

**City of Newburyport
Zoning Board of Appeals
February 26, 2019
Council Chambers**

The meeting was called to order at 7:10 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Maureen Pomeroy
Edward Cameron (Arrived after approval of minutes)
Mark Moore

Absent:

Renee Bourdeau

2. Business Meeting

a) Approval of Minutes

Minutes of the 2/20/19 meeting

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

Votes Cast:

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

3. Public Hearings

2019 009

Address: 14-16 Charles Street

Dimensional Variance

Construction of a one-car garage resulting in non-conforming lot coverage

This hearing is continued from the 1/22/19 meeting. Patrick Heffernan, Esq. presented the application on behalf of Glen Schneider and Carol Denker, owners. The applicants are requesting a dimensional variance for lot coverage (29.28% where 25% is allowed). The property is located in the R2 zoning district and DCOD and consists of two condo units. Unit B exclusive use area is where the applicants are proposing to add a one-car garage. The lot is pre-existing non-conforming with respect to lot area, frontage, front setback, and side setback. The proposal is to add a modest 360 s.f. single car garage (12'x23') with attached storage (6'x14') for joint use. The garage would not extend or exacerbate non-

conformities. The 13'2" height would be below maximum height allowed. There is an 8' wooden fence along the back property line and a 6' fence along the right abutting property that exists today. In Fall 2017 a similar structure in the location of the proposed garage was demolished. The proposed garage will fit in with the character of the neighborhood, is aesthetically pleasing, and is at the rear of the lot. The applicants shared plans with neighbors and have letters submitted in favor. Abutters with opposition seemed to be concerned with decreased green space on the lot. Also, a North facing window on the site plans was a concern and they could condition this be removed.

Hardship argued for the variance was irregular shape as the lot has a 600 s.f. indent. Also argued was the significantly undersized lot. Lot area is less than half of what is required. The owners need extra storage. The garage would not be a substantial detriment to neighboring properties.

Chair Ramsdell opened the hearing to public comment.

In Favor:

12 Charles Street

In Opposition:

David Abusamra, 70 Haigh Road, Brentwood NH & owner of 23 Lime Street

Concerns included; before renovation with previous owners, there was more green space, previous garage was further from the lot line than the proposed, light blockage, view, the applicants purchased the property without a garage knowingly, have not been contacted by owners regarding plans, existing shed may not be in compliance with zoning.

Stephanie Niketic, 93 High Street

Concerns included; worked with neighbors as part of Preservation Trust with the previous owner on renovation of this property. Plans he had been developing were changed to come under the wire as of right. The owner at the time enlarged the house, but took down garage as part of the redevelopment plan. He promised abutters open space in back would remain as part of conservation. There is no hardship; unique lot shape is not there. Not building this garage would not deprive the applicant of reasonable use. They are living there.

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

Concerns included; Preservation Trust strongly in opposition. This is a wonderful, historic neighborhood. Constant additions and filled in spaces in this neighborhood are changing it. Neighbors really do not support this. It is hard to believe any hardship exists on this property.

Questions from the Board:

Chair Ramsdell confirmed that lot shape and lot size were the hardships argued. Yes, this is the only location that the applicants can build and still comply with the open space. Lot area is over, but open space complies.

Mr. Moore asked what size shed is up now. It is a temporary structure and does not need to comply with zoning.

Attorney Heffernan passed out photos.

Mr. Ciampitti noted that Attorney Heffernan mentioned 'substantial detriment,' which is Special Permit language. Hardship relates to variance, though consistence with the neighborhood is important. Photo of temp structure. Even before this, what was there and why it is gone.

Scott Brown, architect spoke briefly about the Special Permit for Non-conformities that went before the Board in Fall 2017 for the renovation of this property. They requested relief of an addition in excess of 500 s.f.. Part of application proposed two good size accessory structures on the lot. During plans, the R3 zoning district was changed to R2 and the application was redrawn. One sacrifice that was made was the ability to have outdoor storage. Cleaning up the yard is a benefit to the neighborhood. The location of the garage is of least impact to the neighborhood and is more or less in the location that the previous garage stood.

Mr. Ciampitti asked if the hardship argument somehow dovetailed in zoning changes. Attorney Heffernan responded that adjustments were made to the property that did not accommodate the old garage. Mr. Ciampitti asked if this property were still is R3, how would this be different. Attorney Heffernan responded that they would have been able to build the garage.

Deliberations:

Mr. Ciampitti was torn. He did not think he could tether change in zoning to the hardship. He respected the argument and practical connection, but must adhere to zoning and hardship arguments. This is a fairly level and geometric lot and it is hard to find legal criteria. The problem is that the garage is not there and that was someone's choice. Tented storage not ideal and the idea of a garage makes sense, but he could not get to a hardship.

Ms. Pomeroy agreed with Mr. Ciampitti. Hardship based on lot shape and size was not met in her opinion.

Mr. Cameron and Mr. Moore agreed.

Chair Ramsdell commented that Council only recently further limited hardship you can find for properties. The Board should not question Council on the specific instance of temporary storage.

Attorney Heffernan requested a continuance.

Motion to continue application 2019-009 to 3/26/19 made by Mr. Ciampitti, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

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

2019	011
Address: 67 Marlboro Street	
Special Permit for Non-conformities	

Renovate a pre-existing non-conforming two-story garage resulting in an upward extension of pre-existing non-conforming side and rear setbacks

This hearing is continued from the 1/22/19 meeting. Ted Boretti, applicant and owners presented the application. Mr. Boretti left last time after a brief overview of a garage renovation, with finished upper level. The reason for continuance was that the proposed layout could be seen as an accessory dwelling. He brought along detail of the proposed interior layout tonight, which included a home office, as he and his wife work from home. A bathroom and bonus room for extra entertaining space would also be included in the space. He noted that the three criteria for an accessory apartment would be sleeping, sanitary, cooking facilities. They deliberately do not have cooking facilities. Renderings were presented along with letters of support submitted last time from abutters. The renovation maintains the aesthetic of the neighborhood. The only real change to the size is 1' added to the height as well as dormers. The intention is not to tear down the existing garage and save as much as possible in the renovation.

Chair Ramsdell opened the hearing to public comment.

In Favor:

David Keery, Architect

In favor, noted overwhelming support from neighbors

In Opposition:

Stephanie Niketic, 93 High Street

Concerns included; accessory dwelling space to be used for short-term rentals or illegal apartments and the easy conversion to this.

Questions from the Board:

Mr. Ciampitti asked if the owner planned to use the space for short-term rental or live there. No, the space is for office use for wife and self as described. He understood if he wanted to use the space as an in-law apartment, he must come before the Board.

Ms. Pomeroy asked if the owner would you be opposed to a condition regarding this. He would not be opposed.

Deliberations:

Mr. Ciampitti was not opposed to the idea of the condition, yet it would be making a condition that the applicant will not break the law. Is the condition any more toothed than the law? He worried that the Board may administer zoning to this imagined future.

Chair Ramsdell commented it is a concern of neighbors and the Board. By putting the condition in it does not legally change anything. This puts the zoning administrator in a position to know it was of interest.

Ms. Pomeroy agreed it was important to articulate to future zoning officials what was of concern to the Board.

Mr. Moore agreed that parties had legitimate concerns.

Condition;

The proposed garage will not be used as a second residential unit.

Motion to approve application 2019-011 with above condition made by Ms. Pomeroy, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

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

2019 014

Address: 346 High Street

Dimensional Variance

Split lot that contains two single-family homes under condo ownership to create a lot with non-conforming lot area, frontage, and front and side yard setbacks

Mr. Ciampitti recused himself from this application.

The applicants asked for a continuance to 3/26/19, as there was not a full five-member Board present tonight.

Motion to continue application 2019-014 to 3/26/19 made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

2019 015

Address: 346A High Street

Dimensional Variance

Split lot that contains two single-family homes under condo ownership to create a lot with non-conforming lot area, lot coverage, frontage, and front yard setback

Mr. Ciampitti recused himself from this application.

The applicants asked for a continuance to 3/26/19, as there was not a full five-member Board present tonight.

Motion to continue application 2019-015 to 3/26/19 made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

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

2019 016

Address: 223 Low Street

Dimensional Variance

Adjust lot lines between parcels resulting in a lot with non-conforming frontage and side yard setback

Attorney Mark Griffin, of Finneran and Nicholson presented the application. The proposal is a property swap between 221 and 223 Low Street due to the erroneous installation location of an inground pool. The site plan shows a concrete pool to left of the structure at 223 Low Street encroaching on 221 Low Street. The applicants discovered the issue felt they had to bring it to zoning enforcement. As the issue stands it would be virtually impossible to convey these properties to a third party and would prevent future sales. Both 221 and 223 Low Street are single-family homes. 221 Low Street was part of a 2009 dimensional variance. At that time, a triangle of land was swapped between the two properties and now the opposite is proposed. It is almost a modification of the 2009 variance. 223 Low Street was built in 2013. This lot is non-conforming with respect to frontage and would slightly be decreasing it with the swap. (57.43' to 57.22'). 221 Low Street is a compliant property with R1 zoning and would still be conforming after the parcel swap.

Hardship argued was wetlands and land topography as well as lot shape. The lot at 223 Low Street has a limited buildable with wetlands. It is also a 'pork chop' shaped lot with very little upland. After the lot line adjustment, the pool will no longer encroach on 221 Low Street and would have a setback compliant at 6' from the lot line. In the 2009 dimensional variance, hardship for variance was met with this argument.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Brian Raiche, 223 Low Street

Due to the pool company thinking they were protecting wetlands and an existing fence on the neighboring property at 221 Low Street, the mishap occurred. They have worked with DEP on the property through any changes. They dug up tires, etc. when the pool went in and disposed of waste properly. They have worked together with an attorney and neighbor. They hope to resolve the issue now to prevent future title issues.

In Opposition:

None

Questions from the Board:

Mr. Ciampitti commented on the frightful situation. The request makes a lot of sense. He asked Attorney Griffin if this was a collaborative request. It was.

Ms. Pomeroy asked about a comment on the staff report regarding lot line A running through the middle of a driveway. Attorney Griffin noted the plans not being accurate, and handed out photos of the driveway bend.

Chair Ramsdell asked if new site plan reflecting proper lot lines could be provided if going forward to be submitted to Planning Office for the file. Attorney Griffin agreed.

Deliberations:

Ms. Pomeroy commented that the lot shape, topography and wetlands met hardship criteria. She noted that updated drawings be provide to Planning be added as a condition.

The rest of the Board agreed.

Condition;

The applicant submits updated plans to address property boundary lines to Planning Office.

Motion to approve application 2019-016 with above condition made by Ms. Pomeroy, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

2019 017

Address: 8 Toppans Lane

Dimensional Variance

Modify previously granted variance that created a non-conforming side setback in to allow an increase in height that conforms to dimensional requirements

Bryan Suchecki, owner presented the application. He purchased the property one month ago. In an effort to help the home fit in with the neighborhood and increase living space within the home, he hopes to update the Garrison style colonial roof to a gambrel style pitch over the existing home and garage. There was a 1970 variance granted to attach the garage to the house. The same footprint would remain and the height restrictions would not be surpassed. There are three other homes in the same style in the immediate neighborhood. He met with neighbors and they are in favor.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Phoenix, 12 Toppans Lane

Letter submitted.

Margaret Utterback, 6 Toppans Lane

Agreed it would be nice to bring the house more in line with neighborhood.

In Opposition:

Stephanie Niketic, 93 High Street

Concerns included; the application did not include enough information, A hardship not understood, this is a historic streetscape, wondering if this will be a modern, tall gambrel that will look off from historic homes. We need better drawings, comparative information of height with neighboring houses, and site plans.

Questions from the Board:

Mr. Moore asked if this was the full set of plans neighbors signed off on. It was.

Chair Ramsdell commented that it was clear from the audience, planning director and Board that the application is not complete enough. We need four side elevations, architectural drawings, and overview of where the home lies in relation to other structures around it. There is not necessarily a problem with the changes, but documentation is lacking.

Mr. Moore agreed.

Ms. Pomeroy asked if this is a modification of previous variance that hardship does not need to be shown. Chair Ramsdell commented hardship would still need to be shown. Hardship not laid out in application. Placement of the structure could be looked into.

The applicant asked about getting started on parts of the project. Chair Ramsdell recommended the applicant talk with the building inspector and zoning administrator on this.

The applicant requested a continuance.

Motion to continue application 2019-017 to 3/26/19 made by Mr. Cameron, seconded by Ms. Pomeroy.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Edward Cameron – approve

Mark Moore – approve

The meeting adjourned at approximately 9:02pm

Respectfully submitted, Katie Mahan - Note Taker