

**City of Newburyport
Zoning Board of Appeals
Senior Community Center
October 24, 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, Bud Chagnon, and Gregory Benik and associate member Patricia Peknik. Member Stephen DeLisle and associate member Lynn Schow were absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Business Meeting

a) Request for Minor Modification

22 Market Street

ZNC-22-13 and ZSP-22-1

Doug Deschenes represented the applicant, Ben Legare of Downeast Residential, LLC, who received a DCOD Special Permit on June 28, 2022. The Newburyport Historical Commission noted in its advisory report that the applicant agreed to repair and restore, rather than replace, the historic windows. The applicant is now proposing to replace the historic windows with reproduction wood windows. He offered to install a cedar shake roof as mitigation for the modification.

Attorney Deschenes said the modification is being sought for the purpose of energy conservation and due to safety concerns. Other proposed modifications involving the rear façade were deemed to be administrative in nature and have been approved. These included a reduction in the size of the rear deck, a shifting of window locations, the addition of a new window and a change in the pitch of the roof. The only change proposed for the front façade is the replacement of the windows.

Ben Legare said the existing windows do not meet the building code, which requires that windows shall be operated without keys, tools or special knowledge. The existing windows are kept open by pins. A child might raise the window and let it slam or an elderly person might not be able to raise a window in the event of a fire. It would be necessary to replace one window in every sleeping unit and permanently close the rest. It would also be necessary to add storm windows, which he does not find attractive.

The hearing was opened to comments from the public. Glenn Richards, 6 Kent Street, said that the proposed windows appear to be good quality reproductions, but he would not view the modification as minor. He said any replacement window should mimic the look of the originals. The public comment period was closed.

Mr. Swanton asked if the applicant had brought the proposed modification to the attention of the Historical Commission. Mr. Legare said he had not because that the matter is not one of opinion, but rather of compliance with the building code. He said he would commit to installing the same reproduction windows throughout the entire building. Mr. Swanton said the input from the Historical Commission was key to the decision making of the ZBA and he would like to know the opinion of the Historical Commission members on the proposed modification and if they would be considered it minor. The applicant stated he had contacted the Preservation Trust about the matter, but not the Historical Commission.

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Mr. Chagnon asked about the removal of the rear deck, which was to be a second means of egress. Mr. Legare said the interior layout of the structure was redesigned, making the deck unnecessary. The presence of the deck was of concern to the neighbors.

Mr. Benik said the Historical Commission does not have the authority to issue a comment at this point in the procedure. He said it would be a reasonable assumption that the members of the Historical Commission would look at the ZBA agendas and weigh in on items that are of interest to them.

Ms. Peknik commented that it is time consuming for a member of one commission to follow the agendas of other boards. She asked if it is necessary for all windows to be operable. Attorney Deschene said it is a safety issue. If all of the windows were to look the same but not all function, a guest of the inn would not be able to discern which window to open in the case of an emergency. Ms. Peknik questioned that the matter could be considered minor, when it is contrary to the City's published guidelines on the restoration of historic wood windows in Newburyport. The publication states that only windows that have deteriorated beyond repair should be replaced. The stated purpose of the DCOD is to maintain the established skills of local tradespeople.

Mr. Legare said it would be less expensive to repair the existing windows. He said it is a code issue and the windows are a safety violation. He does not want to request a code override and is offering to install an expensive roof as mitigation. He said there are methods to make the restored windows stay open, but he does not believe they are reliable in the long term.

Building Commission Greg Earles said he met with the applicant and informed him this is not a building code issue. Only one egress window is required for every sleeping quarter. The windows are a safety hazard in their current condition, but there would be no code issue if the windows were to be repaired and made to operate in a safe manner. One side window could be used for egress. The other windows could be fastened shut if they could not be made to stay open.

Mr. Ciampitti said the Board must determine if the proposed modification to the plan for the windows is minor. Mr. Swanton said the Board has discussed the matter for over an hour and it would not require this amount of effort if the modification were in fact minor.

Mr. Benik said the length of the discussion has provided the members with all they need to know about the request. He said he assumes the Historical Commission would adhere to its original opinion. He has received the information needed to determine the request is minor and he would not want to create any procedural barriers for the applicant.

Mr. Ciampitti and Mr. Chagnon agreed that the modification could be considered minor. Ms. Peknik said she would not consider it minor.

Attorney Deschenes said if the modification were to be considered major, the applicant would be required to begin the process again, but there would be no new information to be presented.

Mr. Swanton said the Historical Commission opinion was central to the Board's decision and the Commission has been cut out of the process. He suggested the matter be continued in order to obtain the opinion of the Historical Commission. Attorney Deschenes said the Board should not be asked to make a determination and the matter should be continued. He said he

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would volunteer to be placed on the agenda of the Historical Commission as soon as possible to obtain a comment from its members.

Mr. Swanton moved to continue the Request for Minor Modification for 22 Market Street to the November 14 meeting. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes; Mr. Benik, yes).

3. Public Hearings

a) John Padden and Julie Christie c/o Lisa Mead, Mead, Talerman & Costa LLC

14 Payson Street

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

The applicant requested a continuance. Mr. Swanton moved to continue the public hearing to the November 28 meeting. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes; Mr. Benik, yes).

b) Michael Burke

16 Oakland Street

ZNC-22-34 - Special Permit for Non-Conformities

The applicant is proposing to construct a sunroom at the rear of an existing single-family structure in the R2 district. The property is non-conforming for lot area, front-yard setback and one side-yard setback. The right side setback is 4.3 feet, where 10 feet is required.

The existing deck would be removed and the sunroom would be constructed in its place on a larger footprint. The side-yard setback non-conformity would be extended. The sunroom would be stepped in from the main structure and would be 4.9 feet from the property line. Four letters of support were received.

Mr. Swanton said no new non-conformities would be created and the project would not be detrimental to the neighborhood.

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 16 Oakland Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes; Mr. Benik, yes).

c) Zachary Golub and Katherine DiFronzo c/o Lisa Mead, Mead, Talerman & Costa LLC

49 Philips Drive

ZSP-23-6 - In-Law Apartment Special Permit

Ryan Clemens represented the applicant, who is seeking a special permit for an in-law apartment. The property is in R1 district. It is non-conforming for lot area, frontage and front-yard setback. A Special Permit was issued in 2004 for the construction of a new in-law apartment with a 672 square-foot exclusive area and a 234 square-foot common area. This permit has expired.

The applicant is proposing to renew the expired permit. The footprint of the structure and the dimensional controls would not change. The interior layout would be changed and the exclusive-use area would be expanded to include the former common area. The in-law apartment would be 817 square feet and would be occupied by the applicant's parents. The applicant agreed to the criteria of the Ordinance.

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Mr. Swanton said the project meets the criteria and has the support of the neighbors. Mr. Chagnon said the applicant has met the nine prongs of the Special Permit criteria.

Mr. Swanton moved to approve an In-Law Apartment Special Permit for 49 Philips Drive. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Ms. Peknik, yes; Mr. Benik, yes).

4. Business Meeting Continued

a) Minutes

Mr. Swanton moved to approve the minutes of the October 10 meeting. Mr. Benik seconded the motion. The motion was unanimously approved.

b) Other Business

None

5. Adjournment

Mr. Benik moved to adjourn the meeting at 9:00 p.m. Mr. Swanton seconded the motion. The motion was unanimously approved.