

**City of Newburyport
Zoning Board of Appeals
Online Meeting
December 8, 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 member Bud Chagnon. Associate member Brandon Banovic was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan, Zoning Administrator Jennifer Blanchet and note taker Gretchen Joy.

2. Public Hearings

Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

193 High Street

2019-042 – Appeal

Mr. DeLisle recused himself from the matter. The applicant requested an extension to March 23, 2021. Mr. Moore moved to continue the public hearing to the March 23, 2021, 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. Ciampitti, yes).

Sherry Evans and Andrew Rosen c/o Adam Costa, Mead, Talerman & Costa, LLC

6-8 Savory Street

2020-078 - Appeal

The applicant requested an extension to February 23, 2021. Ms. Webb moved to continue the public hearing to the February 23, 2021, meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes).

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

68 Middle Street

2020-053 - Special Permit for Non-Conformities

2020-086 - Dimensional Variance

Lisa Mead represented the applicant, who has submitted applications for a Special Permit for Non-Conformities for changes to an existing four-family structure and a Dimensional Variance for the construction of a garage. Attorney Mead said she and the Zoning Enforcement Officer had a conversation shortly before the meeting about the need for relief for the garage. She asked for a continuance on the variance application in order for the paper record to be clear.

Mr. Moore moved to continue the request for a Dimensional Variance to the January 12, 2021, meeting. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes).

The applicant is proposing to convert a four-family structure to two-family use with a two-car garage. The property is non-conforming for lot area, lot coverage, open space, frontage, front yard setback and both side yard setbacks. The existing one-story addition would be removed and a new two-story addition would be constructed on a smaller footprint. Attorney Mead said the 10' x 12' addition would step back 12 inches from the main building and would

City of Newburyport
Zoning Board of Appeals
December 8, 2020

not be visible from the street. No new non-conformities would be created and the right-side setback would be improved. The on-site parking would be increased from two to four spaces, which would meet zoning requirements. The open space is currently 31.3% and would be reduced to 17.5%, where 40% is required. The lot coverage would increase from 31.3% to 33.4%, where 25% is required.

Attorney Mead said the applicant originally planned to convert the structure to three-family use. The applicant worked with the abutters to develop a plan that they would support. She said the proposal would not be more detrimental to the neighborhood than the existing conditions and the reduction in use would in fact be beneficial to the neighborhood.

The hearing was opened to comments from the public. Tom Mema, 66 Middle Street, Unit 1, said he has a concern that the proximity of the deck to the property line would result in a lack of privacy for the abutters. Attorney Mead responded that a privacy fence would be installed on both the first and second floor decks.

Fred Neidhardt, 70 Middle Street, said he and his wife, Claudia, worked very hard with the applicant and they support the proposal, as it would be an important improvement to the neighborhood. He asked that the decision include the DPS recommendations regarding the Tree and Sidewalk Ordinance. Mr. Ciampitti clarified that the DPS has recommended that the existing pavement should be replaced with Boston City Hall brick pavers and granite curbing and the pavers should surround the existing tree.

Mr. DeLisle asked about the garage being a part of the special permit application. Attorney Mead said the garage is on the plan but the special permit applies only to the use of the structure. The intensification of the lot coverage from 31.3% to 33.4% includes the garage. It remains to be determined if a dimensional variance would be needed for the garage.

Ms. Webb asked if any green space would remain on the property after the garage has been constructed. Attorney Mead said that some vegetation would be lost at the rear of the site but plantings would be added at the front and sides of the structure in areas where there currently is pavement.

Mr. Swanton asked if the garage would be responsible for the reduction in open space. Attorney Mead responded the pavement and decks would also contribute. Mr. Swanton commented that the 22' x 24' garage would account for 10% of the lot coverage and it appears that without the garage, the property would be compliant for this dimensional control. He said he is concerned about the lot coverage and the lack of other two-car garages on the street. He pointed out that an application for a garage for 71 Federal Street had recently been denied due to the increase lot coverage that would have resulted.

