

**City of Newburyport
Zoning Board of Appeals
Online Meeting
May 24, 2022
Minutes**

1. Roll Call

Chair Rob Ciampitti called an online meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Rob Ciampitti, Mark Moore, Bud Chagnon, Stephen DeLisle and Ken Swanton and associate member Gregory Benik. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan, Zoning Administrator Jennifer Blanchet and Note Taker Gretchen Joy.

2. Public Hearings

Caswell Restaurant Group, Inc. c/o Lisa Mead, Mead, Talerman & Costa LLC

17-21 State Street

2021-18 - Appeal

The applicant requested to withdraw the Appeal. Mr. Moore moved to approve the request to withdraw the Appeal without prejudice. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

Mark Drago c/o Lisa Mead, Mead, Talerman & Costa LLC

3 Q Street

ZNC-22-4 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to modify a prior Special Permit and is requesting a new Special Permit for the reconstruction of an accessory structure in the PIOD.

The applicant received a Special Permit for Non-Conformities in 2020. During construction, deviations were made from the approved plans. Attorney Mead reviewed the changes and said they were aesthetic in nature; they did not affect the size of the structure or impact the neighborhood. The style and locations of several doors and windows were changed and gable trim was omitted. On the south façade, the size of the deck and pergola was reduced from 72.5 square feet to 50 square feet. On the west façade, the size of the deck was increased from 18 square feet to 26 square feet. A column was added to support the upper deck and the fixed door to this deck was made operational. On the north façade, the size of the second-floor deck was increased 24 square feet and a railing was added.

Attorney Mead said an existing garage that was to be rebuilt collapsed. The garage was non-conforming for side-yard setback. It was within the FEMA flood zone and was located at grade. A new accessory structure would be constructed on pilings outside of the flood zone and would meet all setback requirements. She said the footprint of the new structure would be smaller than that of the existing structure, which would decrease the FAR from 40.5% to 39.66%. The lot coverage would decrease from 25.4% to 24.8%. The mean height of the former garage was estimated to be 10 feet and the height of the proposed structure would be 15 feet.

The hearing was opened to comments from the public. Emily Dunn, 169 Merrimac Street, said she wants speakers to be on camera so that their identities can be confirmed. She said meetings should be held in-person. Andy Port responded that the webinar is set up to prevent

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Zoom bombing. The City is working to provide technology at the Senior Center to allow for hybrid meetings.

Jacob Dumont, 169 Merrimac Street, said he wants to make a motion to adjourn the meeting until a time it can be held in person. He said he wants to be able to see facial expressions to determine the character of the speaker.

Jeremiah Murphy, 163 Old Point Road, said the proposed roof height was presented as being 15 feet, but the peak would be higher and the cupola would further increase the height. While the footprint of the structure might be reduced, its overall square footage would be twice the amount of the existing structure. He said the structure would impact the water views of the abutters and would create more congestion. He is concerned the structure would be used as additional living space.

Kim Richards, 4 P Street, said the proposed structure would be larger and more intrusive into the neighborhood than the previous structure. She also said she observed equipment being used to demolish the previous garage and it did not fall down. The shingles and siding were removed, which allowed its condition to deteriorate. The public comment period was closed.

Mr. Moore asked about the height of the demolished accessory structure. Attorney Mead said the mean height was approximately ten feet. It is not possible to measure this, as structure no longer exists. Mr. Moore asked if the proposed structure could be located elsewhere on the site. Attorney Mead said any other location would be within the flood zone. Mr. Moore said the difference in the type of accessory structure is striking. The original structure was a garage and the proposed structure appears to be an extension of a room in the house. He asked about its purpose. Attorney Mead said it would be used as an office and for storage.

Mr. DeLisle asked about the ridge height of the former and proposed structures. Attorney Mead said she does not have this information. He asked if the garage was demolished by equipment. Attorney Mead said the rot did not just happen in the three years that the applicant has owned the property. She added that the footprint of the original structure was 346 square feet and the footprint of the new structure would be 324 square feet. The deck proposed for the new structure is not included in the FAR calculations.

