

**City of Newburyport
Zoning Board of Appeals
Online Meeting
September 28, 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, Stephen DeLisle, Mark Moore, Bud Chagnon and Ken Swanton and associate member Gregory Benik. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

Brendon Johnson and Krystina Creel Johnson

65 Curzon Mill Road

2021-06 - Dimensional Variance

Mr. Moore recused himself from the matter. The applicant requested a continuance. Mr. DeLisle moved to continue the public hearing to the October 26, 2021, meeting with the provision that no further continuances shall be approved without a modification to the plans or a further submittal. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote. (Mr. DeLisle, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes; Mr. Benik, yes).

Eric Primack

30 Winter Street

2021-49 - Special Permit for Non-Conformities

The applicant requested a continuance. Mr. Moore moved to continue the public hearing to the October 26, 2021, meeting. Mr. Swanton seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes; Mr. Benik, yes).

22-24 Olive St LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

22-24 Olive Street

2021-44 - Special Permit for Non-Conformities

The applicant requested a continuance. Mr. Moore moved to continue the public hearing to the October 26, 2021, meeting. Mr. Swanton seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes; Mr. Benik, yes).

Eve Davis Lee c/o Lisa Mead, Esq., Mead, Talerman & Costa, LLC

64 Liberty Street

2021-52 - Special Permit for Non-Conformities

The applicant requested a continuance. Mr. Moore moved to continue the public hearing to the October 26, 2021, meeting. Mr. Swanton seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes; Mr. Benik, yes).

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Pattiann Bampos
2 Neptune Street

2021-26 - Special Permit for Non-Conformities

Mr. Ciampitti said he is not qualified to participate in the matter. Mr. Moore acted as Chair. The applicant said she has asked the Building Commissioner if the proposed dormer would be exempt from the building code, as was suggested at a previous public hearing. Greg Earles said the plans as presented at the August 10 meeting would be subject to the building code because additional living space would be created.

Ms. Bampos said the placement of beams would prevent her from reducing the size of the proposed closet and study. In order to meet the building code, she has found it would be necessary to add a small wall in addition to the dormer. The dormer in the revised plans would be 3'-6" from the edge of the roof on both sides and would be symmetrical. She said 140 square feet of living space would be added. Many of the houses in the neighborhood have dormers and are higher than her proposed alteration. She said her project would fit into the neighborhood and would not be detrimental to it. She has submitted 16 letters of support, 11 of which are from neighbors.

The hearing was opened to comments from the public. Tom Kolterjahn, 64 Federal Street, said the Preservation Trust continues to oppose the application in the strongest terms possible. He said the shed dormer would dramatically alter the streetscape and the structure and it would not be appropriate. It would negatively impact the other half of the house. The first-period house is unique and iconic and is in a highly visible location.

Glenn Richards, 6 Kent Street, said it has been made clear that the desire for change is driving the need to comply with the building code. He said the dormer would not be controversial but for the historical context of the structure. He reminded the ZBA that it has a role in supporting and protecting the architectural heritage of the city.

Reg Bacon, 21 Strong Street, said he is opposed to the special permit. The structure is one of a few remaining first-period houses. The plan would be detrimental to the neighborhood and the city.

Tam Schwartz, 178 Water Street, said the house was an eyesore when she moved to Newburyport eight years ago. She said the owner is being bullied by a small percentage of the city's residents and she is grateful the applicant has been willing to take on a delapidated structure. She added that residents should not live in the conditions of the past. The public comment period was closed.

Mr. DeLisle asked if the slope of the roof would now be 8 or 9 rather than 10 that had originally been proposed. He said the pitch of the roof does not appear to be as steep. He asked if there would now be more surface area on the face of the dormer when viewed from Water Street. Ms. Bampos said she does not have these figures.

Mr. Swanton said the back wall of the house would now be raised 2.5 feet and the dormer would be added on top of this. He asked if the owner of the other half of the structure remains opposed to the proposal, now that the applicant is planning to raise the entire back wall. Ms. Bampos said she does not know the answer but the abutter wanted the dormer to be 3'-6" from

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the property line, which it now is. Mr. Swanton said neither the historic value of the structure nor the building code is under the charge of the ZBA. He said he would find it challenging to approve a proposal when the owner of the other half of the structure is opposed to it. Ms. Bampos replied that the other owner does not live in the structure full time.

