

**City of Newburyport
Zoning Board of Appeals
Online Meeting
December 28, 2021
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 Mark Moore, Stephen DeLisle, Robert Ciampitti and Ken Swanton and associate member Gregory Benik. Bud Chagnon was absent. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and Note Taker Gretchen Joy.

2. Public Hearings

Alfred G. Clifford

156 State Street

VAR-21-1 - Dimensional Variance

ZNC-21-4 - Special Permit for Non-Conformities

ZSP-21-1 - Special Permit

The applicant requested a continuance. Mr. Moore moved to continue the public hearing to the January 11, 2022, meeting. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton, yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

Ray Kingman c/o Lisa Mead, Mead, Talerman & Costa LLC

10 75th Street

ZNC-21-6 - Special Permit for Non-Conformities

Lisa Mead and Rick Barnard represented the applicant, who is proposing to demolish a single-family home that was built around 1930 and its garage and to construct a new single-family home on pilings. The property is in the R-3 district and the PIOD. It is non-conforming for lot area, lot coverage, frontage, front setback, left side setback and FAR. The FAR is 35.8% where 25% is the maximum allowed. One bedroom would be added for a total of three.

Attorney Mead said that the bottom of the house was engulfed in water during a recent storm and the first floor was filled with sand. The Building Inspector has determined the structure is uninhabitable. The Historical Commission voted that the house is not historically significant and has released it for demolition.

Attorney Mead said the front side setback would be 1.7 feet, where 20 feet is required. The structure currently extends 5.5 feet over the front property line. The left side setback would improve from 4 feet to 10.1 feet, where 20 feet is required. The right side setback would improve from 4.5 feet to 23.8 feet and would be conforming. The lot coverage would be reduced from 21.1% to 21%, where 20% is the maximum allowed. The FAR would be reduced to 31.9%.

Attorney Mead said the proposal would not be detrimental to the neighborhood or the PIOD. It would improve upon the existing conditions, as the current structure is not flood resistant and is uninhabitable. The home would be at risk for further damage if it were not removed. It does not meet FEMA standards. The new home would be on pilings to allow for the flow of sand and water. It would be more dimensionally compliant than the existing structure.

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No one from the public spoke in favor of or in opposition to the proposal. Mr. Moore asked about the elevation of the structure and its materials. Mr. Barnard said there would be louvers instead of break-away panels. The construction materials would be storm resistant. Composite materials would last longer than wood. The structure would meet code requirements. Steel pilings would be driven 30 feet into the ground and the materials above the platform would meet sheer resistance requirements. The lowest structural member must be at least two feet above flood level. The applicant will be on the agenda of the February 1 Conservation Commission meeting.

Mr. DeLisle asked if the space under the structure would be used for parking. Mr. Barnard responded that the space below the structure would be reserved for the mechanicals and there would be no parking underneath it.

Mr. Swanton asked how much of the improvement to the FAR would be due to the removal of the garage. Mr. Barnard initially responded that the new structure would be 200 square feet smaller than the existing structure, which is 1,800 square feet. This, with the removal of the 267 square foot garage, would reduce the FAR. Mr. Swanton asked why the applicant is not proposing a structure that would meet the FAR requirements. Attorney Mead said the applicant has the right to build a house of this size and could choose to make the FAR worse. He is not doing this, but wants to build a structure that meets his needs.

Mr. Benik asked about the amount of livable space in the proposed structure. Mr. Barnard said the livable space in the existing home is 1,530 square feet and the proposed structure would be 1,608 square feet. The livable space would increase by 48 square feet. Mr. Benik asked if a bathroom would be added. Attorney Mead said there are currently two bathrooms and this number would not change.

Mr. Swanton asked again about the size of the existing structure. It was confirmed that the existing structure is 1,530 square feet, not the 1,800 that was originally stated. The new house would be larger than the existing, not smaller. A house that would meet the FAR requirements would be 1,258 square feet.

Mr. Moore said the proposed structure would not be within 10 feet of the side lot lines. It would be two stories and would not be more than 35 feet high. The existing structure is uninhabitable and is in danger from the next storm. The new structure would be built to code and would meet flood requirements. The increase in size would be negligible. The FAR would be improved by 11%. The proposal would not be more detrimental to the neighborhood and the PIOD than the existing conditions.

Mr. DeLisle said the existing structure is not livable and the proposal makes sense.

Mr. Swanton said reconstruction at this density level would be detrimental to the PIOD and he would not support the application.

Mr. Benik said the house would be larger by a nominal amount, but one bedroom would be added. He said he does not intend to support such applications in the future. The purpose of the PIOD is to limit the expansion of non-conforming single and two family homes. The granting of special permits skirts the purpose of the PIOD.

Mr. Ciampitti said applications must be considered on a case-by-case basis and the Board has been granted the discretion to approve them. The residents in this area have been through a lot. He considers the totality of the circumstances.

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Mr. Moore moved to approve a Special Permit for Non-Conformities for 10 75th Street. Mr. DeLisle seconded the motion. The motion was approved by a 4-1 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton; no; Mr. Benik, yes; Mr. Ciampitti, yes).