Jennifer Blanchet clarified that while the Board members are not considering the Variance application at this time, the Special Permit application includes the garage footprint that is shown on the plan and the resulting increase in lot coverage. Additional relief may or may not be required for the construction of the garage. The applicant is seeking two different reliefs but both applications include the garage. The issue at hand is whether or not the project meets the criteria for a Special Permit for Non-Conformities with the inclusion of the garage. Mr. Ciampitti said there may not be another opportunity to discuss the garage at a future hearing. Mr. DeLisle argued that the Board should have input on the interpretation of Section VI-F of the Zoning Ordinance. He said he is concerned that going forward, the placement of accessory structures would be allowed within six feet of the property line without a Variance. Mr. Swanton

City of Newburyport
Zoning Board of Appeals
December 8, 2020

and Ms. Webb agreed that a discussion should take place on the interpretation of the ordinance and the Board should have input on any changes. Jon Eichman of KP Law said the issue before the Board is the Special Permit. While it may be a valid concern, the interpretation of ordinance is not now before the Board.

Attorney Mead said the garage would be an integral part of the property. The applicant could legally convert the structure to three-family use, which the abutters oppose. The abutters agreed to the addition of the garage in exchange for the reduction in the use of the property. She said the applicant would proceed with the legal three-family use without the garage. The abutters do not believe that the proposal, with the inclusion of the garage, would be detrimental to the neighborhood. Mr. Swanton acknowledged that the Federal Street application did not include a reduction in intensification of use.

Additional public comment was allowed. Fred Neidhardt said the neighbors have worked with the developer, who was originally proposing a three-unit use. The garage would act as a screen and would hold the slope. The size and scope of the current proposal is more in keeping with the R2 District and is the best compromise.

Mr. Moore said the project is a good example of the applicant and abutters working together. He said the neighbors support the proposal with the garage included. He said no new non-conformities would be created. The size of the project has been reduced and privacy concerns have been addressed. The proposal would not be more detrimental to the neighborhood than the existing conditions. Mr. DeLisle said the proposal would not be detrimental to the neighborhood and it has the support of the neighbors. Ms. Webb said the abutters have worked hard to reach a compromise that includes a garage and as a result the property would be used in a less intensive way. Mr. Swanton said the early proposal was massive and the neighbors have worked with the applicant to develop a much better proposal. The overall package is an improvement and he supports it. Mr. Ciampitti said he places weight on the sentiments of the abutters.

Mr. Moore moved to approve a Special Permit for 68 Middle Street with the condition the existing sidewalk shall be replaced with Boston City Hall brick pavers with granite curbing and the pavers shall surround the existing tree. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes).

Michael Gray

12-14 Harrison Street

2020-067 – Appeal

2020-075 – DCOD Special Permit and Request for Written Approval

The applicant requested to continue the Appeal to January 12. Ms. Webb moved to continue the Appeal to January 12, 2021. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes).

David Mack summarized the history of the project. A Special Permit for Non-Conformities was issued in May. The removal of the exterior framing triggered the issuance of a Zoning Violation in August. The applicant is requesting that the three-year construction

City of Newburyport
Zoning Board of Appeals
December 8, 2020

moratorium be lifted and work be allowed to resume. He is also requesting the approval of an after-the-fact DCOD Special Permit.

Attorney Mack said the City has interest in encouraging residents to improve their homes. The new structure would be built in the same form and design as the historic house. He said the house was an eyesore and little of the historic fabric remained. The interior was to be entirely gutted. The framing of the exterior walls was structurally insufficient. The framing that was removed would not have been visible. Even if it had been possible to preserve the framing, the structure would have looked the same as it will when the project is allowed to continue. The four-month delay the applicant has experienced is penalty enough. He has suffered emotionally and financially. The ordinance has served its purpose. Continuing the delay for 32 months would not be proportional to the mistake that was made.

