

**City of Newburyport
Zoning Board of Appeals
Online Meeting
November 10, 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. Mr. Banovic 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. DeLisle moved to approve the minutes of the October 27, 2020, meeting as amended. Mr. Swanton seconded the motion. The motion was approved by a 4-0 vote (Mr. DeLisle, yes; Mr. Moore, abstain; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes).

3. Public Hearings

Dan Graovac c/o Lisa Mead, MTC LLC

7 58th Street

2020-074 - Special Permit for Non-Conformities

Olympia Bowker represented the applicant, who is proposing to demolish an existing two-bedroom, single-family home on a solid foundation and replace it with a two-bedroom, single-family home on pilings. The property is in the R-3 zoning district and the PIOD. The lot is non-conforming for area and frontage. The structure is non-conforming for front, rear and left side yard setbacks. The front yard setback non-conformity would be eliminated. The left side yard setback non-conformity would be reduced. The height of the structure would be increased, which would upwardly extend the left side and rear yard non-conforming setbacks. No new non-conformities would be created. The footprint of the existing structure is 635 square feet and the footprint of the proposed structure would be 560 square feet. The existing FAR is .169 and the proposed FAR would be .249.

Attorney Bowker said the proposal would not be substantially more detrimental to the neighborhood than the existing conditions. She said that one pre-existing non-conformity would be eliminated and another non-conformity would be reduced. The lot coverage would be reduced and the open space would be increased. One and a half bathrooms would be added but the number of bedrooms would not increase. The structure would be elevated above flood level. Five letters of support were submitted from abutters.

No one from the public spoke in favor of or in opposition to the application. Mr. DeLisle asked about the parking area under the building being open. Aileen Graf said the regulations do not allow skirting in this flood zone. He also asked if the setbacks include the overhanging air conditioning units. Attorney Bowker explained that by definition, setbacks are measured to the building line, which is the point where the building meets the ground.

Mr. Moore said the change to the property would be modest and the structure would meet the requirements for FAR. Ms. Webb commented that the additional bathrooms would increase

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the water and sewer usage. Mr. Swanton said the FAR calculations the applicant presented were very clear. Mr. Ciampitti said he likes the compact and efficient design of the structure.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 7 58th Street. 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).

Michael Gray
12 Harrison Street

2020-075 - Special Permit/Request for Written Approval

David Mack represented the applicant, who is requesting a Special Permit to demolish more than 25% of a structure in the DCOD. At the May 26 meeting, the Board issued a Special Permit for Non-Conformities. The applicant proposed to convert a two-family structure to single-family use. The roof of the main structure was being raised and an ell was being constructed at its rear. The Historical Commission approved the plans after the applicant agreed to raise the roof 1.5 feet instead of three feet and to make changes to the proposed materials.

Attorney Mack said that during the course of construction, the applicant determined that it would be necessary to replace the framing. Approval was not sought for this change. On August 11, the Zoning Administrator issued a Notice of Violation for the demolition of the historic structure without approval, prohibiting the issuance of a building permit for three years.

Attorney Mack said the structure, which was built around 1800, was in poor condition. He said the project would be identical to the one that was approved in May. The only change would be the replacement of the exterior wall framing, which is not visible to the public. He said the patchwork framing was not historically significant. The replacement of the framing was necessary to construct the building in accordance with the approved plans. The applicant has appealed the Notice of Violation. That matter has been continued to the December 8 meeting. Attorney Mack said the applicant is requesting written approval for the issuance of a building permit that would allow the applicant to proceed with the project.

The hearing was opened to comments from the public. Glenn Richards, Chair of the Newburyport Historical Commission, confirmed that the structure is listed as contributory on the district data sheet. He said it is a noted historic property for which a Form B had been prepared. He asked what disincentive there would be for a developer to undertake an unapproved demolition in the future if there is no penalty. He also asked how it was possible that no structural survey was done before construction to determine if the existing structure would be sound enough to support the proposed changes. He said the NHC is charged with preparing a historical report and would be deliberating on the proposal at its upcoming meeting. Mr. Ciampitti confirmed that the materials are not complete and additional information is needed from the NHC that is critical to the decision-making process. He said at the conclusion of the public comment period, the Board may decide to continue the matter to allow the NHC the time necessary to complete its work.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust strongly opposes the application. The appeal has not been heard and the NHC is in the process of preparing its report. He said the hearing is premature and out of sequence. The applicant demolished a historic building without permission. The engineer who reported on the structural integrity of the building was hired by the applicant and drew his conclusions about the condition

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of the framing after the fact. An independent opinion should have been required. He said he thinks some of the framing might have been viable and a skilled restoration team might have been able to save much of the building. It is common for the sill beam and bottom or corner posts to be repaired. He added that 18th century houses were typically overbuilt and it would have been possible to augment the framing. He requested that the Board deny the application. Adequate reasons have not been given for the demolition of an important historic building that was protected under the law. He predicted that additional demolitions would follow if the application were to be approved. He said the waiving of penalties would not help preserve our city's heritage.

