

**City of Newburyport
Zoning Board of Appeals
Online Meeting
October 27, 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, Rachel Webb and Ken Swanton and associate members Bud Chagnon and Brandon Banovic. Mark Moore was absent. Mr. Chagnon was the voting member. 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 October 13, 2020, meeting as amended. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

3. Public Hearings

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

68 Middle Street

2020-053 - Special Permit for Non-Conformities

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

Dan Graovac c/o Lisa Mead, MTC LLC

7 58th Street

2020-074 - Special Permit for Non-Conformities

The applicant requested a continuance. Ms. Webb 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. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

Joel and Marybeth Martens

50 Bayberry Road

2020-056 - Dimensional Variance

2020-057 - Special Permit

2020-062 - Special Permit for Non-Conformities

The applicant is seeking a Dimensional Variance to construct an addition to a pre-existing non-conforming single-family house, an In-law Special Permit and a Special Permit to construct an addition over 500 square feet. The lot is on the corner of Turkey Hill Road and Bayberry Road, giving it two front yards for zoning purposes. The property is non-conforming for lot area.

A second story would be added to the ranch-style house and a 420 square-foot in-law apartment would be constructed on its west side. The apartment would be occupied by Marybeth Martens' father and her mother, who has physical disabilities. The addition would intrude into

City of Newburyport
Zoning Board of Appeals
October 27, 2020

the non-primary front yard. The requirement for a front-yard setback is 30 feet and the addition would be 23.6 feet from the property line. If the lot were not on a corner, the addition would meet the 20-foot side-yard setback requirement. Ms. Martens said only two people would be added to the neighborhood, which would not create traffic congestion or impair pedestrian safety. The addition would be constructed on an existing concrete pad and would not block any views. Several letters of supported were submitted by neighbors.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle reviewed the findings and found they had been adequately addressed by the applicant, but asked for more information about the curb cuts. Ms. Martens said the two curb cuts have existed for several years. One is currently used only for moving a motor home on and off of the property. She said DPS determined the location of the second curb cut and placed it at an appropriate distance from the intersection. She said DPS provided a permit for installation of the paved pad near the house at the same time. She also said she is considering a circular driveway, as this might be more visible to motorists and more accessible for her mother. This would be an amendment to the proposal and would require the submittal of a new set of plans. Ms. Webb asked if the addition could be added to the right side of the structure, where it would not impact the setback. The applicant responded that the alternative location had been considered but it would be more difficult in terms of plumbing and would have more of an impact on the neighboring house. Mr. Swanton asked if the City would allow two driveways for one house and if a circular driveway would be preferred. Planning Director Andy Port said a circular driveway would extend the asphalt across the front of the property, which would negatively impact it in terms of aesthetics. He said a single curb cut would be preferable in general. Mr. Ciampitti said the curb cut already exists and he does not know of any prohibition against a second curb cut in the ordinance. Mr. Swanton asked if three cars could use the existing driveway. Ms. Martens said she would consider this alternative but it would be necessary to enlarge the existing driveway and she is concerned about it being accessible for her mother.

Ms. Webb said she has an issue with the application. She contacted the DPS and the records were searched back to 2008. No approval for the second curb cut could be found. It does not appear to her that the two curb cuts are far enough apart to allow for a circular driveway. She said having two separate driveways for a single-family house would create too much pavement. One of the curb cuts is too close to the corner and the corner is used as a school bus stop. Mr. DeLisle said it should be determined if DPS is aware of the curb cut. Mr. Swanton said that the trees along the edge of the property on Turkey Hill Road create the feel of a side yard in the proposed location of the addition.

The applicant requested a continuance to obtain the record of the DPS approval for the curb cut and to explore the option of constructing the addition on the opposite side of the house. Mr. DeLisle moved to continue the public hearing to the November 24 meeting. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

Benjamin Becker/BLB Custom Building
28 Highland Avenue
2020-069 - Special Permit for Non-Conformities

The applicant is proposing to construct a second floor on an existing single-story house, adding

City of Newburyport
Zoning Board of Appeals
October 27, 2020

900 square feet to the structure. The lot is non-conforming for area. It is on a corner and the structure is non-conforming for both front-yard setbacks. The addition would extend the non-conformity upwardly and laterally. The existing front porch is four feet wide now and would be extended two feet. The front yard setback is 19.5 feet and the proposed setback would be approximately 17 feet. The front wall of the house would remain in the same location. The existing garage would not be changed. The house was resided with vinyl shingles three years ago and vinyl windows were installed. The materials on the new second story would match those on the first floor and the other houses in the neighborhood. The application triggers the Tree and Sidewalk Ordinance but the Tree Commission has determined there is not space on the property for a tree.

