wall would instead be added with two granite steps. Gas lanterns would be added on either side of the entrance. The garage doors would be upgraded. Cobblestone pavers would be added to provide access to the side entryway. DPS requested that the cobblestones be removed from the driveway apron. The apron would instead be bituminous asphalt. The applicant had previously submitted a proposal to change the brick driveway to bituminous but this was met with opposition from the neighbors. The driveway will remain brick.

Mr. DeLisle said the changes are reasonable. Mr. Moore said the applicant has addressed the concerns of the neighbors over the proposed change in paving materials for the driveway. Mr. Swanton said he is pleased the driveway would remain brick.

Mr. Moore moved to consider the modification minor and approve it as requested. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

3. Public Hearings

**Gregory Elliot and Candace McMahon
12 54th Street**

2020-019 - Special Permit for Non-Conformities

At the previous meeting the Board members were concerned about the height of the proposed second-story addition and the impact of increased development of the fragile ecosystem. The plans have been adjusted to address some of the concerns. The attic storage space has been removed, which would allow the height of the roof to be reduced. The pitch of the roof has also

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been flattened. The dormer on the west side has been removed and the cupola has been lowered and made smaller. The deck of the neighbors at 8 54th Street is at 26 feet, which is high enough to allow views over a portion of the roof towards the direction of the sunset. The mean roof height is currently 13.9 feet and would be 19.9 feet, while the peak is currently at 19 feet and would be at 23.9 feet.

Attorney Mead said the ordinance does not protect views and the Board cannot use the loss of a view to deny an application. She said the proposed addition would not be as tall as other structures in the immediate neighborhood and the proposal meets the dimensional requirements of the ordinance. She also said the Board's decision cannot be based on future concerns, such as sea level rise. All of the surrounding abutters have submitted letters of support except than the Murrays. The addition would be 14 feet from the property line. Attorney Mead said the proposal would not be substantially more detrimental to the neighborhood or the PIOD than the existing conditions.

The hearing was opened to comments from the public. Lynn and Richard Murray, 8 54th Street, asked if the Board members have looked at the property. They said they had a brief conversation with John Sava prior to the April 28 meeting but the owners never discussed the plans with them.

Mr. Swanton asked for confirmation that a new house on pilings could be constructed by right. Attorney Mead responded that it could be done as long as it met the dimensional requirements. Mr. DeLisle confirmed that the first floor would be at elevation 12, which is 14 feet lower than the Murray's deck.

Mr. Moore said he credits the applicant for being responsive to the concerns of the neighbors. The addition of a bedroom and a second floor are allowed in the PIOD. He has observed that other houses in the area are larger and higher and the proposal would not be substantially more detrimental to the neighborhood than the existing conditions. Mr. Swanton said he did not support the application at the last meeting because he was concerned about the cumulative impact of development in the PIOD. However, he has since studied the zoning ordinance and believes applications must be considered individually. A zoning change would be the vehicle through which new development might be limited. He also said the proposal would be preferable to the construction of a new house on pilings. Mr. DeLisle said while he previously did not support the proposal, he would be able to now because of the change to the height of the roof. Ms. Webb said she previously would not have approved the plan but would do so now due to the changes that were made. Mr. Chagnon said he appreciates changes were made to the plans. Mr. Ciampitti said views are not protected under the ordinance and the applicant has met the burden for a special permit.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 12 54th Street. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

Ryan McShera, Red Barn Architecture
4 68th Street
2020-030 - Special Permit for Non-Conformities

The applicant requested an extension. Ms. Webb moved to continue the public hearing to the

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May 26 meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

Redco Construction Inc. c/o Lisa Mead, Mead, Talerman & Costa, LLC

3-5 School Street

2020-031 - Dimensional Variance

2020-032 - Special Permit for Non-Conformities

The applicant requested an extension. Mr. DeLisle moved to continue the public hearing to the May 26 meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

Moseley Village Condominium Trust

1-15 Moseley Place

2020-036 - Variance Modification

Mark Griffin represented the applicant, who is requesting to eliminate one condition of a variance. In 2002, a use variance was granted for a 14-unit condo development. Condition 1.05 #5 required that brick pavers or textured paving was to be used for the parking areas and driveways. The stamped asphalt that was installed has deteriorated. Two of the 14 units are affordable, which would make it difficult to raise the amount needed to replace the 17,000 square feet of pavement. The annual budget of the condo association is \$75,000. The pavers would cost \$90,000 and would be expected to last ten years, while bituminous asphalt would cost \$60,000 and would last 20 to 25 years. The area is bordered by trees and is not very visible from street. The curbs and cobblestone apron would be retained.

