

**City of Newburyport
Zoning Board of Appeals
January 26, 2016
Council Chambers**

The meeting was called to order at 7:15 P.M.
A quorum was present.

1. Roll Call

In Attendance:

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

2. Business Meeting

a) Approval of Minutes

No minutes to approve.

3. Public Hearings (7 on the agenda)

Public Hearing #1:

2016 012
Address: 1 Kent Street
Sign Variance
Erect a free-standing internally illuminated sign and (2) canopy signs for existing gas station

Chair Ramsdell and Mr. Goulet recused themselves as they live on Kent Street.
Mr. Ciampitti disclosed that his law office was approached by clients involved, but he never represented.
Mr. Ciampitti took over as chair for this hearing.

Michael Lowry of Newburyport One Stop presented the application. Currently there are two canopy signs and one free standing externally lit sign. They are seeking to reface the signs with a new store logo. The sign has been in place for years, but they wish to add the new business name. He presented a photo of the existing sign, new sign mock up, deed, GIS map, field card, and color photos.

Vice-Chair Ciampitti opened the hearing to public comment.

In Favor:

None

In Opposition:

Rob Germinara, 2 Ashland Street

He believed Mr. Ciampitti needed to recuse himself as he represented a client on a potential witness list for an upcoming trial. After some discussion with the board, Mr. Ciampitti was inclined to recuse himself to air on the side of caution.

This left the board without a quorum and the hearing needed to be continued.

Mr. LaBay took over as chair.

Four voting members are needed, and with the three recused members and the Board having a vacancy, this could not be accommodated until at least the end of March. The hearing was continued to 3/22/16.

Motion to continue 2016-012 to March 22, 2016 made by Mr. Pennington, seconded by Ms. Bourdeau.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– Recused

Robert Ciampitti – Recused

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – Recused

Renee Bourdeau – approve

Public Hearing #2 & #3:

2016 014

Address: 77 Lime Street

Appeal

Appeal of the Building Commissioner's decision of November 19, 2015 ordering the applicant to remove and lower the ridge of the structure by 2' 4"

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman, 30 Green Street, presented on behalf of the applicant, 77 Lime Street Development.

The Building Commissioner has issued an Enforcement Order instructing the applicant to remove and lower the ridge of a new addition. Permits were issued in June 2014 to add a rear addition. Through construction, the mean height has increased to 14” taller than what was approved by the Board.

Ms. Mead explained that the reason for height increased came from; a proposed two steps up to the front door becoming three, the foundation height increasing due to sandy soil conditions, and

the first floor ceiling height increasing to 9' instead of 8'6". The height is still under the 35' limit. The approved ridge height of 32.6', increasing to 34.7' is not visible by naked eye, the applicant argued. If one were to look around city there would be slight differences in actual construction all over and there was no value gained by the changes made here.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Daniel Hurlin, 17 Tremont Street

Lives a couple blocks from project. He walks past here each night and the property is in much better shape now and fits in with neighborhood. You can hardly tell the difference.

Connie Arets, 21 Smith Street

A realtor who walks by all the time. This is a lovely property and in construction, variations happen.

Mike Chesla, 76 Lime Street

This is an attractive property. He can see from his building and it does not bother him. Allowances need to be made during construction.

In Opposition:

Mayor Holaday, 6 Parsons Street

Lives around the corner from this monstrosity that is too large. There have already been compromises on windows. The community must stand up for historic structures. This is not the height that was approved and contractors should be held to their permits. She implored the board to listen to the community and make this change.

Julie Menin, 83 Lime Street

Has lived here for 21 years. She has seen the neighborhood change with renovations and tear downs/new homes. There are rules for a reason and this should not be okay. Developers should be held to the rules.

Leslie Sarno, 74 Lime Street

She came to the initial permit hearing. There have been issues with this project since the beginning including parking area issues.

Tom Kolterjahn, 64 Federal and Newburyport Preservation Trust

This project sadly went down hill. He thought a historic building would be restored. There have been problems with windows and it seems they cannot follow the rules. This height increase overshadows The historic federalist and should be taken down. He urged the Board to follow through with the Building Commissioner's order.

