

**City of Newburyport
Zoning Board of Appeals
Hybrid Meeting
November 22, 2022
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, Bud Chagnon, Ken Swanton, Stephen DeLisle and Gregory Benik and associate members Lynn Schow and Patricia Peknik. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

**a) Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa LLC
193 High Street**

2019-042 - Appeal of Notice of Violation from Zoning Enforcement Officer

Mr. Ciampitti and Mr. DeLisle recused themselves from the public hearing. Ben Taylor represented the applicant and requested a continuance. He said the Land Court case was recently decided and the appeal period does not end until December.

Mr. Chagnon moved to continue the public hearing to the February 14, 2023, meeting. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Benik, yes; Ms. Peknik, yes; Ms. Schow, yes).

**b) Lisa Freeman and Pam Doherty
34 Lime Street**

APP-22-1 - Appeal

The appellant requested a withdrawal of the appeal. No vote was necessary.

**c) Mark Nagle c/o Lisa Mead, Mead, Talerman & Costa LLC
20 57th Street**

ZNC-22-27 - Special Permit for Non-Conformities

Ben Taylor and Aileen Graf represented the applicant, who is proposing to construct a roof deck on a single-family structure in the R3 district and the PIOD. The property is a corner lot, with the primary front yard on 57th Street. It is non-conforming for lot size, lot coverage, primary and secondary front-yard setbacks, side-yard setbacks and FAR. The FAR is 51.5%, where 25% is allowed.

The roof deck would be constructed over a portion of the existing structure and would remain within the existing footprint. The height of the walls would be raised to lift the ceilings. The roof would be raised and its pitch would be reduced. A spiral staircase and a covered front entry would also be added. The front and side-yard setbacks non-conformities would be upwardly extended. The FAR would not change.

Attorney Taylor said no new living spaces would be added and no new non-conformities would be created. The proposal would not be detrimental to the neighborhood, as many surrounding structures have elevated decks or roof decks. Most houses in the neighborhood are two stories.

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No one from the public spoke in favor of or in opposition to the application. Mr. Swanton asked about the height of the deck. Attorney Taylor said the floor of the deck would be 21.5 feet above the ground.

Ms. Peknik asked if there are other properties where the deck runs the length of the house and rises above the roof peak. Attorney Taylor said this is the case on some of the newer structures. Aileen Graf said this structure is low to the ground. The decks on other structures in the neighborhood give the appearance of being three stories in height.

Mr. Swanton commented that the property is non-conforming in most dimensions and the FAR is more than twice that which is allowed. However, the proposal is for a deck, which would not increase the density of use, and he would reluctantly support the application.

Mr. DeLisle said the deck would be large, but the footprint of the structure would not change and the FAR and lot coverage would not increase.

Mr. Benik said the non-conformity would be upwardly extended, but no enclosed space would be created and the FAR would not increase.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 20 57th Street. Mr. Benik seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

d) Ashley Bakhtiari

8 Barker Street

ZNC-22-29 – Special Permit for Non-Conformities

Dave Gleason represented the applicant, who is proposing to extend an existing second-story deck along the rear of the structure. The property is non-conforming for lot area, lot coverage, frontage, front-yard setback, left side-yard setback, rear-yard setback and FAR. The FAR is 48%, where 25% is allowed. The existing non-conforming rear-yard setback would be extended. The existing right-yard setback is 24.2 feet. The deck would extend into this setback but would hold the 10-foot setback the Ordinance requires. Conservation Commission approval is needed. The item is on the agenda of its December 6 meeting.

The hearing was opened to comments from the public. Sean Bakhtiari said the existing deck is unsafe. He has received nine letters of support from neighbors.

Mr. Swanton said the existing right-yard setback is conforming at 24.2 feet and would be reduced to 10 feet, which would be non-conforming if the property were not on the island. He said it is ironic that it is easier to do something on a barrier island than on the mainland, but the proposal would not be more detrimental to the PIOD. He said the FAR is almost double that which is permitted and a new non-conformity would be added, but it is only a deck.

Mr. Benik moved to approve a Special Permit for Non-Conformities for 8 Barker Street. Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

3. Business Meeting

a) Requests for Minor Modifications

1 Kent Street (MM-22-27)

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The applicant requested a continuance. Mr. Swanton moved to continue the request to the January 24, 2023, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes).

b) Minutes

Mr. Swanton moved to approve the minutes of the October 11 and October 25 meetings. Mr. DeLisle seconded the motion. The motion was approved by a 7-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Schow; Ms. Peknik, yes).

c) Review of Draft Decision

2 Neptune Street

Mr. Swanton moved to approve the draft decision for 2 Neptune Street as written. Mr. DeLisle seconded the motion. The motion was approved by a 7-0 vote (Mr. Swanton, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes; Mr. Benik, yes; Mr. DeLisle, yes; Ms. Schow; Ms. Peknik, yes).

4. Adjournment

Mr. Swanton moved to adjourn the meeting at 8:05 p.m. Mr. DeLisle seconded the motion. The motion was approved.