Jon Eichman of KP Law said that an applicant who has violated the Ordinance is not prevented from seeking permission after the fact. The Board has the authority to allow work to proceed after a period that is shorter than the three-year moratorium that was imposed. The Board should consider the purpose of the Ordinance when determining the appropriate penalty. He said the Board might wish to focus on the Request for Written Approval rather than the DCOC Special Permit. It might be difficult for the Board to grant a DCOD Special Permit because the ability to conduct a peer review would no longer be possible. The Board should keep in mind that the Request for Written Approval and the DCOD Special Permit are separate decisions and separate appealable actions.

The hearing was opened to comments from the public. Glenn Richards, Chair of the Newburyport Historical Commission, said the strong opinion of the NHC members was that the three-year moratorium should be imposed. He said it was of concern that a beautiful old house is being replaced with a new house on the same footprint. He added that the structure had been in poor condition and the proposal was an improvement to the existing conditions.

Linda Miller, 20 Ship Street, said she has rarely seen a post and beam structure that could not be saved with the proper techniques. An 18th century post and beam framed house is being replaced by a modern stick-built structure that is inauthentic and of a lower quality. She said the framing is not visible in any of the city's old houses but the point is that they are authentic. More and more structures are losing their historic assets. In this instance, a nice 18th century house is being replaced with a new one with a garage and addition that does not look like the original structure. The owner made a conscious decision to proceed without permission. A repercussion that might be expedient for the immediate neighborhood but would not be best for the city.

Judy Tymon, 39 Lime Street, said the ZBA should follow the law. The applicant was aware of restrictions of the DCOD. The Board is obligated to fulfill the requirements of the DCOD Special Permit, which specifies that certain conditions must be met. The proposed project must be in harmony with the intent of the Ordinance, which is to protect the history of the city. The preservation of the city's historic character is critical to land values. The house could be secured and temporary siding could be installed to satisfy the neighbors, but it should remain unoccupied for three years.

Tom Kolterjahn, 64 Federal Street, said the Newburyport Preservation Trust strongly opposes the Special Permit application. The NHC has recommended against its approval and relief from the moratorium. The applicant demolished an important historic building that is

City of Newburyport
Zoning Board of Appeals
December 8, 2020

protected by the law. The intent of DCOD is to prevent the demolition of historic buildings. Every citizen of the city benefits from intact historic houses and neighborhoods. He said developers are carefully watching the outcome of the hearing. They want to know if the Ordinance will be enforced. He said that waived penalties would not protect our heritage.

Patricia Peknik, 4 Dove Street, asked that when the Board members consider the cost of the delay to owner, they also consider the economic harm that has been done to the other residents of the city. The preservation of the city's historic character is critical to the preservation of the city's land values. A community does not have economic vitality when houses are built to look historic. It has economic vitality when houses are historic. Every time a house is demolished, the value of her house goes down. All residents pay a price for illegal demolition.

Stephanie Niketic, 93 High Street, said the previous speakers have made excellent points. The application before the Board is for the demolition of an 18th century house in a historic district. The applicant only applied for permission to raise the roof. If the applicant had submitted an application for demolition, the Historical Commission could have imposed a 12-month delay. The applicant had an exploratory demolition permit for three months, which would have given him time to discover any structural issues. City Council included the construction moratorium in the DCOD for the benefit of the public to protect land values.

Blake Wilcox, 10 Harrison Street, said he is a direct abutter. He said the building is not secure and he asked the Board to take safety into consideration.

The public comment portion of the hearing was closed. Mr. Moore asked who was responsible for the demolition. Michael Gray said he was. He said the beams were rotted and there was nothing left of the house that was historic. Mr. DeLisle asked if the demolition crew was experienced in working on old homes. Mr. Gray said it was not. He asked Dan Webb, a structural engineer, and RW Hallworth, a post and beam builder, to look at the condition of the beams. They said they could not be saved. He did not consider an in-kind replacement. The second-floor framing had previously been replaced. He said he was not dealing with an authentic historic home and he has suffered enough already.

