

**City of Newburyport
Zoning Board of Appeals
January 14, 2014
Council Chambers**

The meeting was called to order at 7:13 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Duncan LaBay (Secretary)
Robert Ciampitti (Vice-Chair) *Arrived for public hearing #3*
Jamie Pennington
Howard Snyder
Richard Goulet (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of December 10, 2013 Meeting

Mr. LaBay made a motion to approve the minutes and Mr. Snyder seconded the motion.

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings (6 on the agenda)

Public Hearing #1 & #2:

2013 054 Address: 37 Middle Street Dimensional Variance Increase height of the structure to 36.5' where 35' is allowed

2013 055 Address: 37 Middle Street Special Permit

Convert mixed use building to multi-family (#103) with three residential units

A letter was submitted to the board requesting a two-week continuance from BullDawg USA Realty.

This hearing is continued to the Jan. 28th meeting.

Motion to continue hearings 2013-054 and 2013-055 made by Mr. Snyder, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

- Ed Ramsdell– approve
- Duncan LaBay – approve
- Robert Ciampitti – absent
- Jamie Pennington – abstained
- Howard Snyder– approve
- Richard Goulet – approve

Public Hearing #3:

2014 004
Address: 2 Mechanic’s Court
Special Permit
 Modify special permit (2012-042) to change the use of the existing building from professional office (Use #416) to single residential dwelling unit in conjunction with the other proposed units (Use #103)

Mark Griffin, Esq.of Mark Griffin Law, 11 Market Square, Suite 8, Newburyport presented on behalf of 2 Mechanic’s Court, LLC, owner. The board voted in December of 2012 on the use for this property. There were nine proposed residential units and one professional office. There are two buildings with residential units and the third building is an existing barn that was going to be for professional office use. Since then, after constructing the majority of the project, the petitioner made a practical decision to modify the professional office to a residential unit. It is much more marketable this way and fits in better with the project. Buyers would not know what kind of business would be going in and what impact on traffic and parking it would have. As a residential unit, only 1.5 parking spaces are required, so they are proposing two, where as a professional office, four spaces were to be required. The remaining two spaces will be guest parking spaces. The modification makes sense and decreases the impact on neighborhood. Mr. Griffin showed plans to the board and explained the total number of residential units would be ten total on the property.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #3:

Mr. Snyder asked with nine residential units, were there any affordable housing units. Mr. Griffin answered yes, there was one and no, to his knowledge with ten units it does not affect number of affordable units.

Mr. LaBay asked if the new units would be around 1500 square feet and with two bedrooms and two bathrooms, based on the 18,000 square feet total in the development. Mr. Griffin answered yes.

Deliberations:

LaBay pointed out he had voted against this project in past because he felt it was too much density of residential use in an awkward location. He had concerns of vehicle access to back of property. Although changing the development from mixed use to residential only is an improvement to the plan permitted in the past. He is not in opposition to the change.

Mr. Ciampitti felt it was an appropriate modification request. It improves the parking situation. It is an excellent adapted use of a historic building. Longevity as a residential structure makes more sense. He believes this is an excellent idea.

Mr. Snyder believes the change from office to residential is a better use and more appropriate. He is in favor.

Mr. Goulet agrees with colleagues. It is an improvement of use and parking.

Mr. Ramsdell agrees as well.

Mr. LaBay noted that this development is in the marine district, which encourages mixed use, but in this situation residential makes sense.

Motion to approve the application for a special permit made by Mr. LaBay, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

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

Public Hearing #4:

<p>2014 003 Address: 99 North Reservation Terrace Special Permit Permit an in-law apartment within existing living space</p>

David & Lynne Mason, owners of 99 North Reservation Terrace presented this application. They are requesting an in-law apartment be permitted at their residence. Mrs. Mason's mother, who currently lives in an assisted living facility, will reside in the in-law apartment. The renovations include a bar area in the family room being converted to a kitchen. There will be no structured walls moved or changed.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board regarding Public Hearing #4:

Mr. Pennington asked if they need any approval from conservation commission and the owners responded that they signed off on the conversion.

Deliberations:

Mr. Pennington commented that from land use and zoning perspective the plans look ok.

Mr. Snyder is in support as it is for family member and will not change the footprint of the structure.

Mr. LaBay commented that the plan is straightforward and he has no issues with approving the special permit.