No one from the public spoke in favor of or in opposition to the application. Ms. Webb said the proposal would not create any new non-conformities and she would support it. Mr. Chagnon said he likes the addition and it would not be detrimental to the neighborhood. Mr. DeLisle said there are many 2.5 story structures in the neighborhood and the proposal would blend in with it. Mr. Ciampitti said he would also support the application.

Mr. DeLisle moved to issue a Special Permit for Non-Conformities for 28 Highland Avenue. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

Geoff and Nora Dodge c/o Lisa Mead, Mead, Talerma & Costa, LLC
21-23 Walnut Street
2020-070 - Special Permit
2020-071 - Special Permit for Non-Conformities

Lisa Mead said the applicant is proposing to revert a two-family house back to single-family use. The structure is in the R2 district and the DCOD. It was built around 1850 and has multiple additions that were constructed sometime after 1914. The applicant is proposing to remove an addition at the rear of the structure and replace it with a new addition on a larger footprint. The demolition would result in the removal of 36% of the exterior walls. The structure is non-conforming for frontage and one side-yard setback.

Attorney Mead addressed comments Newburyport Historical Commission Chair Glenn Richards made in an email to the ZBA members about the letter she sent them on September 16. In his email, he said that she was incorrect when she stated that five members of the Historical Commission attended the site visit. Attorney Mead clarified that while Mr. Richards was the only NHC member who attended the actual site visit, four other members mentioned that they had looked at the property on their own. The email also stated that Attorney Mead misrepresented the findings of the NHC. She said that her letter to the ZBA was based on the minutes of the NHC meetings and was written before the DCOD Historical Report had been prepared. She said her letter was correct in that the Historical Commission did not challenge the report on the condition of the addition that is to be removed.

Attorney Mead reviewed the report from the structural engineer, who stated the “current rear section of the building is unsafe, unstable and is not capable of resisting expected loadings.” She said that the foundation, framing, joists and roof structure are in poor condition and of insufficient strength. The grade around the rear of the building is too high and slopes toward the house, resulting in the rotting of the sill and lower sections of the sheathing. The foundation sits

City of Newburyport
Zoning Board of Appeals
October 27, 2020

upon loose rubble. Large stones act as footings in the crawl space. Some of the joists are undersized, beams have been cut and the collar ties are too high.

Aileen Graf reviewed the proposed plans, which had been modified in response to Historical Commission comments. She said the two-story addition would be the same width as the existing one and would extend further towards the rear of the property, where a one-story addition would be used to bring down its scale. Portions of the covered porch on the side of the structure would be converted to living space. A new staircase would be added to provide better access to the finished third floor, which would require the installation of a dormer. A shed dormer had been originally proposed. It was changed to a gabled dormer based on comments from the Historical Commission to match the Greek revival characteristics of the original structure. Two-over-two windows would be used throughout the structure and Hardy plank would be used for the siding. The Historical Commission had been concerned about the empty bay that would be created by the removal of a door and window on the side of the structure. These would be replaced by a trellis and an oval window. The chimney would be removed to accommodate the interior floor plan.

Attorney Mead concluded that while a non-conformity would be extended, no new non-conformities would be created. The conversion from two-family to one-family use would eliminate the non-conformities for frontage and area. The structural engineer has reported that the portion of the structure to be demolished retains no substantial remaining market value or reasonable use. The abutter that would be most impacted by the proposal has submitted a letter of support. The applicant would replace the sidewalk and add a street tree in the front of the property.

The hearing was opened to comments from the public. Glenn Richards said he does not disagree with the characterization of the site visit. With regards to the letter Attorney Mead submitted, he disagrees with the statement that the NHC recommended that the portion to be demolished has no remaining economic value. He said the Commission members are not qualified to make such a determination. It would be more accurate to say they did not contradict findings of the engineer. He said several members had serious concerns about proposed changes to the original part of the structure, specifically the removal of the door and window. The façade is historically significant and should be remain intact. Stephen Dodge said that during his tenure with the NHC, this type of application would have been seen as favorable. He said the centered side doorway is not typical of the period.