Josh Weiss, 13 Harrison Street, said the extension of the moratorium would adversely impact the residents of the street. He said it would be unfair and unjustified for them to have to put up with the current condition of the structure for an extended period of time. The proposed work would be a substantial improvement to the property.

Mark Donovan, 17 Harrison Street, agreed the project would improve the structure. Allowing work to move forward would benefit the city, the residents of street, and the users of the Rail Trail. He said that he does not think Mr. Kolterjahn had the opportunity to inspect the building and he questioned if its integrity as a historic structure has been damaged.

Mary Gene Clavin, 8 Harrison Street, said the improvement of structures is good for all residents of the city. Drawing out the process so that there would be consequences for others in the future would be out of balance.

George Solari, 4 Harrison Street, said he recently resided his house and found rot in the framing. He said it is not uncommon for unexpected repairs to be required.

Stephanie Niketic, 93 High Street, said that while the applicant claims not to have known that the demolition of the exterior walls would require permission, his attorney had written a letter in May stating that the exterior walls would not be demolished. She said the former Deputy Building Commissioner ordered the work to stop during a foundation inspection. Donald Flanders, 296 Water Street, said the neighbors are investing in their homes and the street is now one of the most impressive in the south end. He does not want to see the house in this condition for a long time.

The applicant, Michael Gray, said he made a mistake in taking down the framing. He denied that a stop work order had been issued during the foundation inspection.

Attorney Mack said Mr. Gray has suffered financially and the proportion of the penalty must be considered. The penalty would be harsh for the city and the neighborhood as well as the applicant. The project is supported by the neighborhood. He said he does not believe the application is being considered out of order and it would not be necessary for the Board to hear the appeal before issuing a Special Permit.

The NHC requested that it be given to December 8 to finalize its report. Mr. Ciampitti asked for a motion to defer the Board's questions and deliberations to the December 8 meeting in order to receive a complete body of material from the NHC. Ms. Webb said the NHC would meet on November 12 and should be able to conclude its report at that time. She moved to continue the public hearing to the November 24 meeting. The motion was not seconded. Ms. Webb moved to continue the public hearing to the December 8 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).

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Nicholas Hantzis c/o Lisa Mead, MTC LLC
159 Water Street

2020-076 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to remove the gable end of a rear addition and construct a second story. The property is non-conforming for lot area, coverage, frontage and front and side yard setbacks. The mechanicals would be moved from the basement to the attic to be taken out of the flood plain. Flood vents would be installed to reduce pressure on the sides of the structure. A balcony would be added on the second floor. Cedar clapboards would be used on the original structure and cedar shingles would be used on the additions. The locations of the windows on the additions would be changed in response to the reconfiguration of the interior. The NHC approved the plans with the condition that the applicant shall provide additional information on the features of the structure and the materials. Glenn Richards, Chair of the Newburyport Historical Commission, said this condition has been met. The property is in poor condition and the plans were viewed as an improvement. The application triggers the Tree and Sidewalk Ordinance. DPS has determined the sidewalk is sufficient and there is no room for a tree.

Mr. Moore said the presentation was thorough and the project is thoughtful. No new non-conformities would be created and the structure would be improved. The proposal would not be detrimental to the neighborhood. Ms. Webb said she likes the distinction in materials between the original structure and the additions. Mr. Swanton said it is helpful to receive input from the Chair of the Historical Commission.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 159 Water Street. Mr. DeLisle 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).

