

**City of Newburyport
Zoning Board of Appeals
October 9, 2018
Auditorium**

The meeting was called to order at 7:05 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Robert Ciampitti (Vice-Chair)
Maureen Pomeroy
Edward Cameron
Mark Moore

Absent:

Ed Ramsdell (Chair)
Renee Bourdeau

2. Business Meeting

a) Approval of Minutes

Minutes of the 09/25/18 meeting

Ms. Pomeroy made a motion to approve the minutes and Mr. Ciampitti seconded the motion.
The motion passed unanimously.

Votes Cast:

Ed Ramsdell– absent
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Edward Cameron – approve
Mark Moore – approve

b) Request for Minor Modification – Hillside Center (2016-005, 2016-006 and 2016-040)

This request was continued to 10/23/18 due to one member recusing himself and one absent.

Ms. Pomeroy made a motion to continue the request for minor modification to 10/23/18 and Mr. Moore seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– absent
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Edward Cameron – recused
Mark Moore – approve

3. Public Hearings

2018 045

Address: 79 Parker Street

Variances

Construct light industrial building and include tap room with food service (Use #501) therein, include entertainment use (Use #407) and meeting space (Use #421) on the property, requires side setback relief for light industrial building, and relief for required parking spaces distance from use on site

2018 046

Address: 79 Parker Street

Special Permit

Allow accessory retail use (#604) in light industrial building/brewery

The applicant requested a continuance.

Motion to continue applications 2018-045 and 2018-046 to 10/23/18 made by Mr. Cameron, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – absent

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

2018 049

Address: 34-36 Hancock Street

Special Permit for Non-conformities

Modify pre-existing non-conforming structure by constructing a 8'x16' three season porch

Did not have the membership present for this application; continued.

Motion to continue application 2018-049 to 10/23/18 made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – absent

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – non-voting

2018 052

Address: 293 High Street

Special Permit for Non-conformities

Construct a breezeway addition between existing garage and home

Ben Becker, of BLB Custom Building presented the application. The applicants are looking to connect an existing garage to an existing house with a breezeway. There was previously a trellis/pergola connector there, but they would like something enclosed.

Vice-Chair Ciampitti opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Ciampitti asked if the enclosed connector would be on the same footprint as the trellis/pergola. It would be.

Mr. Moore asked if the breezeway would be heated. It would not.

Ms. Pomeroy asked if the breezeway would be visible from High Street. The majority of the breezeway would be hidden behind the house.

Deliberations:

Ms. Pomeroy commented that the request was modest.

Mr. Cameron agreed.

Mr. Ciampitti also agreed. It would not derogate from the sizing, mass, and scale of the neighborhood. It is designed to keep with existing architecture and the applicant met criteria.

Motion to approve applications 2018-052 made by Mr. Cameron, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – absent

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

2018 053**Address: 11 Coffins Court****Special Permit for Non-conformities***Demolish and reconstruct a pre-existing non-conforming single family home*

John Pelletier, owner, presented the application. He purchased the property a few months ago and is looking to replace the existing home with a new home. The property is in the HSRA district. Existing non-conformities include lot area, open space, lot coverage, front and rear yard setback. The front yard setback is currently less than 1', and with the new structure would increase to 8'. Rear yard setback would also be slightly improved from 5.6' to 16.5'. After reviewing other homes on the street and with proposed changes, this property would be #3 of 8 in open space. They would not be significantly altering the nature of the neighborhood. Three letters of support were submitted.

Vice-Chair Ciampitti opened the hearing to public comment.

In Favor:

None

In Opposition:

Tom Kolterjahn 64 Federal Street and Newburyport Preservation Trust

The existing home is historic and listed as a contributing structure. The home is a carpenter gothic style. In 2005, previous owners went before the Historical Commission for demolition delay. This was 13 years ago old and should not be applied today. The applicants should go before NHC for updated guidance. Mr. Kolterjahn also referenced an email from Councilor Eigerman email where he says "It is black-letter law that when a nonconforming structure is voluntarily destroyed it may only be rebuilt in compliance with applicable zoning requirements; the structure cannot be rebuilt as it was (by special permit) because the protections afforded by MGL c. 40A, s. 6 are lost. (See, e.g. 28 New Engl. L. Rev. 1123, 1155-56 (1994), citing decisions of the Massachusetts appeals court and supreme judicial court in 1985, 1977, and 1973.)" Mr. Kolterjahn suggested updated guidance from NHC and an opinion from the City solicitor regarding the issue of the non-conforming structure being re-built with a SPNC.

Rita Mihalek, 53 Warren Street and Newburyport Preservation Trust

She agreed with Mr. Kolterjahn. It would be a shame to have another disappearance of Newburyport heritage.

Questions from the Board:

Mr. Cameron noted the structure being built in 1830, a letter from the building commissioner in the packet, and demolition delay released. He would like to know the history here.

Mr. Pelletier explained that in 2005 a prior owner filed for a demolition permit and was delayed for six months. He argued the permit is still valid, and he should be able to move forward.

Mr. Ciampitti had an issue with conformity with zoning criteria in the face of this. He noted the NHC is an advisory body, and sometimes the ZBA must lean on them. He wondered whether the applicants were asking for the correct relief.

Ms. Pomeroy noted in the past the Board has asked for NHC to give an advisory opinion. It would be nice to have, as well as the original permit. As far as the legal issue and relief sought, she would like that answered by legal.

Mr. Ciampitti commented that it would not hurt to revisit NHC for advisory opinion.

The applicant requested a continuance.

Motion to continue application 2018-053 to 11/13/18 made by Mr. Cameron, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – absent

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

2018 054

Address: 10 Spring Street

Special Permit for Non-conformities

Construct a second story addition resulting in an upward extension of a pre-existing non-conforming setback

Jack Santos, husband, presented the application. The applicant is looking to add a second story onto a portion of a half house at 10 Spring Street. Existing non-conformities include lot area, open space, lot coverage, frontage, front yard setback side setback and rear yard setback. They are proposing to add a second story to existing single section of the home that will house a master bath. The single story extension built in 2005 serves as a kitchen. The new addition would not extend past the existing footprint. The same materials of tan clapboard and matching windows would be used. The applicants have six letters from neighbors in support. Elevations were presented. For the most part, this addition would not be visible from the street.

Vice-Chair Ciampitti opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Ciampitti clarified that the materials would match the existing home. Yes, wooden matching clapboards would be used.

Deliberations:

Ms. Pomeroy commented on the modest, small request. It does not seem substantially more detrimental to the neighborhood. Neighbors seem to be in support. She noted that the project does not trigger the tree and sidewalk ordinance.

The rest of the Board agreed.

Motion to approve application 2018-054 made by Mr. Cameron, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– absent

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

2018 055

Address: 18 Sylvester Street

Special Permit for Non-conformities

Construct a second story addition resulting in an upward extension of pre-existing non-conforming setbacks and apply the established front yard setback for the construction of an attached two-story garage

Braden Monaco, owner presented the application. He purchased the property in 2014 and renovated the interior of the home. Due to a growing family, he is proposing to put a second floor over an existing first floor and add an attached garage. The original structure was built in 1985. The existing driveway is on McClintock Avenue and the new driveway and garage would be on Sylvester Street. Existing non-conformities include; lot area, frontage, lot coverage, front yard setback (Sylvester Street), front yard setback (McClintock Avenue) and rear yard setback. They intend to remove a shed to keep lot coverage the same. They are trying to preserve the farmhouse look and constructing the garage to look like an old farm barn. Materials would match existing home to keep farmhouse look. The roofline of the garage would be 2.5' higher than the home. Letters of support from neighbors were submitted.

Vice-Chair Ciampitti opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Moore asked if the neighbor closest to barn submitted a letter. They did not submit a letter, and were supposed to be in attendance tonight. He met with all neighbors in depth on the project.

Ms. Pomeroy asked about the garage height being 2.5' higher than the house. This was done to keep the barn look and dimension. Ms. Pomeroy also asked what materials they would use. They plan to use cedar shingles and clapboard.

Deliberations:

Mr. Ciampitti commented on criteria being met.

Ms. Pomeroy commented on the support from neighbors. She had concerns on size of garage. She questioned why it was pushed forward as well. This was to preserve some yard as well as sunlight for neighbors.

Mr. Cameron commented that pushing the garage back or making it lower would fit in more with the neighborhood. He would like to see a smaller garage.

Ms. Pomeroy questioned whether this would trigger the tree and sidewalk ordinance. It would not, since cost did not meet 50% of assessed value.

The applicant requested a continuance.

Motion to continue application 2018-055 to 11/13/18 made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – absent

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

The meeting adjourned at 8:33pm

Respectfully submitted, Katie Mahan - Note Taker