

**City of Newburyport  
Zoning Board of Appeals  
Online Meeting  
November 24, 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, Mark Moore, Rachel Webb and Ken Swanton and associate member Bud Chagnon. Stephen DeLisle and Brandon Banovic were absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and note taker Gretchen Joy.

**2. Public Hearings**

**Joel and Marybeth Martens**

**50 Bayberry Road**

**2020-056 - Dimensional Variance**

**2020-057 - Special Permit for Use #109**

**2020-062 - Special Permit for Non-Conformities**

The applicant is requesting a Dimensional Variance to construct an addition to a pre-existing non-conforming single-family home, an In-law Special Permit and a Special Permit to construct an addition over 500 square feet. 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 property is non-conforming for lot area. It is located on a corner and has two front yards for zoning purposes. The addition would intrude into the non-primary front yard on Turkey Hill Road. If the lot were not on a corner, the addition would meet the side-yard setback requirement.

The applicant had previously proposed adding a second driveway, which was of concern to some Board members. The site plan has been updated. The existing driveway to the right of the house would instead be widened and a walkway would lead from it to the in-law apartment on the opposite side of the house. There are currently two curb cuts on Bayberry Road. The applicant does not intend to remove either of them.

No one from the public spoke in favor of or in opposition to the application. Mr. Moore asked about situating the addition on the opposite side of the house, which would not require a variance. Ms. Martens responded that this would require a substantial amount of additional work to the interior of the house. It would be necessary to reframe the kitchen in order to install a new doorway to the back yard. In addition, the amount of living space in the in-law apartment would be greatly reduced.

Mr. Moore said he is satisfied with the way in which the driveway issue was resolved. He said the location of the lot on a corner is a unique condition that is not the fault of the applicant. He said locating the addition on the right side of the house would impact the neighbor and would require additional construction. Ms. Webb said the house is oriented to Bayberry Road and the location of the lot on a corner creates a hardship. Mr. Swanton said the side yard is large and is only considered a front yard for zoning purposes. He said the Board has recently approved other variance requests for which it was argued that the location of the lot on a corner resulted in a hardship. A variance would not be needed for this property if it were not located on

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a corner. Mr. Chagnon said the position of the lot on a corner makes it unique and it would be difficult to situate the addition in different location on the lot.

Mr. Moore moved to approve a Dimensional Variance for 50 Bayberry Road (2020-056). Mr. Chagnon seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Ms. Webb moved to approve a Special Permit for an In-law Apartment, Unit #109 for 50 Bayberry Road (2020-057). Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

Mr. Chagnon moved to approve a Special Permit for Non-Conformities for 50 Bayberry Road (2020-062). Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

**Stephen and Carol Chruniak c/o Dianne Boisvert  
68 Longfellow Drive  
2020-079 - Special Permit for Non-Conformities**

The applicant is proposing to construct a 968 square-foot addition to a pre-existing non-conforming single-family home. The property is non-conforming for area, frontage, rear yard setback and one side yard setback. None of these non-conformities would be extended and no new non-conformities would be created. Ms. Boisvert said the addition would allow her aging parents to live on the first floor of the house. The street is located approximately 100 feet from the street and is at the top of a hill. The only suitable site for the addition would be in the front of the existing structure. Ms. Boisvert said the existing house is small and the lot would be able to accommodate the large addition. The proposed front-yard setback would be more in keeping with the those of the neighboring properties. The existing structure is the only ranch-style house on the street. The square footage of the proposed structure would be comparable to the other houses on the street. The Tree Commission has determined there is no space for a tree.

The hearing was opened to comments from the public. Sandy Gallagher, 70 Longfellow Drive, said her house is downhill from the property and asked if the construction would create drainage issues. Ms. Boisvert said she believes gutters would be installed on the addition to tie in with those on the existing house and the water would drain to the rear of the site.

Mr. Moore said that given the location of the house on the lot and the topography, it would be logical to construct the addition at its front. No new non-conformities would be created and the size and massing of the structure would be consistent with the other houses in the neighborhood. Mr. Swanton said that the house is located back from the street and the proposed structure would not be larger than the neighboring houses. Ms. Webb said that the addition would make the size of the structure consistent with the other houses in the neighborhood. Mr. Chagnon said that the addition would be modest and other homes in the neighborhood have been modified.

Ms. Webb moved to approve a Special Permit for Non-Conformities for 68 Longfellow Drive (2020-079). Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

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**Geoffrey Holmes and Meghan McGrail**

**32 Franklin Street**

**2020-081 - Special Permit**

**2020-082 - Special Permit for Non-Conformities**

William Sheehan represented the applicant, who is proposing to demolish the rear portion of a single-family home and reconstruct it on the same 14' x 20' footprint. A kitchen would be installed on the first floor and a bathroom and bedroom would be located on the second floor. The proposed addition would be 15 inches higher than the existing conditions. The property is non-conforming for area, frontage, coverage, open space and all setbacks. The structure is located less than a foot from the side and rear property lines. The side yard and rear yard non-conforming setbacks would be upwardly extended. No new non-conformities would be created. Attorney Sheehan said that the proposed addition would benefit the entire neighborhood because of the poor condition of the existing structure.