The hearing was opened to comments from the public. Beth Horne, 13 Moseley Place, said she lives in one of the affordable units and the cost would create a financial hardship for her. Susan Gallagher, 2 Moseley Place, said it would not be financially feasible to replace the pavement according to the condition. Peter Kitsakos of Gemini Property Management said the product was a new one at the time it was installed. Other properties at which it had been used have subsequently been paved with a different material.

Ms. Webb asked if the owners of the units were asked if they support the change. Attorney Griffin said the owners were not asked but the Trustees are in favor of the new material.

Mr. Ciampitti said he was on the Board when the variance was approved. The pavement was selected to create the appearance of a village but it did not work as intended. Mr. DeLisle said the material was installed in 2002 and its replacement would be a capital expense the association should have anticipated, but the condition is an unusual one for a variance. Mr. Moore said that while the intentions were good, the shortcomings of the product were not known at the time it was installed. Mr. Stanton said no other development has been required to use this material.

Ms. Webb moved to approve the Variance Modification for 1-15 Moseley Place. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

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Michael J. Gray
12 Harrison Street

2020-037 - Special Permit for Non-Conformities

The applicant requested an extension. Mr. Moore moved to continue the public hearing to the May 26 meeting. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

Windward Shaw LLC c/o Lisa Mead, Mead, Talerma & Costa, LLC
149 State Street

2020-038 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to construct a loading dock on a commercial building. The structure is non-conforming for front yard setback. The loading dock would be located at the right rear of the structure and would be smaller than 1,000 square feet. Currently deliveries are made near the street and this would allow the activity to take place at the rear of the building. The height would be the same as the existing roof and the siding would have the same exposure as the brick. The existing loading bay and wooden stairs would be removed. Attorney Mead said the loading dock would comply with all setback requirements.

No one from the public spoke either in favor of or in opposition to the application. There were no questions from the Board members.

Mr. Moore said there would be no intensification or extension of an existing non-conformity and no new non-conformity would be created. Mr. DeLisle said the criteria for a special permit have been met. Ms. Webb said it would not be more substantially detrimental to the neighborhood and would be an improvement over the existing conditions.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 149 State Street. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, yes; Mr. Swanton, yes).

Mike and Densia Traister
30 Howard Street

2020-039 - Special Permit for Non-Conformities

Chris Vance represented the applicant and described the plans to demolish a Cape-style house and replace it with a two-story structure that would upwardly extend the non-conforming front yard setback and add more than 500 square feet of living area. The roof would be 8'-4" higher than the existing structure. One side yard setback is currently non-conforming and would be made compliant. The amount of living space would increase from 1,000 to 2,800 square feet. The new lot coverage would be 25%. The grading on the site allows for a walkout basement, creating a three-story rear façade. The roof would be both of metal and asphalt shingles and a combination of clapboards and board and batten siding would be used. Mike Traister said the plans were shown to the abutters. Some supported the plan and none were opposed to it.

Mr. Moore said he would support the application because it would improve the side yard setback and the Board has not received any letters of opposition. Mr. Swanton said the proposal meets the dimensional requirements except for the front setback. The new structure would maintain the established setback on the street, which is at about 20 feet. Few houses on the street

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met the required setback of 25 feet. Ms. Webb said she does not support the application due to the scale and massing of the proposal. The house would be the largest on the street and would be out of character with the neighborhood. Mr. DeLisle said the proposal would not fit in with the smaller houses in this area of town. Mr. Ciampitti informed the applicant that four affirmative votes would be needed to prevail. He asked if the applicant would like to continue the public hearing or withdraw the application without prejudice.

The applicant requested an extension. Mr. DeLisle moved to continue the public hearing to the June 9 meeting. Mr. Moore seconded the motion. The motion was approved by a 4-1 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Ms. Webb, no; Mr. Swanton, yes).

Mr. Moore moved to adjourn the meeting at 9:16 p.m. Mr. Swanton seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker