

**City of Newburyport
Zoning Board of Appeals
February 20, 2019 (Rescheduled from 2/12/19)
Auditorium**

The meeting was called to order at 7:07 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Renee Bourdeau
Maureen Pomeroy
Edward Cameron

Absent:

Mark Moore

2. Business Meeting

a) Approval of Minutes

Minutes of the 1/22/19 meeting

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

Votes Cast:

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

b) Request for Minor Modification – 20 Eagle Street

The Board requested that the applicant provide final plans to the Planning office as a condition of approval earlier this year. The Zoning Administrator has looked over final plans submitted and they are satisfactory.

Mr. Ciampitti made a motion to accept the final plans as submitted and Ms. Bourdeau seconded the motion.

The motion passed unanimously.

Votes Cast:

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

Mark Moore – absent

3. Public Hearings

2017 089

Address: 2 Storey Avenue

Sign Variance

Allow a free-standing sign

This application is continued from previous meetings. Attorney Mark Griffin of Finneran and Nicholson presented the application. Famous Pizza has been in business at “three roads” for thirty years. Storey Avenue, Harnch’s Way, and Ferry Road border the property and the building is set back almost to the rear lot line. The current use is #502, restaurant in the R2 zoning district, which is a residential zone approximately 500’ from the B1 zoning district. The use is pre-existing non-conforming use. Attorney Griffin briefly went over the overall context of the project at 2 Storey Avenue over the past few years. Dimensional relief was sought for renovation project back in 2014. The owners have made a significant investment in the property, cleaned up issues with Harnch’s Way, by funded paving and purchasing a small piece of land from the City. Expanded seating, cleaned-up parking, code compliant bathrooms, and parapets added to muffle HVAC systems were some improvements. A freestanding aluminum and steel pole sign with flood lighting existed on the property and a permit was obtained in 2002. There is somewhat of a debate as to whether the sign was changed sometime between 2002-2017. The building inspector allowed sign rehabilitation according to the owner. The sign was removed in 2017 during renovations. The applicants are proposing to add short monument sign in a better position. The sign would have better sight distance for traffic and modest in size. Proposed illumination is side lit, during open hours of the restaurant. During the Harnch’s Way construction project, a construction plan approved by Jon-Eric White, City Engineer that contained the monument sign as well as entrance signs on Storey Avenue and Ferry Road. In a recent email from Mr. White, he had no issue with the monument or freestanding signs.

Attorney Griffin went over variance criteria. In 2002 a variance granted, and since that time lot size, shape, and topography has not changed. The lot shape is unique with the location of the building at the rear of lot. It has a unique parcel shape unlike neighboring parcels. The Planning Director noted in a 2017 staff report that the property was unique and suggested a hardship may be argued. The sign is modest and an improvement from what was there. Attorney Griffin argued that Strict application of the provisions of this chapter would deprive the applicant of reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures or buildings in the same district. Most businesses have freestanding signs. He submitted photos of other freestanding signs in residential districts throughout the City. The owners have put a lot of time, money, and effort in property upgrades and it would be a shame if they were not equipped to succeed.

Chair Ramsdell opened the hearing to public comment.

In Favor:

David Clay, Storey Avenue

Submitted letter of support.

In Opposition:

Tom Kolterjahn, 64 Federal Street, Co-President Newburyport Preservation Trust

The Newburyport Preservation Trust strongly opposes this request. Concerns include; Prominent area with historic houses, the property has two huge signs that cannot be missed, creation of sign pollution, hearing has been continued so many times, it's a shame abutters who were opposed in the past could not be here tonight, in a residential neighborhood. Mr. Kolterjahn urged the Board to vote no and not allow another continuance.

Stephanie Niketic, 93 High Street

Agreed with Mr. Kolterjahn. Concerns included; Non-conforming use received additional variances, dominant building and signage already, took over part of a public way, improvements for their business, shape and position on lot is an advantage and not more difficult, they have excellent visibility, do not see how any argument could be made on depriving any reasonable use, re-zoning discussions have involved excessive signage.

Rita Mihalek, 53 Warren Street

Concerns included; Explosion in signage around town with parking, A-frames, etc. and it is intrusive. Newburyport was a town set apart and now commercialism is in your face. This is a residential zone. As a community we need to get our heads around the signage pollution. Let us hold onto the quality of life.

Questions from the Board:

Ms. Bourdeau asked how much signage was on previous building. Previous building signage was located on the window on the front of the building. The owner commented that back in 2004, when the pole sign went up, the business saw increases of customers by 24%. They claim to be losing a lot of business coming into Newburyport from the other direction.

