

**City of Newburyport
Zoning Board of Appeals
April 12, 2016
Council Chambers**

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)
Duncan LaBay (Secretary)
Jamie Pennington
Richard Goulet

Absent:

Renee Bourdeau (Associate Member)

2. Business Meeting

a) Approval of Minutes

No minutes to approve

B) 9 School Street (2015-028) – Amend decision for scrivener’s error

Mr. Ramsdell mistakenly referenced going before the NHC in the decision of application 2015-028.

Mr. LaBay made a motion to correct the scrivener’s error and Mr. Goulet seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – absent
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – absent

3. Public Hearings

Public Hearing #1, 2:

2016 018 Address: 300-302R Merrimac Street Dimensional Variance

Split existing lot and construct three residential buildings requiring variances for lot area, open space, height, frontage, and side yard setbacks

2016 019

Address: 300-302R Merrimac Street

Special Permit

Allow multi-family use (Use #103) for eleven residential units

Request to continue to 4/26/16.

Motion to approve application 2016-018 and 2016-019 made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – absent

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – absent

Public Hearing #3, 4:

2016 023

Address: 15 Howard Street

Special Permit

Demolish existing single family home to allow for construction of a new single family home

2016 030

Address: 15 Howard Street

Special Permit for Non-conformities

Rebuild pre-existing non-conforming home where the construction will exceed 500sf

Applications continued from 4/4/16.

Tonight the Board was only speaking about the Special Permit under DCOD and whether they would vote to hire a consultant to assist in review of the application.

Mr. Goulet commented that he had time to review all materials and was comfortable going forward without consultants. The rest of the Board agreed.

Request to continue to 5/10/16.

Motion to continue applications 2016-030 and 2016-023 made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
 Robert Ciampitti – absent
 Duncan LaBay – approve
 Jamie Pennington – approve
 Richard Goulet – approve
 Renee Bourdeau – absent

Public Hearing #5, 6, 7, 8, & 9:

2016 005
Address: 4 Hillside Avenue and 15, 16, 17, 18, and 19 Cottage Court
Special Permit
Construct multi-family homes with bonus units and with reduced separation between buildings; and construct a private parking lot

2016 006
Address: 12-14 Cottage Court
Special Permit
Construct a private parking lot

2016 007
Address: 18 Cottage Court
Dimensional Variance
Construct a lodging house with insufficient lot area, side, and front setback

2016 008
Address: 18 Cottage Court
Special Permit
Permit a ten room lodging house (Use #106)

2016 040
Address: 4 Hillside Avenue and 15, 16, 17, 18, and 19 Cottage Court
Dimensional Variance
Variance from front yard setback where front porch encroaches on Cottage Court and Hillside Avenue

This application was continued from the 1/20/16 meeting. Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman represented the applicants, Hillside Living LLC. Since the last meeting, the applicants have worked with neighbors on concerns and are in the process of appearing before the Planning Board for the site plan review process and VI-C Special Permit Process. They are returning to the Planning Board on 4/20/16 to review a few last details before closing out.

David Hall presented changes since the last ZBA hearing by showing a short video. He stressed the “carbon trifecta” and a DOER grant commitment. The project is aggressively pursuing net zero or net positive. Changes in the video included parking on Cottage Court as mentioned above, driveways are hemlock as well as the fireman’s walk. More trees and vegetation have been added. The barn will hold compacting indoor dumpsters for trash and recycling. The silo is gone. The community patio/terrace was

reduced in size. An outdoor fire pit was eliminated. All 1st floor Cottage Court and Cottage Court Ext. units can be adapted to be handicap accessible. There is a new segregated traffic plan where only emergency vehicles can traverse space between Cottage Court and and Route One to eliminate cut-through. Hillside Ave. and Cottage Court will be improved with granite sidewalk. Mr. Hall went over an attached list of conditions to be added to each approval to accommodate neighbor requests.

Changes made that necessitate additional relief from the Board include; 1. Removing the parallel parking from the private land along Cottage Court and placing it in private driveways between the residences. This has resulted in a shifting of the residential units closer to the street and now several of the covered porches encroach on the front yard setback. 2. The Cottage Court Extension units have been moved and now slightly encroach into the setback. Topography and soil condition are the argued hardship for the variances requested here.

Cornelius Murphy of Whole Systems Design, a small design firm in Vermont, presented the design of landscape and agriculture, aka 'permaculture.' The company takes what exists and makes it function at the highest value. In this case they would be designing a dense multifunctional urban environment where they would be farming vertically to maximize space and yield. Based on the native ecology for this site, they would create plant guilds providing mutual benefit. Some features include; interior space play elements, annual production/raised beds, mounding, berries, multipurpose hardwood and nut trees, berry bushes, fruit trees (apples/pears/paw paws), hearty kiwis and medicinals. They would also work to provide screening for neighbors on Cottage Court.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Pam Jones, 49 Pond Street

David Hall has been great about neighbor concerns. Permaculture next door will be great. She loves the changes and looks forward to moving forward.

Tom Joy, 51 Pond Street

Mr. Joy clarified with the applicants on the restriction on rental for 40 years. As part of the Density bonus provision, 25% of the units are restricted to rental for 40 years. Traffic flow was a concern and has come a long way including parking.

In Opposition:

None

Questions from the Board:

Mr. Pennington asked about the number of rental units and banker financing as its an unusual situation. Ms. Mead responded that this is a rental project. There may be some units sold down the road. It will be conventional financing and will meet requirements of the Ordinance. Mr. Hall commented that the intent is not to sell. Units on Hillside Ave (5 townhouses) would be sold if needed down the road. Mr. Pennington would be ok with a condition addressing the long term.

Request to continue to 5/10/16.

Motion to continue applications 2016-005, 2016-006, 2016-007, 2016-008, 2016-040 made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
 Robert Ciampitti – non-voting (arrived late)
 Duncan LaBay – approve
 Jamie Pennington – approve
 Richard Goulet – approve
 Renee Bourdeau – absent

Public Hearing #10:

2015 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 ¼" instead of 126' 10" as shown on the approved plans

Application continued from the 1/26/16 and 3/22/16 meetings. Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman represented Lime Devel. LLC. The applicant is seeking a Special Permit for Non-conformities to allow a building height with front and side elevations of 127'-5 ¼" instead of 126'-10" as shown on the previously approved plans. The Board requested the applicants go back and review reducing the height of the structure to the approved application. Ms. Mead presented the options. 1. The top of the roof is taken off so the mean height comes into compliance. The applicants are not considering this option, as it is not aesthetically pleasing at all. 2. A portion of the roof would be taken off, leaving 2' on side gables. Rails would be added to give the look of a 'widow's walk.' 3. Reduce the roof in height by removing pitch and replacing with a shallower pitch and lowering the eaves. Both options that the applicant would consider would require significant work and cost. Structural work would need to be done, removing the roof. Staging and use of a crane would be required. Insulation would be hard to contain. Steel beams would need to be hoisted. The roof area would need to be covered 2-3 weeks while new supports and roof are finished. New insulation and ductwork would be needed. Option 2 is estimated to cost \$120K and option 3 to cost \$133K. The applicants request The Board reconsider the original application as built, as the mean height is just 14" different from the approved.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

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

At the beginning of this project a number of preservationists were in support. The applicants have three strikes. 1. The impression was given the building would be restored and it was destroyed. 2. They just could not get the windows correct. Even now they are not in place. 3. Building according to measurement needs to be lowered 2.4'. This will send signal to other developers that they can get away with this. Please reaffirm the original decision.

Linda Cooper, 70.5 Lime Street

Has lived in her home since 1989. Developers come in and present a project and it changes. This needs to stop. The roof should be brought down and windows fixed. She also commented that they have been holding Open Houses and she thought this was not allowed to happen.

Robert Levins, 84 Federal Street

He has been a builder himself and found it hard to envision how you don't realize the height is increasing.

Howard Fairweather, 4 Parsons Street, Ex-Chair of NHC

He commented that developers should follow rules. No benefit will be had by lowering the building, yet he did not believe 'sorry' should be enough. He suggested a contribution be made to the City in some form to make amends.

Diana Kerry, 33 Temple Street

Has lived in her home 11 years. Development is changing neighborhoods. The ZBA is one of the last lines of defense. This will leave floodgates open to future developments.

