

**City of Newburyport
Zoning Board of Appeals
May 14, 2019
Council Chamber**

The meeting was called to order at 7:15 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Renee Bourdeau
Edward Cameron
Mark Moore

Absent:

Maureen Pomeroy

2. Business Meeting

a) Approval of Minutes

Minutes of the 4/23/19 meeting

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

Votes Cast:

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

b) Request for Minor Modifications – 20 Dove Street (2017-035)

Steven Lewis, 11 Windward Drive, Newburyport Properties presented the minor modification. The application was approved with a single car garage as part of the plan. After construction was underway, it was found that that the site was too tight. The applicants are proposing to remove the garage. Four parking spaces will remain on the property.

Ms. Bourdeau made a motion to approve the request for minor modification and Mr. Moore seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – approve
Maureen Pomeroy – absent

Edward Cameron – approve
Mark Moore – approve

3. Public Hearings

2018 064b

Address: 193 High Street

Special Permit for Non-conformities

Remove existing later added shed/garage and construct new attached 3-bay garage

This hearing is continued. Attorney Lisa Mead of Mead, Talerman & Costa LLC, 30 Green Street presented the application. At the last hearing the board requested that more information be provided on the proposed garage addition, including details of finishes, a revised site plan, and rendering from High Street. The request tonight is to demolish a shed at the rear of an existing structure and add a three bay garage for storage of a hearse and two family cars.

Steve Sawyer of The Morin-Cameron Group Inc. went through plans. A three bay garage is proposed with space for cars to pull in and back out. Plans showed a paved area for three parking spaces and turn around area.

Attorney Mead noted that the applicants are ok with a condition on the proposed light fixtures as noted in the staff report. Potential drawings were provided. The garage would have asphalt shingles and hardy plank siding. A rendering of the property from High Street was also presented to highlight that the garage would be minimally seen from the street.

The addition of the garage will not create new non-conformities. The addition of the garage will not be substantially more detrimental to the neighborhood. A 285 s.f. shed is being removed, the proposed addition is totally in the back of property, it is of quality design, and can barely be seen from High Street. It does not change use of the property. There have always been two family cars and one vehicle for the business. This use would not be extended.

Attorney Mead noted that Stephanie Niketic has proposed an alternative design to the Board. The roof pitch is a little different and they would prefer to go with Mr. Keery's design as proposed.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Attorney Tim Schofield, on behalf of Joe & Nicole Devlin, 3 Dexter Lane

Attorney Schofield submitted a letter of opposition to the Board detailing that the proposed garage is an unlawful attempt to reconstruct an abandoned use. A barn was torn down four years ago that served the same function as the proposed garage. This is an attempt to reconstruct the barn, which is not permissible by means sought here tonight. If a non-conforming use ceased to be used for period of two years or more, it is abandoned and one cannot seek an extension of use. The barn was torn down four years ago and is not permitted now as a matter of law. The Board does not have the authority to grant a SPNC and case law supports this.

Attorney Bill Sheehan, on behalf of Brin Stevens, 195 High Street

Mr. Sheehan's client had objections to a portion of the proposed construction involving the parking lot, specifically the turnaround area, and parking spaces. With respect to the structure, he urged the Board to consider the following conditions; plantings on the rendering are preferred instead of a fence from High Street to the end of the driveway of Ms. Stevens, the fence on the west side be the same construction materials as on the east side, no windows on west side of the structure, shrubbery be planted to shield the structure, parking area not to be used as parking, and be seeded with grass.

Brin Stevens, 195 High Street

Concerns included; property in the rear not being used as residential, barn not used previously for business, historic barn voluntarily demolished, parking did not extend behind the funeral home until barn removed, no permits to change residential use behind to business use. She also commented on the design of the proposed garage and noted that good design demands discipline and the importance of harmony. Plans lack these points and there is little relationship to the surroundings. It is very visible from public view. It will set a precedent. An elegant solution would be to rebuild the carriage barn.

Eric Goodness, 189 High Street

Thanked Attorney Schofield. The barn was a case of demolition by neglect. The ordinance is in place to help the City expunge non-conformities as they elapse. He is against the structure and parking.

Nicole Devlin, 3 Dexter Lane

Concerns included; assumed parking in the lot would stop, but this did not happen, the applicants do not want to follow rules, the applicants have had no communication with neighbors, she does not believe what is permitted will happen.

Stephanie Niketic, 93 High Street, Newburyport Preservation Trust

Concerns included; both Linda Smiley and Linda Miller believe the proposed garage is out of scale and context and will be seen from the public way, second story floor space is suggested. An alternative garage structure was presented with the key difference in roof pitch and height. She also noted the garage could be rebuilt to face High Street like the historic barn that was demolished. The barn demolition was intentional and contentious. The new structure will be substantially more detrimental to the neighborhood. As a resident she is mystified and embarrassed that this application is being heard again. She also commented that no City solicitor was present, as there is now a lawsuit.

Joe Devlin, 3 Dexter Lane

Concerns included; vocal opposition, expanding three parking spaces in the future, lights will not be blocked by fence due to topography, the garage addition is not lawful. Non-conforming uses are meant to be weaned out over time and brought into the current use of the neighborhood.

Questions from the Board:

Mr. Ciampitti asked Attorney Mead if she would like to address what we heard. Attorney Mead entirely disagreed. This use has never been abandoned. The shed started to be used in place of barn. This has been a funeral home since 1926 and they have had a hearse on property taking corpses in and out of the back of the home.

Chair Ramsdell asked if Attorney Schofield wanted to speak. Section IX-B of the Zoning Code states the pre-existing non-conforming structures or uses may be extended or altered upon the issuance of a special permit for non-conformities. This is clearly a request to reconstruct a previously existing

structure serving the same use. Case law and the Massachusetts Zoning Enabling Act were referenced (and are detailed in Attorney Schofield's letter of opposition).

Chair Ramsdell re-iterated that the barn was torn down over two years ago. He questioned whether the current application was adding on to the house or replacing the barn.

Mr. Moore asked whether the barn had been attached to the house. It was not. Attorney Mead commented the house is not merely a funeral home, but also a residence. Residential vehicles are to be housed in the garage addition. The applicants can build onto a pre-existing non-conforming structure. The ordinance allows extension on this structure for this use.

Chair Ramsdell asked if the proposed pavement behind the garage would be asphalt. It would be.

Ms. Bourdeau asked why there was a change in proposal. At the previous meeting a turnaround area was discussed and now there is parking for three more cars in addition to a large turnaround area. There was some discussion on reducing the width of the proposed turnaround if the Board preferred. Ms. Bourdeau noted that a lot was heard from abutters on aesthetics of garage. She asked if they would consider a barn reconstruction. Attorney Mead responded that the applicants want a garage attached to the house.

Chair Ramsdell asked Attorney Sheehan to re-iterate the conditions he stated earlier.

Deliberations:

Mr. Cameron commented on the legal arguments made. He was concerned that Attorney Schofield thought the Board did not have the ability to vote.

Mr. Ciampitti commented that he was in no better position than Mr. Cameron to make the right decision. The Board could move forward and do the best they can under the circumstances. He was moved by Attorney Schofield. He felt as though the Board may not have the authority. We cannot call it an alteration or extension because the barn is no longer in existence. The placeholder of a shed did not hold up for him.

Chair Ramsdell brought up the option of continuing things and asking the City Solicitor for opinion. The only problem is, even with opinion that is just what it is.

Mr. Ciampitti commented that if ZBA had legal opinion, the Board would be using all resources at their disposal.

Mr. Moore agreed.

Ms. Bourdeau commented on seeing Attorney Schofield's letter today for the first time was a lot to take in. She was hung up on the barn use.

Chair Ramsdell commented that the core question is does ZBA have the authority here.

The applicants were willing to continue the application.

Legal opinion sought;

1. Whether or not the barn use as described in the application is abandoned under IX-B of the Zoning Ordinance
2. Whether or not ZBA possess authority to move forward

Attorney Mead never got copy of Attorney Schofield's letter and would like to respond to the planning office formally.

Motion to continue application 2018-064b to 6/11/19 made by Mr. Ciampitti, seconded by Ms. Bourdeau.

The motion passed unanimously.

Votes Cast:

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

2019 013

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

Special Appeal

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

The applicant requested to withdraw the application without prejudice.

Motion to withdraw application 2019-013 without prejudice made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

2019 028

Address: 263 Water Street

Special Permit for Non-conformities

Renovation and construction of small addition on pre-existing non-conforming lot

2019 029

Address: 263 Water Street

Special Permit

Demolition of more than 25% of exterior walls of a later added addition to the rear and side

This hearing is continued from 4/23/19. Mr. Ciampitti recused himself due to a client conflict. Attorney Lisa Mead of Mead, Talerman & Costa LLC, 30 Green Street presented the application. David Keery,

architect was also present. The Board asked the applicants to address a few things at the last meeting. First, plans submitted to the Board were not the final version NHC had approved. The applicants have provided these plans. Second, the Board suggested working with the abutter. As a result, changes to NHC approved plans include; 1. East addition is to be brought back 1.5' allowing for more separation between properties. 2. Due to a concern of losing trees, the addition on that area would be placed on piers in order to compensate, and the second story will cantilever 2' in the rear. Conservation Commission approved and were happy with these plans. There would be a slight window change with the cantilever on the river facing side, North elevation. There would also be a removal of one window on the South elevation. A letter from the concerned abutter noted he was satisfied with changes that were made.

Jamie Tuccolo, Deputy Director of DPS noted that the street tree and sidewalk ordinance would not apply here as there was no place for additional trees and the existing sidewalk is in good shape.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Jan Schwarte, Applicant

The applicants fell in love with the house nine months ago want to save it. They have an appreciation for historic buildings. The historic nature is a key component of this restoration, while maintaining a design that is pleasing. A significant investment has been made already, just in plans for restoration. If this does not go through, the owner could sell to developers or the home could continue to be in a state of disrepair. He felt it was important to convey their view on the project tonight.

Holly Jenness, Walter Long's partner, 265 Water Street

Noted they are happy with the updated plans and have reached an agreeable compromise. The home will be functional and honor the historic structure.

In Opposition:

Sigall & Peter Bell

An email letter of opposition was submitted to Mr. Ciampitti who shared it with the Board before recusing himself, as The Bell's are clients of Mr. Ciampitti.

Questions from the Board:

Chair Ramsdell asked with the changes made, if they will get blessing from NHC. Attorney Mead noted that NHC is advisory to the Board and that changes are mostly to river side of the house.

Deliberations:

Mr. Cameron understood what the applicants are trying to do and they have the support of NHC. Abutter conversations have happened, which is good.

Chair Ramsdell commented that if the windows were not on the river side, he might ask NHC to re-advise.

The rest of the Board agreed.

Motion to approve application 2019-028 made by Mr. Cameron, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2019-029 made by Mr. Cameron, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

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

2019 030

Address: 3 Arlington Street

Special Permit for Non-conformities

Move existing carriage barn forward, connect to home, and convert to in-law apartment. Construct approximately 132 s.f. single story addition to rear of carriage barn and 72 s.f. connector between barn and house. Demolish single-story section at rear of house and construct 2-story addition over existing footprint.

2019 031

Address: 3 Arlington Street

Special Permit

Convert existing carriage barn to in-law apartment

Attorney Lisa Mead of Mead, Talermin & Costa LLC, 30 Green Street presented the application. She noted the applicants have already been to the Historical Commission. It is outside of the DCOD, but they are moving a historic barn and changing the roofline. NHC has approved the presented plans. Scott brown, architect explained that the plan was to move the existing barn forward and connect it to late Victorian residence. Work would center on the back 1/3 of house. An existing single story sunroom not original to house, with no foundation would be demolished and rebuilt as a two story adding additional square footage to the back of the house and a master suite. The barn would be converted to a 1.5 story in-law apartment. The barn would have added dormers, windows, and a small one-story addition behind.

Attorney Mead explained this is a pre-existing non-conforming property in the R2 zoning district with regard to lot area, frontage, lot coverage, open space, front setback, and rear setback (to be brought into compliance), side setbacks (to be slightly improved). Exacerbating lot coverage slightly. No new non-conformities would be added and the proposed project would not be substantially more detrimental to the neighborhood. The architecture would be in keeping with the existing house and neighborhood. As far as the in-law apartment, a special permit is requested. It would be occupied by Mrs. Stone, whose son and family would live in the main house. The in-law is proposed to be 895 s.f.

with new construction not exceeding more than 700 s.f. There is sufficient parking for three cars. The applicants intend to follow in-law requirements with the City.

As far as street trees and sidewalks, a brick sidewalk exists and is in good shape. There is no place to put a new street tree. If triggered, there is nothing to be done.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Ms. Bourdeau asked if the garage structure is historic. It is on the cusp of 75 years old. The applicants went to NHC to be safe and they appreciated it. She asked if the frame is in good shape for moving it. Yes, it appeared to be. Ms. Bourdeau also clarified that the footprint of the existing garage was considered when determining the new construction square footage of the in-law. It was.

Mr. Moore asked if materials used would be consistent with the existing house. Yes, including some windows removed from the existing house being moved to the barn/in-law.

Chair Ramsdell asked if the Board wanted to condition if the tree and sidewalk and tree ordinance is triggered, DPS input would be requested.

Mrs. Stone noted that the City actually planted two trees today out front.

Deliberations:

Ms. Bourdeau thought the proposal reasonable and NHC has approved plans.

The rest of the Board agreed.

