

**City of Newburyport
Zoning Board of Appeals
Online Meeting
October 26, 2021
Minutes**

1. Roll Call

Vice Chair Mark Moore called an online meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Stephen DeLisle, Mark Moore, Bud Chagnon and Ken Swanton and associate member Gregory Benik. Robert Ciampitti was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

**a) 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. Chagnon moved to continue the public hearing to the November 9 meeting. 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. Benik, yes).

b) Brendon Johnson and Krystina Creel Johnson

65 Curzon Mill Road

2021□06 □ Dimensional Variance

Mr. Moore recused himself from the matter. Mr. DeLisle acted as chair. The applicant is requesting a Variance to extend an existing two□story garage and construct additional living space above it. The proposal would create a new side-yard non□conformity. The addition would be 16'-6" from the side property line, where 20 feet is required. Ms. Johnson said a hardship is created by the angled position of the house on the lot. She said she and her husband have explored several alternates, none of which have proved to be feasible. The alternatives would result in an aesthetically unappealing home that would be less functional or a financial hardship would be created.

The applicants considered removing the existing garage and constructing a new garage that would face the street. This would require that the driveway be moved and the garage would block the view of the house. A second alternative would be to indent the garage by four feet on one or both sides. Ms. Johnson said it would be difficult to maneuver the vehicles or walk around them in this alternative and dead space would be created in the living area above. A financial hardship would be caused if the house were to be demolished and reconstructed with a different orientation on the lot.

No one from the public spoke in favor of or in opposition to the application. Mr. Swanton asked about the dimensions of the garage in the alternative in which a Variance would not been needed. The length of the garage in the alternative would be 29 feet and its width would be reduced to 21 feet in the area of the doors. Mr. Swanton also asked for clarification on the nature of the hardship. Ms. Johnson said a hardship has been created by the angle of the house on the lot. Mr. Swanton replied that the Ordinance requires that a hardship must be

City of Newburyport
Zoning Board of Appeals
October 26, 2021

created by the soil, topography or shape of the lot. He said the lot is rectangular and flat and has no wetlands.

Mr. Chagnon asked for additional clarification of the dimensions of the garage. The width of the proposed garage is 25 feet and its width in the alternative plan would be 21 feet. The proposed garage would intrude 3.5 feet into the side-yard setback.

Mr. Swanton said the property does not meet the requirements for a Variance. The lot is rectangular and flat. No wetlands are present. The proposed garage would be very large in comparison with others in the city.

Mr. Chagnon said the language of the Ordinance includes structures. The angle of the house creates the hardship. Mr. Benik said he agrees with the interpretation that the Ordinance could apply to structures. However, he said he is not able to reach the conclusion that the current situation creates a substantial hardship. The applicant would be adding more than a two-car garage. He does not find that the applicant would be deprived of the reasonable use of the structure.

Mr. DeLisle said the hurdle that the Ordinance sets forth for the granting of a Variance is a tall one. He said he would not be able to support the application.

Mr. DeLisle pointed out to the applicant that four members of the Board must vote in favor of the application in order for it to pass. Three members have stated they would not support it. One member is absent.

The applicant requested a continuance. Mr. Benik moved to continue the public hearing to the November 23 meeting with the condition that the Board shall approve no further continuances. Mr. Swanton seconded the motion. The motion was approved by a 4-0 vote (Mr. DeLisle, yes; Mr. Swanton; yes; Mr. Chagnon, yes; Mr. Benik, yes).

c) Eric Primack
30 Winter Street

2021-049 □ Special Permit for Non-□ Conformities

The applicant is proposing to remove the shed roof addition at the rear of the property and replace it with a two-story addition that would allow for greater headroom. The non-conforming side-yard setbacks would be upwardly extended. The plans were modified in response to comments made by the Historical Commission. The proposed roofline was lowered so that it would not obscure the gable of the original structure and the NHC has released the property from the Demolition Delay.

The windows on the front façade would be replaced with simulated divided lights in the same pattern, size and locations as the existing windows. The locations of the door openings would not be changed. All trim would be repaired or replaced in kind to match the existing conditions. The clapboards would be repaired and replaced as necessary.

The hearing was opened to comments from the public. Tom Kolterjahn, 64 Federal Street, said he is glad this wonderful building would receive much-needed attention. He is concerned that developers often replace more of the existing materials than is presented. He said the project is to be a restoration, and not a replacement, of a historic structure. He added that the building deserves better than vinyl windows. Mr. Primack responded that any new trim would be wood and would match the existing material. The public comment period was closed.