Judy Mouradian, 46 Liberty Street

If the ZBA does not vote to take the height down, they should be fined to send a powerful message.

Mr. Ramsdell commented that the ZBA does not have the authority to fine.

Mayor Donna Holaday, 6 Parsons Street

The Mayor has spoken passionately before on this. Too many of these situations have happened. This is not a de minimus change. It ruins the neighborhood and they did not follow the plan. It is unfortunate the ZBA does not have authority to fine. The Board should adhere to the original vote taken.

Stephanie Niketic, 93 High Street

She sent a message to the Board pointing out serial violation of city's ordinances. Windows are still not brought back completely. The building commissioner sent instructions that marketing could not happen and there was an open house. The developer has offended before on Hancock Street, he is a serial offender. Please deny the request.

Jeanette Isabella, Lime Street

There has been meeting after meeting that neighbors have attended. This has to stop; enough is enough.

Bill Harris, 54-56 Lime Street

Has lived here since 1969. He feels sad and frustrated at the quality of the neighborhood. Dozens of residents have complained about this building harming the historic district. This was one of the last approved projects allowed with a 'connector' between two homes. The windows and doors visible from the public street are not done. The zoning ordinance says the Board should grant approval sparingly. We are creating inauthentic buildings and losing integrity of the neighborhoods. The ceiling heights increased without coming back to board and they knew the building was too high. The developer either knew he was going above the permitted height or was in reckless disregard. He suggested the applicants ask for a continuance to negotiate with the City on a contribution to benefit the City and neighborhood.

Linda Miller, 20 Ship Street

Agreed with opposition. The Board needs to deny. In the future, developers will pay more attention.

Ms. Mead addressed a few items.

-The property neighbors brought up on Hancock Street, referring to removing sidewalks; the sidewalk was on private property.

-Ceilings increased from 8'6 to 9'; this difference was outlined at the last hearing.

-Windows have all been put in.

-The cease and desist letter applies to the new structure only as they await an occupancy permit.

-The developer is taking this very seriously. It has been an expensive endeavor and he is not taking it lightly.

-If a fine could be given, the maximum fine by law would be \$300/day by the building inspector.

-Donation to the Preservation Trust and Unitarian Church steeple fund of \$15k each were offered. He is not looking to walk away scot-free.

Questions from the Board:

Mr. LaBay asked if every window approved last May is now in. The applicant responded, yes. Though the rear windows may have been a bit off. The building inspector approved them.

The Board debated whether the current photo looks like the approved plans. Something was off, the sizing looked different. The applicant admitted the kitchen window is different than what was approved. Mr. Ciampitti was fixated on this issue. It is clear the window is different and a departure from what was approved. Ms. Mead commented the window would be changed. Mr. LaBay commented that the windows look taller and thinner in photos than on plans.

Mr. Pennington was reluctant to comment on the differences.

Deliberations:

Mr. Ciampitti was moved by words from Mr. Fairweather. It is agreeable that \$100K+ is a significant expense. He was inclined to signal to applicant to consider a donation of some kind, though not comfortable with the ZBA negotiating. He would invite the parties to discuss and report back to the Board. The options presented were not favorable. The applicant either knew or should have known what was happening.

Mr. Ramsdell concurred. He was not inclined to vote in favor of any alternatives. If the applicant is agreeable to talk to the City and come back to the Board, that would be favorable. All parties were happy at earlier points and it is fascinating how it became such a disaster.

Mr. Goulet concurred. A strong message needs to be sent.

Mr. LaBay agreed with the fascination. He agreed with his colleagues that they couldn't support tonight. The 3rd option was more palatable, but still not there. He credited the applicant for attempting to be in compliance with options presented. He was amenable to a continuance for the parties to discuss.

Mr. Pennington generally agreed with his colleagues. Options presented were not the right solution. Lots of support was had and promises not met. This is distressing. The silver lining is that this has created more dialogue on preservation.

Mr. Ramsdell encouraged the applicants to speak with the Mayor.

Requested a continuance to 5/24/16.

Motion to continue application 2016-007 to 5/24/16 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 – absent

The meeting adjourned at 9:42pm

Respectfully submitted, Katie Mahan - Note Taker