Mr. Swanton asked if approval was obtained for the changes to the structure. Attorney Mead said the builder made the changes during construction. She agreed that the applicant should have returned to the City for approval before the changes were made. Mr. Swanton said the FAR is much denser than the 25% allowed and the abutters are concerned about the change in height. Attorney Mead said the height of the building would increase because it would be on pilings. The FAR would decrease. Mr. Swanton said the FAR shown on the zoning matrix was 15% and asked for the applicant to ensure that submitted plans are correct.

Mr. Chagnon asked if the cupola would be negotiable. He said its omission might make the height more acceptable to the neighbors. Attorney Mead said her client would agree to remove the cupola.

Mr. Benik said he would like to hear from the applicant himself about the reason that changes were made without approval. The applicant was not available to participate in the discussion. Attorney Mead said the plans were approved in May 2020. As-built plans were created in January 2022 after the Conservation Commission issued an Enforcement Order. Mr.

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Benik asked if the proposed accessory structure would include a bathroom. Attorney Mead said it would not.

Mr. Moore said he is concerned about the number of changes that were made after the plans were approved. Although they might be minor, the applicant failed to adhere to the proper procedure. He said the cupola does not serve an engineering purpose and its removal would provide relief for the abutters.

Mr. DeLisle said he does not approve of the process, but the scope of the changes to the structure are minor. While the style of the proposed accessory structure is different from that of the original plans, no new non-conformities would be created and it would not be more detrimental to the PIOD or the neighborhood than the existing conditions.

Mr. Swanton said the property is already far denser than the 25% allowed. He said that the process followed was not good.

Mr. Chagnon said the modifications to the structure would have been considered minor. The accessory structure would be placed on pilings 3.5 feet above grade. The removal of the cupola would make it appear smaller.

Mr. Benik said the changes to the residence were minor, but the Board was undermined. He would like some form of penalty to be imposed. He said the accessory structure meets the criteria for approval.

Mr. Ciampitti said the Board does not have the authority to issue sanctions. He would not want the accessory building to be used as a dwelling unit.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 3 Q Street with the conditions that the cupola shall be removed from the plans and the accessory structure shall not be considered a separate dwelling unit and shall not be used for short-term rentals. Mr. Chagnon 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).

Waldot Realty, LLC c/o Lisa Mead, Mead, Talerman & Costa LLC
200-208 Merrimac Street
ZNC-22-7 - Special Permit for Non-Conformities
VAR-22-2 – Variance

Lisa Mead, Eric Botterman and Brad Nederoff represented the applicant, who is proposing to remove a portion of a one-story rear addition and construct a new one-story structure in its place. The property is located in the WMD and the DCOD. It includes a mixed-use structure with three residential units, a liquor store and a carry-out establishment. The property is non-conforming for front-yard setback. The height of the building is 40 feet, where 35 feet is allowed. The single-story addition was constructed at the rear of the structure in the 1970s.

The 852.6 square-foot, single-story addition would be removed and rebuilt. An additional 800.4 square foot would be constructed. Cooling and freezing units would be installed on cement pads on the side of the building.

Attorney Mead said no new non-conformities would be created. The addition would meet all dimensional requirements. The existing rear addition is in poor condition. The new addition would enhance and activate the rear of the property. It would be architecturally consistent with the main structure.

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The applicant is also seeking to modify a Variance issued in 2011 for fast food/carry-out use. A coffee shop would be operated in the newly constructed area and would include a small number of interior seats. Outdoor seating would also be provided. Attorney Mead said a new Variance is not being requested. The modification of a Variance is allowed. She said the new use would be compatible with the existing one. The coffee shop would be at the rear of the structure, whereas the pizza shop is located at its front. The coffee shop would operate between 6:00 a.m. and 4:00 p.m., while the pizza shop is open between 11:00 a.m. and 8:00 p.m. A walkway would be created between Merrimac Street and the rear of the structure. An accessible ramp and landing into Cashman Park would be installed. The applicant has agreed to contribute \$17,500 to the Parks Commission to be used towards the construction of a sidewalk that would extend behind Lombard's Oil from this landing to the existing sidewalk between Merrimac Street and Cashman Park.