James Bourque Construction, Inc. c/o Lisa Mead, MTC LLC
3 Hancock Street

2020-077 - Special Permit for Non-Conformities

Lisa Mead and Scott Brown represented the applicant, who is proposing to raise the roof of a single-family house that was built around 1800. The roof would be raised 20" beginning at the ridge and extending towards the rear of the house. The shape and pitch of the roof would not change. The property is non-conforming for lot area, frontage, lot coverage, front-yard setback and side-yard setbacks. No new non-conformities would be added. The non-conformity side-yard setbacks would be extended. Mr. Brown said the change would make the small house more livable. The current ceiling height is mainly 6'-6" and is as low 5'-11" in parts of the second floor. The ceilings would be raised to 7'-6". The location of the doors and windows on the sides and rear of the structure would be changed. On the front façade, a new wood door with a surround made of composite materials would be installed. Three alternatives for raising the roof were presented to the Historical Commission. In the original proposal, the chimney was to be removed, which was of concern to the NHC. In the current proposal, the chimney would be retained.

Attorney Mead said the character of the house would not be altered. She said the proposal would not be more detrimental to the neighborhood than the existing conditions. Four letters of

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support have been received. She asked that the Board approve the application without waiting for the historical report. She said the decision made by the NHC would not change the relief being sought. The applicant would be required to return to the Board if the roof were to be raised more than 20 inches.

NHC Chair Glenn Richards pointed out that the ridgeline would be raised, which was not clear from the presentation. He said he believes the NHC would be able to reach an agreement with the applicant.

Mr. Moore said the plan is a thoughtful treatment of a historic structure. He does not think that the structure would be adversely impacted by a 20" roofline change. No new non-conformities would be created. The Board's approval would be subject to lifting of the Demolition Delay imposed by the NHC. Mr. Swanton said the plan would improve the property.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 3 Hancock Street subject to approval from the Historical Commission. 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).

Sherry Evans and Andrew Rosen c/o Adam Costa, Mead, Talerman & Costa, LLC
6-8 Savory Street
2020-078 - Appeal

The applicant has requested an extension to the December 8 meeting. Mr. Moore moved to continue the Appeal to the December 8 meeting. 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).

Ryan McShera, Red Barn Architecture
4 68th Street

2020-030R - Special Permit for Non-Conformities

Mr. Ciampitti recused himself from the matter. Mr. Banovic was not on the Board at the time the public hearing was opened. Mr. Chagnon would be the voting member for this matter. The applicant is proposing to demolish a single-family residence and replace it with a two-story structure on pilings. The number of bedrooms would be increased from two to three. The FAR of the existing structure is .21 and the FAR of the proposed structure would be .32. The history of the application was reviewed. At the July 14 meeting, the Board requested data on other structures in the neighborhood with respect to FAR. The applicant presented a map at the August 11 meeting that showed 16 out of 150 properties are denser than the proposal. Of the properties surveyed, only one was a direct abutter. The Board members requested that the applicant provide FAR data for the abutting properties. At the September 8 meeting, the applicant presented data that showed the FAR of four neighboring properties as being less than .25, with six being between .25 and .32 and 13 being over .32. The public hearing was closed at this meeting and the Board voted to issue a Special Permit for Non-Conformities.

Tarah Cammett and Ron Boisvert, 10 68th Street, questioned the data and subsequently contacted the Planning Office. The decision had not yet been filed with the City Clerk. Zoning Administrator Jennifer Blanchet issued a memorandum on FAR calculations on October 27 that stated FAR is calculated by dividing gross floor area by the area of the lot. The gross floor area

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is defined as the total square footage of floor space within the outside dimensions of the building, without deductions for halls and closets. Decks, canopies and open porches are not a part of the enclosed space and should not be considered in FAR calculations. At the October 13 meeting, Mr. Swanton presented a comparison of the FAR analysis in the application materials to information he obtained at the Assessor's Office. He said that for 4 68th Street, the FAR of .32 did not include the decks, while decks and other features that should have been excluded were counted for the other 23 houses in the study. He concluded that the applicant did not use comparable figures on the map provided and that the FAR for every abutting house in the applicant's study was overstated. He said this data was pivotal in the Board's decision to approve the application and appears to be wrong. The Board then voted to reopen the public hearing.

Lisa Mead said the FAR of the abutting structures has been recalculated taking into consideration the deductions necessary to meet the definition of FAR in the PIOD. The calculations have been verified from the street and are as accurate as possible, given that the applicant cannot enter the other structures to take measurements. A new map of 23 properties shows that nine have FARs under .25, six have FARs between .25 and .32 and eight have FARs that exceed .32. She said the revised calculations did not materially change the outcome. Previously 19 properties were calculated as having FARs of .25 or above. This number is now 14.