City of Newburyport
Zoning Board of Appeals
October 26, 2021

Mr. DeLisle said no new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions. He said he would support the plan, which was improved through the process of working with the Historical Commission.

Mr. Swanton said he would oppose the upward extension of the non-conformity if it were visible from the street but the addition would be at the rear of the structure and no neighbors have spoken against it. He added he would prefer wood windows to vinyl ones.

Mr. Benik moved to approve a Special Permit for Non-Conformities for 30 Winter Street. 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. Benik, yes).

**d) Eve Davis Lee c/o Lisa Mead, Esq., Mead, Talerman & Costa, LLC
64 Liberty Street**

2021-52 - Special Permit for Non-Conformities

Lisa Mead and Juli McDonald represented the applicant, who is proposing to remove an existing one-story addition to a non-conforming single-family structure that was constructed between 1750 and 1775. It would be replaced with a new addition that would be both one and two stories. The property is on a corner, with its primary front yard on Liberty Street and its secondary front yard on Federal Street. It is non-conforming for lot area, both primary and secondary front-yard setbacks, rear-yard setback, lot coverage and open space. The new addition would lengthen the structure 4.1 feet on the Liberty Street side of the property. The non-conforming primary front-yard and rear-yard setbacks would be upwardly extended. The lot coverage would increase from 53.2% to 60.3%, where 25% is permitted. The existing addition extends slightly over the primary front-yard and rear-yard setbacks. The new addition would be within the boundaries of the property, which would increase the open space from 12.3% to 13.4%, where 25% is required.

The one story section of the new addition would be set back 5.55 feet from Liberty Street and the two-story section would be constructed behind it. The addition would add 128 square feet to the footprint of the structure. The addition would step in from the corners of the original structure. It would have a cedar shingle roof and wood windows. Its wood trim would be simplified to distinguish the addition from the original house.

Attorney Mead said that while the existing non-conformities would be extended, they would not be intensified and no new non-conformities would be created. The two immediate abutters have submitted letters of support.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle asked about the age of the addition that is to be removed. Attorney Mead said the shed-roofed addition could not be dated. It is old but not original to the house. The other part of the addition was added in the past 40 years.

Mr. Swanton asked if the addition would be set back from both the rear property line and Liberty Street. Juli McDonald said the corner boards on both sides of the original structure would be exposed.

Mr. Benik said the addition is tasteful and in keeping with the historic nature of the structure.

City of Newburyport
Zoning Board of Appeals
October 26, 2021

Mr. Swanton moved to approve a Special Permit for Non-Conformities for 64 Liberty Street. Mr. Benik seconded the motion. The motion was approved by a 4-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Mr. Chagnon, absent; Mr. Benik, yes).

**e) Joseph O'Donnell and Kellye Van Liere O'Donnell c/o Lisa Mead, Esq.
143 Crow Lane**

2021-55 Special Permit for Non-Conformities

The applicant is proposing to construct an addition greater 500 square feet to an existing non-conforming single-family structure. A garage and living space would be added to a ranch-style home that was constructed in 1966. The existing structure is 1,164 square feet and 1,438 square feet would be added for a total of 2,672 square feet. The property is non-conforming for lot area, frontage, front-yard setback and the east side-yard setback. The addition would be constructed on the rear and west side of the structure, which are dimensionally conforming. It would be set back 34 feet from the front property line. The rear-yard setback would be 45 feet, where 30 feet is required. The west side-yard setback would be 22 feet, where 20 feet is required. The lot coverage would increase from 7.01% to 16.1%, where 20% allowed.

The property slopes from the front right to the back left. The proposal utilizes the slope in a way which prevents the addition from overwhelming the ranch-style house and minimizes the impact on the streetscape. Attorney Mead displayed photographs of other structures in the neighborhood with large additions. Twelve letters of support have been submitted.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said no new non-conformities would be created and the proposal would not be detrimental to the neighborhood. He said the plans would make a simple house interesting.

Mr. Swanton said the architect has taken advantage of the topography to help with the massing. Mr. Chagnon said the proposed structure would not be largest home in the neighborhood and would no longer be the smallest. Mr. Benik said the proposal would improve the home and the neighborhood. Mr. Moore said the neighborhood is an eclectic one.

Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 143 Crow Lane. 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. Benik, yes).

3. Business Meeting

a) Minutes

Mr. Swanton moved to approve the minutes of the October 12, 2021, meeting. 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. Benik, yes).

b) Updates from the Chair and Planning Director

KP Law will provide an overview of the ZBA review process for 40B permits at 6:00 p.m. on Tuesday, November 9.

City of Newburyport
Zoning Board of Appeals
October 26, 2021

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 8:55 p.m. 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. Benik, yes).