

**City of Newburyport  
Zoning Board of Appeals  
Hybrid Meeting  
October 11, 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, Bud Chagnon, Ken Swanton, Stephen DeLisle and Gregory Benik and associate members Lynn Schow (arrived at 7:20) and Patricia Peknik. Also in attendance were Planner Katelyn Sullivan and Note Taker Gretchen Joy.

**2. Public Hearings**

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

**26 Eagle Street**

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

Lisa Mead and Aileen Graf represented the applicant, who is proposing to construct a single-story addition with a porch. The house was constructed in 1869 and is on a corner lot in the R2 district and the DCOD. The property is non-conforming for lot area and both front-yard setbacks. The primary front yard is on Carter Street.

The 521 square-foot addition would extend the primary front-yard setback non-conformity. The existing structure is 6.7 feet from the property line on Carter Street. The addition would be set back two feet from the existing structure and would be 7.9 feet from the property line. The screened porch would be stepped in from the addition on both sides. Clapboards would be used for the addition to match the existing structure. The sidewalk is in good condition. Street trees that were in poor health were recently removed but the DPS has indicated that no replacement trees are necessary.

Attorney Mead said that no new non-conformities would be created. The front-yard setback would be extended but not intensified. The addition would be subordinate to the main structure and would not significantly alter the view of the structure from Eagle Street. The lot is large in comparison to others in the neighborhood and has sufficient space to accommodate the addition. Four letters of support from abutters were received.

Mr. Swanton asked if the applicant had considered moving the addition further into the yard so that it could be set back ten feet from the street. Ms. Graf said the use of the interior space would be made difficult. She said the one-story addition has a flat roof and would have a minimal presence on the street.

Mr. Benik asked how the scale and massing would relate to the other homes in the neighborhood. Attorney Mead displayed a series of slides of other properties in the vicinity. She said the houses on Eagle Street are mostly large and two-stories.

Mr. Chagnon asked about the lot coverage and open space. Attorney Mead said the existing open space is 80.4% and the proposed open space is 71.4%, where 40% is required. The existing lot coverage is 14.4% and the proposed lot coverage is 20.2%, where 25% is allowed.

Mr. Swanton said he has some concern about extending a long building, especially as the houses on Carter Street are small, but the addition would be screened by a tall fence.

Mr. Benik said the lot is large. The open space and lot coverage requirements would be met. The proposal would not be detrimental to the neighborhood. It would be a good addition to the structure and the neighborhood.

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Mr. Chagnon said the addition is one story and would be subordinate to the main structure. He said it flows well.

Ms. Peknik said she likes that the applicant was able to obtain additional space on a single floor. Ms. Schow said the lot is large. Mr. Delisle said the project is a nice one. Mr. Ciampitti said the design is thoughtful.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 26 Eagle Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

**Hale Business Park LLC, c/o Lisa Mead, Mead, Talerma & Costa LLC  
21 Hale Street (21 Malcolm Hoyt Road)**

**VAR-22-5 - Variance**

Lisa Mead represented the applicant, who is requesting a Variance to construct a small industrial services building on a vacant lot in the I-1 district. The 290,850 square foot lot would be divided. The building would be constructed on the new lot, which would be 54,530 square feet, where 50,000 square feet is required. The footprint of the proposed two-story structure would be 2,880. The remaining 236,321 square foot parcel would be donated to the Conservation Commission. The proposed structure would be 20.1 feet from the property line, where 60 feet is required. The developed lot would meet the other dimensional requirements of ordinance.

Attorney Mead said the Variance is needed for the front yard setback due to presence of a resource area. The soil conditions would prevent the applicant from constructing the building the required distance from the street. The location of the wetland resource area is not the fault of the applicant. The lot is unique in that it is large but has only two upland areas. One upland area is within the front-yard setback. The other is at the rear of the property and would require a wetland crossing on order for it to be developed. She said the strict application of the Ordinance would deprive the applicant of the use of the parcel. The proposed building would be 21 feet from the property line but 40 feet from the Hale Street travel path. The location of the no-disturb zone would make it impossible to situate the building further from the road.

Attorney Mead also said the proposed structure would have three doors on Hale Street, which would give it a residential appearance. She said the proposed structure would be small for an industrial building and in relation to the size of the lot.

Mr. Swanton asked if the Conservation Commission wants the land. Attorney Mead said the upland area has habitat value and the parcel would provide flood storage.

Mr. Benik asked about the neighboring properties and the reason the Board should consider deviating from the Ordinance. Attorney Mead said a single-family home is located across the street and the adjacent parcels contain industrial buildings. She said an industrial building would typically be much larger. The proposed building would be 25 feet in height, which is close to the height of a residential structure. In a residential zone, the front-yard setback requirement is 25 feet. The building would be smaller in height and massing than is usual and would be less imposing on the street.

Mr. Chagnon asked the reason that the applicant could not build on the second upland. Attorney Mead said this would require the crossing of a stream, which would not be allowed.

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Ms. Schow asked about the use of the building. Craig Pessina said there would be no loading docks and the site could not accommodate a tractor trailer. The building was designed to look like a residential structure on the front. Each unit would have an office and would allow small contractors to store equipment. There would be no heavy manufacturing and the use would be low impact.

Mr. Delisle asked about the existing building on the adjacent parcel. Attorney Mead said the parcel under discussion and the adjacent parcel were once both a part of a larger parcel that was divided to create a conforming lot.

Mr. Swanton said the hardship could be seen as the fault of the applicant. The dividing of the larger lot resulted in a smaller parcel with wetlands, which requires a Variance. On the other hand, the donation of 5.4 acres to the City would have a positive impact on the neighborhood.

Mr. Benik said the soils create a hardship. He said it is in community's interest for the wetlands to be given to the City. The units would be modest in size and the height and massing of the structure would not create an issue for him.

Mr. Chagnon said that the building would look like a residence. It would not be possible to move the building further away from the road without it being made too long and skinny.

Ms. Schow said the setback would be similar to that of the house across the street. There would be no noxious use near the road. The part of the site with habitat value would be preserved.

Mr. DeLisle said the lot would remain large, with two upland sections. The hardship is the wetlands. Ms. Peknik said that industrial park development is also in the interest of the community.

Mr. Ciampitti said the impact would be soft. It area is more of an enterprise zone than an industrial park. The non-residential building would be residentialized to soften it in its setting.

Mr. Swanton moved to approve a Variance for 21 Hale Street, subject to the condition that the applicant follows through with the gift of land to the Conservation Commission that is shown on the plan. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

**Claudio Lilienfeld and Cornelia Urban**

**11 Purchase Street**

**ZNC-22-26 - Special Permit for Non-Conformities**

Mr. DeLisle recused himself from the matter. Jeff Roelofs and Matt Langis represented the applicant, who is proposing to construct a 722 square foot addition to an existing two-family home. The property is non-conforming for lot area, frontage, front-yard setback and one side-yard setback.

The structure would be reverted to single-family use. A two-story addition would be constructed at the rear of the house, which would extend the side-yard setback non-conformity. Three shed dormers would be added to the main structure and a deck would be constructed off the addition. The two existing chimneys would be removed and would not be replaced. The existing front sidewalk would be replaced with brick.

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Attorney Roelofs said the house is smaller than many houses in the neighborhood, while the lot is larger. The fences that are shown on the plan are being discussed with the neighbors. While they might not be installed, the applicant wishes to reserve the right to do so.

The hearing was opened to comments from the public. Margaret Bernier, 18 Salem Street, said the fences would make her property feel walled in, and new shadows would be cast on it. There would be views into the neighboring houses and yards from the second-floor deck and third-floor dormers. She is also concerned that it might be attractive in the future to revert back to multi-family use.

Matt McCann, 20 Salem Street, said the proposal would architecturally improve the house. A single-family home would be preferable to a multi-family one and he is willing to accept the trade-off of the structure being made longer. He has concerns about the heights and locations of the proposed fences. The public comment period was closed.

Mr. Swanton asked about the plans for the fences. Attorney Roelofs said they are not relevant to the application, but the applicant is committed to having a dialogue with the neighbors. Mr. Ciampitti said it is in the interest of the Board to review the details of the application to achieve a better result. The fences would impact that which is in the purview of the Board.

Mr. Benik asked about the use of the new space. Living area would be added on the first floor. A master suite bathroom and storage would be added on the second floor.

Mr. Chagnon questioned the increase in lot coverage from 22.2% to 25%, the maximum allowed, while the footprint being added is 360 square feet. Attorney Roelofs said he did not have figures.

Mr. Swanton said no new nonconformities would be created. The lot is large and the addition would be set in from both sides.

Mr. Chagnon said that while the addition would be twice the size of the existing porch, the Board has found this type of scale to be acceptable for other projects. He would prefer a vegetative screen to the proposed fence.

Ms. Schow said the addition would be a large expansion into the lot but the property has more open space than most neighbors.

Ms. Peknik said many neighboring houses were overbuilt for their lots. The dormers are unsympathetic to the existing structure and she has concerns about scale and massing, but the de-intensification of use in tight quarters is good. She said the fenestration is jarring and she does not like to see chimneys removed. She is sympathetic to the opposition to the deck.

Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 11 Purchase Street with the condition that the applicant shall report on the result of efforts to re-address the issue of fencing with the neighbors to the Zoning Administrator prior to the issuance of a building permit. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Ms. Schow, yes).

**Labarba Property Management, LLC**  
**2 White's Court**  
**VAR-22-6 - Variance**  
**ZSP-22-6 – Special Permit for Non-Conformities**

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Michael Tucker represented the applicant, who is proposing to reconstruct the form of the roof on an existing three-family residential structure that was constructed in 1970. The property is located in the WMD and the DCOD. It is non-conforming for lot area, lot coverage, frontage, front-yard setback, both side-yard setbacks and rear-yard setbacks. The structure is listed as an intrusion on the district data sheets.

A Special Permit was issued in 1995, when the use was changed from a furniture making shop to three residential units. The applicant is proposing to reduce the number of units from three to two. The applicant is also requesting to modify the Dimensional Variance that was issued in 1995 in order to create a covered entry, which would increase the lot coverage by 1%.

Attorney Tucker said the proposal would increase the living space of the family. Without this, the applicant could not continue to live on the property. No new non-conformities would be created. The height would be increased from 20 feet to 25 feet. The number of units would be reduced from three to two. A portico would be added on the north side of the building. The lot coverage would increase from 47% to 48%, where 25% is allowed. The number of parking spaces would be reduced.

The hearing was opened to comments from the public. Bill McDevitt, 1 Pop Crowley Way, said the proposal would improve the neighborhood. The public comment period was closed.

Mr. Benik asked about the need to modify the Variance. Attorney Tucker explained the lot coverage would increase by 1%.

Mr. Swanton said the reduction in use would be beneficial. No new non-conformities would be created. The proposal would be a big improvement for the neighborhood.

Mr. Benik said the 1% increase in lot coverage would be de minimis. Ms. Schow said the denial of the relief would constitute a hardship because the applicant would have to move.

Mr. DeLisle said the modification of the Variance has the benefit of the findings of 1995. Mr. Ciampitti said he supports the family staying in the home.

Mr. DeLisle moved to approve a Variance for 2 White's Court. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

Mr. DeLisle moved to approve a for Special Permit for Non-Conformities for 2 White's Court. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

### **3. Business Meeting**

#### **a) Requests for Minor Modifications**

##### **21 Walnut Street**

##### **MM-22-28**

Geoff Dodge requested to revise the approved plans. A trellis was to be planted where the side door had been. He said an 18" concrete slab is located at the foundation of the structure, which would result in plant material being installed too far from the trellis. He does not wish 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. The applicant said the sidewalk is in good

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condition. He is waiting for DPS approval of a plan to install a patch at the edge of the property that would eliminate the tripping hazard. He also said there is one tree, a telephone pole and overhead wires in front of the house and there is no room for an additional street tree.

Mr. Swanton said there was an agreement to replace the form of the door with a trellis. It was a part of a compromise and would not be in good faith to drop out it out. The trellis does not need to have a plant.

Mr. Benik said the trellis was a result of thoughtful consideration and it should not be removed from the plans. Mr. Chagnon agreed, saying a lot of discussion took place about the removal of the door.

Ms. Schow said she would not support changing the plan. The door was a part of a compromise. Mr. Ciampitti said the trellis was the result of a thoughtful process where there was public comment. He said it creates an architectural reference.

Mr. DeLisle moved to consider the request minor to remove the special condition from the written decision that a new street tree be installed and to approve the request for a Minor Modification to the Special Permit for Non-Conformities for 21 Walnut Street (2020-070 and 2020-071). Mr. Swanton seconded the motion. The motion was approved by a 7-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Schow, yes; Ms. Peknik, yes).

Mr. DeLisle moved to consider the request minor to remove the special condition from the written decision that the existing sidewalk be replaced and to approve the request for a Minor Modification to the Special Permit for Non-Conformities for 21 Walnut Street (2020-070 and 2020-071) with condition the applicant shall be responsible for compliance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance with respect to the sidewalk transition at the northwest corner of the property's frontage on Walnut Street. As such, and in order to eliminate a tripping hazard, the applicant shall obtain written approval from the Newburyport Department of Public Services (DPS) with respect to the installation of a suitable transition (materials and/or slope TBD) between the existing sidewalk along the frontage of this property, and the adjacent segment of "sidewalk" along the frontage of abutting property at 25 Walnut Street. Mr. Swanton seconded the motion. The motion was approved by a 7-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Schow, yes; Ms. Peknik, yes).

Mr. DeLisle moved to consider the request minor to remove the special condition from the written decision that a trellis be attached to the side of the house. Mr. Swanton seconded the motion. The motion was approved by a 7-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Schow, yes; Ms. Peknik, yes).

Mr. DeLisle moved to approve the request for a Minor Modification to the Special Permit for Non-Conformities for 21 Walnut Street (2020-070 and 2020-071) to forgo attaching a trellis on the side of the house. Mr. Swanton seconded the motion. The motion was failed by a 1-6 vote (Mr. Swanton, no; Mr. Chagnon, no; Mr. Ciampitti, yes; Mr. Benik, no; Mr. DeLisle, no; Ms. Schow, no; Ms. Peknik, no).

**b) Minutes**

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Mr. DeLisle moved to approve the minutes of the September 27, 2022, meeting. Mr. Swanton seconded the motion. The motion was approved.

**c) Request for Reconsideration per Section 5.5 of the Rules and Regulations**

**2 Neptune Street**

**ZNC-22-22**

Mr. Chagnon said he does not have a problem with reconsidering the vote. Ms. Peknik said that the purpose of a reconsideration is to correct or take into consideration in new information. It should be grounded in new facts. Mr. Ciampitti responded that the reasons for reconsideration could include a change of mind. He said did not offer the applicant the opportunity to continue or withdraw.

Mr. DeLisle said the applicant had a lot of experience before the Board and should have known the procedure. Ms. Peknik said the plan was very similar to the one that the Board had been poised to deny when the applicant requested to withdrew the application. Mr. Swanton said the applicant requested a continuance four times when the Board was at the point of denial. She was not unaware of the process.

Ms. Schow said the applicant could have a case for an abuse of discretion. The dormers would be allowed by right if not for the non-conformity. Mr. Swanton responded that the non-conformity is the charge of the Board. Ms. Peknik added that the non-conformity would be upwardly extended. The dormer does not require Historical Commission review because it meets the guidelines but is not exempt from Zoning regulations.

No motion to reconsider was a made by a Board member having standing to make such a motion. Mr. Benik moved to grant the request to reconsider the decision. The motion was not seconded. The four members who would have standing to second the motion said they would not when asked.

**d) Review of Draft Decision**

The review of the draft decision for 2 Neptune Street was tabled.

**4. Adjournment**

Mr. DeLisle moved to adjourn the meeting at 10:35 p.m. Mr. Swanton seconded the motion. The motion was approved.