

**City of Newburyport  
Zoning Board of Appeals  
Online Meeting  
October 13, 2020  
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, Rachel Webb and Ken Swanton and associate members Bud Chagnon and Brandon Banovic. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and note taker Gretchen Joy.

**2. Business Meeting**

**a) Minutes**

Mr. Swanton moved to approve the minutes of the September 22, 2020, meeting as amended. Mr. Moore 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. Ciampitti, yes).

**b) Request for Minor Modification**

66 Storey Avenue (2014-054)

Jessica Keys said the Provident Bank is changing its branding. The new name is BankProv. The existing posts would be used for the new sign and the lighting would not change. The sign would be of a high-density urethane with carved letters and no internal illumination. The color and shape of the sign would be changed and its size would be reduced to 31 square feet. The new logo contains all lower-case letters.

Mr. DeLisle asked if the oval shape could be retained. Ms. Keys said she had proposed this to the client, who wants rectangular signs to be used in all locations. The change in shape from oval to rectangular is a part of the new branding. Mr. Ciampitti said when first approved, the Board carefully considered the aesthetics of the free-standing sign, which is located in an entry corridor to the city. The granite posts were important to this, but he does not recall that the shape of the sign was a consideration. He said the massing seems to have been reduced and he would support the proposal as long as the sign would not be illuminated internally.

Mr. DeLisle moved to consider the request minor and to approve the modification to the Variance for 66 Storey Avenue (2014-054). 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. Ciampitti, yes).

**3. Public Hearings**

**Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC**

**193 High Street**

**2019-042 - Appeal**

Mr. DeLisle recused himself from the matter. The applicant requested a continuance. Mr. Moore moved to continue the public hearing to the December 8 meeting. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

City of Newburyport  
Zoning Board of Appeals  
October 13, 2020

**Windward Shaw LLC c/o Lisa L. Mead, Mead, Talerman & Costa, LLC**

**68 Middle Street**

**2020-053 - Special Permit for Non-Conformities**

Lisa Mead requested a continuance. She said the applicant has been working with the neighbors and the plans are being revised. Ms. Webb moved to continue the public hearing to the October 27 meeting. Mr. Moore 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. Ciampitti, yes).

**Eric Goodness**

**190 High Street**

**2020-055 - Appeal**

Mr. DeLisle recused himself from the matter. The applicant requested to withdraw the appeal. Mr. Moore moved to accept the withdrawal of the appeal for 190 High Street without prejudice. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Chagnon, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

**Michael Gray**

**12-14 Harrison Street**

**2020-067 - Appeal**

The applicant requested a continuance. Mr. DeLisle moved to continue the public hearing to the December 8 meeting. 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. Ciampitti, yes).

**Timothy and Wendy Higgins c/o Sarah Wolf, Esq., Finneran & Nicholson, PC**

**284 Water Street**

**2020-066 - Special Permit for Non-Conformities**

Sarah Wolf represented the applicant, who is proposing to construct a 205 square-foot, one-story enclosed porch on the south side of an existing house. The structure is non-conforming for front and rear yard setbacks. The addition would extend the preexisting non-conforming front yard setback. The house is nine feet from the front lot line and the sunroom would have a 14'-6" setback. Ms. Wolf said the lot is a large one and the adjacent neighbor does not object to the proposal. She said the addition would not create any new non-conformities and would not be more detrimental to the neighborhood than the existing conditions. It would not impact the light, air or views of the abutters. Matt Langis said the style of the addition would be in keeping with that of the existing structure. The siding and trim would match.

No one from the public spoke in favor of or in opposition to the application. Ms. Webb asked if a roof deck would be added. Ms. Wolf responded that the applicant has no plans to install a roof deck. The proposed roof is flat so that it would not block a second-story window.

Mr. Moore moved to approve a Special Permit for 284 Water 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. Ciampitti, yes).