Motion to approve the application for a special permit made by Mr. Pennington, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

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

Public Hearing #5:

2014 001

Address: 17 Ship Street

Dimensional Variance

Construct a 6' x 8' accessory shed with non-conforming 1' rear and side setbacks where 6' is required

Mark Griffin, Esq. of Mark Griffin Law, 11 Market Square, Suite 8, Newburyport presented on behalf of Kathi Rodrigues and Patricia Kurkul, owners. This property is in the R3 district. The owners propose to build a 6'x8' utility shed in the yard with non-conforming 1' rear and side setbacks where 6' are required. There is currently no storage on the lot. Although the addition of a shed is small, it will make a big difference to the yard and keeping it up. There is no way to place it and also have good use of yard unless it is positioned as proposed with non-conforming setbacks. There are a number of non-conforming properties in the area, on Ship Street specifically. The street itself is on a grade and lot sizes are small.

In Favor:

Michelle Depasqua, 16 Smith Street

As an abutter on left side of the property, there are a number of shed of other abutting sheds to the property and this is not an issue.

Anne McClelland, 19 Ship Street

The shed would be right next to her property and this would not be a problem.

In Opposition:

None

Questions from the Board regarding Public Hearing #5:

Mr. Ciampitti asked about plans for shed and what materials would be used. Mr. Griffin responded that it will be wood and made to match the house.

Mr. Snyder asked if the shed would be placed on a foundation. Mr. Griffin responded it would be placed on a concrete pad. Mr. Snyder asked if there was ever an existing shed. Mr. Griffin responded that he did not believe so.

Mr. LaBay asked if the shed would be on a 6'x8' concrete pad and how thick it would be. Mr. Griffin answered it would be 4" thick concrete and a fairly mobile architecturally built shed. The thickness is due to leveling up and being continuous with the back patio.

Deliberations:

Mr. Ciampitti believes this request is very reasonable. He has seen more and more architecturally built sheds that are favorable to match the home. There is ample evidence of the hardships in the neighborhood and lack of logical placement. He is in support.

Mr. LaBay commented this issue is fairly common according to neighbors.

Mr. Ramsdell commented that keeping the shed in the corner of the lot is favorable.

Motion to approve the application for a variance 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
- Howard Snyder– approve
- Richard Goulet – non-voting

Public Hearing #6:

2014 002
Address: 17 Ship Street
Special Permit for Non-conformities
Rebuild pre-existing non-conforming single family home where the proposed structure will increase the non-conforming nature of the rear and left side setbacks as well as lot coverage

Mark Griffin Esquire of Mark Griffin Law, 11 Market Street, Newburyport presented on behalf Kathi Rodrigues & Patricia Kurkul, owners. The existing structure at 17 Ship Street is a single family located in the R3 district. The home is on an undersized lot and in a neighborhood with many older homes also with non-conforming setbacks. In fact, there are very few homes, if any, on Ship Street meeting zoning requirements. The required dimensional controls are front and rear setbacks of 20' (currently at .1' and 12.8'), and side setbacks of 10' (currently at 3.2' and 9.8'). The front step of the existing home actually encroaches on the street and needs to be brought back when rebuilt. There is currently one small parking space to the right of the structure.

The petitioner has gone before Historical Commission, as the structure was built in 1800 according to the Assessors card – although it may have been built in the 1700s. A demolition delay was imposed one year ago and is now expiring. Now the petitioners are in front of the ZBA to demolish and reconstruct a new single family on the property. Mr. Griffin asked that the board be objective and focus not on the historic value (as this was the Historical Commission's job), but as to whether this structure would be more detrimental to the neighborhood. Since they originally filed, they have filed amended plans. The size and nature of non-conformities have changed. The original plans had rear bump out bringing the rear setback down to 8', but this has been eliminated bringing the rear setback to 13.1'. The right setback has been made compliant as well by shrinking the proposed size of the new structure. This will create space for two car compliant parking. The open space has also become more conforming. The construction proposed is not much different from what is on the property now, but will greatly improve aesthetically. The proposed dormer in rear will not be seen from the street and the structure will be 4' back from the street. It will be 2.5 stories. With the amended plan, side A setback will be going from 5.7' to 3.2' and lot coverage going from 37% to 40.1%. There will be a 9' increase in

height. The square footage will be 1682, a little over 500 more than the existing. It is very comparable with homes to the left and right and smaller than those across street. The new structure will not look out of character.

Patricia Kurkul, owner took a moment to explain the motivation for the plans. She has lived in Ipswich for 30 years and always visited Newburyport. Several years ago they decided to downsize and move. They liked the idea of walking and biking in downtown area. They looked for a long time and found the home on Ship Street. The house is in such bad condition, but they loved the street and neighborhood. They purchased a year ago and did seriously consider the historical aspects. They decided it was economically unfeasible to restore the home and it would not address issues like street encroachment. Parking was not adequate, and as it is she could not get out the car door when parked. They wanted to keep with the neighborhood and the new design will benefit the neighborhood. They are looking forward to building this new home and joining the community.

Mr. Griffin added that these small non-conformity intensifications compared to the surrounding home non-conformities would weigh that this is not substantially more detrimental to the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Michelle Depasqua, 16 Smith Street

Looking forward to a new home in neighborhood. The one currently there is in bad shape.

Anne McClelland, 19 Ship Street

Lives next door and would like to see this improvement in the neighborhood.

In Opposition:

Linda Smiley, Chair of Newburyport Historical Commission

The Historical Commission imposed a one-year demolition delay that expires January 17th, 2014. She believes this would be substantially detrimental. The house is from the early to mid-1700s and there are not many homes of this age still in existence. She disagrees that the height fits in with the neighborhood. She believes the applicants will make nice neighbors. They like the architecture, but they want to tear down – this is what she doesn't understand. She is strongly against this demolition and re-build.

Thomas Kolterjahn, 64 Federal Street

Strongly opposed to the demolition. If this application is approved it will ruin the historic nature of the neighborhood. Newburyport is celebrating its 250th year anniversary this year. If approved, we will allow the destruction of a house that existed even before we were a town. He believes this home can be restored, as he has worked restoring properties. It would be a detriment to the public good and inconsistent with the neighborhood if approved.

Jared Eigerman, 83 High Street, representing Ward 1 Counselor, Allison Heartquist who could not make it

Mr. Eigerman believes this is a citywide issue. He noted Mr. Griffin used the term “this ship has sailed” when referring to the historical argument. He believes this proposal would be a detriment to the neighborhood and impair integrity, character, authenticity, and originality. If we continue to lose structures from the 1700s, we are losing integrity. He does not believe enough evidence was presented that the home cannot be restored. There is no explicit way to deal with historic code currently, and it is an accelerating problem. He noted that his parents on Fruit Street restored a home that they purchased.

Reginald Bacon, 21 Strong Street

He is opposed on the ground that plans intensify non-conformities. He is not directly near the property, but is a resident and taxpayer. He has seen this happen in his neighborhood and beyond. We are ‘scarring neighborhoods.’ He works in the history and museum field. We are ‘citizen curators’ and historic assets need protection by all.

Linda Miller, 20 Ship Street

She lives across the street and has viewed the existing building on multiple occasions. It is a wonderful structure that could be saved in her opinion. She even had a contractor come to estimate work and it was not economically unfeasible. In fact, it would cost less than building a new home. The neighborhood has changed since she purchased her home. She wanted to live in a historic neighborhood with old homes, which is why she bought there. She believes an authentic structure is far preferable and a new one is more detrimental.

Raymond Dodge, 22 Ship Street

He lives across the street. The applicant has chosen to purchase a building with historical value with demolition as a priority. He pointed out that wall and windows would need to be fire rated if built within a certain distance to the neighbors.

Stephanie Niketic, 93 High Street

She agrees with the opposition. We are in the 250th anniversary of Newburyport and 30th anniversary of being in the national historic registry. The authentic character of the streets is changing more dramatically. It is confusing to her that those who are attracted to the historic nature of the neighborhoods want to change them.

William Harris, 56 Lime Street

He has restored his home on Lime Street. When the 1940 zoning ordinance came into play, Newburyport had highest percentage of historic homes. We have been losing them over the past 73 years – over 38%! Not looking just at non-conformities, we are destroying the essence of historic architecture. He walks through neighborhood often. Linda Miller was outbid on the sale and she was going to restore the home versus these people who are going to destroy it. If you encourage this, you will get a lot more of it. We will lose craftsmen if we continue this behavior. This is the opportunity to set a standard. The petitioners could have bought a new house if that’s what they were looking for. If we ask to continue the hearing maybe they would reconsider. There is a viable alternative. They could come back with a plan.

Mr. LaBay stated he had a letter from Malcolm Carnwath, 22 Strong Street and he was opposed to the plan.

Rita Mihalek, 27 Charter Street, Unit #4

She cannot add more than what previous speakers said. But to lose this home from this neighborhood would be tragic. Help preserve Newburyport.

Questions from the Board regarding Public Hearing #6:

Mr. Ciampitti asked about material and window choices. Chris Crump, CWC Design answered that they would be using all wood clapboard and nothing artificial. They would be using divided light windows.

Mr. LaBay asked if the applicant or council would like to make a statement on what they have heard from the opposition. Mr. Griffin added that the petitioners have followed the process and have been before the Historic Commission. They endured the one-year demolition delay. That was the penalty for not agreeing to rehabilitate the home. It would be further penalty to deny this Special Permit for Non-conformities. The plans are modest in scope and aesthetically pleasing to fit in with the neighborhood. Mr. Griffin posed a hypothetical question – what if the owners had already demolished the home? They would still have the right to appear before the ZBA for a re-build. We should concentrate not on what the owners did when they purchased, but focus on what they are doing now – re-building a structure. Is this structure more detrimental? This new structure will increase the value of the neighborhood. Change is hard for some to accept, but it is part of the development of the city. He also commented that one person's financial feasibility is not necessarily another's.

