

**City of Newburyport
Zoning Board of Appeals
Online Meeting
September 8, 2020
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, Rachel Webb and Ken Swanton and associate member Bud Chagnon. Robert Ciampitti was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and note taker Gretchen Joy.

2. Business Meeting

a) Minutes

Ms. Webb moved to approve the minutes of the August 25, 2020, meeting as submitted. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes).

b) Request for Extension

23 Overlook Street
2018-044

A Special Permit for Non-Conformities was issued on September 11, 2018, for the demolition and reconstruction of a single-family house on Plum Island. Mary Ann Padellaro said that due to Covid-19 and the resulting closures of businesses and delays in the planning of construction, she would not be able to complete the work by the upcoming deadline. She requested a one-year extension. The Board members were in agreement that the request is reasonable under the circumstances.

Mr. DeLisle moved to approve the request for a one-year extension for the Special Permit for Non-Conformities for 23 Overlook Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes).

3. Public Hearings

Ryan McShera, Red Barn Architecture

4 68th Street

2020-030 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to demolish a one-story, single-family house and replace it with a two-story, single-family structure. The lot is non-conforming for area and frontage. The structure is non-conforming for front yard setback and one side yard setback. The FAR of the existing structure is .21. The proposed structure would be elevated on piles with parking beneath it. The amount of living space would be increased by 639 square feet. The FAR of the proposed structure would be .32, which is greater than the .25 allowed. The Board members had requested that the applicant provide additional detail on the FAR calculations for abutting properties.

Attorney Mead said the proposed FAR would be consistent with the neighborhood. The FAR of 23 neighboring properties was presented. The FAR of six neighboring properties is less

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than .25. The FAR of six neighboring properties is between .25 and .32. The FAR of 11 neighboring properties is over .32. Attorney Mead concluded the proposed FAR would be consistent with the surrounding neighborhood and would not be substantially more detrimental to the PIOD or the neighborhood than the existing conditions. In addition, the front yard setback would be brought into compliance. The side yard setback, while still non-conforming, would be improved. The construction of a house on pilings would improve the existing conditions in terms of resiliency.

The hearing was opened to comments from the public. No one spoke in favor of the application. Speaking in opposition, Tara Cammett, and her associate identified themselves as owning the house at 10 76th Street and asked what the values were that were used to determine their FAR and said they have a hard time believing that the FAR on their house exceeds the standard. The applicant responded that a gross floor area of 3,400 from the Assessor's data was used for the calculations. Ms. Cammett's associate questioned the result, saying the resulting number is a strange one.

Mr. DeLisle said that he was one of the Board members that had asked for the FAR study and based on the results and the information provided, he had no further questions. He said the applicant has met the requirements for a Special Permit for Non-Conformities and he would support it. Ms. Webb said she was satisfied by the provided data and she would like the Assessor's information to add the FAR calculations for the whole island. She said the existing non-conformities would be improved and the FAR would be in keeping with the neighborhood. Mr. Swanton said he had trouble reading the data. A clearer version of the data was displayed. He questioned the use of FAR as a zoning tool because so much of the island is already dense. The map showed that all but four of the 23 properties exceed the .25 FAR standard and 13 exceed the proposed .32 FAR. He concluded that while density is an issue on the island, the Board would not be able to deny an applicant with a FAR that is consistent with other properties in the neighborhood. Mr. Moore said he appreciates the new information, which shows the proposal would not be detrimental to the neighborhood. Mr. Chagnon agreed that the proposal would not be more detrimental to the neighborhood than the existing conditions.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 4 68th Street. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes).

Windward Shaw LLC, c/o Lisa L. Mead, Mead, Talerman & Costa, LLC
68 Middle Street

2020-053 - Special Permit for Non-Conformities

Lisa Mead confirmed the applicant has requested an extension. The plans are being revised in response to comments from abutters. Ms. Webb moved to continue the public hearing to the October 13 meeting. Mr. Chagnon second the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, yes).

Joel and Marybeth Martens

50 Bayberry Road

2020-056 - Dimensional Variance

2020-057 - Special Permit In-law Apartment

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2020-062 - Special Permit for Non-Conformities

The applicant has requested a continuance for all three applications. Mr. DeLisle moved to continue the public hearing to the September 23 meeting. Mr. Swanton second the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, yes).

Scott Stick

39 Beacon Avenue

2020-058 - Dimensional Variance

The applicant is proposing to install an in-ground swimming pool within the front yard setback of a corner lot. He said the front door of the residence is on Beacon Avenue. The pool would be ten feet from the property line on the Reilly Avenue side of the lot. An existing fence along Reilly Avenue would screen the pool from view. Mr. Stick said installing the pool in this location would prevent the loss of two mature trees and spare him the expense of installing a new patio. He said a pool has been installed within the setback at the corner of Oak Street and Guild Street and the granting of a variance would not constitute a special privilege. The closest Reilly Street neighbor submitted a letter of support.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said the applicant has satisfied the requirements for a variance. Because the lot is a corner one with two front yards, the conditions and circumstances are unique to applicant's lot. The strict application of the provisions would deprive the applicant of the reasonable use of the property. The unique conditions are not the result of the actions of the applicant. The relief would not constitute the grant of a special privilege because there is a pool within the setback at the corner of Oak Street and Guild Street. The Board members agreed with this summarization.

