

**City of Newburyport  
Zoning Board of Appeals  
Online Meeting  
August 10, 2021  
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, Mark Moore, Stephen DeLisle, Ken Swanton and Bud Chagnon and associate member Gregory Benik. Also in attendance were Planning Director Andy Port and Note Taker Gretchen Joy.

**2. Request for Minor Modification**

**21-23 Walnut Street (2020-070 and 2020-071)**

Zoning Administrator Jennifer Blanchet sent a memo to the applicant regarding a possible violation of the Zoning Ordinance. The applicant was to retain the original trim. Ms. Blanchet observed that trim had been replaced with new material that did not match the original trim. In addition, the front door and its sidelights were covered and the surrounding trim was removed.

Stephen Dodge represented the applicant and requested permission to replicate the trim. He said the original trim was in disrepair and he was unable to restore it. He does not intend to change the dimensions of the front door. The current conditions do not represent the final product. Spanish cedar would be used to replicate the trim. The dimensions would be the same as what was existing.

Mr. Swanton asked about the corner boards, which are not fluted and appear to be of stock lumber. Mr. Dodge responded that only the boards in the door surround were fluted. The new corner boards replicate the original design.

Mr. DeLisle said materials that have been neglected sometimes cannot be reused but he emphasized that an applicant must come before the Board before deviating from the plans. Mr. Swanton said he would reluctantly support the request but he is concerned about there being no penalty for work that is not done in accordance with the approved plans. The applicant has apologized and has admitted he should have requested a modification when he realized it would be necessary to replace the material. Mr. Benik said he would support the request. The Board does not have the authority to impose sanctions, but this might be an issue City Council could address. Mr. Ciampitti said the process has worked. While the loss of an architectural element is unfortunate, materials have a finite lifespan.

Mr. Benik moved that the request is minor and to approve the request for a Minor Modification for 21-23 Walnut Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote. (Mr. Moore, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. Swanton, yes; Mr. Chagnon, absent).

**3. Public Hearings**

**Christopher and Holly Ragusa, Trustees, c/o Lisa Mead, Mead, Talerman & Costa, LLC  
276 High Street  
2021-48 - Special Permit**

Mr. DeLisle recused himself on the matter. The applicant requested an extension. Mr. Swanton moved to continue the public hearing to the September 14 meeting. Mr. Moore seconded the

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motion. The motion was approved by a 4-0 vote. (Mr. Moore, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. Swanton, yes; Mr. Chagnon, absent).

**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**

Mr. Ciampitti said he is qualified to vote on the matter, which he was not at the previous meeting. 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 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 plans were revised based on comments made by Board members at the June 22 meeting. The size of the front addition was reduced from 112 square feet to 99 square feet. The size of the shed was reduced from 112 square feet to 65 square feet. The existing lot coverage is 24.3%. The lot coverage would now be 28.9% instead of the 30.2% previously proposed.

Attorney Mead said the lot was formerly in the R-3 zoning district. This district, which is one block away from the property, allows a 30% lot coverage. She said proposal is modest but provides much needed first-floor living space. She said the project has overwhelming support from the neighbors. One abutter changed her letter of non-objection to one of support based on the amendments to the plans. Tom Kolterjahn intended to speak in favor of the proposal but could not attend the meeting and has instead submitted a letter of support.

Architect David Keery said historic structures are often changed over time to meet the needs of their residents. The proposal would be beneficial in that the main structure would be restored. He said relief should be granted based on the merits of the proposal and the support of the neighborhood.

Attorney Mead said no new non-conformities would be created. The existing non-conformity would be extended and intensified. She said the shape of the lot is a hardship. The applicant has worked to minimize the impacts to the historic structure. The granting of a Variance would have no negative impact on the neighbors. The lot coverage would be consistent with other properties in the South End. A special privilege would not be conveyed.

Mr. Moore asked about the lot line closest to the shed. Attorney Mead said the east lot line is longer than the west lot line. The shed is square with the house, which is square with the street. The shed is at angle to the lot line.

Mr. DeLisle asked about the nature of the hardship. Attorney Mead said the shape of the lot creates a hardship, as does the presence of a historic structure. The applicant does not wish to construct a two-story addition that would cover a part of the house. Mr. DeLisle said that lot coverage does not relate to the shape of the lot.

Mr. Swanton said the applicant is seeking a Variance and Special Permit for Non-Conformities, not a DCOD Special Permit. The consideration of the historic nature of the structure is outside of the purview of the Board. Attorney Mead said it is a historic structure in a

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historic neighborhood and the Board should take the historic nature of structures into consideration when making its decisions. It is appropriate to argue for the preservation of a historic structure. Mr. Swanton said this is a factor that should be given more consideration, particularly in the South End. He said the shape of the lot is closer to a rectangle than other properties in the South End. (Mr. Chagnon joined the meeting at this point.)

Mr. Moore said the proposed is modest. The conditions and circumstances of the property are unique. The options for expansion are limited and would be reasonable to add a small mudroom. The denial of the application would deprive the owner of the reasonable use of the property. He concluded that the proposal would not be detrimental to the neighborhood.

Mr. DeLisle said he does not find that the four requirements for a Variance have been met. The lot is too small for the proposed additions. Mr. Swanton said he is in agreement with Mr. DeLisle with regards to the Variance criteria. The issue is the increased lot coverage. This could be remedied by the construction of a single two-story addition, but this would be more detrimental to the historic structure than two small additions on the first floor. The applicant has improved the proposal, which has the support of the neighbors.

Mr. Benik said the proposal is pleasing and would be an improvement to the home. It would be beneficial to the city and is supported by the neighbors. He said the four criteria for a Variance have been met. Mr. Ciampitti said he could support the proposal, which the applicant has improved in response to comments from the Board.

Mr. Moore moved to issue a Dimensional Variance for 20 Atwood Street. Mr. Benik seconded the motion. The motion was approved by a 4-1 vote. (Mr. Moore, yes; Mr. DeLisle, no; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. Swanton, yes; Mr. Chagnon, abstain).

Mr. Moore moved to issue a Special Permit for Non-Conformities for 20 Atwood Street. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote. (Mr. Moore, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. Swanton, yes; Mr. Chagnon, abstain).

**Cheryl Smith, Trustee c/o Mead, Talerman & Costa, LLC  
8 Coffins Court**

**2021-45 - Dimensional Variance**

**2021-46 - Special Permit for Non-Conformities**

**2021-47 - Special Permit allow In-law Apartment**

Lisa Mead represented the applicant, who is proposing to construct an in-law apartment, connector and addition to a single-family home that is located in HSRA and DCOD. The DCOC is not triggered because 24.3% of the exterior walls would be removed. The applicant would reside in the in-law apartment, which has the appearance of a carriage barn. The rear of the property is significantly higher than the front of the property, which allows for the construction of a garage under the in-law apartment. The applicant's daughter, husband and two children would live in the main house. Attorney Mead said the addition would be needed to accommodate the family of four and would provide a family room and dining area.

The applicant requires a Special Permit for Non-Conformities. The property is non-conforming for frontage, lot area, front-yard setback, right side-yard setback and rear-yard setback. The front-yard setback non-conformity would be exacerbated. The existing front-yard setback is 49.6 feet where 75 feet is required and would decrease to 31.2 feet. The rear-year setback non-conformity would be extended. The existing setback is 3.4 feet and the setback of

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the rear addition would be 7.2 feet. The requirement in the HSRA District is 300 feet. Attorney Mead said no new non-conformities would be created for which a Variance is not being sought.

The applicant requires a Variance for open space and lot coverage. The lot coverage would increase from 10.6% to 17.6% where 12% is the maximum allowed. The existing open space is 86.3%, where 85% is required and would decrease to 78.8%.