Mr. DeLisle asked if there are elements for a written approval finding. Attorney Eichman said the Ordinance does not provide specific criteria for making a written approval finding. The Board members must look to the purpose of the ordinance and the way in which its intent might be facilitated. Mr. Ciampitti said the Board must consider the purpose and spirit of the Ordinance in absence of any criteria to govern a finding.

Mr. Moore said it would be very difficult to approve a DCOD Special Permit after the fact. The focus should be on the best outcome for the applicant, the neighborhood and the city. Mr. DeLisle said the Board would not be able to make the necessary findings for a DCOD Special Permit. Mr. Ciampitti said if the Board is having difficulty considering the DCOD Special Permit, the written approval request should instead be considered.

Ms. Webb said the Board would be challenged to reach a conclusion on DCOD Special Permit. She asked if the ZBA has standing to comment on the interior framing. Attorney Eichman clarified that demolition pertains to the external walls and these walls contain the framing. The removal of the framing can reasonably be construed as the demolition of the exterior walls. The removal of siding is not considered to be the demolition of the exterior walls, which leaves only the framing.

City of Newburyport
Zoning Board of Appeals
December 8, 2020

The Board members began their deliberations. A straw poll indicated that none of the members were in support of the imposition of the full three-year moratorium.

Mr. Swanton said a four-month penalty would not uphold the city's laws. The DCOD is in place to protect the historic assets that are critical to land values. He said from the photographs posted when the structure was for sale, the house did not look bad and appeared to be like many houses in the city. In his opinion, a three-year penalty would be too much but four months would not be enough. Keeping the house in its currently condition for three years would be unsafe and unsightly and would not be the correct solution. He said an alternative penalty should be explored. He suggested that the applicant not be allowed to raise the roofline or add the roof deck. The Board might consider a delay on the occupancy of the building. Attorney Eichman said the Board could add conditions to the approval of the written request. The conditions should be directed to the harm that was caused, rather than being punitive.

Mr. Chagnon said the neighbors want the house to be completed. In his opinion, even a one-year delay would be punitive. He believes the applicant would have been given approval to the remove the framing due to its condition. He would consider the four-month delay that the applicant has already experienced to be penalty enough.

Mr. DeLisle said he would be agreeable to considering alternatives, but the Board must impose a penalty in accordance with the intent of the Ordinance. In his opinion, four months would not be adequate. He said he would prefer an occupancy delay to a construction moratorium because the building could be further damaged if it were to remain covered with tarps through the winter.

Mr. Moore said he would support a one-year delay beginning from the stoppage of work with a condition about the removal of the roof deck from the plans.

Attorney Mack said the applicant would be willing to agree to a six-month delay in occupancy once construction has been completed and the elimination of the roof deck provided that he would be allowed to begin construction immediately. The delay would begin from the issuance of the Certificate of Occupancy. Mr. Moore, Ms. Webb and Mr. Chagnon said they would support the applicant's proposal. Mr. DeLisle said he would support an eight-month delay, which would be a one-year penalty when the four months that have already passed are taken into consideration. Mr. Swanton said six months would be too small of a penalty. This would be a delay of a total of ten months and would not adequately defend the Ordinance. He said it is critical to send a message to developers. He would support an 18-month penalty, which is half of the three-year moratorium. Attorney Mack said the applicant would not agree to the removal of the roof deck if the delay in occupancy were to be more than six months from the completion of construction.

Mr. Swanton moved to lift the moratorium with the conditions the rear roof deck shall be removed from the plans and a delay of 14 months shall be imposed from the issuance of the Certificate of Occupancy. Mr. DeLisle seconded the motion. The motion failed by a 2-3 vote (Mr. Moore, no; Mr. Swanton, yes; Ms. Webb, no; Mr. Ciampitti, yes; Mr. DeLisle, no).