Ms. Webb moved to approve a Dimensional Variance for 39 Beacon Avenue. Mr. Swanton second the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, yes).

Eric & Louise Lingerman

35 Munroe Street

2020-059 – DCOD Special Permit

2020-060 - Special Permit for Non-Conformities

2020-061 - Special Permit to Allow In-law Apartment

The applicant is proposing to demolish a portion of a structure that was built around 1855. A two-story addition was constructed to the original Italianate house in the early 1900s. A one-story sunroom was added in the 1980s. The applicant is proposing to demolish the two-story addition and the sunroom and construct a new two-story addition with screened porch and roof deck. A first-floor deck would connect the addition to a new two-car garage with an in-law apartment above it.

A DCOD Special Permit is required because more than 25% of the exterior walls would be removed. The applicant must demonstrate that the structure has no remaining substantial market value or reasonable use and rehabilitation would not be feasible. Structural engineer Thomas Callery provided a written report that documents the condition of the addition and concluded that it is at the end of its useful life. It is unclear that the poor-quality framing could

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withstand the jacking process if rehabilitation were to be attempted. The kitchen is pulling away from the original structure. The foundation has settled, the floor joists are sagging and the floors are not level. It is insulated with newspapers. The pantry is sinking and does not have a foundation. The footings of the sunroom have rotted and it is pulling away from the kitchen.

At its June 11 meeting, the Historical Commission voted that the garage is historically significant, but not preferably preserved, which allows for its demolition. The Commission determined that the proposed demolition of the two-story addition would not result in the loss of historically significant material due to its condition. The removal of the sunroom was not of a concern because of its age. The Historical Commission was concerned that the size and massing of the addition would overwhelm the modest historic house. Its report stated that the Commission is opposed to the addition of the roof deck, which is a modern feature that would be highly visible from the street and incongruent with the period of the structure. Finally, the proposed dormer on the east side of the structure would not meet the setback requirement.

Aileen Graf said changes were made to the plans to address the concerns of the Historical Commission and the massing of the addition was reduced. At 28 feet, the width of the Munroe Street façade of the addition is greater than that of the house, which 24 feet. In order to reduce the impact of this, the peak of the roof was lowered and the pitch was changed to be shallower. The stairs to the in-law apartment were moved further away from the street. The size of the roof deck was reduced.

Attorney Mead said the in-law apartment would be occupied by the applicants' adult son and daughter. The applicants would agree to the terms of the special permit. Letters of support were received from 11 neighbors.

The hearing was opened to comments from the public. No one spoke in favor of the application. Stephanie Niketic, 93 High Street, represented the Newburyport Preservation Trust and spoke against it. She said is not in favor of modern features being added to a historic property that sits on a highly visible lot. The shed dormers and second-floor roof deck would not be compatible with the original structure. The Historical Commission has not had the opportunity to review the revised design.

Mr. DeLisle asked about the lot coverage calculation. At 24.9%, it is very close to the 25% allowed. Aileen Graf said the surveyor performed the calculations based on the plans. The square footage of the screened porch is included. He asked about the comment from the Historical Commission that the proposed dormer would not be in compliance with the setback requirements. Ms. Graf responded that the dormer on the façade opposite Broad Street would not set back but rather would be in line with the wall below. This would be necessary to accommodate the stairs.

Mr. DeLisle said that evidence has been provided that the structure to be demolished retains no market value or reasonable use. His concerns about massing have been allayed. The roof deck would not fit into the neighborhood, but it would not be substantially more detrimental to the neighborhood than the existing conditions. Ms. Webb said the structural report provided overwhelming evidence on the condition of the structure. She is pleased the applicant would be able to achieve the programmatic needs without greatly increasing the size of the footprint. She is not opposed to the roof deck. Mr. Swanton said the size of the lot alleviates any concerns he might have about massing. He believes the roof deck would be detrimental because there are no other modern decks in the neighborhood. Mr. Chagnon said the addition should be subordinate

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to the original structure and he believes the proposal accomplishes this. He is not concerned about the roof deck. Mr. Moore said the roof deck would not be substantially more detrimental to the neighborhood and the proposal would be an improvement over the existing conditions. He said the letters of support from immediate abutters are of importance to him.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 35 Munroe Street (2020-060). Ms. Webb second the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, yes).

Ms. Webb moved to approve a DCOD Special Permit for 35 Munroe Street (2020-059). Mr. Chagnon second the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, yes).

Mr. DeLisle moved to approve a Special Permit to Allow an In-law Apartment (2020-061). Mr. Chagnon second the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes; Ms. Webb, yes).

4. General Business

City Council is interested in knowing if Board members wish to resume in-person public meetings. The ZBA members were in agreement that this would be premature. It would not be possible to control the number of people who might attend a meeting and hybrids meetings would not provide a clear benefit.

Mr. Swanton moved to adjourn the meeting at 9:26 p.m. Ms. Webb seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker