

**City of Newburyport  
Zoning Board of Appeals  
February 14, 2012  
Minutes**

The meeting was called to order at 7:20 P.M.  
A quorum was present.

**1. Roll Call**

**In Attendance:** Ed Ramsdell (Chair), Duncan LaBay (Secretary), Charles Ciovacco, Jamie Pennington

**Absent:** Robert Ciampitti (Vice-Chair)

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of December 13, 2011 Meeting**

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

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington – approve

**Minutes of January 10, 2012 Meeting**

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

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington – approve

**b) Motion to grant withdrawal of 30 Union Street application for Dimensional Variance**

(construct an addition resulting in 29.1% lot coverage where 25% is the maximum allowed) **and Special Permit** (construct an addition resulting in an upward extension of pre-existing non-conforming front and rear yard setbacks). This application was continued from the 12-13-2012 meeting.

**Mr. LaBay made a motion to allow withdrawal of the application for both the Dimensional Variance and the Special Permit with no prejudice at request of applicant, Mr. Ciovacco seconded the motion.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington – approve

**b) Public Hearings (5 on agenda)**

Mr. Ramsdell let the applicants know that there were only 4 out of the 5 Board Members present. He indicated that the applicants could request a continuance for their application if they wanted five members (as opposed to only four) to vote.

**Public Hearing #1:**

**2011 037**

**Address: 26 Boardman Street**

**Special Permit for Non-Conformities**

Remove an existing flat roof and replace it with a new gambrel roof over an existing structure with a pre-existing non-conforming setback

Mr. Ramsdell indicated that this meeting was a continuance from December 13, 2011 because the Board had requested that the applicant go through the Historical Commission and then come back to the Zoning Board. Michael J. Cebula, the applicant, indicated that the Historical Commission likes the house and the renovation being proposed. The new roof will replace a flat roof from the 1930s and 1950s which is leaking. The new roof is a gambrel.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

None

**In Opposition:**

None

**Questions from the Board:**

Mr. LaBay asked if there was anything to file from the Historical Commission. There was nothing to file, but the Planning Office had received confirmation of approval. Mr. Pennington asked about the amount of square footage that had been added. The total square footage added is about 450 sf.

**Deliberations:**

Mr. Pennington indicated that it was a perfectly reasonable request and that it was a nice design. Mr. Ramsdell also supported the application. Mr. LaBay indicated that having the Historical Commission approval was a plus and having no negatives from neighbors about the design was good.

**Motion to approve the Special Permit for Non-Conformities made by Mr. Pennington, seconded by Mr. Ciovacco**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington - approve

**Public Hearing #2:**

**2012      003**

**Address: 40 State Street**

**Dimensional Variance**

Request relief from the parking requirement to add an additional unit to a mixed use structure

**Public Hearing #3:**

**2012      004**

**Address: 40 State Street**

**Special Permit**

Add an additional residential unit to a mixed use structure

**The notice of public hearing was read aloud for the record.**

Mr. Ramsdell read the notice of public hearing associated with both the Dimensional Variance and the Special Permit for the 40 State Street application. These applications were handled together as they are both associated with 40 State Street. Mark Janos, Esq, representing J & F Tucker, the owners, indicated that he had made corrections to the memorandum first issued to clear up some typos and one factual error. In the application, the memorandum indicated that there were four parking permits, but, in reality, he could only find two. The Tuckers purchased the property in December 2010 from Mr. Martilini. Mr. Martilini had obtained a variance and special permit. The first floor was for the business (Grams Ice Cream); the 2<sup>nd</sup> floor was not designated for residential space and the 3<sup>rd</sup> and 4<sup>th</sup> floors were in the Martilini's 1998 request to be used as a residence. Subsequent to issuing the initial memorandum, Mr. Janos became aware the Mr. Martilini used both the 2<sup>nd</sup> and 3<sup>rd</sup>/4<sup>th</sup> floors as residences. The Tuckers purchased the building knowing that the second floor was not a legal residence.

Special Permit: In the application for the special permit, Mr. Janos emphasized the repopulation of the downtown areas with residences is a good idea. All of the standard criteria required make sense. They have complied with all the requirements including the fact that it is essential to repopulate the downtown area. They are not creating an increase in uses.

Dimensional Variance: Mr. Janos pointed out that the City of Newburyport allows persons who live downtown to go to the City Clerk and apply for a parking permit. There are no prohibitions

for people – they are allowed to park on the waterfront and the Tucker’s have already applied for and received 2 permits. The City Clerk indicates that to receive a permit, you have to provide evidence that you live in downtown Newburyport.

The prior Zoning Board granted permission to an abutter to have a residence on the second floor. The Martilini application indicated he provided the Board with a recordable lease. Parking is available by way of parking permits. Mr. Ciovacco indicated that there had been a similar application in the past for State Street and the Board had granted both reliefs.

Mr. Jonas is asking the Board to grant reliefs. The City is willing to grant parking permits if you demonstrate that you live downtown. There is no way to park on site – this is a substantial hardship – there is no space.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

None

**In Opposition:**

None

**Questions from the Board:**

Mr. Ramsdell made the observation that he was not aware that you could obtain a 24 hour parking permit if you had evidence you lived downtown. Mr. Pennington asked about the use of the second floor prior to 1989. The applicant did not know but it was clear that Mr. Martilini’s son and family used it as a residence after 1989. Mr. Ramsdell indicated that the space has basically been used as a second residence in the building. The impact will not be significant because it has been a second residence for 24 years. Mr. Pennington commented that, on the practical side, the space is there and should be utilized.

**Deliberations:**

Mr. LaBay said the vision card is instructive because it is conflicting - 66% family, 34% store - this is a clear statement that there are multiple apartments in the building. He felt the Board should correct the situation and grant relief. Mr. Ramsdell said that until a parking garage is built or the current ordinance parking ordinance is revised, the applicant has provided a reasonable premise on which to grant application for variance.

The applicant offered to have as a condition of granting relief that they would get a permit. The Board did not feel this was necessary. Mr. Ciovacco said it wasn’t required for a similar application.

Mr. Ramsdell indicated that because the City allows downtown residents to have a 24 hour parking permit, the Tucker’s will, in essence, have a full-time parking space permit. None of the Board Members wanted to make obtaining a permit a condition. With the relief from the parking requirement, there is good rationale to approve.

**Motion to approve the Dimensional Variance made by Mr. Pennington, seconded by Mr. Ciovacco**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington – approve

**Motion to approve the special permit made by Mr. Pennington, seconded by Mr. Ciovacco**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington - approve

**Public Hearing #4:**

**2012 005**

**Address:** 37 Phillips Drive

**Dimensional Variance**

Construct a second floor cantilevered addition resulting in a 28.25' front yard where a 30' setback is required

**Public Hearing #5:**

**2012 006**

**Address:** 37 Phillips Drive

**Special Permit for Non-Conformities**

Construct a second floor addition over 500 sf on a structure with pre-existing, non-conforming lot size and frontage

**The notice of public hearing for was read aloud for the record.**

Mr. Ramsdell read the notice of public hearing associated with both the Dimensional Variance and the Special Permit for Non-conformities for the 37 Phillips Drive application.

Mr. Ramsdell indicated that since this application had been filed originally, a variance is no longer required to extend a non-conforming property. This change recently went up through appeals court and the result is that this is no longer a variance application.

Mathew Cummins, Architect, represented Ray Atanasoff, the owner.

Currently the house is built within 1 inch of the set-back line. There is an existing cantilever at the rear of the home. It is a garrison style home which is being made more attractive by adding a second story. There are other neighbors that have added second stories.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

None

**In Opposition:**

None

**Questions from the Board:**

Mr. Pennington asked the architect to explain why he pushed the front out – was it just style? The architect answered that the original home had a cantilevered rear. The footprint of the home is so small. There needed to be some more space on the second floor in order to have reasonably-sized (not big) rooms and a bath. The center of the house is off center. The cantilever in the front adds structurally and provides for an attractive home. The applicant said that they could have designed a straight front but it would have been a substantial detriment. People would not understand why it was done that way. Mr. Ramsdell commented that the house is a toadstool; the foundation is smaller than the house.

Mr. Ciovacco had no questions.

Mr. Ramsdell reiterated how we will never see another Dimensional Variance on a piece of non-conforming property. An expansion can be done under Special Permit. It is interesting to note, though, that if your home were totally conforming, you would still have to pull a variance.

Mr. LaBay had no questions.

Mr. Pennington had no questions.

**Deliberations:**

Mr. LaBay indicated he was conflicted. He noted with favor that everyone on that end of the street signed a petition in favor of the addition. No one came to the meeting and opposed the plan. He commented that it is the ugliest thing he has seen but that there is nothing illegal. Mr. Pennington said that it was definitely unique and indicated that the Zoning Board was not “style police”. He was in agreement that providing the break on the front of the house would actually take the curse off of the tall elevation. He doesn’t love it, but is not strongly against it either. He acknowledged the support from the neighbors and indicated he was “lukewarm” but in favor. Mr. Ramsdell supports the application and reiterated that the Zoning Board is not the “style police”. With the variance requirement gone, he can support the application. He indicated they should simply dismiss the variance application and only vote on the Special Permit application and make the finding that the structure is NOT significantly more detrimental.

**Motion to DISMISS the Dimensional Variance made by Mr. LaBay, seconded by Mr. Ciovacco.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington - approve

**Motion to approve the Special Permit for Non-Conformities made by Mr. LaBay, seconded by Mr. Ciovacco**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington - approve

**3. Adjournment**

**Motion to adjourn made by Mr. LaBay, seconded by Mr. Ciovacco at 8:35 p.m.**

The motion passed unanimously

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington - approve

**Respectfully submitted, Jennifer Lamarre - Note Taker**