

**City of Newburyport
Zoning Board of Appeals
Online Meeting
May 25, 2021
Minutes**

1. Roll Call

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

2. Public Hearings

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. Mr. Swanton moved to continue the public hearing for 65 Curzon Mill Road to the July 13 meeting. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Benik, yes).

Douglas C. Deschenes, Attorney for Owner

7 Harbor Street

2021-27 - Special Permit for Non-Conformities

The applicant requested an extension. Mr. Chagnon moved to continue the public hearing to the June 22 meeting. Mr. DeLisle 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. Benik, yes).

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

14 Highland Avenue

2021-15 - Special Permit for Non-Conformities

Mr. DeLisle recused himself from the matter. Lisa Mead and Aileen Graf represented the applicant, who is proposing to modify a single-family structure built around 1939. The property is non-conforming for lot area, frontage and front-yard setback. The roofline change would upwardly extend the non-conforming front-yard setback. The size of the structure would be increased by 111 square feet. The changes would be made within the existing covered footprint of the structure and no change would be made to lot coverage.

The Historical Commission determined the structure is historically significant and the Demolition Delay was imposed. The plans have been twice modified in response to comments from the NHC and the neighbors. The NHC has approved the most recent version of the plans.

The hearing was opened to comments from the public. Stacey MacMillan, 16 Highland Avenue, said she appreciates that the applicant removed the previously proposed rear addition from the plans. She said changes could be made the application package that would make the process easier for abutters who do not have experience in the process.

Wade Amos, 6 Highland Avenue, thanked the applicant for the changes that were made to the plans.

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Erika Vartabedian, 12 Highland Avenue, said she is concerned about the presentation, which referred to the characteristics of two sets of plans. She said the abutters did not support the second version of the plans.

Mr. Swanton asked which version of the plans the Board is being asked to approve. Attorney Mead said the plans to be approved are the third iteration, which is dated May 24. The second version of the plans, dated April 13, showed that a second-story addition would be constructed over the deck, which was met with opposition from the neighbors. In the May 24 plans, the second-story addition above the deck has been deleted.

Mr. Swanton also asked about the boundary dispute with an abutter. Attorney Mead responded that the application would meet the dimensional requirements for side-yard setback and lot coverage for both property line locations.

Mr. Chagnon confirmed that the only dimensional change over the existing conditions would be an increase in roof height from 22.8 feet to 23.2 feet and the only non-conformity is the front-yard setback, which would be upwardly extended.

Mr. Swanton moved to approve a Special Permit for 14 Highland Avenue with the condition 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. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Moore, yes; Mr. Benik, yes).

Benjamin Legare
192 Low Street

2021-24 - Special Permit for Non-Conformities

The applicant presented his plan to demolish a structure that is less than 75 years old and replace it with a larger single-family home and two car garage. The property is non-conforming for frontage and both side-yard setbacks. The new structure would be in compliance with all setback requirements. The front-yard setback would be consistent with the neighborhood. The amount of living space would increase from 992 square feet to 2,057 square feet with 336 square feet of storage above the garage. The lot coverage would increase from 12.7% to 17.6%, which is below the 25% allowed. The amount of open space would be 70%. Mr. Legare said the average size of the directly abutting houses is 2,003 square feet. He said the new structure would reduce the existing non-conformities and would be consistent with the character of the neighborhood.

The hearing was opened to comments from the public. Alexandria Kelly, 194 Low Street, said she does not object to the proposal but asked that the decision be subject to her right for a legal review based on the results of a survey she is having prepared.

Mr. DeLisle asked about the materials that would be used for the new structure. Mr. Legare said it would be of Hardy Board, with clapboards on the first floor and board and batten on the second floor. The windows would be simulated divided lights. Mr. Chagnon asked if the foundation would be removed. Mr. Legare said the existing house does not have a foundation.

Mr. DeLisle said the proposal would not create any new non-conformities and would improve on the existing conditions. Mr. Swanton said he appreciates the analysis of the massing of the homes in the immediate vicinity and the improvement of the side-yard setbacks. He requested that application materials be submitted in advance of meetings. Mr. Chagnon said the

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design is modest and would be an improvement over the existing conditions. Mr. Benik said the proposal would be consistent with the size of the neighboring homes.

Mr. Benik moved to approve a Special Permit for 192 Low Street with the condition that the recommendations of the DPS and Tree Commission regarding trees and sidewalks shall be implemented prior to the grant of an occupancy permit. 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. Benik, yes).

Pattiann Bampos c/o Lisa Mead, Mead, Talerman & Costa, LLC
2 Neptune Street
2021-25 - Appeal

The applicant is appealing the determination of the Zoning Administrator that the addition of a dormer would upwardly extend the pre-existing non-conforming front and rear-yard setbacks and would require a Special Permit. The property is non-conforming for lot area, frontage, front-yard setback, left side-yard setback, rear-yard setback, and lot coverage. The saltbox-style structure was built in 1657. The Historical Commission imposed the Demolition Delay for the change to the roofline, which will expire in August.

According to the staff report, the proposed dormer would not be considered a subordinate roof form under the Guidelines for Dormers, which requires that a dormer must be at least 3'-6" from the gable ends, at least 1'-6" from the building's main wall underneath the eaves, and at least 1'-0" below the roof ridge. The proposed dormer would be one foot from the gable ends and would start at the roof ridge. The proposed new roof form would sit within the existing non-conforming front and rear-yard setbacks and therefore would intensify the upward extension of the existing non-conformity.

The opinion submitted by KP Law states that the proposed addition would encroach into rear and front-yard setbacks by several square feet. In *Goldhirsh v. McNear*, an increase in the amount of building within the setback area could be characterized as an intensification of an existing non-conformity of the structure.

Lisa Mead represented the applicant. She said the dormer would increase the amount of living space 140 square feet. It would not increase the footprint of the structure or its height. The roofline change would occur within the structure's existing envelope. She referred to the case of *Bjorklund v. ZBA of Norwell*, in which it was ruled that small-scale alterations, extensions, or structural changes, such as dormers, would not increase the non-conforming nature of a structure and would not constitute intensification. She said the dormer would be a modest alteration. It would be fully encompassed within the existing dimensions and would not alter any non-conformities. Alterations to pre-existing non-conforming structures that do not intensify an existing non-conformity are allowed by right under *Bjorklund*.

Attorney Mead added that the staff notes were incorrect in that they stated the proposal would not meet the definition of a dormer under the Ordinance. A dormer is defined as a rooftop appurtenance to a building or structure built out from a sloping roof and not extending above the ridge line of the roof from which it projects, set back from all walls of the building or structure below it. She said the proposal does meet this definition, although it does not meet the Guidelines for Dormers.

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Attorney Mead went on to say the City Solicitor relied on out-of-date case law. The decision in the Bjorklund case was made 16 years after Goldhirsh.

Attorney Mead concluded by saying the dormer would not be visible from Neptune Street and eight neighbors submitted letters of support. The application conforms with the Ordinance and does not constitute an upward extension of a pre-existing non-conformity. She asked the Board to overturn the decision of the Zoning Administrator.

The hearing was opened to comments from the public. Judy Tymon, 39 Lime Street, said she agrees with the sentiment expressed at the Historical Commission meeting that not a hair on this house should be touched. She also agrees with the opinion of the City Solicitor. The proposed dormer would not be a de minimus change in the context of the city or this house. The structure is an iconic one and it is not the job of the ZBA to strike a balance between livability and preservation. The dormer would be detrimental the neighborhood and the city. The residents are stewards of the city's treasures. If the dormer were approved, a treasure would be lost and they would have failed as stewards.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes the both the Appeal and the Special Permit in the strongest terms possible. There are so few first-period houses that they are unique and rare. The house has survived for 360 years and the dormer would alter it and the streetscape. The house is an iconic historic structure and is in a visible location.

Susan and John Shortsleeve, 1 Neptune Street, said they strongly support the proposal. They said there are a variety of homes in the neighborhood. The proposal would not negatively impact the other half of the structure.

Phillip Schwarz, 178 Water Street, said he supports the project. He said the addition would be modest in comparison to those made to other structures in the neighborhood. He said the change would be a minor one.

Reg Bacon, 21 Strong Street, said he strongly opposes the Appeal, which challenges the validity of the Zoning Ordinance. He said the Historical Commission did its job in imposing the Demolition Delay and the applicant did not make a good faith effort to modify the design. He said that according to the guidelines, the proposed dormer would be too large.

Glenn Richards, 6 Kent Street, said the change would not be a modest alteration and would not be de minimus. It would not, as the applicant contends, be a minor displacement of the roofline and it would not take place within the existing envelope of the house. He said the size of the change must be considered within its context.

Linda Miller, 20 Ship Street, said she opposes the addition of the dormer. The house is one of the few remaining first-period houses and the addition would ruin its iconic form. She said the change would be a major one that would impact the city. It is detrimental to lose a part of the city's character.

Patricia Peknik, 4 Dove Street, said this is not a small-scale alteration but rather an expansion that would destroy the character-defining feature of the house. There are only ten houses in the state as old as this one. With a house this old and rare, only a structural engineer experienced in evaluating antique timber frame houses could determine if the house could withstand any type of demolition at all without compromising the other side of the house. The removal of the roof could introduce structural issues that might lead to a more extensive demolition of the exterior walls.