Mr. Chagnon said that he would support the application. The dormer meets the building code and is 3.5 feet from the edge of the roof on each side.

Mr. Benik said the ZBA can take the advisory opinion of the NHC into consideration, but it is not binding. He asked the applicant about the features of the structure that have been changed since it was constructed as a single-family house in the 1700s. He said the door to the yard was solid at one time, the solar panels are new and the windows not faithful to the historic nature of the structure.

Mr. DeLisle asked if a change to the pitch of the entire rear roof would alter the proposal to such a degree that the applicant would need to seek additional approval from the Historical Commission. Jennifer Blanchet confirmed that the proposal now involves a change to the entire roofline, but the Historical Commission has already imposed the Demolition Delay. The Delay will be valid for six months from its expiration date. The addition of a new wall and the increased size of the face on the sides of the dormer would be different from the original proposal but the required relief would not change. The applicant would still be seeking the approval of an upward extension of a non-conforming front and rear-yard setback. The proposal would be a part of the same review process. The one-year delay has expired and the applicant has six months to undertake the demolition. Mr. DeLisle clarified that the rear setback is adjacent to 2.5 Neptune Street and the front setback faces Water Street. He asked if the upward extension being proposed is not just for the dormer but for the entire wall of 2 Neptune Street. Ms. Blanchet said the drawings show that a triangular section of the roof of 2 Neptune Street would now be above the roof of 2.5 Neptune Street due to the addition of the knee wall. The vertical face of three sides of the primary wall would be expanded as well as the upward extension of the dormer. The proposed upward extension is larger than just that of the dormer.

Mr. Moore said the pitch of the roof on either side of the dormer would now be less steep than originally proposed. Mr. DeLisle said the pitch on the dormer would also be changed.

Mr. Benik asked how much higher the project would be. The proposed height of the roof would 2.5 feet higher than the existing conditions.

Mr. DeLisle said he was not in support of the proposal when it was first presented and the revisions to the plan have not changed his position. He said the addition of the knee wall was a surprise and questions remain about the application. The Board should not vote on the application at this time.

Mr. Chagnon said he was in support of the dormer at previous meetings and it now has been made smaller. He has some concern about the change in the pitch of the roof, but this is minor.

Mr. Swanton said confusion was created by the application of the term “by-right” to the dormer. Ms. Blanchet said the proper terminology would be “exempt.” A dormer of particular dimensions would be exempt from Demolition Delay. An upward extension of a

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non-conformity could not be done by right. Mr. Swanton said the house is very close to the street on two sides and the Board has not approved the upward extension of a non-conformity that is so close to street during his tenure. The owner of the other side of the house has asked the Board not to approve the proposal and now the applicant is proposing to add a wall.

Mr. Benik said equally large buildings are located on corners on Water Street. He said the neighborhood is eclectic and he is unable to find that the proposal would be detrimental to it. He said the deck on 2.5 Neptune Street is equally disruptive to the original structure as the dormer would be. Other saltboxes exist in the city and little of the true character of this one is left.

Mr. Moore said he would support the application, although he has some concern about its impact on the owner of the other side of the structure. He said the house has been dramatically altered over the years. The size and massing of the proposal would not be detrimental to the neighborhood.

Mr. DeLisle said the advisory opinion of the Historical Commission is a factor for him. He said the letter of support from the neighbors indicate that they like the applicant, but the comments do not pertain to the matter of the upward extension of the non-conformity. The shared wall with the owner of the other half of the structure is a concern to him. This owner has asked the Board to consider the shared wall as a property line and uphold all zoning requirements. The house is in a highly visibility location and the dormer would be detrimental to the neighborhood. The applicant is now proposing the upward extension of the entire back of the house and he cannot support the proposal.

Mr. Swanton said he is not sure that any revision to the plans would be satisfactory to him. The structure is 2.5 feet from a major road. The applicant is proposing to raise the entire roof. The owner of the other side of the structure is opposed to the plans.

Mr. Moore said it appears the Board would not approve the application as presented. The applicant may withdraw the application without prejudice or request a continuance. The applicant requested a continuance. Mr. Benik moved to continue the public hearing to the November 9, 2021, meeting. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Chagnon, yes; Mr. Benik, yes; Mr. Swanton, yes).

McDonald's USA, LLC c/o Bohler (William Lucas)
37 Storey Avenue

2021-54 - Special Permit for Non-Conformities

Bill Lucas said the chain is undertaking a rebranding program for all of its restaurants nationally. The interiors and exteriors are being remodeled and the drive-through features are being upgraded. In this location, the applicant is proposing to install a canopy over the drive-through speaker to provide protect from inclement weather. The canopy would be ten feet high and have a 25 square-foot roof. The existing freestanding sign would remain in place and no changes would be made to the outdoor lighting. Five existing wall signs would be removed and three new wall signs would be added.

Mr. Lucas said no new non-conformities would be created. The proposal would upwardly extend the non-conforming side-yard and front-yard setbacks. The existing roof

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overhang is 15.4 feet from the front property line, where 25 feet is required. The proposed roof overhang would be 20.9 feet from the front lot line, an improvement of 5.5 feet. The existing roof overhang is 23.1 feet from the side property line, where 25 feet is required. The proposed roof overhang would be 23.4 feet from the side property line, an increase of .3 feet.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Ciampitti asked how a large vehicle would be alerted to the height of the canopy. Mr. Lucas said a clearance bar at the same elevation as the canopy structure would be installed over the approach.

Mr. Moore asked about ADA compliance. Mr. Lucas said the proposal is being reviewed by the City's ADA coordinator as a part of the building permit process. The AAB has reviewed the design concept that is being applied nationally.

Mr. Chagnon asked about the improvement to the front-yard non-conformity. Mr. Lucas clarified that the front of the restaurant is considered the rear of the property. The drive-through is located in the front-yard setback of the property.

Mr. Moore said no new non-conformities would be created and the proposal would not be detrimental to the neighborhood. The other Board members were in agreement.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 37 Storey Avenue. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes).

**Lisa Adams & David Miller c/o Lisa Mead, Mead, Talerman & Costa, LLC
12 Horton Street**

2021-53 - Special Permit for Non-Conformities

Brian Winner represented the applicant, who is proposing to remove an existing second-story addition and construct a larger second-story addition over the existing footprint and deck. The property is non-conforming for lot area, frontage, front-yard setback and west side-yard setback. The addition would upwardly extend the existing side-yard non-conformity. The property is in the R-2 district and the DCOD. The Historical Commission reviewed and approved the plans at its September 23 meeting.

Kevin Latady reviewed the plans. He said the view of the structure from Horton Street would not change. The addition is at the rear of the structure and would not impact the neighborhood. It would allow for the installation of a staircase to the existing floor that is less steep than the existing one and would meet the building code.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Moore and Mr. DeLisle asked about the materials and details of the addition. Mr. Latady said the historical details of the main structure would be replicated. The existing shingles and clapboards would be matched and the windows would be restored.

Mr. Swanton said the street is uniform and the addition would not change the massing of the side of the structure visible from the street. Mr. Moore said the proposal would make a nice house better and the plans well thought out. The addition would not be visible from the street and would not be detrimental to the neighborhood. The remaining Board members were in agreement.

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Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 12 Horton Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes).

3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the September 14, 2021, meeting. Mr. Moore seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes; Mr. Benik, yes).

b) Updates from the Chair and Planning Director

Mr. Ciampitti said he will be absent from the October 26 and November 9 meetings. Andy Port recommended that the Board members attend a Planning Board and City Council Planning and Development Committee joint public hearing on amendments to the Zoning Ordinance scheduled for October 20 relating to dimensional requirements and public purpose takings and short-term rental units.

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 9:49 p.m. Mr. Moore seconded the motion. The motion was approved by a 6-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, yes, Mr. Ciampitti, yes; Mr. Benik, yes).