

**City of Newburyport
Zoning Board of Appeals
October 22, 2013
Council Chambers**

The meeting was called to order at 7:10 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Duncan LaBay (Secretary)
Robert Ciampitti (Vice-Chair)
Jamie Pennington
Richard Goulet (Associate Member)
Jared Eigerman (Associate Member)

Absent:

Howard Snyder

2. Business Meeting

a) Approval of Minutes

Minutes of October 8, 2013 Meeting

Mr. Pennington made a motion to approve the minutes as submitted and Mr. Ciampitti seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – approve
Jamie Pennington – approve
Richard Goulet – approve
Jared Eigerman – approve
Howard Snyder– absent

Mr. LaBay made a motion to cancel the November 26, 2013 meeting as it falls during the week of Thanksgiving and having a quorum present would be difficult. Mr. Goulet seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Duncan LaBay – approve
 Robert Ciampitti – approve
 Jamie Pennington – approve
 Richard Goulet – approve
 Jared Eigerman – approve
 Howard Snyder– absent

3. Public Hearings (4 on the agenda)

2013 048

Address: 11 Payson Street

Special Permit

Convert existing single family home to a two-family use (#102)

Mr. Ciampitti recused himself from this hearing.

Mark Griffin, Esq., of 11 Market Square, Newburyport, presented on behalf of Adam Chase, of True Real Estate Development LLC, owners of the property. This property is in the R3 zoning district. The structure is currently a single-family home built around 1900. It is considered historical and the petitioners will also seek relief from the historical commission if approved for a special permit. The lot is large and sufficient enough to meet all requirements for a two-family. The lot is over 12,000 sq. ft. of area. The required setbacks are 20' in the front and rear and 10' on the sides. The existing structure meets all but the front setback, which is 9'. The proposal is to construct another single-family on the left of the existing home, joined together to be one structure and it would be condominium owned. The two homes would not be mirror images. The proposed design is by Brian Libby and care has been put into the plan to aesthetically please and fit with neighborhood. The proposal meets all dimensional requirements and no zoning relief is required. Mr. Griffin presented renderings of the new home and also passed around photos of similar existing homes in the neighborhood. Adam Chase has also worked on #6 and #10 Payson Street in recent years on renovations and construction. The owners are ultimately seeking permission to use as a two-family. Mr. Griffin explained that the R3 district in the past has allowed two-families and he has heard in future this may come back. This project would be consistent with city's housing plan and would produce housing that is more diverse. The proposed project will not affect traffic, pedestrian safety, or parking. And will not overload the water/sewer system. The use will not impair or be detrimental to the R3 district. The neighborhood in immediate area is single family, but at large contains (3) two-family homes and one (6) unit home. The project is in harmony with the zoning ordinance. Jon-Eric White (City Engineer), Lt. Mark Murray (Police Department), and Steve Bradbury (Deputy Fire Chief) have all submitted letters in support of the project.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #1:

Mr. Eigerman asked Adam Chase if he would be building the new home. Mr. Chase answered yes, and with the same crews that worked on #6 and #10 Payson Street. Mr. Eigerman reviewed the photos of neighborhood homes again and Mr. Chase explained some of the construction in the photos, including that #6 was in the last year and #10 was in the last 2 years.

Mr. Pennington noticed a discrepancy between the rendering and plans. Mr. Chase explained that the potential buyer wanted to see the rendering as drawn, but there will not be a porch as seen. There will be a small shed roof, similar to the original home. Mr. Chase explained that they would bring plans back for approvals if they changed. Mr. Pennington also asked if they had filed with the Historic Commission. Mr. Chase responded that they had and the hearing is set for November 7th.

Mr. Goulet asked for parking access explanation. Mr. Chase explained there are two new off street spots. They can already park four cars and one snugly garaged in the existing driveway.

Mr. LaBay asked for dimensions of the new driveway inside the sidewalk. Mr. Chase explained the driveway is 27.7' in length by 20'+ in width.

Deliberations:

Mr. Eigerman believes that this two-family is appropriate. The issue in his mind was the dominance of the addition to original house. There are really no guidelines and it is the board's generic duty to make sure it fits in with neighborhood. Mr. Chase's other work in area has fit in well. Mr. Eigerman asked if Mr. Chase had any reaction to the comment by staff that the façade is overwhelming. Mr. Chase responded that they attempted to minimize by setting the home back more. The faces of the homes are very different in plans and renderings, making the new construction appear a bit larger, although they are very similar in size. Mr. Griffin commented that the intent was to make the project look like two different homes.

Mr. Goulet said that the proposed home will be a good fit and good project for the neighborhood. He also commented that setting the new unit back was a plus and added some irregularity. He is comfortable with the connector of the homes.

Mr. Pennington is on board with this use in this district, especially on an otherwise conforming lot. He does not love some of the aesthetic choices, but noted that we are not a design board. He thought the Historic Commission might have some design input when they appear for their hearing.

Mr. LaBay agreed with Mr. Pennington.

Mr. Ramsdell concurred. The addition is a bit overwhelming, however the use is fine. There may be changes from the Historic Commission.

Motion to approve the application for a Special Permit made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – recused
Jamie Pennington – approve
Richard Goulet – approve
Jared Eigerman – approve
Howard Snyder– absent

2013 049

Address: 9 Pond Street

Special Permit for Non-conformities

Construct a 1-1/2 story 2-car attached garage with a 3.7' side yard setback where 10' is required

Mr. Pennington made it known that he is acquaintances, but has never done business with one of the parties involved in this application.

Erik Kaminski, of Kaminski Construction Management, 19 Eagle Street, Newburyport presented on behalf of property owners, Elizabeth and Emery Johnson. The petitioners seek a special permit for non-conformities and plan to construct a 1.5 story garage with a bonus room above. The new 3.7' side setback would be non-conforming. The neighbors are in favor of the project and a letter with signatures from neighbors in support has been submitted with the application. There are similar design elements in the new construction from the existing house and those in the neighborhood. There is currently no off street parking, and the two-car garage would solve this problem.

Chair Ramsdell opened the hearing to public comment.

In favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #2:

Mr. Eigerman asked about an existing garage structure on the property off of Court Street. Mr. Kaminski answered that it is a garage in a dilapidated state in the back of the lot with and of no use to the owners. It will be staying as is. Mr. Eigerman asked if a car could currently park in that garage and Mr. Kaminski answered no.

Mr. Pennington asked which way the driveway is pitching. Mr. Kaminski answered toward Pond Street. However, they have been thinking about coming off Court Street for financial reasons.

Mr. LaBay asked if this would change the position of the garage. Mr. Kaminski answered that the doors would be on the opposite side, and the garage would stay in the same spot.

Mr. Eigerman asked if they were looking for approval on both driveways proposed. Mr. Kaminski answered that if the board could approve the driveway off Court Street, that would be sufficient.

Mr. Goulet questioned when given the change with Court Street access, had they considered a different garage location. Mr. Kaminski answered no, they believe the proposed location in best.

Deliberations:

Mr. Eigerman liked the idea of the driveway coming off Court Street. It would decrease cost and sounds great.

Mr. Ciampitti believed it would make a lot more sense to come in off Court Street.

LaBay asked about the material that would be used for the driveway off of Court Street, as it looks quite long. Mr. Kaminski answered that it would likely be asphalt and that there is plenty of space for run-off.

Mr. Ramsdell commented that the board prefers permeable surfaces.

Mr. Goulet asked about the topography off Court Street. Mr. Kaminski answered that the driveway would drop about 6' over a 12' run.

Mr. Ciampitti asked whether Court Street is a public way. Mr. Kaminski answered that he was unsure. The neighbors park on Court Street, but he was not sure if the city maintains it. They currently have a gravel access way during construction.

Mr. Ramsdell asked whether the old garage was accessed from Pond Street. Mr. Kaminski answered yes.

Mr. Ciampitti expressed concern as to whether the property has legal rights to access and egress off Court Street. He questioned how the board could permit something that is both contemplated and openly preferred.

Mr. LaBay asked if the board believes Court Street access is preferable, what documentation would need to be provided at a continuance. Mr. Ciampitti believed the owners might be searching for a piece of uncertainty.

Mr. Eigerman suggested the board vote with proviso that the building commissioner approves the entrance on Court Street they would permit. Mr. Ciampitti agreed this could be a solution.

Mr. Goulet brought up the fact that the letter from abutters in support of the project, was when the location of the driveway was off of Pond Street. Mr. Kaminski said they mentioned the possibility of a Court Street driveway to neighbors and nobody voiced concerns.

Mr. Eigerman began to summarize the deliberations when Mr. LaBay voiced that he was not comfortable with any of this.

Mr. Pennington posed the question of whether to vote on the application as submitted with the driveway off of Pond Street or continue the hearing and have the applicant come back with the modifications discussed.

It was decided that a continuance would be best with new plans showing the driveway off Court Street, proof of neighbors in support, and the right of access from Court Street (which the board admitted may not exist).

Motion to continue the application for a Special Permit for Non-conformities to November 12, 2013 made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – approve
Jamie Pennington – approve
Richard Goulet – approve
Jared Eigerman – non-voting
Howard Snyder– absent

2013 051

Address: 10 55th Street

Special Permit for Non-conformities

Construct a second floor over a portion of the existing footprint resulting in an upward extension of pre-existing non-conforming setbacks

Everett Chandler, of Design Consultants Inc., 68 Pleasant Street, Newburyport, represented Brian and Eleese Colcord, owners of 10 5th Street, Newburyport. The petitioners are seeking a Special Permit for Non-Conformities to construct a second floor over a portion of the existing single-family home. The lot is non-conforming with regards to front, side, and rear setbacks, FAR, and lot coverage. The proposal will take a small portion of existing structure and raise it up to add one bedroom. The FAR and height will slightly increase. The structure is located in a low area in the middle of the island. It is tucked in from the beach and Northern Boulevard and will not impact the neighbor's views. The plans take a modest and small home, and improve it, as well as the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #3:

Mr. Pennington asked if they would be completely using the existing foundation. Mr. Chandler responded that they would be. They would be making a roof cut to add the new room. They went to Conservation Commission for determination of applicability and were issued a negative determination of applicability.

Deliberations:

Mr. Pennington remarked that it is always a pleasure to approve a clear, modest addition.

Mr. Goulet was in agreement.

Mr. Eigerman commented that the project is very reasonable.

Motion to approve the application for a Special Permit made by Mr. Ciampitti, seconded by Mr. Pennington.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – approve
Jamie Pennington – approve
Richard Goulet – approve
Jared Eigerman – non-voting
Howard Snyder– absent

2013 050

Address: 7 Graf Road

Use variance

Construct a building to house Professional Offices (Use #416)

Mr. Eigerman recused himself from this hearing.

Mark Griffin, Esq., of 11 Market Square, represented petitioners Dr. Salman Ghiassudin and Dr. Saira Naseer and property owner, Terry Jones, Trustee of Weeping Willow Realty Trust.

The application is for a Use variance in I1B, designed to attract corporate headquarters and light manufacturing. The proposal is for a medical office building. The business park has not been able to attract businesses it is zoned for. Chase and Lunt Insurance Company was recently granted a permit for similar corporate headquarter use. The lot is very large at 113,000'+. Other

non-conforming uses in this district include a brewery, an accounting firm, a printer, a glass company, and a few other varied businesses. The proposal itself is to construct an aesthetically pleasing medical office building. The design is meant to be visually appealing. Where this is a Use that is not presently allowed, corporate headquarters dimensional requirements were used in plans. The plans are very much within these requirements with more lot area and greater setbacks. They also applied parking requirements for a commercial building use, where 45 parking spaces are required, and they have proposed 56 spaces.

To address further detail on the project, Steve Sawyer of Design Consultants Inc. spoke. Parking was a concern, but they have met and exceeded requirements. This lot was previously permitted through conservation for an industrial building. After speaking with the DEP about the reconfigured site, it was determined if they keep the disturbed area within the approved industrial permit the project is ok. It will save a lot of time if they can run with existing the order.

Scott Brown, the architect on the project spoke of the industrial park and the eclectic mix of buildings. This building is different, as with others in park. It is rumored that there will be future changes to the zoning ordinance for this district. This project will be at forefront of the trend of professional type buildings in park.

Mr. Griffin introduced the petitioners who are local residents and physicians – Dr. Salman Ghiassudin explained that he and his wife have been in medicine and healthcare for 30 years and 16 years respectively. Community level care is important, but Newburyport does not offer much office space for new medical offices. The community is growing and needs quality care. Creating this space will help to attract local area patients as well as those from out of town. They intend to see patients in these offices, not handle medical procedures. The proposed building will be a good place to start to grow a medical practice. Dr. Saira Naseer explained how she was permitted 2.5 years ago for a project on Green Street in which she started with 9 exam rooms, are at 14 now, and all have been 100% rented for the past two years. The practice is growing and they need more space for physician's office to attract more specialties. We are lucky to have a hospital in the community and we need to support it with more specialties. She assured the board that the building would quickly become occupied.

Mr. Griffin also spoke about the Carson Real Estate building renovated by the doctors and explained that the hope to start this next building too. The area of the proposed new building is a transitional buffer between four districts. The land hasn't sold to conforming businesses. The aesthetics are desirable, it will be a good-looking building occupied by physicians, will facilitate job creation, taxes for city, and eliminate vacant space. The intent of the ordinance is to attract diverse business uses. Mr. Griffin pointed out that a medical office building is similar to corporate headquarters, only with multiple offices. The Planning Office is in support of application, and the district is on its way to being allowed by right instead of by permit. Industrial businesses are not attracted as they once thought. While a zoning change is in the works, let's get things started now and allow this project.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Bill O'Flaherty, Attorney, 102 State Street, Newburyport

Mr. O'Flaherty represented Terry Jones, Trustee of Weeping Willow Realty Trust, owners of 7 Graf Road. Mr. O'Flaherty gave some background on the land. In 1987 the owner obtained an order of commissions from the Conservation Commission for building on the lot. Since then the surrounding properties have been developed and run off from the surrounding properties has created a ponding affect and the wetlands have grown. Terry Jones bought the property in 2005. It was determined that the maximum footprint was a 13,200 sq ft building and a permit was granted in 2010. The property went up for sale with plans, a permit and approval from the DEP. Anthony Triglione, the most recent broker saw no industrial businesses interested because the buildable area is not large enough to support industrial business with the wetlands. This land is not suitable for what it is zoned for. They are proposing an office building with ½ the maximum footprint, because an office building can have multiples stories, where an industrial company may not be able to work with this. The land has been a hardship for Weeping Willow Realty Trust. He believes it is a great and attractive proposal visible from Low Street and the doctors are well known in community.

Jon Hartman, owner of properties to the north and west of 7 Graf Road

He believes the plans would be a great use for the area and would be an asset. He is in favor of the project moving forward.

Anthony Triglione, Commercial Real Estate Broker

He attested to the property being stagnant for over 3 years. He is in favor of the project. He also believes the value for other property owners will increase with scope of project.

Ralph Costagna, Constagna Construction Corporation, 69 Parker Street, Newburyport

Mr. Costagna is a member of the Newburyport Business Park Association. He likes the plans and knows the building will be nice. It will continue the park in a good direction. The current loss of tax revenue with the vacancy is not doing the city any good. He is in support of the project as submitted.

In Opposition:

None

Mr. Pennington recused himself from this hearing at this point due to an unusual relationship with one of the parties involved.

Mr. Griffin took a brief moment to discuss with his clients whether they wanted to continue the hearing with only four voting members, in absence of Mr. Pennington. It was ultimately decided that they would continue the hearing with the four voting members.

Questions from the Board regarding Public Hearing #4:

None

Deliberations:

Mr. Ciampitti thought there could be no better demonstration. He believes the city code should be more consistent with how city lives. Zoning bylaws should be more in line. This is a good

example with wonderful execution. This is a legitimate and viable opportunity to be a performing lot within the business park. The plans were well thought out, presented, and intended. He expressed he could not support something more. He commended the applicants and believes it will be fine addition.

Mr. LaBay fully agreed.

Mr. Goulet also agreed that the business park would be moving in the right direction.

Mr. Ramsdell also commented that the applicant's track record is nice.

Motion to approve the application for a Special Permit made by Mr. Ciampitti, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – approve
Jamie Pennington – recused
Richard Goulet – approve
Jared Eigerman – recused
Howard Snyder– absent

Adjournment

Motion to adjourn made by Mr. Goulet, seconded by Mr. Ciampitti at 9:01 PM.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Duncan LaBay – approve
Robert Ciampitti – approve
Jamie Pennington – absent
Richard Goulet – approve
Jared Eigerman – absent
Howard Snyder– absent

Respectfully submitted, Katie Mahan - Note Taker