Attorney Mead said the Board's decision should not be based on FAR alone. The new structure would be located more centrally in the lot than the existing house. The non-conformity for the front-yard setback would be eliminated and the non-conformity for one side-yard setback would be eliminated. The proposal would provide environmental benefits by locating the structure above the flood plain. She said the purpose of the PIOD is to reduce damage to property from flood waters, eliminate costs due to flooding, avoid the loss of utility services and eliminate new hazards to emergency response officials. She concluded by saying the proposed project would not be substantially more detrimental to the neighborhood than the existing structure. The 1,494 square-foot structure would be not large and many houses around it are larger. The FAR would be consistent with those of the surrounding homes, the property would be made more conforming and it would meet the performance standards of the Wetlands Protection Act. She said the proposal would not be substantially more detrimental to the neighborhood and it would in fact be beneficial.

The hearing was opened to comments from the public. Ron Boisvert, 10 68th Street, said Attorney Mead did not mention one of the purposes of the PIOD, which is to limit the expansion of non-conforming single and two family structures to prevent the exacerbation of existing problems with density and intensity of use. He said of the 14 properties that exceed the FAR standard, only three were constructed after the PIOD was established. The rest were built between 1900 and 1980. He questioned the use of structures constructed before the PIOD was established to justify disregarding its standards. He said the proposed structure would be 28% over the standard and 66% over the existing FAR.

Mr. DeLisle asked why it occurred to the applicant to revise the FAR between August 11 and September 8, when it was changed from .3 to .32. Mr. McShera said during that time he reviewed the definition of the PIOD. Mr. Swanton asked why the previous FAR calculations included decks for all of the neighboring houses, while the large deck that is planned for the proposed house was not included. Mr. McShera apologized for this error. He said he used the

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gross floor area from the Assessor's data and did not carefully review it for deductions. Mr. Swanton said that four of the five Board members mention the data was critical to their decision to approve the Special Permit. He said he has learned that it is not possible to accurately calculate FAR for abutting properties and the Board should focus on the other aspects of the application. He said the Board should not belabor the FAR data because it cannot be verified. He said the previous decision was tainted and asked if the vote should be rescinded. Jon Eichman of KP Law said the Board could vote to reconsider its previous decision and then vote again on the application. The prior decision would not be an impediment to a new vote.

Mr. Swanton said he does not like that the decision made at the September 8 meeting was based on tainted information. He said he thinks the Board must take a new vote. Mr. DeLisle said much energy has been spent on this proposal and he is not sure that there is sufficient evidence that the structure would be substantially more detrimental to the neighborhood than the existing conditions. Mr. Chagnon said some of the Board members had indicated at the previous meeting that they would support the application on the condition the house was not going to be the largest in the neighborhood. He said he supports the original decision. Ms. Webb said the proposal is a good one and she would support it. Mr. Moore said the Board had asked for comparable FAR data and the information provided originally was not for the immediate neighborhood. He said FAR is an imperfect measure but it is intended to protect against overzealous development. It can punish small lots because even a modest improvement could greatly impact the FAR. He said the proposal would improve the structure. While the change to the property would be a large one, he could not say that even with the new data it would be detrimental to the neighborhood. He said he would be reticent to change the previous decision. The new information has not changed his mind.

Mr. Swanton moved to reconsider the vote of September 8 to approve a Special Permit for Non-Conformities for 4 68th Street. Mr. DeLisle seconded the motion. The motion was approved by a 3-2 vote (Mr. DeLisle, yes; Mr. Moore, no; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, no). It was confirmed that a simple majority is needed to approve a vote for reconsideration.

Ms. Webb moved to approve a Special Permit for Non-Conformities for 4 68th Street. Mr. DeLisle seconded the motion. Mr. Swanton said that earlier in the evening, the applicant for 7 58th Street was complimented for staying under the FAR standard, but the Board is now considering approving a FAR of .32. He said a great deal of density would be created if approval was given to all applicants who requested permission to exceed the FAR standard. Mr. DeLisle said that while he would likely view FAR differently for future applications, the additional information has been considered and the applicant has shown that the proposal would not be detrimental to the PIOD or the neighborhood. The motion was approved by a 4-1 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, no; Ms. Webb, yes; Mr. Chagnon, yes).

Ms. Webb moved to adjourn the meeting at 10:42 p.m. Mr. Swanton seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker