

**City of Newburyport  
Zoning Board of Appeals  
March 27, 2012**

The meeting was called to order at 7:08 P.M.  
A quorum was present.

**1. Roll Call**

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

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of February 28, 2012 Meeting**

Mr. Ciampitti made a motion to approve the amended 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  
Robert Ciampitti – approve

**b) Request for an extension of a Use Variance granted in 2011 to Leary's Fine Wine and Spirits, 202 Merrimac Street.**

This is a request for a six month extension, made prior to the end of the current use variance. One extension can be granted. Mr. LaBay indicated that extensions have been granted in the past. Chairman. Ramsdell indicated it was standard practice.

**Mr. Ciampitti made a motion to extend a Use Variance granted to Leary's Fine Wine and Spirits, 202 Merrimac Street, Mr. Pennington seconded the motion.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve  
Duncan LaBay – approve  
Charles Ciovacco – approve  
Jamie Pennington – approve  
Robert Ciampitti – approve

**b) Public Hearings (3 on agenda)**

**Public Hearing #1:**

**2011      031**

**Address: 15 76<sup>th</sup> Street**

**Special Permit for Non-Conformities**

**Add an additional 40 square feet of floor area increasing the FAR from .52 to .53**

Anthony and Candice Havartin c/o Paul J. Gagliardi, Esq., Healy, Deshaies, Gagliardi, & Woelfel, PC

This is a continuance. Mr. Gagliardi, Attorney from Amesbury, had requested a continuance from a meeting in November 2011. The board had asked for plans. This project involves enclosing a deck under an overhang – 40 square feet on the first floor. On the second floor they will be introducing two dormers, adding 114 square feet of floor area. The FAR increases from .43 to .46 which is in excess of .25 which is required in the PI overlay district.

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

**In favor:**

None

**In Opposition:**

None

**Questions from the Board:**

Mr. Ciovacco asked for a review of the situation. Mr. Ramsdell indicated that initially there were some numbers between the forms and the plans that didn't match and the packages were not correct. Mr. Gagliardi said the architect had not treated additional floor space in the calculations.

**Deliberations:**

Mr. Ciovacco indicated that he got his package late and would have to rely on others.

Mr. Pennington said that all the questions were answered for him.

Mr. Ciampitti had no questions.

Mr. LaBay appreciates the work done by the applicant. The application provided a clean set of prints. The FAR is offset by the fact that it is a small lot. He indicated he had no issues.

Mr. Ciovacco agreed with the comments from his peers.

**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  
Robert Ciampitti – approve

**Public Hearing #2:****2012      007****Address: 334 High Street****Special Permit for Non-Conformities**

Construct a half-story addition over the existing garage

Kathy Rand, applicant, spoke and indicated that the addition over the garage will be approximately 20 feet by 20 feet, the pitch of the roof will change, and the garage structure will change. The pitched roof is being proposed to eliminate the flat roof. The initial application had just provided a pitched roof, but the structure looked strange. The new design matches the existing roof line. Nothing will be built under the roof, it is just a pitch. Chairman Ramsdell asked if she had spoken with the neighbors. Ms. Rand indicated she had spoken with some, but not all of them.

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

**In favor:**

**Mr. Gaylord, 311 High Street, Newburyport, MA:** spoke in favor of the application. He indicated that they have been good neighbors and he did not consider this addition to be a big deal.

**In Opposition:**

**Mr. Jeremiah Doyle and Mrs. Jean Doyle, 15 Ashland Street, Newburyport, MA:**

They have lived at this location for 54 years. The business requesting the Special Permit has become a “take-out” restaurant with a lot of cooking. People park up and down the street. The City Council passed a 2 hour parking ordinance, but it is not respected by the employees. They live diagonally across from the location requesting the Special Permit. The building has been exactly the same for 54 years. They will have more delivery trucks because of this addition.

**Mr. Robert Foss, 59 Ashland Street, Newburyport, MA:**

The addition will directly impede the sunlight in his dining room. He showed the Board photos. He has concerns with parking, and garbage as well. The new rooftop will directly impact the structure of the garage.

**Mr. Nigel Wood, 322 High Street, Newburyport, MA:**

He has lived at this location for 20 years. There is a parking issue. He is often blocked in his driveway. He understands this is not about parking, but about a pitch in the roof. He moved into a residential area. The business has outgrown this location and should move to Port Plaza.

**Ms. Maureen Winn, 48 Ashland Street, Newburyport, MA:**

If the space under the pitched roof is used for additional storage, there will be additional deliveries. This addition creates a very dangerous situation.

**Mr. Steve Noel, 54 Ashland Street, Newburyport, MA:**

Trucks present a safety issue. You can't park. He feels if the space under the new pitched roof is left unfinished for storage than there will be more goods, more deliveries, more people, and more traffic. The business has outgrown the neighborhood. In addition to this, they used to make deliveries at 4:30 in the morning. The deliveries are later now, but still not in compliance with taking place after 8 a.m.