Motion to approve application 2019-030 made by Mr. Moore, seconded by Ms. Bourdeau.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2019-031 made by Mr. Moore, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

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

2019 033

Address: 342 Merrimac Street

Dimensional Variance

Construct new dwelling within the required front and side setback

Attorney Lisa Mead of Mead, Talermin & Costa LLC, 30 Green Street presented the application. The applicants are proposing the construction of a new residence at rear of property. The existing home on the property is a two-family that is proposed to be restored back to a single-family as well as build the proposed single-family on the lot. The plans require a VI-C Special Permit from the Planning Board to have more than one residence on a lot and the applicants will also need to bring plans to the Historical Commission and Conservation Commission. The property is located in the WMD district. Zoning Enforcement is treating the existing structure as a single family, so it does meet side yard setback.

The existing house was built in 1785, and is a contributing property to the Newburyport Historic District. The home has a lot of history. In the 1980s it was converted to a two-family. Historically there was a row of houses along Merrimac Court as seen in historic photos. In preliminary meetings with planning board, they the proposed the structure on Merrimac Court closer to the street as presented, requiring a variance from ZBA to be more historically accurate. Variance hardship argued was that the property is situated between two public ways, the location of the proposed house is to maintain the streetscape on Merrimac Court as preferred by Planning Board, the lot is oddly shaped lot with elevation change.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Sam Kimball, 344 Merrimac Street

Mr. Kimball attended to be informed. He would like to do something similar on his lot in the future.

In Opposition:

None

Questions from the Board:

Ms. Bourdeau clarified elevations. She also asked if the existing garage was used for anything other than storage. It was not and the applicants would be willing to condition this. Ms. Bourdeau also asked why the applicants did not request a lot split. The applicants noted that much more relief would need to be requested, though that would be a preference over the VI-C.

Chair Ramsdell asked if the applicants would have any problem conditioning that both structures would be single family. They would not have a problem with this. He also noted that he did not believe the tree and sidewalk ordinance is triggered in this case. Chair Ramsdell noted that the applicants still have to go before Planning Board and Conservation Commission as well as Historical Commission. Assuming the Board is in favor, he asked if the Board would want continue in case of tweaks. The applicants noted

they would prefer not to. The Board agreed they would be approving the location/footprint. If anything changes, they would need to come back.

Deliberations:

Ms. Bourdeau commented that she was not a fan of this type of application. Hardship criteria are hard to meet and she felt it a self-imposed hardship. A two-family exists and is a reasonable use.

Mr. Ciampitti commented on the balance of historic preservation importance and that this comes at a cost. While he recognized Ms. Bourdeau's point, accomplishing preservation in the reality of today's world is difficult. He was moved to look past the self-inflicted hardship.

Mr. Cameron agreed with Mr. Ciampitti. The variance is needed because of a Planning Board suggestion to move the house. This is in support of historic preservation.

Chair Ramsdell agreed. There was enough in lot shape and topography for hardship. The idea of historic preservation was convincing, though he did understand Ms. Bourdeau's point.

Mr. Moore shared Ms. Bourdeau's thoughts, but was swayed by Mr. Ciampitti's explanation.

Motion to approve application 2019-033 made by Mr. Cameron, seconded by Mr. Ciampitti.

The motion passed.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – no

Maureen Pomeroy – absent

Edward Cameron – approve

Mark Moore – approve

2019 035

Address: 390 Merrimac Street

Special Permit for Non-conformities

Upward extension of pre-existing non-conforming front and rear setbacks

Attorney Maurica Thomas of Mead, Talerman & Costa LLC, 30 Green Street, presented the application. Photos of the pre-existing, non-conforming residence of 390 Merrimac Street in the WMD district were presented. The applicants are proposing a roofline change to raise the roof and build a second story addition. The applicants have been before the Historical Commission already. The property is non-conforming with regard to lot area and open space. A shed will be razed and a portion of the driveway will be changed to grass area, bringing open space closer to conforming. Front and rear yard setbacks are non-conforming and would be extended upward. No new non-conformities would be added. The proposed structure will not be substantially more detrimental to the neighborhood than the existing structure. Elevations were presented. The proposed structure will be consistent with the neighborhood. Razing the shed and converting some of the driveway to grass will bring open space more into compliance.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Ms. Bourdeau asked if they would be demolishing the existing house. The applicants plan to retain the existing structure and raise the roofline. They will be demolishing the shed.

Chair Ramsdell asked what materials would be used. Asbestos siding would be removed. Clapboards and true divided light windows would be used on the proposed structure.

Deliberations:

Ms. Bourdeau thought this would be a nice addition to the neighborhood.

Mr. Cameron agreed. It will balance the high apartment buildings in the area.

The rest of the Board agreed.

Motion to approve application 2019-035 made by Mr. Cameron, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – absent

Edward Cameron – approve

Mark Moore – approve

The meeting adjourned at approximately 10:16pm

Respectfully submitted, Katie Mahan - Note Taker