Both the front and rear sections of the home are historically significant. Attorney Sheehan said the application meets the standards for a DCOC Special Permit. He said that in order to salvage the property, the rear portion must be demolished and restored due to its deteriorated condition. Former Building Commissioner Bob Armstrong indicated in an email to the Planning Department that the demolition and reconstruction of the addition would be preferable to a salvage attempt. This opinion was also expressed by Structural Engineer Daniel Gelinas, who reported that it would not be economically feasible to repair the addition. The Newburyport Historical Commission issued a report dated May 27, 2020, that stated the project would not have an adverse impact on the historic structure or its neighborhood. It was also noted in the report that the rear addition was not well built and is badly deteriorated.

Geoffrey Holmes described the condition of the addition. He said that the sills have deteriorated and are sitting directly on the ground. The beams between the first and second floor have been cut over the years and are no longer structurally sound. This has resulted in ceiling heights in the addition that are six inches lower than those in the front section. In the proposal, the level of the floors in the addition would be consistent with those in the front structure. The addition would have a full second story. There is currently less than six feet of head height in some parts of the second floor.

Attorney Sheehan said that under GML Chapter 266, Section 106B, the applicant is allowed to enter the abutters' yards for the purpose of repairing and maintaining his property. It would be necessary to impact two feet of the abutters' properties to install the footing and frost wall for the addition. An easement of ten feet is being requested, which would provide space for a ladder when the siding is being installed.

Attorney Sheehan said the applicant has renovated the front part of the house himself and intends to construct the rear portion as well. The structure has been in the family for several generations and the applicant is well known to his neighbors. He went on to describe the letters of support that were submitted by the neighbors at 26, 34, 35, 36, and 38 Franklin Street. The neighbors wrote that they know the applicant well and he is a good neighbor who is reliable and trustworthy. He has done work on several of their properties. They are in favor of the improvement to the portion of the structure that is in poor condition.

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Attorney Sheehan added that letters of support were not received from the neighbors at 30 Franklin Street and 15 Salem Street. Lisa Mead represents these abutters. He provided her with a construction agreement and 24-week temporary easement on November 11 but an agreement between the parties has not yet been reached. Attorney Mead has asked for the addition to be reduced by three feet at the rear and on one side, or that the location of the addition be shifted to the left. Attorney Sheehan said the applicant is not able to accommodate this request. He said the addition is small enough as it is and shifting it would mean that the door that would lead from the kitchen to the yard would have to be eliminated.

The hearing was opened to comments from the public. Attorney Mead said MGL Chapter 266 applies only to maintenance and not to new construction. The time allowed for access is limited to eight hours per day for 30 days during a year. It does not allow for the storage of materials. She said the neighbor to the left at 34 Harrison Street, who supports the project, is not a full-time resident, while her clients are. The 10-foot construction easement would impact the fence, trees and gardens of the abutter at 15 Salem Street. The owner would be not able to use her outdoor space during the construction. The increase in height would be detrimental to the abutters because of its proximity to the property lines. The addition would tower over their yards. She said that reducing the length of the addition by three feet in the rear and moving it three feet to the left would improve the setbacks and would have less impact on the neighbors. The abutter at 34 Franklin Street has given permission for access to her property. The construction could be done from that side.

Glenn Richards, Chair of the Newburyport Historical Commission, said the Historical Commission focused its report on the historical significance and condition of the structure. The difficulties that would be encountered during construction are not under its purview. He said the second story of the existing addition is not a full one and there is very little headroom. He concluded that due to its current condition, the rehabilitation of the property would be beneficial. He confirmed that the NHC determined the project would not have an adverse impact on the historic structure. Changes that have been made to the structure over time have detracted from its historical integrity. The NHC members are not qualified to make a determination on salvageability of the existing addition.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes application and disagrees with conclusions of the NHC and the Building Inspector. He said the scale of the proposed addition would be inappropriate. The existing structure should be saved. The problems with the 18<sup>th</sup> century timber framing are typical of the south end and could be repaired. An independent evaluation by an expert on timber framing should be required.

Stephanie Niketic, 93 High Street, said the proposed addition would be detrimental to the neighborhood. The addition should be subordinate to the front part of the structure, but the increased height would make it dominate. The proposal would have an adverse impact on the historic structure and the streetscape. A report on the condition of the existing structure should be requested from an expert who has not been hired by the applicant.

Mr. Swanton questioned the timing of the submittal of the application when the abutters have not agreed to allow access to their properties. Attorney Sheehan said he and Attorney Mead disagree on the interpretation of Chapter 266. He is hoping to resolve the matter by agreement rather than through the courts.