Howard Fairweather, 4 Parsons Street and former Historic Commission member
Developers must not deviate from approved plans to accommodate their needs.

Ted Reutenik, 46 Liberty Street

Builders seem to deviate from approved permits in Newburyport and get away with it.

*Barry Connell, 36 Woodland Street, City Council and former ZBA member
Believes it is important for the ZBA to affirm the ordinance and decision of the Building Commissioner. This could set precedence of historic preservation deviation.*

*William Harris, 54-56 Lime Street
Submitted a letter to the board detailed with references to court cases. Has lived here for 46 years and has seen changes and extensive rehabilitation in the neighborhood. This home could have been restored properly. They should have come back to the board for changes, not after being caught. How will we deter inappropriate building?*

*Linda Miller, 20 Ship Street
The ZBA has heard enough of this case and should stick with the ruling. Conditions were not met and they should be made to comply with law.*

*Stephanie Niketic, 93 High Street
The referenced deviation of 14" in mean height is not what the average person is seeing. The variation of 2'1" in ridge height is what they see. It is important to note that. This order is strictly about height. She noted that another enforcement problem that goes back to last June was with the window pattern. The applicants have defied the ZBA and it took citizens to go to the City about these issues. As of today, they still have not complied with the window plan. There is a pattern of doing harm and hoping for no consequences. Please enforce zoning.*

*Reginald Bacon, 21 Strong Street
Encouraged enforcement on zoning laws for the public good. He also commented on adherence to hearing procedures, and not cutting into Board deliberations.*

*Jerry Mullins, 7 Parsons Street
Lives in view of 77 Lime Street. Newburyport was not always so well off and developers were welcomed. Developers should no longer be allowed to do what they want without consequence.*

*Linda Harding, 13 Tremont Street
Commented that abutters have no recourse. It takes money to take an issue to court. Encourages the ZBA, City Council and Building Department to work together.*

*Mr. LaBay read an email received from Councilor Vogel, 90 Bromfield Street
Urged the Board to not overturn the decision. Post construction variance establishes precedence.*

*Peter Binette, Assistant Building Commissioner
Urged it is difficult to see a 14" difference in mean height and stressed that they do not as-built everything unless people come to them.*

Gary Calderwood, Building Commissioner

Issued the Enforcement Order. He noted the window pattern issues are being addressed. By removing this height variance, they would be giving the gambrel a "crew cut." It seems that this was a communication failure and they have been punished; this has cost them a lot of money. He suggested moving on at this point, as it will look horrible to remove the height variation.

Ms. Mead commented that this height variation is on the new structure attached to the historic structure. She disagreed with Mr. Harris on visibility. She also argued the developer did not do this for additional value.

Questions from the Board regarding Public Hearing #2:

Mr. Pennington clarified with the applicant that the variance was mean height was raised 1'4" and ridge height was raised 2'1".

Mr. Goulet asked about the window issue. Ms. Mead answered they were in the process of working with Mr. Calderwood on the issue.

Mr. Ramsdell asked Mr. Calderwood about his Enforcement Order issued vs. comments made tonight. Mr. Calderwood answered that he issued the order because it was his job to do so.

Ms. Bourdeau questioned whether they could have known about the height variation sooner. It all started at the foundation level. Mr. Binette and Mr. Calderwood explained that they do not inspect each level closely enough to know a variation would occur.

Everett Chandler, Surveyor commented that construction issues brought height up. Height was checked in July and they were below allowed height. They did not realize they did not match ZBA approved plans.

Mr. LaBay asked what would be involved in removing 2' in height. Ms. Mead explained it would be a lot of work and the project is 100% complete at the moment. A structural engineer would have to be brought in. Eileen Graf, Architect commented that removing the 2' would make it a challenge to meet livable space.

Deliberations:

Mr. Pennington was conflicted and saw pros and cons. Pros – He did not believe the Board should punish people. He would find it terribly wasteful environmentally to tear down. He did not see a big difference visually. Con – This is the 2nd time the project has come back to the Board for problems. Builders should not get away with things, but they also do not measure laser level as they go.