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Stephanie Niketic, 93 High Street, said she agrees with the concerns of the previous speakers. She said at NHC public hearing, the owner of 2.5 Neptune Street, the other side of house, spoke in opposition to the proposal. She said the house abuts a public park and the proposal would be detrimental to the neighborhood. She cited the City's Master Plan, where the importance of maintaining the city's historic character is emphasized.

Mary Anne McCauley, 25 Madison Street, said the city is gaining a reputation as a place that does not care about its history. She said this classic first period house would no longer be a saltbox if the roofline were to be changed. She asked the Board to deny the Appeal to protect the character of the city.

Mr. DeLisle asked the percentage of the roof would be impacted. Attorney Mead said she does not know this figure. He said it looks like it involves a significant portion of the roof. Attorney Mead clarified that an accepted dormer would be one that meets the Guidelines for Dormers. An accepted dormer must be a certain distance from the main walls and gable ends. She said for this proposal, in which the applicant wishes to add both a den and a bathroom, there would not be sufficient clearance for a shower under the Building Code.

Mr. Swanton said the City Solicitor backs up the determination of the Zoning Enforcement Officer and he does not have the expertise to challenge the City Solicitor.

Mr. DeLisle said the Bjorklund cases discusses small scale alterations. The proposed dormer would span the entire back roof of the structure and does not appear to be small in nature. He said he would find it difficult to support the Appeal.

Mr. Swanton said the Zoning Enforcement Officer flagged the dormer because of its size. The City Solicitor agrees with Enforcement Officer. He said he would not be in favor of the Appeal.

Mr. Chagnon said he that while he found the argument of the applicant to be compelling, he would side with the City Solicitor.

Mr. Benik said he would deny the Appeal. He would defer to the Zoning Administrator except where he finds the decision to be clearly erroneous, which he does not in this instance. He does not find the proposed dormer would be the type of small alteration discussed in Bjorklund.

Mr. Moore said he would have difficulty supporting the Appeal. He does not find that the dormer of this size would be a minor alteration that would compel him to override the decision of the Zoning Administrator.

Mr. DeLisle moved to approve the Appeal of Zoning Administrator's determination for 2 Neptune Street. Mr. Benik seconded the motion. The motion failed by a 0-5 vote (Mr. Moore, no; Mr. Swanton, no; Mr. Chagnon, no; Mr. DeLisle, no; Mr. Benik, no).

Pattiann Bampos c/o Lisa Mead, Mead, Talerman & Costa, LLC
2 Neptune Street

2021-26 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to add a shed dormer to a structure built in 1657. The dormer would add head height for a bathroom, closet and study. The property is non-conforming for lot area, frontage, front-yard setback, left side-yard setback, rear-yard setback, and lot coverage. The front-yard setback non-conformity would be upwardly extended. No new non-conformities would be created and no change would be made to any dimensional

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controls. She said the neighborhood is an eclectic one and many structures have dormers. The proposal would not have a negative impact on the neighborhood.

The hearing was opened to comments from the public. Judy Tymon, 39 Lime Street, said this unique first period house should be preserved. The photographs the applicant presented demonstrate the visibility of the roofline in the neighborhood.

Tom Kolterjahn, 64 Federal Street, said the dormer would be huge and would ruin the structure. The size, scale and massing would obliterate the defining shape of the saltbox.

Glenn Richards, 6 Kent Street, said the City adopted the Guidelines for Dormers to prevent the addition of this type of huge dormer. It would result in the permanent loss of the historic character of the house. The framing would be destroyed and the change would not be reversible.

Reg Bacon, 20 Strong Street, said he is opposed to the Special Permit. This is one of the few first-period houses in the city and its stewardship is important due to its location on the heavily travelled Water Street. The residents of the city are entitled to the application of the Zoning Ordinance to protect one of their greatest collected assets and the city's historic character.

Stephanie Niketic, 93 High Street, said one of the most unique structures in the city would be destroyed. A demand to improve the laws was made after 5 Neptune Street was altered. She said the applicant claims the house is too small to live in, but it has been livable for 360 years. The size of the house was evident when the applicant purchased it.

Patricia Peknik, 4 Dove Street, said the proposal is the same that was presented to the NHC and unanimously opposed. She said the NHC routinely approves conforming dormers. The NHC determined that the raising of the roof as proposed would have a negative impact on the city's historic resources.

Mr. DeLisle asked if the applicant attempted to change the project during the one-year delay. Attorney Mead said the original design was as tight to the house as is possible and the applicant did not attempt to make any other changes. Mr. DeLisle asked if an engineer has determined that the roof would be able to withstand the addition. Attorney Mead responded that the front part of the roof was reinforced to support solar panels.

Mr. Swanton asked if the Zoning Enforcement Officer flagged this dormer because it is oversized and if a dormer could be added if its size were in keeping with the guidelines. Jennifer Blanchet said in order this dormer to be exempt from a roofline change, the dimension shown on the plans as 1'-0" must be 3'-6". This would not be the same as the dormer being small enough to be subordinate and not an upward extension of a non-conformity. She said is not able to make such a determination because she has not been presented with plans showing a smaller dormer. Mr. Swanton asked if there might be a smaller dormer that would be acceptable. Ms. Blanchet responded that she assumes there could be a dormer that would qualify as de minimus change. Mr. Swanton asked if the owner of the other side of the house has changed his opinion on the proposal. Attorney Mead said she could not speak to that.

Mr. Chagnon asked if a smaller dormer would be possible without violating the Building Code. Attorney Mead said that if the dormer were 3'-6" in from either side of the roof, the bathroom would not be code compliant.

Mr. Benik asked about other changes to the structure. Attorney Mead said the solar panels are controlled by the Building Code. The chimney is original but the windows and siding are not.

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Mr. Moore asked if a dormer could be brought in more than one foot from either side of the edge of the roof and be acceptable under the Building Code. Attorney Mead said this might be possible but she does not know at this time. She would review this if the Board would be inclined to give it further consideration.

Mr. DeLisle asked if a dormer could be added regardless of its size. Attorney Mead said a redesign must meet both the needs of the client and Building Code requirements. She asked if the Board would consider a dormer that would be less than 3'-6" from the edges of the roof but more than 1'-0".

Mr. DeLisle said it is difficult to consider the historic nature of the structure in juxtaposition to the purview of the Board. This is made more complicated by there being some size of dormer that could be put on by right. He would like to see a rendering of a smaller dormer.

Mr. Swanton said the Board has approved other dormers but this house is rare. Historic houses are a large part of what makes the city attractive. He said the house is on a major thoroughfare and he could not support an oversized dormer on a rare house.

Mr. Chagnon said he would support the dormer as proposed. Because a dormer of some sort could be added by right, it is of no consequence to him that this would be smaller than the proposed dormer.

Mr. Benik said he is aware of the importance of historic structures to the city, but letters have been written in support of the proposal and there is not groundswell of objection. Changes have been made to the house and it does not have a compelling historic value. He thinks the dormer meets the criteria.

Mr. Moore said that because a dormer could be built within certain specifications, the presence of a dormer would not be more detrimental to the neighborhood. The size, scale and massing would be in keeping with the neighborhood.

Mr. Swanton said the applicant could add a smaller dormer by right, which would not involve the Board. It is before them because of its size.

Mr. DeLisle said the Board must apply the Ordinance. He thinks a dormer, regardless of the distance from the sides of the roof, would be detrimental to the neighborhood. He could not support a dormer of any size.

Attorney Mead requested an extension to discuss the matter further with the applicant. Mr. Chagnon moved to continue the public hearing to the June 22 meeting. Mr. DeLisle 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. Benik, yes).

Symes Development & Permitting, LLC
22-24 Auburn Street (Lot 2)
2021-28 - Special Permit

Rich Williams represented the applicant, who is proposing to construct a two-family structure in the R3 zoning district, where two-family use is allowed by Special Permit. The structure would meet all dimensional requirements. The lot coverage would be 22% and the open space would be 70%. The lot was a part of a larger property that was divided and an existing two-unit structure was demolished. A dimensionally complaint single-family home is to be constructed on the other lot. The project triggers the Tree and Sidewalk Ordinance. The applicant submitted a

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revised planting plan that shows the addition of a red maple, as was recommended by the Tree Committee. Mr. Williams reviewed the nine criteria for the special permit.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Swanton asked about the reconstruction of the sidewalk. Mr. Williams responded that a concrete sidewalk would be added along the frontage of both lots. Mr. Chagnon asked about the fence at the rear of the property. Mr. Williams responded that arborvitae would be added between the existing trees.

Mr. DeLisle moved to approve a Special Permit for 22-24 Auburn Street with the conditions that the recommendations of the Tree Commission shall be implemented prior to the grant of an occupancy permit and the existing sidewalk along the frontage of the two lots shall be replaced with a brick or concrete sidewalk in accordance with the specifications of the DPS prior to the grant of an occupancy permit. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Swanton, yes; Mr. Benik, yes).

3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the May 11, 2021, meeting. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Swanton, yes; Mr. Benik, yes).

b) Discussion of Proposed Zoning Amendment

Andy Port summarized the proposed Zoning Ordinance amendment that will be considered by the Planning Board and City Council at a public hearing on Wednesday, June 2, 2021 at 7:00 p.m. One aspect of the amendment would be a clarification of the dimensional requirements within the Agricultural Conservation District. The definition of demolition would be updated to be consistent with KP Law's interpretation of the Ordinance. The requirements of the DCOD and the DOD would also be considered.

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 10:55 p.m. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Swanton, yes; Mr. Benik, yes).

Respectfully submitted,
Gretchen Joy
Note Taker