

**City of Newburyport
Zoning Board of Appeals
Senior Community Center
September 12, 2023
Minutes**

1. Roll Call

Chair Rob Ciampitti called a hybrid meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Rob Ciampitti, Ken Swanton and Bud Chagnon and associate member Patricia Peknik. Members Stephen DeLisle and Gregory Benik and associate member Lynn Schow were absent. Also in attendance were Planner Katelyn Sullivan, Planning Director Andy Port and Note Taker Gretchen Joy.

2. Business Meeting

a) Request for Permit Extension – 23 Boyd Drive

The applicant was not present. Mr. Chagnon said the square footage of the in-law apartment is within the regulations, the owner's parents occupy the apartment and there is sufficient on-site parking for the single-family home and the apartment.

Mr. Swanton moved to extend the In-Law Special Permit for 23 Boyd Drive for an additional three years. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes).

3. Public Hearings

**a) Mical Real Estate & Construction LLC, c/o Lisa Mead, Mead, Talerman & Costa LLC
34-36 Prospect Street**

ZNC-23-20 - Special Permit for Non-Conformities

Mr. Swanton recused himself from the matter. The applicant requested a continuance. Mr. Chagnon moved to continue the public hearing to the September 26 meeting. Ms. Peknik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes).

b) Russell and Debra Worthington

48 Woodland Street

ZNC-23-19 - Variance

The applicant is proposing to replace an existing pergola with a roofed deck. The property is non-conforming for lot area, front-yard setback, rear-yard setback and one side-yard setback. The proposal would create a new non-conformity. The lot coverage would increase from 23.7% to 27%, where 25% is the maximum permitted. The original zoning determination indicated the applicant would be required to seek a Special Permit, but this was later revised to a Variance.

Debra Worthington said the roof would provide protection from the elements and would allow for the year-round use of the space. A linden tree on the property drops detritus on the deck during May and June, which creates a safety hazard and maintenance expense. The proposed materials would be consistent with the existing structure. Gutters on the proposed roof would tie into those on the house to control runoff. The footprint of the existing pergola is larger than that of the proposed covered deck, which would be 173 square feet.

Mr. Swanton asked if the property is sloped or has swampy soils. Ms. Worthington said it is flat with gravel in the area of the deck. Mr. Swanton asked for a response to the two letters received from abutters. Jay Barry and Elizabeth DeLisle, 50 Woodland Street, wrote of their

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concern about runoff from the roof onto their property. Jill and Joe Gross, 3 Payson Street, asked if the roofline could be lowered so as to not block their view of the trees on Woodland Street. Ms. Worthington said she observed the view from the deck at 3 Payson Street. She said the trees that are visible are beyond Woodland Street and other obstacles impact the views. She said downspouts would be installed at the intersection of the new roof and the house. She would accept a condition requiring the runoff to be drained away from the property line.

Mr. Chagnon asked if overhangs above doors count towards lot coverage. It was explained that cantilevered overhangs do not add to lot coverage, but overhangs with posts do.

Mr. Ciampitti asked the applicant if she has experienced drainage issues on the property. She said she had not. She said it is the nuisance of tree that prevents the use of the space.

Mr. Swanton said the proposal would create an additional non-conformity. The bar for approving a Variance is high and there is not a strong legal basis for granting one under these circumstances. The lot is not an unusual shape, it is not sloped and the soils are not poorly drained. It would be difficult to approve the Variance request, especially in light of the abutter opposition. He said it would be easier to approve a Special Permit if the applicant were to find a way to reduce the lot coverage.

Mr. Chagnon said it appears the applicant has made the covered deck as small as possible to be usable and the roof could not be lowered. The footprint of the structure could be no more than 70 square feet in order for it to be compliant. He said there are four conditions that must be met for the Board to approve a Variance. He does not find that the conditions and circumstances are unique to the applicant's lot.

Ms. Peknik said the covered roof has the appearance of an extension of the house rather than a refining of the yard. She is not persuaded the applicant has demonstrated a hardship.

Mr. Ciampitti said he might support the application if the drainage question were to be addressed, but other challenges exist and at least one member is struggling with the hardship issue. The Board does not approve very many Variances because it is difficult to meet the criteria. He asked the applicant if she would like to continue the public hearing to explore design alternatives that would require a Special Permit rather than a Variance. The applicant requested a continuance.

Mr. Swanton moved to continue the public hearing to the October 10 meeting. Ms. Peknik seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes).

**c) Peter Newton c/o Lisa Mead, Mead Talerman & Costa LLC
6 Julia Street**

ZNC-23-21 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to renovate and expand an existing first-floor deck on a single-family home. The property is in the R3 district and the PIOD. It is non-conforming for right side-yard setback and rear-yard setback. The property extends 7.5 feet beyond the rear lot line. The encroachment is permitted through an easement. The lot is uniquely shaped, with secondary frontage on Julia Street and primary frontage on Old Point Road. The property is conforming for lot area and FAR. The FAR would not be increased.

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The applicant is proposing to expand the deck in a westerly direction and wrap it around the south corner of the house. A second-floor deck would be constructed, which would be accessed by an exterior spiral staircase. The right side-yard setback is 18.5 feet, where 20 feet is required, and would be reduced to 14.5 feet. An existing shed that is located close to the property line would be removed.

Attorney Mead said the proposal would not be detrimental to the neighborhood. The area is dense, with a mixture of one, two and three-story houses. Many structures have second-floor decks or roof decks. The deck would not be within ten feet of the property line.

Mr. Swanton said no new non-conformities would be created and the proposal would not be detrimental to the neighborhood. The lot is large for Plum Island. The lot coverage would not change. The abutters have not voiced opposition to the proposal. Mr. Ciampitti said the proposal would be in keeping with the neighborhood.

Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 6 Julie Street. Mr. Swanton seconded the motion. The motion was approved by a 4-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes).

4. Business Meeting Continued

a) Minutes

Mr. Chagnon moved to approve the minutes of the August 22, 2023, meeting. Mr. Swanton seconded the motion. The motion was unanimously approved.

b) Other Business

None

5. Adjournment

Mr. Chagnon moved to adjourn the meeting at 8:44 p.m. Mr. Swanton seconded the motion. The motion was unanimously approved.