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The Board members discussed the need for another opinion on the condition of the addition and the possibility of salvaging it. The work would not take place until spring, which would allow time for a review by an independent party experienced in timber framing. Mr. Chagnon pointed out that if the rear section were to be salvaged, it would need a foundation and this work would be just as disruptive as new construction. He is satisfied with the letter from Historical Commission and the opinion of the Building Commission and structural engineer. He said he could support the proposal based on the information presented. The house is the smallest in the area and he is not concerned about the increased height. Mr. Moore said he is more concerned about the impact of the proposal on the neighborhood than the condition of the structure. He said he would be comfortable with proceeding without another opinion. Ms. Webb said she is satisfied by the reports that have been submitted and the height of the proposal is not of a concern to her because the two neighboring houses are much taller than it. Mr. Swanton said that there are not many small houses left in the city and they are an important part of its fabric. Many older homes were constructed close to property lines and when they are in poor condition, they must be repaired or rebuilt. He said the ordinance allows for a peer review and he would prefer that one take place. Mr. Ciampitti said he agrees with the majority opinion the Board has received adequate documentation on the condition of the structure.

Mr. Moore moved to approve a DCOD Special Permit for 32 Franklin Street (2020-081). Ms. Webb seconded the motion. The motion was approved by a 4-1 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, no).

Ms. Webb moved to approve a Special Permit for Non-Conformities for 32 Franklin Street (2020-082). Mr. Swanton seconded the motion. The motion was approved by a 4-1 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, no).

**Eileen Bockoff c/o Lisa Mead, Mead, Talerman & Costa, LLC  
13 Basin Street**

**2020-083 - Special Permit for Non-Conformities**

Lisa Mead and Rachel Harris represented the applicant, who is requesting to construct a 70 square-foot weathertight entry for wheelchair access to a single-family home. The property is non-conforming for lot area, frontage, side-yard setbacks and FAR. The FAR would increase from .251 to .259. The left side-yard setback non-conformity would be intensified by less than one foot. No new non-conformities would be created. Attorney Mead said the addition would be of the smallest size possible and would not be detrimental to the neighborhood.

No one from the public spoke in favor of or in opposition to the application. Ms. Webb said the plans show a sleeping area on the first floor. She is concerned this would become a fourth bedroom. Attorney Mead said the sleeping area would be used temporarily for the period that the applicant would be able to remain in the home. Mr. Moore said the addition would be modest and would not be detrimental to the PIOD or the neighborhood. Mr. Swanton said no new non-conformities would be added and he would support the proposal.

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Mr. Moore moved to approve a Special Permit for Non-Conformities for 13 Basin Street (2020-083) with the condition that the first-floor sleeping area shall be temporary. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, yes).

**Michael Shea / Figtree Kitchen Baker**  
**3 Liberty Street**  
**2020-084 - Variance**

Mr. Ciampitti recused himself from the discussion and left the meeting. The ordinance prohibits a change to the mode of operation of historic windows. The applicant is requesting a variance to replace a fixed first-floor window with one that would be operable. The six-over-six, double hung window would be wood with true divided lights and would be of the same size as the existing 12 pane window. Katie Habib said the bakery is only 450 square feet. Sales are currently being conducted through the door, which makes curbside delivery difficult. The employees of the bakery would be to transact business through an operable window, which would allow for better social distancing and improved air circulation.

The hearing was opened to comments from the public. Glenn Richards, Chair of the Newburyport Historical Commission, said the NHC should have the opportunity to review the proposal. He said the window dates from the 1970s, when the commercial storefronts were reconfigured during urban renewal. The window was changed at that time to be historically accurate and consistent with others in the downtown.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust opposes the application. He said the ordinance does not provide for a Covid hardship and the Historical Commission should review the application under the DOD Special Permit process. He said the proposal would involve a permanent change to a historic structure to solve a temporary problem. During urban renewal, the windows were restored to be as close to the original as possible. The window is consistent with the other fixed first-floor windows in Market Square. First-floor storefront windows should not be the same as the double hung windows on the upper floors. He said he is sympathetic to the impact of Covid on small businesses and thinks other alternatives should be explored.

Stephanie Niketic, 93 High Street, said the existing window is consistent with others in Market Square and is character defining. She asked the Board to continue the hearing to allow for an NHC review of the application and possible alternatives. These alternatives could be the installation of a Dutch door or a change to the window that would not be permanent. The applicant said a Dutch door would not be useful and the installation of a temporary window could be cost prohibitive.

The Board members discussed expediting the matter to help a small business during Covid, but there is no provision for this in the ordinance. The item is on the agenda for discussion at the December 10 NHC meeting. The next ZBA meeting following that date is scheduled for January 12.

Ms. Webb moved to continue the public hearing to the January 12 meeting in order to receive an opinion from the Newburyport Historical Commission. Mr. Swanton seconded the motion. The motion was approved by a 4-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes).

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**3. Business Meeting**

**Minutes**

Mr. Swanton moved to approve the minutes of the November 10, 2020, meeting. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Chagnon, yes; Mr. Ciampitti, absent).

Mr. Swanton moved to adjourn the meeting at 10:05 p.m. Ms. Webb seconded the motion. The motion was unanimously approved.

Respectfully submitted,  
Gretchen Joy  
Note Taker