Fred and Mary Ellen Venditti c/o Lisa Mead, Mead, Talerman & Costa, LLC
25 Basin Street

ZNC-21-7 – Special Permit for Non-Conformities

Lisa Mead and Andy Sidford represented the applicant, who is proposing to construct a 464 square foot, one-story addition to a single-family home that was built in 1920. The property is in the R-3 district and the PIOD. It is non-conforming for frontage, front setback and right side setback. The existing FAR is 14%. One bedroom would be added for a total of three.

Attorney Mead said the lot is a large one that can easily accommodate the addition. The addition would be dimensionally conforming and no new non-conformities would be created. The proposal would not be detrimental to the neighborhood or the PIOD. The open space would be 80.6% and the FAR would be 17%. The addition would be constructed on pilings and would be resistant to floods. The immediate abutters submitted letters of support.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Moore asked about the length of addition, which would be 31 feet, and the width of the existing deck, which is approximately 15 to 16 feet.

Mr. DeLisle asked about the proposed materials. The addition would have cedar shingles to match those on the remainder of the house.

Mr. Moore said he would support the application, as the modest addition would be located on the rear of the structure and no new non-conformities would be created. The proposal would not bring the FAR close to the maximum permitted.

Mr. DeLisle said the addition would not have more than two stories, be higher 35 feet or within ten feet of the side property lines.

Mr. Swanton said the addition would be small and the lot is large. The proposal would be within the density guidelines. While he is concerned about density in the fragile environment of the island, he would support the application, as it would not be very dense.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 25 Basin Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Ciampitti, yes).

Brad Kutcher
344 Merrimac Street

VAR-21-3 – Dimensional Variance

ZNC-21-8 - Special Permit for Non-Conformities

Nick Cracknell represented the applicant and presented a lengthy slide show on the application for a Dimensional Variance and Special Permit for Non-Conformities. The applicant is seeking a VI.C Special Permit from the Planning Board for two single-family structures on a single lot. The existing structure was constructed in 1805 and currently contains two condo units. The applicant is proposing to revert it to single-family use. The exterior of the structure would be

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restored and a preservation restriction would be placed on it. A separate single-family structure would be constructed on the lot to maintain the two-family use of the property.

The property is in the Waterfront Marine District. It is non-conforming for lot area. The lot area is 13,892 square feet. In the WMD, the lot area required for two-family use is 15,000 square feet. The proposed new structure would be non-conforming for front and rear setbacks. The proposed front setback would be 3.84 feet, where 25 feet is required. If the Variance were to be approved, no new non-conformities would be created, but a Special Permit would be needed to add more than 500 square feet to the non-conforming lot.

Mr. Cracknell said the neighborhood is mostly made up of single-family homes, which are of a wide variety of architectural styles. A hardship has been created by the narrow lot that has frontage on three streets and the established front setback. He said the use is already permitted and would not result in undue traffic or place a burden on public utilities. It would not impair the character of the neighborhood.

Mr. Cracknell said the restoration of the historic structure and the preservation restriction would provide a public benefit. The new building would be of a high quality. The applicant would provide off-site improvements to the neighborhood and would make a \$40,000 deposit to the Affordable Housing Trust.

The hearing was opened to comments from the public. Daniel Lynch, 342 Merrimac Street, said he is concerned he would lose his view of the river and he would like the foundation of the proposed structure to be staked. He said he is the closest abutter, but the applicant has not approached him regarding the proposed plans.

Steve Schaepe, 3 Currier's Landing, said the proposal would create more density than the neighborhood could support.

Joe Lilly, 1 Currier's Landing, said the renderings do not show the newest house in the neighborhood, which is very close to the location of the proposed house. He said there is a lot of traffic to the marina on Merrimac Court. The house would be built near the intersection of three streets. There are significant water issues on the property.

Cynthia-Lee Blatt, 11 Union Place, said the street is narrow and she is concerned about traffic and density. She would like the Board members to visit the site.

Applicant Brad Kutcher said he would be willing to meet with the neighbors on the site. He took pains not to impact the views of the abutters. The water problems on the site could be corrected.

Property owner Sam Kimball said the concerns of the neighbors would be taken into consideration.

Daniel Dehner, 346 Merrimac Street, said he is in support of the plan. The applicant has made a commitment to restore the historic house. There is virtually no traffic on Union Place and the proposal would spread out the parking.

Betsey Fitzgerald, 10 Merrimac Court, said that many of the properties in the neighborhood do not have adequate parking. She is concerned about increased parking on the street near her house. She said there is much boatyard traffic on Merrimac Court. The neighborhood is already dense. She would like more open space and less congestion. The public comment period was closed.

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Mr. Moore asked if a roof deck is a part of the plans. It has been shown on one drawing but not another. Mr. Barnard said outdoor space would be added on top of the sunroom. Mr. Moore also asked about the relief that is being sought. Mr. Cracknell said a Dimensional Variance is being sought for relief from the 15,000 square foot lot requirement and the front and rear setbacks. The setback at the rear of the new structure would be 20 feet, where 25 feet is required.