**Questions from the Board:**

Mr. Ciampitti asked about the intent for the space. The applicant responded that it was for cups, containers, and paper goods. This space would be accessed from the live sales floor through a set of stairs in the back hallway.

The question was asked about why this came up in front of the Zoning Board of Appeals. The answer was that this is a non-conforming building relative to zoning code. Most every structure in that area is off on set-backs.

Mr. LaBay indicated that he appreciated the photos provided by the abutter. He asked questions about entrances to the garage and the new space. He confirmed that the apartment unit was separate from anything that was being proposed. Mr. Calderwood's cover sheet indicated that the application had been reviewed by the historical commission and that there were no issues.

Mr. Pennington asked about the ceiling height in the storage area. It is 11 or 12 feet at the pitch and 4 feet at the edges.

**Deliberations:**

Mr. Ciampitti appreciated the abutter's comments. He indicated that the Board is tethered to a zoning code that regrettably does not indicate the need to look at parking. The Zoning Board cannot tether decisions around delivery times either. In terms of the Zoning board, it appears the application is seeking a special permit for non-conformities. Does this altercation further intensify other non-conformities? - what is being sought does not intensify existing non-conformities. Does the proposal extend the footprint? - no. Is the proposal more detrimental to the neighborhood? - it is an architectural alteration and is actually more in keeping with the neighborhood. Currently the roof is not consistent with the building or with the neighbors. The overall application indicates no additional living space.

Mr. LaBay agreed with much of what Mr. Ciampitti already noted. This is not about business or traffic or parking. None of these things has to do with the application. One place could be potentially impacted: Mr. Foss is a direct abutter. The extension could be looked at as negative, although it is within the guidelines for height, admittedly it does impact the southerly direction, but is this significant enough to derail the project?

Mr. Ciovacco said that in a case like this, a lot of credit has to be given for building a business, but Mr. Foss has a legitimate point as it relates to the addition. He remains “up-in-the-air” as it relates to this point. But, the direct abutter is the only potential issue.

Mr. Pennington appreciates very much that the neighbors came to the meeting. The structure is straightforward. It makes the building more consistent. He is in synch with Mr. Ciampitti. The right of not casting a shadow is not really protected. The ridgeline is actually lower than the existing ridgeline. He has no issue with the existing structure. He is more concerned about use and the idea that creating additional storage creates additional traffic. It is important that this is a mixed use neighborhood. He doesn’t see the connection between storage space and an influx of new customers. This should not incrementally change traffic. He is coming down in support of the application.

Mr. Ciampitti said that this component of mixed use is woven into to R-3 as written – this is the nature of our City. The notion to jettison a use cause has outgrown itself. He is puzzled by the implication that additional storage will lead to additional deliveries. There would be potentially fewer deliveries because there is more storage.

Chairman Ramsdell agrees with Mr. Ciampitti, Mr. Pennington, and Mr. LaBay. Parking is not relevant here. Putting a roof on a garage will not increase the parking and the traffic. He understands the question of shadows and light, but because this roof is lower than the primary roof, he finds it hard to believe there would be a significant difference in shadows and there is not an absolute right of air and light under the ordinance. He is not convinced it is significant enough to deny the application.

Mr. LaBay said the Board doesn’t deal with hypotheticals. Would abutters still have the issue if this application was for a residence to change the building?

Mr. Pennington indicated that privacy comes up as a potential issue. The storage area should increase privacy versus the deck that is there now.

Mr. Ciovacco indicated that his colleagues all had valid points. Hypothetically, would these folks be here if it was for a roof associated with a residential home. The line has become blurred. He is still somewhat torn, but feels that this is a supportable application and hard to vote against. He can’t determine one issue that is a zoning issue. Air and visual rights are not a protected right. He believes this is a supportable application,

**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

Robert Ciampitti – approve

### Public Hearing #3:

**2012 008**

**Address: 3-5 Pine Street**

**Special Permit for Non-Conformities**

Allow for renovation of an addition to the two-family residential structure where said renovations and addition will result in the extension of front-and side-yard setback non-conformities

Lisa Mead, Attorney, Blatman, Bobrowski, & Mead, LLC, 30 Green Street, Newburyport, MA, represented Mr. Geno Ranaldi, Manager of 3-5 Pine Street Development, LLC. Attorney Mead provided a history of the situation. Originally, there was a 3 story, 2 family house on the Lot. The proposal was to move from 3 to 2 stories. Renovation Plans were submitted to the Building Department. Based on these plans, the site plan, and the plot plan, the building Inspector, Gary Calderwood, issues a building permit. Historical Commission approval was received.

Without any mal-intent of the builder and an oversight by the building Inspector, so, as approved the side-line set back was part of the proposal. As construction went on the contractor extended non-conformities. Building inspector Calderwood issued a "Cease and Desist".