Mr. Chagnon asked if the Board may approve the extension of a non-conformity. Attorney Mead responded that this is allowed for single and two-family homes. The standard is different for other types of structures. Mr. Swanton asked about the oval window, which is a Victorian feature and not typical of a Greek Revival structure. He said the Board is responsible for maintaining the architectural character of the city's structures. Attorney Mead responded that the structure shown as an example of Greek-revival architecture on the website of the Newburyport Preservation Trust has an oval window. Ms. Graf said buildings evolve over time. It is acceptable to add later elements to structures and there are historic oval windows in the city.

Mr. DeLisle said the project has been well thought out and he would support the application. Substantial evidence has been provided that the rear portion of the structure has no remaining market value or reasonable use. No new non-conformity would be created. He commended the Dodges for preserving the house. Mr. Chagnon said the project would enhance

City of Newburyport
Zoning Board of Appeals
October 27, 2020

a structure that is in need of it. Mr. Swanton agreed the application meets the requirements of the ordinance and he would support it, although he does not like the oval window.

Ms. Webb moved to issue a Special Permit for Non-Conformities for 21-23 Walnut Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

Mr. DeLisle moved to approve a DCOD Special Permit for 21-23 Walnut Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

Craig and Susan Lane

81 Turkey Hill Road

2020-072 - Dimensional Variance

2020-073 - Special Permit for Non-Conformities

Joel Gagnon described the plans to construct a two-car garage with living space above it. The addition would be connected to the house by a breezeway. The property owners anticipate the need for an elderly family member to reside with them in the future. The addition would be greater than 500 square feet and would intrude seven feet into the side-yard setback. Its materials would match those of the existing house. The house was built towards the left side of the property, leaving a large open area to the right of the house. The existing driveway is lower than the structure and slopes away from it. This slope would allow the living space over the garage to be on the same level as the first floor of the house. Mr. Gagnon said he explored orienting the garage differently to avoid an intrusion into the setback. He said the alternative solution would not allow enough room for cars to back out of the garage. It would also be necessary to excavate the hill and construct a retaining wall around the property, which he feels would be more detrimental to the abutter. He said the slope of the driveway is dramatic enough that he felt the need to apply his parking brake. Mr. Lane said four cars are presently being parked in the driveway and it would be beneficial to the neighborhood for two of these to be inside the garage. The driveway would be located further from the property line than it is now. The neighbor on the side of the property where the addition would be located has submitted a letter of support.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle said he does not agree that the slope of the site is dramatic. He said the square lot is unremarkable and he is not sure that the requirements for a variance have been met. The narrowness of the lot does not create a unique circumstance. He is not convinced that a solution could not be found that would not require an intrusion into the setback. Ms. Webb said the proposal is logical and takes advantage of the topography. She said the applicant meets the requirements for a variance because of the slope, which is unique to the lot. The strict application of the Ordinance would deprive the applicant of the reasonable use of the property. With regards to the Special Permit, no new non-conformities would be created. Mr. Swanton said that while he would like to see contour lines on the plan, he visited the site and observed that it is steep. The slope makes the lot unusual. Mr. Chagnon said the proposal makes sense for the lot and many other homes in the neighborhood have garages.

City of Newburyport
Zoning Board of Appeals
October 27, 2020

Ms. Webb moved to approve a Dimensional Variance for 81 Turkey Hill Road. Mr. Swanton seconded the motion. The motion was approved by a 4-1 vote (Mr. DeLisle, no; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

Ms. Webb moved to approve a Special Permit for Non-Conformities for 81 Turkey Hill Road. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Chagnon, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

4. General Business

Andy Port said the Planning Office is considering a system that would streamline the way Board members receive comments from the public. Emails would be sent to a special address created for the Board and then forwarded to the members. This would relieve the Planning Office staff of the task of compiling the emails and the members could receive them more quickly. The Board members were in agreement that they would prefer to continue receiving the emails in a package. They were concerned that some emails might be overlooked if they were sent sporadically.

Mr. Swanton moved to adjourn the meeting at 9:44 p.m. Ms. Webb seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker