

**City of Newburyport
Zoning Board of Appeals
Online Meeting
June 22, 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 Mark Moore, Stephen DeLisle, 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 and Note Taker Gretchen Joy.

2. Public Hearings

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. She said the plans for the dormer have been revised based on comments made at the previous meeting. The dormer would now be located two feet from the edge of each side of the existing roof rather than the one foot that had previously been proposed. The face of the dormer would be moved six inches closer to the lower eave. The number of windows would be reduced from five to three. The windows would be eight-over-eight rather than six-over-six. There would be two skylights rather than three.

Attorney Mead said comments were made at the previous meeting that saltboxes are rare, but there are eight others in Newburyport. She said the architecture in the neighborhood is eclectic. The house has seen a number of changes over the years and the proposal would make it more livable. Four additional letters of support have been provided.

The hearing was opened to comments from the public. Glenn Richards, 6 Kent Street, said the applicant has focused on the upward expansion of the non-conformity. Nowhere did the applicant mention that the project was before the Historical Commission and was found to be detrimental to the structure and the neighborhood. He said the applicant has not chosen to install a dormer that would meet the guidelines. He reminded the Board of the language of the Ordinance, which states that power must be sparingly exercised to preserve the property rights of others.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes the application in the strongest terms possible. He pointed out that most of the salt boxes Attorney Mead referenced are not first-period houses. It is its age that makes this property unique. He said that a slight change in the plans is not an improvement. The dormer would be detrimental to the structure and the neighborhood. It would be a tragedy for the city and the neighborhood to lose the saltbox roofline after it has existed for over 360 years. One side of the house would overpower the other and the owner of the other side has submitted a letter of opposition.

Patricia Peknik, 4 Dove Street, said she would support the right of the applicant to install a conforming dormer but she opposes the granting of a special privilege. Section 9 of the Special Permit criteria cannot be divorced from the intent of the DCOD ordinance. Section 9 does not nullify the historical preservation review criteria. The ZBA website states that the interests of the city and the welfare of the public as a whole must be considered along with those of the applicant. The upward extension in this location would not be beneficial to the residents of the

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city. She said this is one of only ten houses in the Commonwealth that have been documented as having structural evidence of being as old as this house. She also read a letter from Adam Weisman, the owner of the other side of the structure, who requested that the property line be respected.

Reg Bacon said the application could be denied solely on the basis of the dimensions of the proposed dormer. It is too big. The destruction of the roofline of the iconic 17th century home impacts not only the neighbors but every taxpayer in the city.

Stephanie Niketic, 93 High Street, said the Board is not being asked to approve a dormer, which could be done by right. They are being asked to approve a roof addition that is so large that the Zoning Administrator has determined that it is an upward extension of a non-conformity. She said the proposed skylight and window in the attic could indicate that living space is being added that has not been reflected in the application. She said Board could deny the application and the owner could still install a dormer. The addition of a smaller, by-right dormer could be a more reversible alteration.

Pattiann Bampos said she believes she is being a good steward of the building and the changes she is making would help it survive another 200 years. The shed dormer would make more livable while preserving the roofline.

Dianna Kinoshian, 42 Temple Street, said the applicant purchased a treasure in our town. The prior owner lived there for 30 years and found it livable. The public comment period was closed.

Mr. DeLisle asked about the construction of a by-right dormer, which would be located an additional 1.5 feet from the edges of the roof. Attorney Mead said the bathroom would then not meet code requirements.

Mr. Swanton asked about the dimensions of the roof. Attorney Mead did not have this information. He said without these dimensions, it would not be possible to determine the percentage of the roof that would be covered by the dormer. He said the roof would be covered except for two feet on each side and six inches from the bottom, which he thinks would be about 80%. He asked if the bathroom would meet code requirements if the closet or study were made smaller. He also asked about the letter of opposition from the owner of the other side of the house. Attorney Mead said the setback requirement is zero from that side of the house. The non-conforming lot line is on the Water Street side. Mr. Swanton commented that the dormer would be two feet from the edge of the roof, which is very close to a busy road. He asked why the additional 18 inches is so critical. Attorney Mead said it is critical to the livability of the home. Mr. Chagnon confirmed that the width of a by-right dormer would only be three feet less.

Mr. DeLisle said the percentage of the roof that would be covered by the dormer is still of concern to him. The size of the dormer relative to the area of the roof creates massing issues.

Mr. Swanton said he agrees with Mr. DeLisle. The location of the dormer is very visible and it would cover 80% of the roof, which is too much massing.

Mr. Chagnon said he would support the application. The proposed dormer would be very similar to one that could be constructed by right.

Mr. Benik said he agrees with Mr. Chagnon. The issue of massing is relative to the neighborhood and he does not think the dormer would not be detrimental.