Mr. DeLisle said the VI.C Special Permit has recently been made more restrictive. He asked why the proposal would not derogate from the purpose of the Ordinance. Mr. Cracknell said the two-family use already exists. The proposal does not conflict with the Ordinance due to the unique features of the lot. He said an alternative could be done without the need for a Variance, but the proposal would be the preferable solution.

Mr. Swanton said a hardship occurs when the use of the property is limited by its shape, slope or soil conditions. In this case, the applicant has shown that an alternative exists. He asked for the nature of the hardship to be explained. Mr. Cracknell said that the front of the house is on Merrimac Street, but under the Ordinance, the primary front yard is Union Place. Relief would not be needed for the rear setback but for the Ordinance, by which the property has three front yards and no side yards. He said the condition is unique.

Mr. Benik said the application appears to meet the four criteria for a Variance. The lot is unique, which is not the fault of the applicant. A special privilege would not be granted because a similar application was approved for a neighboring property with a smaller lot. He said the applicant would be deprived of the reasonable use of the property. The proposal would improve the neighborhood, preserve a historic structure and add money to the Affordable Housing Trust. No additional traffic would be added to the street.

Andy Port said the Planning Board was heavily involved in the drafting of the new legislation from which the ZBA is being asked to grant relief. The ZBA is being asked to remove this criteria before the Planning Board has had an opportunity to review the application.

Mr. Ciampitti responded that the role of the Board is to grant relief from the Ordinance. The members must review an application in terms of the powers they have been granted and not look ahead to the actions of the next Board that will receive it.

Mr. Moore said that to meet the criteria of the Ordinance, the applicant must be deprived of the reasonable use of the property. He is not convinced this requirement has been met. An alternative exists that would provide reasonable use of the property while not involving the narrow end of the lot.

Mr. DeLisle said the applicant has met the criteria of the Ordinance. It carries weight with him that similar relief was granted for a neighboring property in 2019. The applicant would be deprived of the reasonable use of the property in a manner equivalent to the use permitted to be made to other owners in the district. The proposal would make good use of the narrow lot. He would support both the Variance and Special Permit applications.

Mr. Benik and Mr. Ciampitti agreed the criteria have been met. Mr. Ciampitti said the Planning Board would have further opportunity to scrutinize the proposal.

Mr. Swanton said he finds the application challenging and he would have difficulty supporting a Variance for the project.

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Mr. Benik moved to approve the Variance application for 344 Merrimac Street. Mr. DeLisle seconded the motion. The motion failed by a 3-2 vote (Mr. DeLisle, yes; Mr. Moore, no; Mr. Swanton; no; Mr. Benik, yes; Mr. Ciampitti, yes).

Mr. Ciampitti asked the applicant if he wished for the Board to vote on the Special Permit application or if he wished to withdraw it. Mr. Cracknell asked if there could be an opportunity for the hearing to be continued to give the Board members more time to consider the material.

Mr. Benik moved to reconsider the vote for the Variance application for 344 Merrimac Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Ciampitti, yes).

The applicant requested a continuance. Mr. Swanton moved to continue the public hearing to the January 25, 2022, meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

**Rob and Kristin Padellaro c/o Lisa Mead, Mead, Talerman & Costa LLC
23-25 Overlook Street**

ZNC-21-9 – Special Permit for Non-Conformities

Lisa Mead and Aileen Graf represented the applicant, who is proposing to demolish a single-family home that was constructed in 1920 and replace it with a new single-family home on pilings. The property is in the R-3 district and the PIOD. It is non-conforming for lot area, front setback and left side setback. The new structure would be 973 square feet larger than the existing one. One bedroom would be added for a total of three. The Historical Commission has determined that the house is not historically significant and has released it for demolition.

Attorney Mead said the existing home has low ceilings and lacks a proper foundation. It does not meet building construction or FEMA standards. The proposed home would meet the dimensional requirements of the Ordinance. The open space would improve from 59.9% to 76.4%. The proposed FAR would be 21.7%. The new structure would not be detrimental to the neighborhood and would be an improvement to the PIOD because it would allow for the flow of water and sand and would reduce the potential for damage associated with flooding. Four letters of support from neighbors have been received.

No one from the public spoke in favor of or in opposition to the proposal. Mr. Moore asked about the open space under the building. The two center bays would be used for parking.

Mr. Moore said the proposal would be beneficial to the PIOD. The new structure would meet FEMA requirements and would eliminate the front and side setback non-conformities. Mr. Swanton said the lot is large, the setbacks would be improved and the FAR would be below the required maximum. Mr. Ciampitti said the proposal would fit with the size of the lot.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 23-25 Overlook Street. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton; yes; Mr. Benik, yes; Mr. Ciampitti, yes).

3. Business Meeting

a) Minutes

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Mr. Swanton moved to approve the minutes of the December 14, 2021, meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes).

b) Updates from the Chair and Planning Director

None

4. Adjournment

Mr. Moore moved to adjourn the meeting at 11:11 p.m. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Moore, yes; Mr. Swanton; yes; Mr. DeLisle, yes; Mr. Ciampitti, yes; Mr. Benik, yes).