Mr. LaBay commented that he got the impression that with the demolition delay expiring, that the applicant may be before the city for demolition permit if not approved tonight. Mr. Griffin answered no, that he was not inferring this. It was hypothetical.

Mr. LaBay commented that the owners liked the sense of community and liked the house. They filed for demolition shortly after. Ms. Kurkul responded that the initial impression was that the condition of the home was quite bad and they had been advised of the potential one-year delay, so they filed quickly. Mr. Griffin also answered that often counsel will advise owners to file, whether they have decided to go the demolition route or not, because the clock is ticking.

Mr. Pennington had dimensional questions. On the height, how much is the front eave raising? The rendering presented is different and he does not see the rear dormer. He questioned whether you would see it from the front of house. Mr. Crump answered that he would guess the dormer would have to be moved 3-4' in to not see it from the front of the house. He believes the eave increased 2'.

Mr. Ramsdell went back to the vacant lot hypothesis. If the structure went away, would they be looking for a SPNC or slew of variances? Mr. Griffin disagreed that they would need variances in that hypothesis.

Mr. Ciampitti was intrigued by the hypothesis. In the absence of demolition, it would be a stack of variances. It has provoked some thought. Everett Chandler, Design Consultants commented

that they would not have to fully demolish and could apply for a SPNC. Mr. Ciampitti did not believe that would get the app done.

Mr. Snyder can appreciate what abutters have said and asked the applicants to discuss how it is not substantially more detrimental. Mr. Griffin reiterated the intensification of non-conformities and that the historic quality should not be focused on.

Mr. Ramsdell reiterated that the front, rearm and left setbacks would become less non-conforming. There is a vertical extension of rear non-conformity. Mr. Griffin disagreed.

Deliberations:

Mr. Pennington was having a hard time with this application. There has to be a workable solution. The undertone in opposition is respected. The ZBA have to live within the parameters they are given. He disagrees that approving this application would set precedent, as every project is unique. There is something about the age of the home and he is having trouble deciding how he feels about it. He does believe it is modest for modern living on small lot. There needs to be some extra sensitivity on this site and he would like to see more. He is looking for more attention to detail. The dormer in particular from a massing standpoint needs attention. He is not in a position to vote yet.

Mr. LaBay commented that if we look at our tools as ZBA, stepping away from age, it is an exceptionally tiny lot. The proposal increases lot coverage by 3%. Side A setback would be a 45% increase. Height would be a 45% increase. This is significant. He gets to no very quickly just from that. Non-conformities cannot further impair the integrity of the district. It is an old house in an old district. He believes the testimony is compelling. They love the house but apply to tear it down right away.

Mr. Ciampitti remarked he is not far off from Mr. LaBay. He can see it is derelict and in disrepair, but it is a scarce 1st period home. He is struggling to make a decision as well. Is the replacement of the structure enough to be more detrimental? Based on tonight he does not think he can get to a decision. He also commented that simulated divided light windows are inappropriate with how close neighbors are.

Mr. Ramsdell is not comfortable with the authority we have to worry about the demolition of a historic structure. The size and massing of the new structure are incongruous to the neighborhood. The shed dormer is a big concern and is a major detriment.

Mr. Snyder agreed with Mr. Ramsdell and Mr. LaBay. Mr. Pennington stated architectural style concerns that could be detrimental and he would like to see more effort.

Mr. Griffin asked whether altered plans would affect a future decision if continued. Mr. Snyder stated yes. Mr. LaBay stated that the only way is if it stays on same footprint. The upper extension is an issue as well. Mr. Ramsdell believes things could be done, but he cannot what would impact his decision. Mr. Ciampitti does not think it should stay on footprint, which would be dangerous, being so close to the street. Aside from that he does not know what would change

his view. Mr. Pennington believes the board does not need to give crystal clear guidance; they need to assess and address. He again mentioned integrity, character, and authenticity.

Motion to continue the application to January 28th, 2014 for a statement and decision for a further continuance, withdrawal or final vote for a Special Permit for Non-conformities made by Mr. LaBay, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

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

Adjournment

Motion to adjourn made by Mr. LaBay, seconded by Mr. Goulet at 9:39 PM.

The motion passed unanimously.

Votes Cast:

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

Respectfully submitted, Katie Mahan - Note Taker