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Mr. Moore said the proposed dormer would be a big change, but a by-right would be a big change as well. He said the dormer would not be detrimental to the neighborhood. The wider version of the dormer could better preserve the slope of the roof.

The applicant requested a continuance. Mr. Benik moved to continue the public hearing to the July 27 meeting. Mr. Chagnon seconded the motion. Mr. Swanton requested that the applicant provide roof coverage figures. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

Douglas C. Deschenes, Attorney for Owner

7 Harbor Street

2021-27 - Special Permit for Non-Conformities

Douglas Deschenes and Scott Brown represented the applicant, who is proposing to construct a second story addition above the existing footprint of a single-family house on Plum Island. The house dates from the early 1900s. The Historical Commission has determined it is not historically significant. The 216 square-foot addition would provide a closet and sitting area in the master bedroom. The property is non-conforming for lot area, lot coverage, frontage, side-yard setbacks, rear-yard setback and FAR. The proposal would upwardly extend the left side pre-existing side-yard non-conformity. The FAR would increase from 36% to 39%. The height of the existing roof is 17.4 feet and the height of the proposed roofline would be 20.5 feet.

Attorney Deschenes said the modest proposal would have a de minimus impact on the neighborhood. It would blend well with the existing home and would be an aesthetic improvement. The materials of the addition would match those of the existing structure. The lot coverage would not increase.

No one from the public spoke in favor of or in opposition to the proposal. The neighbors have been contacted and 13 letters of support were submitted.

Mr. DeLisle confirmed that the expansion would be located above the existing footprint. He asked about the materials. Scott Brown said the materials would match those of the existing structure.

Mr. Swanton commented that the property was purchased in 2019 and there have been no changes to the PIOD requirements since that time. He said the PIOD is a fragile environment and the property is already significantly above the allowable FAR. He is concerned about the cumulative impact of small expansions. He asked if a closet could be added within the existing footprint. Scott Brown said the bedroom is located under the roof structure. It would not be possible to add a closet with a door inside the volume of the existing structure.

Mr. Chagnon asked about the existing living space. He said he thinks the FAR is closer to 27% or 28%. Scott Brown said the living space is 1,855 square feet. The FAR is high because it was necessary to include the portion of the basement that is over six feet. He said the existing FAR without the basement would be 27% and the proposed FAR would be 31%.

Mr. DeLisle said he believes the lot coverage is more critical than the FAR. The lot coverage would not increase and with no new bedroom or bathroom, there would not be an increase in the intensity of use. He said the size and massing of the proposal would not be detrimental to the neighborhood.

Mr. Swanton said FAR is the best metric for density. He said that while adding a closet would be a small change, he could not support any proposal that would increase the FAR to 39%.

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Mr. Benik said he does not think the addition would create additional demands on the infrastructure of the island. The intensity of use would not increase.

Mr. Chagnon said he agrees with Mr. DeLisle. The addition of a closet and sitting area does not create the concern that the addition of a bedroom or bathroom would.

Mr. Moore said the proposal is modest and would not add intensity. It would not be detrimental to PIOD.

Mr. Chagnon moved to issue a Special Permit for Non-Conformities for 7 Harbor Street with the condition the applicant shall submit updated plans prior to the issuance of a building permit. Mr. DeLisle seconded the motion. The motion was approved by a 4-1 vote (Mr. Swanton, no; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

David and Patrice Antczak c/o Lisa L. Mead, Mead, Talerman & Costa, LLC
161 Water Street

2021-33 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to construct a one-story addition at the rear of a pre-existing non-conforming structure. The property is in the WMD and DCOD. It is non-conforming for frontage, lot size, front-yard setback and one side-yard setback. The height of the existing structure is 26 feet and 25 feet is the maximum allowed in the WMD. The finished floor elevation of the proposed addition would be 15.8 feet, which is above the base flood elevation of 12 feet. The non-conforming side-yard setback would be extended. The existing structure is 5.0 feet from the property line at its closest point. The addition would step in from the original structure and would be 5.1 feet from the property line on the west side.

No one from the public spoke in favor of or in opposition to the proposal. A letter of non-opposition was received from an abutter.

Mr. Swanton said the plan is a nice one and the addition would not be visible from the street. Mr. DeLisle said no new non-conformities would be created. Mr. Swanton said he would support the application. Mr. Chagnon said he likes the design of the proposal.

Mr. Swanton moved to issue a Special Permit for Non-Conformities for 161 Water Street. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

Arthur Russo c/o Lisa Mead, Mead, Talerman & Costa, LLC
316 High Street

2021-35 - Dimensional Variance

2021-34 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to construct addition to a single-family home. The property is at the corner of High Street and Forrester Street. The longer frontage is on the Forrester Street side of the property, making this the primary front yard. The property is non-conforming for lot area and secondary front-yard setback. The setback from High Street, the secondary front yard, is 1.2 feet where 25 feet is required. The proposed addition would be 13.1 feet from the High Street property line, which is an extension of the non-conformity. The addition would provide a first-floor master bedroom and bathroom. The form and materials of the addition would match those of the original structure. Attorney Mead said the proposal would

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not be more detrimental to the neighborhood than the existing conditions. Four letters of support were received. The proposal does not trigger the Tree and Sidewalk Ordinance.

A Variance is needed for the property line opposite Forrester Street. This is the rear yard for zoning purposes and the setback requirement is 25 feet. The addition would be ten feet from the property line, which would be conforming if the property were not on a corner and this were the side-yard setback. Attorney Mead said the proposed location of the addition would be the least disruptive to the property and the neighborhood. An alternate location would require the removal of gardens and the shifting of the driveway to High Street, which would be less safe.

No one from the public spoke in favor of or in opposition to the proposal. Mr. DeLisle clarified that the Special Permit being requested is for the extension of front-yard setback non-conformity. He asked about the foundation of the addition. It would have stone veneer and foundation plantings would be installed.

Mr. DeLisle said the location of the property on a corner creates a hardship. The property would be conforming for rear-yard setback if it were not for this. The strict application of the Ordinance would deprive the applicant of the reasonable use of this portion of the lot. No special privilege would be granted. The addition would complement the existing structure and would not be detrimental to the neighborhood.

Mr. Swanton said he would support the Variance and he likes that the addition is stepped back from High Street. Mr. Benik said the addition is tasteful.

Mr. Benik moved to issue a Variance for 316 High Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

Mr. Chagnon moved to issue a Special Permit for Non-Conformities for 316 High Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

**Alexander and Mary Bruce Rae-Grant c/o Lisa Mead, Mead, Talerman & Costa, LLC
20 Atwood Street**

2021-37 - Dimensional Variance

2021-38 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to construct two one-story additions to a pre-existing non-conforming single family house. Two existing non-conforming sheds would be demolished and replaced with a new 8' x 14' non-conforming shed. The property is non-conforming for lot size, frontage, front-yard setback, one side-yard setback and rear-yard setback. The applicant is seeking a Special Permit to extend the side-yard non-conformity of the shed and the rear-yard non-conformity of the house. The applicant is also seeking a Variance to increase the lot coverage above 25%. The existing lot coverage is 24.3% and the proposed coverage would be 30.2%.

Attorney Mead said the two existing sheds are small and not functional. The applicant desires to increase the amount of outdoor storage space. In addition, the laundry is in the basement and would be moved to the first floor. The second addition would be used as a mudroom and would include space for a kitchen table. She said the odd shape of the lot and the unique nature of the structure create an undue hardship.

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The hearing was opened to comments from the public. Connie Preston, 18 Atwood Street, said she supports the application. She said the additions are modest and would be appropriate for the neighborhood. The setback of the shed would be similar to others in the neighborhood.

Tom Kolterjahn, 64 Federal Street, said the plans are minimal. The applicant has paid attention to the details and the proposal would complement the building. The public comment period was closed.

Mr. DeLisle asked for clarification on the nature of the hardship. Attorney Mead said the applicant could choose to increase the living area by constructing a two-story addition, which would reduce the amount of proposed lot coverage, but this would have a detrimental impact on the historic structure. She said the purpose of the Ordinance is to control density and allow for open space in the neighborhood. She said the shed and additions would be partially over areas that are currently impervious. Mr. DeLisle pointed out that her answer pertained more to the open space requirement than lot coverage.

Mr. Swanton asked if the shed contributes to the lot coverage. David Keery said the shed and two additions are all approximately the same size and each has its own important function.

Mr. DeLisle said that he could support the Special Permit. The extension of the non-conformities would not be detrimental to the neighborhood. He said the applicant has not met the burden for a Variance and he would not support the application.

Mr. Swanton also said he could not support a Variance, which has a high bar. Mr. Chagnon said that he agrees, although he likes the project.

Mr. Benik said he would support the Variance application. He said the neighborhood is dense. The proposal would provide additional living space while preserving the historic nature of the structure. Mr. Moore said the conditions are unique to the lot.

The applicant requested a continuance. Mr. Benik moved to continue the public hearing to the July 27 meeting. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

3. Business Meeting

Minutes

Mr. Swanton moved to approve the minutes of the June 8, 2021, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, abstain; Mr. Benik, yes).

4. Adjournment

Mr. Chagnon moved to adjourn the meeting at 10:17 p.m. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Benik, yes).

Respectfully submitted,
Gretchen Joy
Note Taker