Attorney Mead made a request for relief to allow a set of non-conforming on stage 2 for this home based on the following:

1. No creation of new non-conformities
2. Is this substantially more detrimental to the neighbors than the existing non-conformity?
3. She doesn't believe the increase in floor area is substantially detrimental because it doesn't increase footprint

**In favor:**

None

**In Opposition:**

**Mr. Cliff Goudy, 21 Marlboro Street, Newburyport, MA:** Mr. Goudy is a corner abutter. Because of this error a building now exists – this is an awkward situation. This kind of thing can't happen by accident. A lot has happened in the neighborhood. This building has degraded values in the neighborhood. This should have been discussed at a zoning meeting. It is illogical to tear it down. This situation is absolutely objectionable.

**David Shepard, 14 Pine Street, Newburyport, MA:** He echoes what Mr. Goudy said. This is a terribly unfortunate, run down building. Had a cute building, now a modern box with a cantilever. Not clear what the solution is. It is ugly; the cantilever is the worst.

Chairman Ramsdell asked about the attendance of the Building Inspector at this meeting, but was told he was out of town.

**Dana Hooper, 25 Marlboro Street, Newburyport, MA:**

Ms. Hooper has spoken with Gino, he acknowledged that the slope has to be improved. At the back of the house, they substantially built up grading. Her property is affected by run-off. She has brought landscape people in to advise. There is very little that can be done to stop the rainfall from going onto her property. She would like to have a solution.

**Leah McGavern 21 Marlboro Street, Newburyport, MA:**

18 feet added to back

- 1- Exacerbates existing non-conformities
- 2- Little bump-out does not compensate for set back

To not include a 20 foot dimension on the plans, to let a drawing slip by is outrageous. This was a very bold move by the builder.

**Peter Vandermeulen, 7 Pine Street, Newburyport, MA:**

Mr. Vandermeulen agrees with a lot of what has been said. The overhang is ugly. There are run off problems on side becomes slope is downward. Not a great project so far, creating additional problems,

**Matthew McDermott, 23 Marlboro Street, Newburyport, MA:**

Trouble understanding. The maximum you can do without Special Permits disturbs him. This has to stop. People need to be held accountable. The situation has to be corrected.

**Bob Miller, 25 Marlboro Street, Newburyport, MA:**

Inexcusable that you can make mistakes so egregious. What has happened is inexcusable.

**Questions from the Board:**

This should have been discussed before it was built. Mr. Ciampitti asked about the siding. Needs priming. Cement board, trim is hard pine. Windows are true simulated divided 2 over 2. Casement windows have the hardy board exposed 5+ inches. Gino Ranaldi said that as far as the cosmetics are concerned he would like to do whatever he can to improve the situation. Lisa Mead indicated that Gary Calderwood reviewed the plans. Why did he not ask for something different? Gill vs. Gloucester case was referenced.

Mr. Ciampitti said we need to do a post-mortem. How did this happen?. Gary Calderwood received a plan. The plan was not clean enough- he would have had to figure out set-back inclusion.

The position of Counsel is that a set of plans, 2 x 3 were provided in good faith as a complete set of plans. Mr. Ranaldi, builder, said that the architect he used has done an excellent job with homes on High Street. He gave him more leeway on this one. He indicated that he did not manipulate plans.

Chairman Ramsdell wouldn't mind having the Building Inspector's wisdom on what type of fix might be acceptable. Chairman Ramsdell suggested we might want to continue:

1. Have Mr. Calderwood come to the next meeting
2. Have the neighbors and applicant talk in more depth- see if they can reach common ground

He indicated that we shouldn't be talking about this now. We should have been talking prior to the house being built. We can't sit here tonight and "chew though it".

Mr. Ciampitti also indicated it was important to have Mr. Calderwood present to discuss situation and that decisions can't be made at the present meeting. He requested a continuance.

Chairman Ramsdell suggested that this be continued two meetings from now. Everyone (neighbors and builder) should chat and see if they can come up with a solution. It is important to have Gary here to discuss what happened. Trying to come to a solution will work to everyone's benefit.

Mr. Ciampitti indicated we need to have ways to prevent this from ever happening again.

Mr. LaBay reiterated that it is important that Gary be here for the next meeting. This is a unique situation. There is a stop work order in place now.

**Motion to continue the hearing for the Special Permit for Non-Conformities to April 24, 2012 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

Robert Ciampitti – approve

Mr. Ramsdell indicated that there were no applications currently scheduled for the April 10 meeting.

**Motion to cancel the April 10, 2012 Zoning Board Meeting made by Mr. Ciovacco, seconded by Mr. LaBay.**

**3. Adjournment**

**Motion to adjourn made by Mr. Ciampetti, seconded by Mr. Ramsdell at 9:00 p.m.**

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco – approve

Jamie Pennington – approve

Robert Ciampitti – approve

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