Mr. Ciampitti was also conflicted. This was the 2nd time before the Board for a deviation from approved permits. He was in support of adherence to decisions, but not against the applicant. Chopping off the roof of gambrel would likely not look good visually and they would potentially lose living space.

Mr. Ramsdell commented on the potential loss of living space.

Mr. Goulet was wrestling with a decision and he saw passion on both sides. The cure could be worse than the existing.

Mr. LaBay commented this has been a tortured case from the beginning and the third time before the Board. The Building Commissioner issued an order and testimony tonight is conflicted. The public is in opposition for the most part. It is unknown with what to do with the building to make top floor livable. This is a series of unfortunate errors.

There was discussion with Mr. Calderwood, Mr. Binette, and Ms. Graf on potential complicated remedies.

Mr. Ramsdell commented that what is signed off on is what they intend to see built. As a developer if it is seen that something is changing from approved plans, they must come back to discuss the changes. The Board is not in business of punishing and setting examples, but they are in the business of enforce zoning code.

Mr. Ciampitti commented that while sympathetic, he must stay genuine to code, order and details. He supported the building commissioners order. It is not punitive, but corrective.

Ms. Bourdeau agreed with Mr. Ramsdell and Mr. LaBay. It was hard to believe the applicant got to the top before they realized the building was too high.

Motion to grant appeal 2016-014 made by Mr. LaBay, seconded by Mr. Goulet.

The appeal failed.

Votes Cast:

Ed Ramsdell– No

Robert Ciampitti – No

Duncan LaBay – No

Jamie Pennington – Yes

Richard Goulet – Yes

Renee Bourdeau – non-voting

2016 013

Address: 77 Lime Street

Special Permit for Non-conformities

Modify existing Special Permit for Non-Conformities to allow a building height with front and side elevations of 127' 5 1/4" instead of 126' 10" as shown on the approved plans

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman, 30 Green Street, presented the application. The height difference is not discernable and is a mere fraction of approved height. It is also less than the maximum height allowed of 35'. The modification is not substantially more detrimental than the approved application.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Tom Kolterjahn, 64 Federal Street and Newburyport Preservation Trust

He did not see how the Board could deny the appeal and then give them what they want. Urged the Board not to let them keep the building the way it is.

Bill Harris, 56 Lime Street

Argued that it is not true that the increase in height is not noticeable. He propose to the board that they not grant the Special Permit, but encourage the applicant to come back with an actual plan of how this would be handled as well as what is being done with windows. The Board should be looking at entire project history including windows. He submitted the same letter for the record.

Stephanie Niketic, 93 High Street

Argued that the applicant did gain value here. They are advertising 9' ceilings. This is beneficial to the sale. Something can be done to bring the building back down to the height that was permitted.

Questions from the Board regarding Public Hearing #3:

Mr. Ciampitti questioned the height of the original Federalist and the gambrel addition. Ms. Mead responded that the federalist was 28'8" and the gambrel 27'5".

Mr. Pennington asked if a landscape plan was submitted. Ms. Mead responded no, but they have installed the landscape.

Deliberations:

Mr. Ramsdell did not know how the Board would grant this right now and encouraged a request for continuance. He also commented that while the ordinance calls out mean height, they are also required to look at impact on the neighborhood and ridge height is part of this.

Mr. Ciampitti commented they would need to see some sense of what it would look like.

Requested a continuance to 3/22/16.

Motion to continue application 2016-014 made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve
Renee Bourdeau – non-voting

Public Hearing #4 & #5:

2016 015
Address: 8 Strong Street
Dimensional Variance
Dimensional relief for left side setback

2016 016
Address: 8 Strong Street
Special Permit for Non-conformities
modify a pre-existing non-conforming structure

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman, 30 Green Street, presented on behalf of the applicant, 8 Strong Street Realty Trust. The parcel housed a single-family home that was ordered razed by the Board of Health before the current owner. The order was issued 10/22/15 and demolition took place on 11/9/15. The applicants propose to build a single-family home in its place. The former home was as largely non-conforming. Front setback would be improved from 6.9' to 9.1'. Side right would be improved from 1.2' to 3.2'. Left side setback would be slightly decreased from 12' to 7.9'. Rear setback would be improved from 9.2' to 4.5'. Lot coverage would increase from 39% to 45%. Open space would decrease from 43% to 42%. Height would increase from 19' to 24.5'.

