

**City of Newburyport  
Zoning Board of Appeals  
Hybrid Meeting  
September 13, 2022  
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, Stephen DeLisle and Gregory Benik and associate members Lynn Schow (non-voting) and Patricia Peknik (voting). Bud Chagnon was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

**2. Requests for Minor Modification**

**21-23 Walnut Street**

**MM22-22**

Nora Dodge described the requested changes to the approved plans. A trellis was to be planted where the side door had been. She said that because of an 18” concrete slab at the foundation, any plant material installed would be too far from the trellis. She said it would look strange to have a trellis with no plant material and is requesting to remove it from the plans.

The replacement of the sidewalk and the installation of a street tree were a part of the approved plans at the recommendation of the DPS. Ms. Dodge said the sidewalk is in good condition. It is flat and level and it would be wasteful to replace it. She also said there is one tree, a telephone pole and overhead wires in front of the house. There is no room for an additional street tree. DPS sent an email to the Planning Office stating the existing sidewalk is in good condition but presents a tripping hazard.

The meeting was opened to comments from the public. Stephanie Niketic, 93 High Street, asked if this is the first time a minor modification has been requested for an exemption from the requirements of the Tree and Sidewalk Ordinance. Andy Port responded that there might have been one such request made of the Planning Board. The public comment period was closed.

Mr. Swanton asked about the background of the plan with regards to the trellis. The Historical Commission reviewed the plan and strongly recommended that the side door be retained. Ms. Dodge said the trellis was proposed as an alternative. She was in favor of the trellis but learned it would not be possible to install plant materials within a reasonable distance.

Mr. Benik asked about the tripping hazard. Ms. Dodge said the lower sidewalk is on the neighboring property. The driveway has not yet been installed.

Ms. Schow asked if the installation of a decorative door frame was considered in place of the trellis. Ms. Dodge said she did not want a false door.

Mr. Swanton said it is rare that the Board is asked to remove a required element of the plans. The NHC was clear about the trellis and he would not be comfortable with calling the request minor.

Mr. Benik said he could not accept an ambiguous email as the basis for the reversal of the sidewalk recommendation. The NHC recommended the installation of the trellis and it played a role in the deliberations. Its removal would not be a minor change.

Mr. DeLisle said the DPS email is not enough to overturn the sidewalk recommendation. He could approve the modification to the plans for the street tree and sidewalk with a clearer statement from the DPS. He said he likes the trellis and it was an important part of the plan. He would not deem the request minor.

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Ms. Peknik said the installation of the trellis was a condition of the approval of the plans. The NHC determined the side door was an important historical feature but after much debate, reluctantly allowed its removal. The installation of the trellis was agreed upon as a means to provide visual balance. She said she would be troubled to allow the applicant to remove a condition that was agreed upon by the NHC. The front door, with its surround and side lights, was to be restored or replicated. As what was constructed does match the original conditions, the side door becomes more important.

Ms. Schow said she agrees that the Board supported the plan based on the installation of a trellis. If the trellis were not to be installed, she would like consideration to be given to another element that would return the structure to its original appearance. She said there is a tripping hazard at the place where the sidewalk meets the neighboring property, which would be eliminated by the installation of a new sidewalk.

Mr. Ciampitti said the Board might determine that the request is not minor and would require additional information. The Board members must consider if the requested change would have a substantial impact and if they would have voted the same way if they had received the information during the initial presentation of the application.

The applicant requested a continuance. Mr. Swanton moved to continue the matter to the September 27 meeting. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Ms. Peknik, yes).

### **3. Public Hearings**

**Waldot Realty, LLC c/o Lisa Mead, Mead, Talerman & Costa LLC**

**200-208 Merrimac Street**

**ZNC-22-7 - Special Permit for Non-Conformities**

Ms. Peknik recused herself from the matter. The applicant requested to withdraw the application. Mr. Swanton moved to accept the request to withdraw the application for 200-208 Merrimac Street without prejudice. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Ms. Schow, yes).

**Francesca and Ryan Burke c/o Lisa Mead, Mead, Talerman & Costa LLC**

**26 Eagle Street**

**ZNC-22-23 - Special Permit for Non-Conformities**

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

**Pattiann Bampos**

**2 Neptune Street**

**ZNC-22-22 - Special Permit for Non-Conformities**

The applicant is proposing to construct a shed dormer on the rear of a structure on a corner lot. The property is non-conforming for lot area, lot coverage, open space, frontage, front-yard setback, side-yard setbacks and rear-yard setback.

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Pattiann Bampos said the front part of the structure was built in 1657 and the rear el was added in 1725. She is proposing to add a shed dormer to gain head height on the second floor. The footprint would not change and less than 100 square feet of living space would be added. The dormer would upwardly extend the non-conforming front and rear-yard setbacks. The proposal is in compliance with the dormer ordinance. The dormer would be 3'-6" from either side of the roof and would be 1'-6" from the rear wall. One corner of the structure is 2'-6" from the sidewalk and the dormer would be 6'-3" from the sidewalk.

Ms. Bampos said no new non-conformities would be created and the proposal would not be substantially more detrimental to the neighborhood than the existing conditions. She said substantially means to a great or significant extent and detrimental is defined as causing harm. The dormer would be subservient to the original structure and the use of the property would not change. The proposal would blend in with the eclectic homes in the neighborhood. She provided photographs of other structures in the neighborhood that have been altered and a list of applications the Board has recently approved. She submitted a petition with 197 supporters.

The hearing was opened to comments from the public. Richard Lodge, 15 Hancock Street, said the applicant's photographic tour shows how far the city has strayed from the preservation of its historic character. Many of the examples were of overbuilt structures. The structure is one of a handful of first-period houses in the city and is a unique landmark. Its image is on a refrigerator magnet sold downtown. The dormer would be inappropriate for the house and would destroy a landmark on the waterfront. The co-owner of the structure is concerned about the alteration causing permanent structural damage to his property.

John Thibodeau, 1 Goodwin Avenue, said the proposal would complement the structure and would allow better functionality. He is in favor of the plan and it would not be detrimental to the neighborhood.

Glenn Richards, 6 Kent Street, said the photographs shown are a rogues gallery of old houses with alterations that were not for the better. While he sympathizes with the applicant's need for headroom, the roof is the character defining feature of the house. He asked the applicant to consider a more modest dormer that would not destroy the roofline.

Tom Kolterjahn, 64 Federal Street, said in post and beam construction, all members of the frame rely on all other members for strength. The integrity of the frame would be destroyed, making it susceptible to racking. That other houses have been altered does not make it right for this house.

Jack Davis, 35 Purchase Street, said he is in support of the request. It would make an old house livable in the modern age. The proposed change is modest and in keeping with the neighborhood.

Stephanie Niketic, 93 High Street, said alterations to a house across the street led to the adoption of the dormer ordinance. She said the petition is broad and most signers are not abutters. It is irrelevant to the zoning process. The most important letter is from the other owner, who is concerned about the structural integrity of his home.

Ree Coleman said she supports the plan and the applicant has done a wonderful job of taking care of her home. Changes were made to the other side of the house that caused structural damage. She said the uniqueness of homes of different periods makes it interesting to walk down the street.

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Jeffrey Holmes, 32 Franklin Street, said modern engineering would prevent any structural damage. People historically came to the area in order to be able to do what they wanted and the applicant wants to change the building. She has adjusted the size of the dormer. He asked the Board to approve the application. The public comment period was closed.

Mr. Swanton said the Board has seen the proposal several times. Mr. DeLisle asked if the plan is different from the last proposal and if the applicant has spoken to the party-wall neighbor. Ms. Bampos said she did not look at the old plans. The co-owner wanted a 3'-6" distance between the dormer and the property line, which she has provided.

Mr. DeLisle asked if an engineer had looked at the plan and the removal of timber framing. Ms. Bampos said there she shored up the walls in preparation for a dormer. The plans were prepared by an engineer.

Mr. Swanton said the co-owner has voiced his objection in several letters. He asked Ms. Bampos if she informed the signers of the petition of his opposition. She said she did. She said he at one time supported the dormer, when he thought he might want one himself, and then decided it would not be in his best interest. He is concerned that his view would be altered.

Mr. Swanton said that the Board has approved upward extensions at the back of other houses, but this upward extension faces a major road, which the Board in the past has considered detrimental. The house is very close to one of the very busiest roads in the city. Dormers were added to other houses before zoning requirements changed. Their existence does not provide support for this application.

Mr. Benik said where there is co-ownership of a structure, there must be compromise. The objections of the owner of the other side of the house carry no more weight than those of any other abutter. The letters of support are relevant. A dormer of this size is exempt from historical review. The historic nature of the building has been dramatically changed over the years and its significance has been lost. There is no evidence that the change would cause structural damage.