Chair Ramsdell commented to Attorney Griffin that staff, not necessarily the Planning Director, wrote the staff report in 2017. They simply outlined possible scenarios for the Board to approve. The most recent staff report was in fact from the Planning Director. Chair Ramsdell also asked if the applicants had explored entrance signs as discussed at one point instead of the monument signs and whether Board approval would be needed. Attorney Griffin replied that DPS has no jurisdiction and any freestanding sign would need sign variance.

Deliberations:

Ms. Bourdeau had concerns over what audience the sign was for. She was sympathetic to the reasoning for the request. She noted other businesses on High and Merrimac Street in the residential zones that do not have freestanding signs. With improvements to the building and building signage it is hard to miss. She did not feel the proposed sign would accomplish much more. She noted abutters at previous meetings saying additional signage was not wanted. She was not in support of application.

Ms. Pomeroy agreed. Signs on the building provide enough signage.

Attorney Griffin asked the Board if they would consider an entrance sign instead of a monument that would be much smaller and directional. He handed out a rendering.

Ms. Bourdeau was opposed to any additional signage.

Chair Ramsdell commented that he was not in favor of the sign application. They did a nice job on the building, but the additional signage is not needed. He may be open to other iterations of directional sign. He felt the shape of the lot was a positive, rather than a hardship.

Mr. Cameron agreed with his colleagues. The proposed signage was overkill and extraneous. The new signage on the building is great and visible. He was not in favor of additional signage.

Mr. Ciampitti agreed, though was sympathetic to the owner. He was pleasantly surprised with the outcome of building. He was not in support of the monument sign. He might be in favor of directional sign, but did not know what it would look like.

The applicants requested to withdraw the application without prejudice.

Motion to withdraw application 2017-089 without prejudice made by Ms. Bourdeau, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

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

2018 028

Address: 1 Inn Street, Unit 7

Appeal

Appeal of the denial of a request for issuance of a cease and desist letter by the Zoning Enforcement Officer dated 4/6/18 for noise and vibration in excess of what is allowed under the Zoning Ordinance due to operations associated with the property at 35 Market Square

The applicants requested a continuance. Attorneys were not available at this rescheduled date.

Chair Ramsdell noted that he informed the applicant that at the 3/12 meeting, he would like to see this go forward or be withdrawn.

Motion to continue application 2018-028 to 3/12/19 made by Ms. Bourdeau, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

2018 064

Address: 193 High Street

Special Permit for Non-conformities

Remove existing later added shed/garage, construct new attached 3-bay garage, create formal paved parking area at rear of site, construct exit driveway on the western side of the building

The applicants requested a continuance. Attorneys were not available at this rescheduled date. Mr. Ciampitti and Ms. Pomeroy would not be available on 3/12, so the Board continued to 3/26.

Motion to continue application 2018-064 to 3/26/19 made by Ms. Bourdeau, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – absent

2019 012

Address: 5 70th Street

Special Permit for Non-conformities

Change roof line resulting in an upward extension of a pre-existing non-conforming side and rear yard setbacks

Patrick Heffernan, Esq., presented the application. The property is located in the PIOD and R3 districts. The home was built in 1900. The property is pre-existing non-conforming with lot area, frontage, side setbacks, and rear setback. It currently meets height and front setback requirements. The applicants wish to alter the existing roof, consisting of three rooflines. They are proposing to 'lift and rotate' the roofline. Height would increase from 19'10" to 24'4", well below the 35' limit. This will not create new non-conformities or exacerbate existing. The change will not be substantially more detrimental to the neighborhood and will be more aesthetically pleasing, fitting in with the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Chair Ramsdell noted that the Zoning Administrator made a notation that Historic Commission review was required. The applicant responded that this happened on January 19th and was deemed not historic. The Conservation Commission is still pending. The Board could approve with a condition that construction not start until Conservation Commission was no longer pending.

Ms. Pomeroy noted that the staff report said that the upper level was not to be used as living quarters. The applicant agreed that this was true; it would be used for storage. It could be a condition if needed. The Board agreed they would not need a condition, as further review would be required if the space were to be converted to living space and the FAR increased.

Deliberations:

Ms. Bourdeau commented the request is modest. She was able to support with the suggested Conservation condition.

The rest of the Board agreed.

Conditions;

-Applicant must obtain approval from Conservation Commission and/or Conservation Agent prior to building permit issuance

Motion to approve application 2019-012 with above condition made by Ms. Bourdeau, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

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

2019 013

Address: 3 Donahue Court (aka 26 Toppans Lane, Lot 4B)

Appeal

Appeal of the 12/11/18 Notice of Violation from the Zoning Administrator in regards to plantings

The applicants requested a continuance. They are going to Planning Board in early March, so Chair Ramsdell suggested continuing to late March.

Motion to continue application 2019-013 to 3/26/19 made by Ms. Bourdeau, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

The meeting adjourned at approximately 8:26pm

Respectfully submitted, Katie Mahan - Note Taker