As far as the variance, a hardship is found in that this is a non-conforming lot surrounded by other non-conforming lots. Lots at 6, 7, 9, and 10 Strong Street are all non-conforming. This is a reasonable use of the property. They would be improving most setbacks. The project would not be detrimental to adjacent properties.

As far as the Special Permit for Non-conformities, this project would not be substantially more detrimental to the neighborhood and no new non-conformities would be added.

Proposed elevations and renderings were presented. The structure would be consistent with other structures in the neighborhood. Living area would increase to 1727 sq. ft.; up only 90 sq. ft. This would be one of the smaller structures in the immediate neighborhood.

The applicant submitted letters of support from neighbors.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Bernie Casey, 6 Strong Street

In support. The developer went out of way to address concerns with abutters.

Reginald Bacon, 21 Strong Street

In support. Although demolition happened he is optimistic. The modest scale is impressive and will fit in. He love porch, but not the garage. It will be complimentary to the neighborhood and “of its time.”

Lela Wright, 4 Winter Street

In support. Thanked the applicant for keeping it a small house. As a realtor, this is what the buying public is looking for.

Erdem Kaya, 10 strong Street

In support.

Frank Novak, 12 Strong Street

The previous home was deplorable and he was concerned with what would replace it. The applicant worked with the neighborhood.

In Opposition:

None

Questions from the Board regarding Public Hearing #4 & #5:

Mr. LaBay clarified open space on page two of the application versus what Ms. Mead presented. Ms. Mead responded that the table is accurate and she misspoke.

Deliberations:

LaBay was pleased to see this application. It meets the spirit of the neighborhood, there was no opposition, and the dimensional variance was supported.

Mr. Ciampitti agreed. There was ample evidence presented for the variance and SPNC. It was a fantastic proposal.

The rest of the Board agreed.

Motion to approve application 2016-015 made by Mr. LaBay, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – non-voting

Motion to approve application 2016-016 made by Mr. LaBay, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – non-voting

Public Hearing #6:

2016	017
Address: 2 Stickney Avenue	
Dimensional Variance	
<i>Construct a single story addition with a 13' setback where 25' is required</i>	

Jivonne Alley of Joppa Design presented the application. This is a simple application requesting a 13' rear yard setback to construct a one-room rear addition. There is significant topographic slope creating hardship in terms of where an addition could be added on. A step down into the addition would keep the roofline as low as possible.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Marcia Foley, 206 High Street
In support.

Pam Shaw, 3 Brisette Ave
In support and requested that the applicant share the cost of an 8' fence for privacy.

Mr. Ramsdell commented to check with the building inspector on if a permit is required.

In Opposition:

None

Questions from the Board regarding Public Hearing #6:

None

Deliberations:

Mr. Ciampitti commented on the lack of opposition and neighbors present in support. The hardship was supported satisfactorily.

Mr. Goulet commented the application is modest and fits in.

The rest of the board agreed.

Motion to approve application 2016-017 with condition that the applicant must seek approval if necessary for an 8' fence jointly installed with neighbors at 3 Brisette Avenue made by Mr. Ciampitti, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – non-voting

Public Hearing #7:

2016 004

Address: 48 Boardman Street

Dimensional Variance

Split lot to create two non-conforming lots with variances required for lot area, frontage, lot width, and rear yard setback

Continued to 2/9/16.

Motion to continue application 2016-004 to February 9, 2016 made by Mr. LaBay, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – non-voting

Adjournment

Motion to adjourn made by Mr. Ramsdell, seconded by Mr. Ciampitti at 10:14 PM.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Duncan LaBay – approve
Jamie Pennington – approve

Richard Goulet – approve
Renee Bourdeau – approve

Respectfully submitted, Katie Mahan - Note Taker