Attorney Mead said the lots near Marchs Hill are shaped differently from the remainder of the High Street District. The property has topographical challenges and is oddly shaped. She said the HSRA was designed to protect the rear yards of the houses on High Street. The lots on Coffins Court are much smaller and have higher lot coverages than the High Street properties. Coffins Court is reminiscent of the R-2 district. She said the proposal would not be detrimental to the neighborhood. The house is the last one on the street and is bordered by City property. The rear addition would be built over an existing patio. The in-law apartment would be smaller than the main house and while it would pick up on its design elements, it would be differentiated from it. The connection to the structure is not living area but preserves integrity of the historic structure and is needed because of the topography. The lot does not abut High Street and the additions do not abut any adjoining properties. The other homes on Coffins Court have less open space and more lot coverage than what is being proposed. The proposal is more consistent with the Ordinance than these properties. The project would preserve the rear of the lot and would not derogate from the intent of the Ordinance. A special privilege would not be granted. Attorney Mead reviewed the requirements for an in-law apartment and said several letters of support have been received.

The hearing was opened to comments from the public. Stephanie Niketic, 93 High Street, said the project narrowly escapes DCOD review and a Historical Commission advisory report. She is grateful to the applicant for preserving the 18<sup>th</sup> century Georgian-era building, which is an increasingly rare example of Newburyport's architectural heritage. She said this is the first Variance being sought for the HSRA, which was adopted to preserve open space along the High Street ridge. She does not want to see the dimensional controls eroded of the district eroded. She commented that an addition does not seem necessary for a 3,600 square foot structure that would be used by a family of four. She asked if a Variance would be needed if this addition were not to be constructed. She pointed out that the materials have not been indicated on the plan. The public comment period was closed.

Mr. Moore asked if a Variance would be needed without the connector and rear addition. Attorney Mead said the in-law apartment alone put the property over the 12% allowed for lot coverage. The connector would be 96 square feet and the addition would be 500 square feet.

Mr. DeLisle asked about the covered porch. Attorney Mead said it counts against open space but not lot coverage. He said the City Council appears to intended to protect Coffins Court. It is in the High Street A district, while other side streets are in the High Street B district. Attorney Mead said the goal of the Ordinance is to protect the rear of the properties from being developed. The proposal would be in harmony with the Ordinance. The rear yard would be protected. Mr. DeLisle asked for clarification on the hardship. Attorney Mead said it is the topography and shape of the lot. Without the connector, it would be necessary to place the in-law apartment against the historic structure, which would damage it.

Mr. DeLisle asked about the materials. Architect Bill Soupcoff said the barn would have a fieldstone foundation. Above this vertical ship lapped boards of a high-density polymer would

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be used. Red cedar shingles would be used on the connector to match the existing house. Red cedar shingles would be used on the roof of the barn. A high density-polymer would be used for the trim. The windows would be wood with simulated divided lights.

Mr. Swanton said the house with the in-law apartment, connector and addition would be approximately 5,000 square feet, which would be a large structure for five people. He said he could support exceeding the 12% lot coverage for the in-law apartment and connector but he would have difficulty supporting the addition. Mr. Soupcoff said the first-floor rooms in the main structure have been preserved like a museum. The rooms are awkward and not livable for a family in today's society. The interior rooms are exquisite and the issuance of a Variance would ensure that they would be maintained.

Mr. Moore said the addition has been well thought out. Mr. DeLisle said the strict application of the Ordinance would not allow for the addition of an in-law apartment. The house is on a smaller lot than the High Street properties the Ordinance was designed to protect. The Ordinance was adopted to prevent infill, which is not being proposed. He said the topography and odd-shape of the lot are not a result of the actions of the applicant. The grant of a Variance would not be a special privilege. No new non-conformities would be created.

Mr. Benik said the design of the in-law apartment is tasteful. He is not convinced the addition would be necessary to the reasonable use of the structure. Mr. Ciampitti said shares some of the concerns mentioned by the other Board members, but the massing would be appropriate for the area and the lot. Mr. Swanton said the design of the barn is nice design and the addition would not be visible from the street. He is uncertain of issuing the first Variance in the new district for a 5,000 square foot house. Mr. Chagnon said is comfortable with the three applications.

Mr. Moore moved to issue a Dimensional Variance for 8 Coffins Court. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote. (Mr. Moore, yes; Mr. DeLisle, no; Mr. Ciampitti, yes; Mr. Swanton, yes; Mr. Chagnon, yes).

Mr. Chagnon moved to issue a Special Permit for Non-Conformities for 8 Coffins Court. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote. (Mr. Moore, yes; Mr. DeLisle, no; Mr. Ciampitti, yes; Mr. Swanton, yes; Mr. Chagnon, yes).

Mr. Chagnon moved to issue a Special Permit for an In-law Apartment for 8 Coffins Court. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote. (Mr. Moore, yes; Mr. DeLisle, no; Mr. Ciampitti, yes; Mr. Swanton, yes; Mr. Chagnon, yes).

## **Pattiann Bampos**

### **2 Neptune Street**

#### **2021-26 - Special Permit for Non-Conformities**

Mr. Ciampitti said he is not qualified to vote on the matter. Mr. Moore acted as chair.

The applicant said she is proposing to construct a shed dormer at the rear of the structure to add 140 square feet of living area. She said the dormer would not alter the existing non-conformities. She has reduced the size of the dormer so that it would be two feet from the edge of the roof on the Water Street side of the structure and three feet from the opposite boundary of her roof. She said she does not believe an asymmetrical dormer would be the best alternative. The proposed dormer would cover 74% of the roof. She said a by-right dormer that is 3.5 feet from the borders

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would cover 66% of the roof. A dormer that could be constructed by right would not meet the building code.

The hearing was opened to comments from the public. Patricia Peknik, 4 Dove Street, said the existing building code exempts historic structures. She pointed out that in the public hearing for the previous application, Attorney Mead argued the Board should take the historic nature of a structure into account.

Reg Bacon, 21 Strong Street, said he is opposed to the proposed dormer, as it does not meet dimensional requirements of the Zoning Ordinance. It would be detrimental to the neighborhood, the city and the structure, which is one of few first-period houses in Newburyport.

Stephanie Niketic, 93 High Street, said the dormer is still too larger. She said the public becomes worn out by endless continuances with changes being made in inches. Many members of the public spoke in opposition to the proposal at the last hearing. The public comment period was closed.

Mr. Swanton, said he was concerned about using modern building code requirements for a historic structure. He said the Board has not received other applications for large dormers very near a road and asked the reason that this proposal should be the first that would be approved during the time he has been a Board member. He asked if the applicant could reduce the size of the office or closet in order to be able to construct a dormer with a bathroom that meets the building code. He said the house is one of the oldest in the city and borders one of its busiest streets. The applicant said the Board is discriminating against her. Her project is being treated differently because of the age of the home. Mr. Swanton the Board has not received other applications of a similar nature. He said he is concerned about massing and the opposition of the owner of the other side of the structure to the proposal.

Mr. Moore asked about the number of letters of support for the proposal. The applicant said she has received 10 to 16 and she could have asked for more if she thought they were needed.

Mr. DeLisle said the proposed dormer would cover 74% of roof. There is no dormer currently and an increase from no roof coverage to 74% would be too great. He said he would consider a dormer of this size that would be four feet from the public way to be detrimental to the neighborhood in terms of size, scale, massing and location. He would not support the application. Mr. Swanton said he agrees with Mr. DeLisle and he would not support the application.

Mr. Chagnon said the difference between the proposed dormer and a by-right is minor and he would support the application. Mr. Benik said he agrees with Mr. Chagnon. Mr. Moore said the applicant has gone through the Demolition Delay process and could construct a smaller dormer by right.

The applicant asked if a by-right dormer would be exempt from the building code. Andy Port responded that she should consult with the Building Office. KP Law has given guidance to that office regarding exemptions from the building code. He also clarified that the use of the term "by-right dormer" could be misleading. Under the Ordinance, a smaller dormer would not be allowed without review because of the extension of the non-conformity.

The applicant requested a continuance. Mr. Benik moved to continue the public hearing to the September 28, 2021, meeting. Mr. DeLisle seconded the motion. The motion was

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approved by a 5-0 vote. (Mr. Moore, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Swanton, yes; Mr. Chagnon, yes).

**4. Business Meeting**

**Minutes**

Mr. Swanton moved to approve the minutes of the July 27, 2021, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes).

**5. Adjournment**

Mr. Swanton moved to adjourn the meeting at 10:35 p.m. Mr. Moore seconded the motion. The motion was approved by a 6-0 vote (Mr. Chagnon, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. Moore, yes; Mr. Swanton, yes).