**Boyle & Company, LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC**

**1 Williamson Avenue**

City of Newburyport  
Zoning Board of Appeals  
October 13, 2020

**2020-068 - Special Permit**

Lisa Mead said the applicant is seeking a Special Permit to renovate an existing attached garage to create an in-law apartment. The structure is non-conforming for front yard setback. This non-conformity would not be extended. Neither the existing dimensions nor the footprint of the garage would be changed. The garage doors would be replaced with windows and an additional means of egress would be created on the back of the structure. The paved area to the left of the house is large enough for two cars and two additional cars could be parked in front of the garage. The amount of paved area on the lot would not be changed. The apartment would be occupied by the niece of the elderly property owner. Ms. Mead said the occupant is a blood relative who acts as a child to the applicant. She said the use of the apartment by the niece would be in keeping with the intent of the ordinance, allows parents and children to live together. She said the applicant would comply with all of the requirements of the Special Permit. Two letters of support were received.

No members of the public spoke in favor of or in opposition to the application. Mr. DeLisle said he is concerned about the relationship between the applicant and the occupant of the apartment. The ordinance stipulates that the apartment shall be occupied by parents, grandparents, children, or grandchildren, by blood or by marriage. A niece is not included in this list. He is concerned that in the eleventh and twenty-third months, the homeowner would not be able to certify under the pains and penalties of perjury that the obligations of the ordinance are being met. Ms. Mead responded the niece is related by blood and the intent of the ordinance is to allow family members to provide care for one another and to allow residents to age in place. Mr. Swanton asked if the Board is allowed to interpret the bylaw or if it must administer it as written. Planning Director Andy Port said in the future courts might determine that some provisions in local communities are invalid because the definition of family is too restrictive and the language might ultimately be rewritten. Zoning Administrator Jennifer Blanchet said that while the language is restrictive, the applicant has been forthcoming about the relationship and it would be part of the legal record. Mr. Ciampitti said the Board has some discretionary powers and in his opinion the application would be within the spirit and intent of the ordinance. The applicant has made the case that the niece is the equivalent of a child.

Ms. Webb moved to approve a Special Permit for 1 Williamson Avenue. Mr. Moore seconded the motion. The motion was approved by a 4-1 vote (Mr. DeLisle, no; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

**4. General Business**

**a) Board Discussion to Consider the Reopening of an Application**

Mr. Ciampitti recused himself from the discussion. The public hearing in the matter of Ryan McShera, Red Barn Architecture, 4 68th Street, was closed at the September 8, 2020, meeting and the Board voted to issue a Special Permit for Non-Conformities. The decision has not yet been issued. During the public review process, the applicant submitted, as was requested by the Board, a FAR density comparison map. Some Board members, especially Mr. Swanton, had concerns about the data provided to analyze the FAR. Tarah Cammett, an abutter, questioned the data and subsequently contacted the Planning Office.

Planning Director Andy Port said the first decision would be to determine if the public hearing should be reopened to consider new information. Jonathan Eichman of KP Law said Mr.

City of Newburyport  
Zoning Board of Appeals  
October 13, 2020

Swanton compared the FAR analysis in the application materials that were provided to the Board to information he obtained at the Assessor's Office. The results of his research were distributed to the other Board members after the public hearing was closed. If the Board chooses to consider these materials, it should do so through the public hearing process and the public hearing should be reopened. The Board may use the information to determine if the hearing should be reopened but its substantive aspects cannot be discussed at the time.

Mr. Swanton reviewed the history of the application and presented an overview of his findings. The FAR of the existing structure is .21. The applicant first presented a FAR of .30 for the proposed replacement structure and later revised this figure to .32. The Board asked the applicant to provide FAR data for properties in the immediate vicinity of the subject structure. At the September 8 meeting, the applicant said that 13 of the houses in the immediate neighborhood had a FAR over .32, while four were within the .25 allowed by the regulation and six were between .25 and .32. The data as presented by the applicant showed that the whole neighborhood was already dense. This information was pivotal to the Board's decision to approve the Special Permit for Non-Conformities, as is recorded in the minutes.

At the September 8 meeting, an immediate abutter said he could not understand how his property could exceed the standards for FAR and asked about the values that were used in the calculation. The applicant responded that the gross square footage of 3,400 from the Assessor's data was used. The abutter questioned this figure.

The FAR is calculated by dividing gross floor area by the area of the lot. The gross floor area is defined as the total square footage of floor space within the outside dimensions of the building, without deductions for halls and closets. The Assessor's data indicates the gross square footage of the abutter's house is 3,440. When this figure is used in the calculation, the resulting FAR is .38. This figure includes decks, an open porch, a canopy and the attic. When these spaces are not included, the FAR of the abutter's house is .21. Mr. Swanton consulted with Zoning Administrator Jennifer Blanchet, who confirmed that decks, canopies and open porches are not a part of the enclosed space and should not be considered in FAR calculations. Attics should only be included when the headroom is six feet or over. For the abutter's structure, if only one-third of the attic has adequate headroom to be included in the calculation, the house would still be within .25 FAR requirement.

Mr. Swanton said that for 4 68<sup>th</sup> Street, the FAR of .32 did not include the decks. The applicant did not use comparable figures for the map that was provided. He said that every house in the applicant's study was overstated. All had areas that should not be counted. Of the 23 houses in the study, 20 have decks. Many have sheds, garages, carports, open porches, half stories, attics and basements. These areas were all included in the FAR calculations and should not have been. Mr. Swanton said that most of these properties probably do not have a FAR over .32 as presented, and probably most are in compliance with the .25 allowed. It would be necessary to view elevations of the properties to examine the headroom in order to make this determination.

At the August 11 meeting, only one of the five properties in the immediate neighborhood was depicted in red, indicating it has a FAR greater than .32. At the September 8 meeting, all of these properties were red. The square footage used to calculate the FAR for these five houses was different from one meeting to the next. The gross floor area, which includes decks, was used for the September meeting. Mr. Swanton said this data was pivotal in the Board's decision

City of Newburyport  
Zoning Board of Appeals  
October 13, 2020

to approve the application and appears to be wrong. He would like the applicant to explain these results and for the abutters to have a chance to comment. The Board would then determine if the decision should stand or if it had been based on faulty information.

Mr. Chagnon said it is possible to modify data to support different claims. The FAR changes by adding or omitting the attic space. The applicant first used living area in its calculation and recalculated the FAR using the gross square footage. In his opinion, the applicant tried to use the ordinance as written and he would be uncomfortable with reopening the public hearing. Mr. DeLisle clarified that the only part of the attic that would be considered would be that with six feet of headroom. Mr. Swanton responded that the applicant should not have included decks in the calculations. Mr. DeLisle said the Board must be sure that the representations and data that the applicants present are correct.

Andy Port said the Planning Office has questioned if expansion on Plum Island should be approved given sea level rise. While the data used should be accurate, the bigger question that should be asked is if it makes sense to consider the FAR of adjacent properties. He said that allowing one house to be large because an adjacent house is large would be contrary to the purposes of the PIOD. He asked if the Board should be granting any variances for the expansion of houses on Plum Island.

Mr. Swanton said that while he is sympathetic to the issue of overdevelopment on the island, the important point is that the Board should not base its decision on incorrect data. He believes the Board was misled. Mr. Moore said the FAR is a part of the ordinance and must be considered. He said the Board should question the applicant if the data does not appear to be accurate. Ms. Webb commended Mr. Swanton on his research. She said the decision has not been filed with the City Clerk and the hearing should be reopened. To her, the information speaks loudly that the Board was operating under erroneous data. Mr. Banovic agreed that clarity would be gained by the reopening of the hearing.

Mr. DeLisle moved to reopen the Special Permit for Non-Conformities 4 68th Street. Ms. Webb seconded the motion. The motion was approved by a 4-1 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, no).

Mr. DeLisle moved to adjourn the meeting at 8:40 p.m. Mr. Swanton seconded the motion. The motion was unanimously approved.

Respectfully submitted,  
Gretchen Joy  
Note Taker