Attorney Mead went on to say that the coffee shop would enhance the experience of boaters using the Cashman Park ramp. The existing 71 parking spaces would satisfy the parking requirements. The parking area would be reorganized and painted. Landscaping would be installed to break up the pavement. The entry and exit from the parking lot would be controlled. Deliveries would take place at the rear of the structure, which would be an improvement over the existing conditions. Eighteen letters of support have been received.

Ken Cram provided an overview of the traffic impact assessment. He said according to DOT, the volume of traffic in 2020 was 10,045 vehicles daily. The volume for 2022 is projected to be 10,150 on an average day. It is estimated that the coffee shop would draw 478 vehicles per day, mostly during the morning hours, and half of these would be driving by anyway. The boat storage would be removed from the site, which would allow delivery trucks to unload at the rear of the building, which would improve the flow of traffic on Merrimac Street. These trucks now block traffic by parking on the street.

Attorney Mead said she expects to continue the hearing for the Variance application. The applicant was scheduled to attend a meeting of the City's Traffic Safety Advisory Committee (TSAC) prior to the ZBA meeting, but that meeting was postponed.

The hearing was opened to comments from the public. Lorraine Jarnes, 195 Merrimac Street, said the process is not transparent and an in-person meeting should take place. The plan is flawed and the traffic on the street is dangerous. The use would not be a good fit for the neighborhood.

Bob Jarnes, 195 Merrimac Street, said the proposal would be detrimental to the neighborhood and public good. The proposed 74-seat restaurant would dramatically increase traffic congestion and intensify parking problems.

Jeffery Stott, 7 Dove Street, said the amount of traffic on Merrimac Street has grown and is dangerous. The proposed coffee shop would make it more so. The area is saturated with commercial businesses. It is a neighborhood, not downtown. The use would be detrimental.

Emily Dunn, 169 Merrimac Street, said that while 18 letters of support were submitted, they were 22 letters of opposition. She said that 13 of the 18 supporters do not live in town. There are vacant storefronts in town where the business might be welcomed. The neighbors here do not want it. The traffic is already unsafe and horrible.

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Dan Dener, 14 Dove Street, said adding fast food would increase traffic. Cars do not stop at the crosswalks and he is concerned for his safety when crossing the street. There is a trash problem with the existing business.

Jacob Dumont, 169 Merrimac Street, said the coffee shop might not stay and it could be replaced with a McDonalds, which would increase traffic even more. The coffee shop should move into another location in the city that is vacant. He does not think the traffic figures are accurate, as they were recorded during was Covid. He also does not think there are 71 parking spaces on the site. He said the proposal would hurt the neighborhood, where there is already too much on-street parking.

Dan Wilmot, owner of the Park Lunch, said the proposed hours of the coffee shop could change. Merrimac Street is a busy road and there are too many cars in the neighborhood.

Patricia Peknik, 4 Dove Street, said the 2011 Variance allows a small portion of the building to be used for takeout. The proposal would involve new construction for a restaurant, which would not be a modification of the Variance. The use is not permitted in the district. The building would be open 17 hours per day, in addition to deliveries.

Tina Wasserman, 20 Russia Street, said that with the increased development in the area, crossing the street has become difficult. It is a neighborhood, not a commercial district. This would not be a neighborhood business and it would not be to scale with the neighborhood.

City Council President Heather Shand said that the City Engineer and the residents who know how dangerous the street is should make the decision about the safety of bringing additional cars to the neighborhood. The proposal should have first been before TSAC. This section of Merrimac Street is already crowded. The Kent Street intersection should be reconfigured.

Suzanne Poitras, 9 Dove Street, said she agrees with the comments on traffic. The proposal would not be a modification of the use. It would be a new use and a major extension. The building would be open earlier in the morning and cars would be exiting from both sides of the building.

Kathleen Doyle, 197 Merrimac Street, spoke of the difficulties in crossing the street. She agrees that the meeting should not be held on Zoom. People would not use public transportation to get to the building. The waterfront is precious and the neighborhood is beautiful and historically significant. It should not be turned over to an out-of-town realty company.