Mr. DeLisle said the objection of the party-wall owner is an important factor for him. The request for an upward extension in this location is troubling because it would be very visible from Water Street and only 6'-3" from the sidewalk. In terms of size, scale and massing, the location of the extension would be detrimental to the neighborhood and the general public at large.

Ms. Peknik said that the examples shown by the applicant were not of comparable situations. The dormers that were depicted are located on the rear of the structure and are not visible from the public way. Some photographs were of additions that were not upward extensions of a non-conformity. Many were of inappropriate alterations that were done before the zoning laws were changed. The ordinances are different now and were put in place to manage trends. The Board has not previously approved this type of application. The dormer would be detrimental to the neighborhood, which is the DCOD.

Ms. Schow said the dormer does not trigger Demolition Delay Ordinance and would be allowed by right if it were not an upward extension of a non-conformity. The proposal would not be detrimental to the neighborhood. Dormers of this style are found throughout New England. That not many rooflines of this form still exist is probably because dormers have been added to them. Except for the co-owner, many residents of the neighborhood support the

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application. The applicant would be responsible for damages if the work were to cause structural changes.

Mr. Ciampitti said he is moved by the direct abutter who has concerns about structural damages. The applicant would be responsible if any damage were to occur. He said the Board must apply the legal criteria, which is that the proposal would be substantially more detrimental to the neighborhood than the existing conditions. He said there must be change or there would be no building elements that did not exist in the 19th century.

Mr. Benik moved to approve a Special Permit for Non-Conformities for 2 Neptune Street. Mr. Swanton seconded the motion. The motion was failed by a 3-2 vote (Mr. Swanton; no; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Ms. Peknik, no). Mr. Ciampitti explained that four votes in the affirmative are required for a motion to pass.

**Douglas Deschenes**

**22 Ashland Street**

**ZNC-22-24 - Special Permit for Non-Conformities**

The applicant is proposing to construct a single-story addition at the rear and side of an existing non-conforming two-family structure. The property is non-conforming for frontage, front-yard setback and side-yard setback. The 480 square-foot addition would contain a bedroom, bathroom and laundry room, which would allow the owners to live on one level. The right-side setback non-conformity would be intensified from 17.3 feet to 4.8 feet. The lot coverage would increase from 7% to 10%, where 25% is allowed.

Attorney Deschenes said the size of the addition is modest and its materials would blend with those of the existing structure. The proposed setback is not atypical of the city. All of the abutters support the application, including the owners of the other side of the structure.

The hearing was opened to comments from the public. Kathleen Murray, 2 Parker Ridge Way, said the prior owner was concerned about infill and placed a deed restriction on the property. The master deed states that no exterior projection or addition shall be attached to the structure.

Andrew Simons, 25 Ashland Street, said he understands the desire to age in place. The public comment period was closed.

Mr. Swanton asked if the applicant is aware of the master deed. Attorney Deschenes said he is not, but the owner of the other condo is in favor of the proposal and the master deed could be changed. He added that this is not a zoning issue. Mr. Ciampitti agreed that the Board is not governed by the condo documents but said it would want the documents to be amended.

Mr. Swanton asked if it would be possible to construct the addition only at the rear of the property and not to its side. Architect Scott Brown said one goal is to retain as much as possible of the existing interior layout. He said an addition only to the rear would be longer, and because the lot tapers, the setback would still be intensified. He clarified that a column on the covered porch is 4.8 feet from the property line. The house itself would be set back 10.8 feet from the edge of the lot.

Mr. Swanton said no new non-conformities would be created. The addition would be set back a distance from the street. The abutters support the proposal.

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Mr. DeLisle said he had a concern about the intensification of the non-conformity, but the party-wall neighbor supports the application and the addition would be far from the street.

Mr. Benik said the addition is small and single story. The design is thoughtful. Ms. Peknik said the street is wide and the addition is set back from it. Ms. Schow said the addition is small and the lot is large.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 22 Ashland Street subject to the applicant's amendment of the master deed and related condominium documents of record so as to remove any restriction in the said documents that would be contrary to the Board's approval as motioned. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Benik, yes; Mr. Ciampitti, yes; Ms. Peknik, yes).

#### **4. Business Meeting**

##### **Minutes**

Mr. Swanton moved to approve the minutes of the August 23, 2022, meeting. Mr. Benik seconded the motion. The motion was approved.

#### **5. Adjournment**

Mr. Swanton moved to enter into an executive session at 9:52 p.m. Mr. DeLisle seconded the motion. The motion was approved.