

**City of Newburyport
Zoning Board of Appeals
Senior Community Center
May 23, 2023
Minutes**

1. Roll Call

Chair Rob Ciampitti called a hybrid meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Robert Ciampitti, Stephen DeLisle, Bud Chagnon and Gregory Benik and associate members Patricia Peknik and Lynn Schow. Member Ken Swanton was absent. Mr. Ciampitti left the meeting at 9:30 p.m. Also in attendance were Planning Director Andy Port and Note Taker Gretchen Joy.

2. Public Hearings

**a) Newburyport Renovations LLC c/o Lisa Mead, Mead, Talerman & Costa LLC
6 Pine Street**

ZNC-23-11 - Special Permit for Non-Conformities

ZSP-23-3 - DCOD Special Permit

Adam Costa represented the applicant, who is proposing to renovate and construct an addition to an existing single-family structure located in the R2 district and the DCOD. The structure was built in 1850, according to the District Data Sheets. At some time after 1924, additions were constructed to the rear and side of the structure over a crawl space.

The property is non-conforming for frontage, front-yard setback and right side-yard setback. The proposal would extend the right side-yard setback non-conformity. The existing right side-yard setback is 3.6 feet, where ten feet is required. The proposed addition would be 8.4 feet from the right property line.

The applicant is proposing to remove the side and rear additions, which would involve the demolition of more than 25% of the exterior walls. A physical engineer has reported that it would not be economically feasible or practical to retain and repair the existing walls and foundation to support the new loads of the second floor. In addition, a portion of the rear wall would be covered and the location of some windows would be changed.

Architect Scott Brown said the original portion of the house is only 13 feet wide. The entry would be moved from right to left side of the property, where it would be further from the neighboring structure. The addition would be sided with red cedar clapboards and the windows would be aluminum-clad wood. A two-car garage would be constructed at the rear of the property. The structure would remain one of the smallest houses on the street.

The Historical Commission provided an advisory report, in which it was stated that while the addition would significantly increase the size of the structure, it would not seriously degrade the structure's historical value. Without the addition, this small house would likely be demolished, which would result in a loss of the city's historic fabric.

Attorney Costa said the existing home has 882 square feet of living area. The proposed structure would have 1,642 square feet of living area and would continue to be a small house in relation to others in the neighborhood. The view of the home from Pine Street would not be changed. The addition would be differentiated from the original structure by height and size, and its materials would match those of the existing structure.

With regards to the application for a Special Permit for Non-Conformities, Attorney Costa said no new non-conformities would be added and the proposal would not be more detrimental to the neighborhood than the existing conditions. The side-yard setback would be

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extended but not intensified. The adjacent properties have less open space and the structures are larger. Ten letters of non-opposition were submitted by abutters and the closest abutter is in support of the proposal.

The hearing was opened to comments from the public. Dave Shepard, 14 Pine Street, said he supports the application. He said the applicant does tasteful and high quality work.

Anne Comeau, 4 Pine Street, said the approach is respectful and the project would benefit the neighborhood.

Joe Bevis, 8 Pine Street, said the modest addition would fit in well with the neighborhood. The public comment period was closed.

Mr. Benik asked about the material of the driveway. The renderings show the driveway as brick, but the applicant is not yet able to commit to this material.

Ms. Peknik said the application includes an unusually high percentage of demolition of exterior walls. She said the purpose of the DCOD Ordinance is to prevent demolition. The Board must find that there is evidence that the building retains no substantial market value for a reasonable use, but it sold for \$600,000 on April 10. The engineer did not write that the walls must be repaired independently of this project, only that the walls must be reinforced in order for the applicant's plans to be carried out.

Attorney Costa said the application includes the demolition of the additions that were constructed at a later date than the original structure, and the Ordinance does not distinguish between the two. The property was purchased for the purpose of renovation, and its selling price does not necessarily reflect the amount a homeowner would have been willing to pay.

Mr. Benik said no new non-conformities would be created and the proposal would not be substantially more detrimental to the neighborhood than the existing conditions. The addition would be set back almost five feet more from the property line than the existing structure. The project has the overwhelming support of the neighborhood. He said housing is essential and there is no evidence the proposal would create undue traffic congestion or would overload the public systems. It would not impair the integrity of the district or cause an excess of that particular use in the district and it would be in harmony with the intent of the Ordinance.

Ms. Schow said there is sufficient evidence to determine that the portion of the structure to be demolished does not have a reasonable use in its current condition and retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 6 Pine Street with the condition the accessory structure shall serve only as an accessory living space for the primary dwelling unit and shall not be used as a separate dwelling unit or as a short-term rental unit. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes; Ms. Schow, yes).

Mr. DeLisle moved to approve a DCOD Special Permit for 6 Pine Street with the condition that the accessory structure shall serve only as an accessory living space for the primary dwelling unit and shall not be used as a separate dwelling unit or as a short-term rental unit. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes; Ms. Schow, yes).

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b) Hebbelinck Real Estate, LLC c/o Adam J. Costa, Mead, Talerman & Costa, LLC
193 High Street
ZNC-23-12 - Special Permit for Non-Conformities

Mr. DeLisle recused himself from the public hearing. Adam Costa represented the applicant and requested that the Board approve a Special Permit for Non-Conformities for the removal of an existing shed and the construction of a new garage pursuant to the Land Court's judgment and the Order of Remand dated November 1, 2022. He said in 2018 the applicant proposed that the shed be removed and a garage be constructed for the indoor parking for residential vehicles and hearses. Transportation to the hearses is done outside, even in bad weather. The applicant also proposed to add 52 parking spaces at the rear of the site to remove on-street parking, with a one-way circulation pattern. The number of spaces was later reduced to 38 and the egress on the north side was removed. Eventually, the parking was eliminated from the plans and the only proposed element was the garage. The decision of the Board to deny the application was litigated in Land Court. The Court decided that it was within the discretion of the Board to deny the parking lot. The Court remanded the matter to the Board with instructions to grant a Special Permit for Non-Conformities for the removal of the shed and the construction of the garage. The appeal period was allowed to lapse and the plan was modified to show a reduction in the amount of proposed pavement.

The hearing was opened to comments from the public. Tim Schofield, an attorney representing Nicole and Joe Devlin of 3 Dexter Lane, said the court order does not deprive the Board to set conditions on the Special Permit. One condition his clients are requesting is that the pavement intended to be a turnaround for emergency vehicles not be used for parking. His clients are concerned about lights and noise and are requesting that screening be added along the edge of the pavement.

Rita Mihalek, 53 Warren Street, spoke on behalf of the Newburyport Preservation Trust and said the garage is out of scale, unattractive and will be very visible from a public way. Its height suggests a second-story floor space and a total square footage that would require Major Site Plan View by the Planning Board. The garage should be less than 800 square feet, one-story, and oriented towards High Street.

Stephen DeLisle, 195 High Street, questioned if the 500 gallon dry well would be sufficient to receive the flow from the roof of the garage so that water does not runoff to neighboring properties. He requested that the window on the west side of the garage be removed for the privacy of the neighbors at 195 High Street and for the plantings that were shown in 2019 to be returned to the plans.

Joe Devlin, 3 Dexter Lane, spoke of the importance of screening, saying the fence that was installed would not prevent lights from shining into the second floor bedroom. The public comment period was closed.

Attorney Costa said the applicant is not prepared to accept conditions and would not request a continuance to receive further clarification on the decision of the Land Court.

Attorney Tom Lane of KP Law said the Board is required to approve the Special Permit, but the decision is vague. It does not indicate whether the Board can or cannot add conditions.

The Board members questioned the version of the plan that was remanded. Attorney Costa said there were three versions of the plan. Version #2 was the plan that was pursued. The

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only difference between that and the current plan is the amount of pavement. Version #3 was not litigated and does not include screening. The screening was addressed in the context of 38 parking spaces.

Attorney Schofield said the order does not state the Board cannot impose conditions. Version #2 included 38 parking spaces and could not be the plan that was remanded.

Mr. Benik asked the reason the applicant is opposed to adding a vegetative screen. Attorney Costa said a fence has been installed and the applicant is not interested in accommodating the abutters that were opponents in court. There is a cost associated with landscaping and the applicant does think screening is necessary. The turnaround was designed for flexibility and was not intended for emergency vehicles. The applicant should be allowed to park anywhere on the pavement. The window was included on the plans that were approved, as was the dry well.

Ms. Peknik pointed out that the downward-angling lights shown on the 2019 plan have been removed. She asked if the argument is being made that the garage must be approved but the applicant may remove any elements desired from the site plan. Attorney Costa said the fixtures were to provide light to the parking spaces that were eliminated from the plan. There is no lighting proposed for the driveway.

Mr. Benik said the Board regularly imposes conditions and the members have the residual authority to do so.

Ms. Schow said the garage the Board was ordered to approve is not attractive and it is not in keeping with the historic character of the neighborhood. If the Board had approved the application for the garage, conditions would have been added. The Land Court did not approve a specific site plan, which gives the Board some discretion. The addition of screening would be reasonable and is something neighbors should be expected to do. It would be beneficial for both the neighbors and the neighborhood.

Ms. Peknik agreed that the Land Court judge did not approve the site plan itself. Mr. Ciampitti said that when the language of a remand is vague, the Board may exercise its discretion and it would not be unreasonable for the Board to place certain conditions.

Mr. Benik moved to approve a Special Permit for Non-Conformities for 193 High Street with the conditions that 1) the line of shrubs shown at the rear of the garage on the May 24, 2019, plan shall be installed, 2) this same shrub line shall be extended along the back edge of the parking area, 3) there shall be no lighting installed in the parking area and 4) a civil engineer shall provide a letter stating that the drywell is of sufficient capacity to handle the runoff from the garage roof. Ms. Schow seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Ms. Peknik, yes; Ms. Schow, yes).

Mr. Ciampitti left the meeting and Mr. DeLisle acted as chair for the remainder of the meeting.

**c) Tucker and Haley McCarthy, managers of Overlook Holdings LLC c/o Lisa Mead,
Mead, Talerman & Costa LLC
31 Overlook Street
ZNC-23-8 - Special Permit for Non-Conformities**

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Mr. DeLisle qualified to vote on the application. Ben Taylor and Michael Hebert represented the applicant, who revised the plans after comments the Board members made at a prior meeting. The number of bedrooms was reduced from four to three. The bathroom on the first floor and the dining room on the second floor were eliminated. A privacy wall was added to two sides of the roof deck to screen the views of the neighbors. The footprint of the existing structure is 875 square feet and the footprint of the proposed structure would be 654 square feet. A total of 46 square feet of living area would be added to the structure, which would increase the FAR from 23.9% to 24.9%, where 25% is the maximum allowed. The pilings would be six feet, rather than the ten feet that had originally been proposed. The rear-yard setback would be made conforming. The existing setback is 13.4 feet, where 20 feet is required and would be improved to 20.5 feet. The lot coverage and open space would also be improved.

Attorney Taylor said that if the cost of a project in a flood zone is expected to be at least 50% of the value of the structure, it must be built to meet all applicable flood zone regulations. The assessed value of the structure is \$125,500. The amount of work needed to rehabilitate the structure would be greater than 50% of this amount. He said the applicant has made an effort to reach out to the abutters and two letters of support have now been submitted. He added that there are many two-story structures in the neighborhood.

The hearing was opened to comments from the public. Alexis Clough, 32 Basin Street, said the lot is one of smallest in the neighborhood. The proposal would impact the character of the neighborhood. Her biggest concern is privacy and noise. She said she would like there to be only one deck on the first floor and for the roof deck to be eliminated. The roof decks would allow views into areas of her property that are currently private. She said the height of the structure would increase the shadows and she is concerned the decks would eventually be covered. The examples of bigger homes shown by the applicant are on larger lots. The public comment period was closed.

Ms. Peknik asked about the applicant's assertion that rehabilitation is not a reasonable alternative to full demolition. The FEMA rule pertains to market value, but the applicant referenced the assessed value in the filing. Attorney Taylor said the amount the applicant paid for the property is very close to the assessed value. He said it is the value of the structure, not the entire property, that is taken into consideration. He said the focus of the PIOD is the building of more resilient structures. It would be beneficial to the PIOD to meet FEMA requirements.

Mr. Chagnon said the applicant has made changes in the areas of primary concern to the Board members, which are FAR and height. Some abutters are now in support of the proposal. He said no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. He said he does not have an issue with the size or massing of the proposed structure or the roof deck. Many structures on the island have roof decks.

Mr. Benik said the existing structure is uninhabitable and the proposal would be an improvement. Ms. Schow said she appreciates that the applicant addressed the concerns of the Board. Ms. Peknik said she finds the proposal would be substantially detrimental to the neighborhood. Mr. DeLisle said he is happy the FAR would be improved.

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Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 31 Overlook Street. Mr. Benik seconded the motion. The motion was approved by a 4-1 vote (Mr. Chagnon, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Peknik, no; Ms. Schow, yes).

d) Christina and Tadhg Curtin

4 Everett Drive

VAR-23-2 - Variance

Ms. Schow qualified to vote on the application. Tadhg Curtin said he has submitted six letters of non-opposition from abutters. He also submitted a plan that is acceptable to the closest abutter for the screening of the addition with vegetative. Four shrubs, either dogwood or euonymus, would be planted four feet apart between the corner of the existing shed and Dennett Drive.

The hearing was opened to comments from the public. Virginia Boyle, 9 Everett Drive, said she is in support of the proposal. The public comment period was closed.

Mr. Chagnon reviewed the criteria for a Variance. He said the placement of the house on the corner lot is unique and is not the fault of applicant. The strict application of the Ordinance would deprive the applicant of the reasonable use of the lot and the relief would not constitute the grant of special privilege.

Ms. Schow said the applicant has accommodated the abutter, who has a more extended setback issue than the applicant.

Mr. Chagnon moved to approve a Variance for 4 Everett Drive. Ms. Schow seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Peknik, yes; Ms. Schow, yes).

3. Business Meeting

a) Minutes

Mr. Benik moved to approve the minutes of the May 9, 2023, meeting. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Peknik, yes; Ms. Schow, yes).

b) Other Business

None

4. Adjournment

Mr. Benik moved to adjourn the meeting at 10:10 p.m. Mr. Chagnon seconded the motion. The motion was approved.