Milissa Duncan, 14 Dove Street, said the proposal would be a new use, not a modification of an existing Variance. The pizza shop does not have indoor or outdoor seating. She is concerned about noise and said the street has too much traffic. She does not agree with the figures on the expected vehicular traffic to the site. The public comment period was closed.

Mr. Moore asked about existing parking spaces. Eric Botterman counted the spaces on the plan and reported that there are 71 shown. Mr. Moore asked about the location of the sidewalk. Attorney Mead said that it would be immediately to the east of the building. She said there is currently no barrier between the parking lot and the Lombardi property and none is proposed. Mr. Moore asked when deliveries would begin. Attorney Mead said the coffee shop would open at 6:00 am. Deliveries would not necessarily take place before it opens.

Mr. DeLisle asked how trucks leave the Lombardi property. Attorney Mead said the larger trucks exit through Leary's parking lot. Two spaces would be blocked off in the morning

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for delivery trucks to exit. Mr. DeLisle said the minutes from 2011 show that the number of hours the pizza shop was to be open was a factor considered before the grant of the Variance. Attorney Mead said the Variance did not place a limitation on hours. The number of hours the pizza shop is currently open differs from those stated in the minutes. Mr. DeLisle pointed out that the hours of Leary's and Otto coincide, but the coffee shop would be open additional hours. Also, the traffic study did not comment on weekend usage, especially during the summer.

Mr. Swanton asked about seating in the coffee shop. Attorney Mead said there would be four stools inside. The outside tables would be seasonal. She said that while the square footage and seating would be increased, the use would remain the same. Mr. Swanton said the use would not be the same, as it is only takeout now. There is no onsite seating. He asked if the space could be used by a chain restaurant. Attorney Mead said the space would not be large enough and the Variance could include a condition that it would run with the proposed occupant.

Mr. Chagnon asked if the removal of boat storage would result in an increased number of parking spaces. He was told the additional space would be used to remove the delivery trucks from Merrimac Street and no additional spaces would be created.

Mr. Benik said he wants to be provided with information on the timing and number of delivery trucks. He wants confirmation that there is adequate room for turning. He also wants to have a better understanding of the menu. He asked for the applicant to provide a memorandum that supports this being a modification to the existing Variance and not a new use.

Andy Port said the Board has the ability to require a peer review for the traffic study. Mr. Moore said the traffic is the main concern cited by the abutters and third-party confirmation would be beneficial. Mr. Chagnon said a peer review would be imperative. The other Board members were in agreement.

Attorney Mead requested a continuance to the June 28 meeting and said she would confer with her client about a peer review. Mr. Ciampitti said he would not wish to continue the public hearing without having an agreement on this. Attorney Mead agreed the traffic review would be expanded and a peer review would be done on it.

Mr. Moore moved to continue the public hearing to the June 28 meeting with the condition that the applicant agrees to a peer review of the expanded scope of the traffic study, the details of which will be determined by the Planning Office. Mr. Chagnon seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

The Board members decided at 11:10 p.m. not to hear the remaining three applications on the agenda due to the lateness of the hour.

Douglas C. Deschenes
22-24 Market Street
ZNC-22-13 - Special Permit for Non-Conformities
ZSP-22-1 - DCOD Special Permit
ZSP-22-2 - Special Permit for Hotel/Inn Use

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Mr. Moore moved to continue the public hearing to the June 14 meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

**Barbara Gordon c/o Lisa Mead, Mead, Talerman & Costa LLC
7 Oak Street**

ZNC-22-15 – Special Permit for Non-Conformities

Mr. Moore moved to continue the public hearing to the June 14 meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

**Joseph Cohen and Robin Wallace c/o Lisa Mead, Mead, Talerman & Costa LLC
4 79th Street**

VAR-22-3 - Variance

ZNC-22-6 – Special Permit for Non-Conformities

Mr. Moore moved to continue the public hearing to the June 14 meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

3. Business Meeting
a) Minutes

Mr. Benik moved to approve the minutes of the May 10, 2022, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

b) Updates from the Chair and Planning Director
None

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 11:19 p.m. Mr. Chagnon seconded the motion. The motion was approved by a 6-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).