Mr. Moore moved to lift the moratorium with the conditions the rear roof deck shall be removed from the plans and a delay of six months shall be imposed from the issuance of the Certificate of Occupancy. Ms. Webb seconded the motion. The motion was approved by a 4-1 vote (Mr. Moore, yes; Mr. Swanton, no; Ms. Webb, yes; Mr. Ciampitti, yes; Mr. DeLisle, yes).

City of Newburyport
Zoning Board of Appeals
December 8, 2020

Mr. Ciampitti asked the applicant if he wishes to withdraw the application for a DCOD Special Permit without prejudice. Attorney Mack asked for clarification that the lifting of the moratorium would allow the applicant to remove the remainder of the exterior framing. The applicant wishes to complete the project with entirely new framing. Mr. Ciampitti said he would not support the withdrawal of the DCOD Special Permit application without a condition that no further demolition shall be permitted. Attorney Mack asked if the matter might be continued to allow the applicant to discuss the condition of the vestibule with the Building Inspector. Attorney Eichman said it would then be necessary to continue the lifting of the moratorium as well. Mr. Gray said he does not wish to delay the project any further and agreed to continue the work with the existing materials.

Mr. DeLisle moved to accept the request of the applicant to withdraw the application for a DCOD Special Permit for 12 Harrison Street without prejudice. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

Mark Schulte

151 Storey Avenue

2020-080 - Special Permit for Non-Conformities

Ryan Hayward represented the applicant, who is proposing to extend the footprint of an existing garage five feet towards Virginia Lane and add a master suite above it. The addition would be greater than 500 square feet on a lot that is non-conforming for area. The lot is a corner one and has two front yards for zoning purposes. The non-primary front yard setback on Virginia Lane is non-conforming and this non-conformity would be extended. The existing setback is 22.3 feet, where 30 feet is required. The proposed setback would be 17.3 feet. The driveway would be relocated to Virginia Lane. The curb cut on Storeybrooke Road would be removed and grass would be planted in the area of the existing driveway.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Moore said the addition would be modest and the DPS has approved the change in the location of the driveway. No new non-conformities would be created and the proposal would not be more detrimental to the neighborhood than the existing conditions.

Ms. Webb moved to approve a Special Permit for Non-Conformities for 151 Storey Avenue. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

James McDonagh c/o Lisa Mead, Mead, Talerman & Costa, LLC

29 Summit Place

2020-085 - Special Permit for Non-Conformities

Lisa Mead represented the applicant, who is proposing to construct a two-story addition to a single-family home in the R-2 and DCOD districts. A two-car garage would be located on the first floor of the addition, with living space above. The Zoning Enforcement Officer has determined that a DCOD Special Permit would not be needed. The property is non-conforming for front yard and rear yard setbacks. No new non-conformities would be created. The front yard setback non-conformity would be extended but would not be intensified. The front yard setback of the existing structure is 1.7 feet and the front yard setback of the addition would be

City of Newburyport
Zoning Board of Appeals
December 8, 2020

19.4 feet. The property is bordered on three sides by a public street or public property. The addition would be located on the opposite side of the structure from the closest abutter. The style and materials of the addition would match those of the existing structure. Attorney Mead said the houses on this section of the street are newer and larger than those on the remainder of the street and the size of the structure with the proposed addition would be consistent with those nearest it. Three letters of support from neighbors were submitted.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Moore said no new non-conformities would be created. He said the addition has been thoughtfully located and would not be more detrimental to the neighborhood than the existing conditions.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 29 Summit Place. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

3. Business Meeting

Minutes

Mr. Swanton moved to approve the minutes of the November 24, 2020, meeting. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes).

Review of Draft Decision on 4 68th Street

Mr. Ciampitti recused himself from the discussion. Mr. Swanton pointed out that he had not voted in favor of the Special Permit for Non-Conformities for 4 68th Street. Mr. DeLisle moved to approve the draft decision as revised. Mr. Chagnon seconded the motion. The motion was approved by a 4-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes; Mr. DeLisle, yes; Mr. Ciampitti, absent).

Mr. Swanton moved to adjourn the meeting at 11:50 p.m. Ms. Webb seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker