

**City of Newburyport  
Zoning Board of Appeals  
May 24, 2016  
Council Chambers**

The meeting was called to order at 7:11 P.M.  
A quorum was present.

**1. Roll Call**

**In Attendance:**

Ed Ramsdell (Chair)  
Duncan LaBay (Secretary)  
Jamie Pennington  
Richard Goulet  
Renee Bourdeau (Associate Member)

**Absent:**

Robert Ciampitti (Vice-Chair)

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of the 05/10/16 meeting**

Mr. LaBay made a motion to approve the minutes 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 – approve

**3. Public Hearings**

**Public Hearing #1:**

**2016      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*

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman presented on behalf of the applicants. The application was continued from the 1/26/16, 3/22/16, and 4/12/16 meetings. At the April meeting, they applicants requested modifying the existing permit to allow the new addition to stand. The applicant agreed to a replace window on the original building as approved. The Board had no appetite for plans removing the roof, but was hesitant to approve the modified permit. Mitigation was discussed and it was suggested that the applicants meet with the Mayor. On April 26, a meeting with the Mayor took place. Assuming the Board granted approval of the modified permit, leaving the existing addition, \$40,000 would be given to the City to benefit the affected neighborhoods upon closing of 93 Prospect Street. If the property should sell for \$1 million or more, an additional \$10,000 would be donated. The correction of approved windows would also be done.

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

**In Favor:**

*None*

**In Opposition:**

*Tom Kolterjahn, 64 Federal Street, Co-chair Newburyport Preservation Trust*

*The trust made it clear in their letter to the Mayor that they would not accept any mitigation from the developer. It should go directly to the affected neighborhood. He was disappointed in the amount. He would like more clarity on the agreement about the fence repair. He was happy there was a resolution and believes all have learned from this. The Trust thanks the Board for holding developers accountable.*

*Linda Cooper, 70.5 Lime Street*

*She was disappointed in the amount in comparison to the listing prices of the units. However, it is good the mitigation amount would be put toward the neighborhood.*

*Reginald Bacon, 21 Strong Street*

*Disclosed he works in the preservation field and is a friend of the developer. He felt the settlement figure was too low and sends a message to other developers. He also commented on the Board reading letters aloud into the record. He would speak in favor of such a policy.*

*Mr. Ramsdell commented if letters received in advance, they are sent to Board. If someone hands out copies that evening, everyone gets them. They do make an attempt to read them aloud. Mr. LaBay noted that they try to be aware of letters that they have all seen and sometimes paraphrase, such as with a letter from Councilor Cronin at the last meeting.*

*Mr. Robert Levins, 84 Federal Street*

*He was troubled the ZBA cannot enforce mitigation. This hardship was created by the applicant.*

*Jeannette Isabella, 1 Lime Street*

*She had a strong opposition to the \$40,000, feeling the amount was too small. The developer saved much work for not being held to correct it and should not profit from this.*

*Stephanie Niketic, 93 High Street*

*She asked if the conditions from Attorney Mead could be read aloud. Mr. LaBay read them. Ms. Mead noted the repair of the fence would be worked with Mike Bartlett, Facilities Manager. Ms. Niketic agreed*

*with others that the amount seems low given permanent harm to neighborhood. She thanked the ZBA for catching the window issue and holding ground on enforcing the original permits.*

**Questions from the Board:**

None

**Deliberations:**

Mr. Ramsdell was not sure the amount has direct bearing on the future. Hope lies in the building department looking at everything with a microscope.

Mr. LaBay appreciated the applicant working with the City on mitigation. The ZBA is not in a position to accept mitigation, however it shows a good faith effort to try and resolve the problem. He heard from the community that the financial amount was not enough, but this does not matter to the Board. He was struck by the low number and said anything under \$130,000 would be a plus for the developer. Mr. LaBay noted as a direct result of the project, zoning code was changed.

Mr. Goulet was prepared to accept the number although low. He did not see this as setting a precedent, as the Board takes everything case by case. They must be cautious and firm early on in the future. This was a near perfect storm with the City bearing some responsibility as well.

Mr. Pennington appreciated the Mayor and applicant working together outside of the ZBA. Mitigation was the right approach and the amount is not decision of Board.

Mr. Ramsdell was not bothered by the amount agreed with Mr. LaBay on this project changing the ordinance. This project will also cause City to look more closely at future projects. He commented that the Board can accept mitigation, but cannot state the amount and do not have penalty ability.

**Conditions;**

1. Window replacement on the original building would be completed by the May meeting;
2. Mitigation fee of \$40,000 with a potential additional \$10,000 if the unit at 93 Prospect Street sells for more than \$1,000,000; and
3. Developer will work with City to resolve and complete the fencing between 77 Lime Street and the Brown Youth Center.

**Motion to approve application 2016-013 subject to (3) conditions above 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 – recused

**Public Hearing #2-3:**

**Address: 13 Purchase Street**  
**Dimensional Variance**

*Modification to previously issued variance for change in size of shed and roof line reduction*

**2016 032**

**Address: 13 Purchase Street**

**Special Permit for Non-conformities**

*Modification to previously issued special permit to allow reduction in roof line*

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerma presented the application. In September 2015, the Board approved plans for an attached garage with a room above it, and a shed. Numbers came in larger than anticipated, so plans have been reworked. They removed the 2<sup>nd</sup> floor and dormers and decreased the shed size. Instead of a garage the single story addition would be living space. Aside from a change in height, lot coverage is a greater due to shed becoming larger. This lot is a non-conforming corner lot, surrounded by other non-conforming lots. The neighbors are on board, especially since it is smaller.

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

**In Favor:**

*None*

**In Opposition:**

*None*

**Questions from the Board:**

Mr. LaBay asked about parking. Ms. Mead responded that there is a two car wide driveway that would remain. A fence would be removed allowing the cars to pull in fully and be entirely in the driveway. The driveway fits two cars comfortably, but she did not have exact dimensions.

**Deliberations:**

Mr. Goulet thought there were positive changes; reduction in size and plenty of parking.

Mr. LaBay commented it was almost a de minimus change to what was approved. It was an improvement with height reduction. The corner lot hardship was sufficient.

The rest of the Board agreed.

**Motion to approve application 2016-032 made by Mr. Pennington, 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 – approve

**Motion to approve application 2016-033 made by Mr. Pennington, 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 – approve

**Public Hearing #4-5:**

**2016      041**

**Address: 51 Ashland Street**

**Special Permit for Non-conformities**

*Convert pre-existing non-conforming building to a two-family*

**2016      044**

**Address: 51 Ashland Street**

**Special Permit**

*Convert existing building to a two-family use (#102)*

Lisa Stewart presented on behalf of her mother, Stina who currently owns the home. She would like to purchase the home and convert into a two-family like it was in 1969 when her mother purchased the home. A three-season porch would extend out 6 ft. The 2<sup>nd</sup> and 3<sup>rd</sup> floor would be remodeled.

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

**In Favor:**

*None*

**In Opposition:**

*None*

**Questions from the Board:**

Mr. LaBay asked when the home was converted into a single family. Ms. Stewart explained when her parents bought the home in 1969, they converted it.

Ms. Bourdeau commented that there was a letter to the building inspector about adding a dormer. Ms. Stewart explained they would be adding a dormer, but did not know what it would look like at this point. They needed permitting for a two-family before they went into the design phase.

Mr. Goulet asked which side the dormer would be one. It would be on the right side, looking at the home.

Mr. Pennington asked if there was an obvious configuration for a two-family inside. Ms. Stewart explained the layout as the first floor would be a single floor unit for her mother. The 2<sup>nd</sup> and 3<sup>rd</sup> floor have a second entrance, and need a little work to make it a full unit again.

Mr. Ramsdell asked about the dormer and if should be the length of roof. They imagined it would run the length of the side if amenable and within the existing ridgeline.

The applicants were amenable to having the permit for a two-family use approved and coming back with more specific plans for the SPNC. They have spoken to various neighbors and sent letters.

Mr. LaBay noted that in the SPNC and SP applications “use variance” was referenced and should not have been.

**Deliberations:**

Mr. LaBay had no problem in turning the structure back into a two-family. The applicants made a reasonable request and it looks like two-family. He would like to see plans for alterations to the structure.

Mr. Ramsdell could approve the use. The SPNC can be continued once plans and structure changes are determined.

The Board concurred on a continuance of the SPNC and approving a two-family use.

The applicants requested a continuance for the SPNC to the 7/26 meeting.

**Motion to continue application 2016-041 to 7/26/16 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 – approve

**Motion to approve application 2016-044 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 – approve

**Public Hearing #6:**

<b>2015</b>	<b>042</b>
<b>Address: 38 Harding Avenue</b>	
<b>Dimensional Variance</b>	

***Construct an attached garage within the required side yard setback***

Antony and Jessica Yuhasz presented the application. The applicants wish to build an attached garage that would be within 6 ft. of the property line. There would be room for two cars. Surrounding properties are also non-conforming. The home is also not centered on the lot. They submitted a letter to the direct abutting neighbor.

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

**In Favor:**

*None*

**In Opposition:**

*Thomas Murphy, 31 Harding Avenue*

*Questioned whether there would be an apartment above the garage. There would be a bedroom and bath, but not an apartment. Mr. Murphy was in support.*

**Questions from the Board:**

Mr. LaBay asked about the layout above the garage. There would be a bedroom with master bath. He referred Mr. LaBay to submitted plans. Mr. LaBay asked if they had talked with neighbors. They had.

Mr. Pennington noted an in-law addition on the abutting neighbors home 3' from the property line. The buildings would be 9' apart.

Ms. Bourdeau asked if the addition would be 3' taller than existing home. Yes, it would be.

Mr. Goulet asked about the garage doors that were mentioned in the staff report. The applicants explained that they would like to do wooden doors, hinges, trim, etc. The plans did not show this.

**Deliberations:**

Mr. Goulet commented that the hardship was argued.

Mr. LaBay explained that the lots in this neighborhood are small. There are many changes, new construction, additions, etc. happening currently. It would be close to the neighbor's home, but neighbors are in favor. Hardship was argued.

Mr. Pennington agreed.

Mr. Ramsdell agreed. 9' separation in other parts of the City is not excessively tight.

**Motion to approve application 2016-042 made by Mr. Goulet, seconded by Mr. Pennington.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell— approve

Robert Ciampitti – absent

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – approve

**Public Hearing #7:**

**2016      043**

**Address: 8 Ashland Street**

**Dimensional variance**

*Construct single family home within the required front yard setback*

Rob Germinara, 2 Ashland Street presented the application. He grew up at 11 Ashland Street and currently serves as trustee for BART Realty Trust. There are wetlands to the rear of the property. The applicant received an Order of Conditions from the Conservation Commission to construct the home on the parcel. However, the DEP issued a superseding order requiring the applicant to shift the structure closer to the front of the parcel so that it is further from the wetland. Working with Steve Sawyer, Everett Chandler, and Eileen Graf, the applicants have a final plan for the property. The applicant is proposing to construct a single family home on the vacant parcel. The home will meet all of the dimensional requirements for the structure with the exception of the front yard setback, which is proposed to be 10.1' rather than the required 25'. Hardship argued was lot shape and topography, as there are wetlands. The structure will not be more detrimental to the neighborhood.

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

**In Favor:**

*None*

**In Opposition:**

*None*

**Questions from the Board:**

Mr. Ramsdell asked if the front setback is the only setback requiring a variance. Yes, the structure would meet all other criteria. The majority of the property is wetlands, but there is more than enough room to build.

Ms. Bourdeau questioned a deck location that hung partially over wetlands. Mr. Germinara responded that they have been working with DEP and they have reviewed plans. An existing rock wall will be moved to separate wetlands. Ms. Bourdeau was concerned that DEP did not submit a letter endorsing the approved plans.

**Deliberations:**

Mr. LaBay did not think the DEP/deck question was terribly relevant. The applicant provided reasonable rationale for the site of the building with shape and topography. Much of the lot is wetlands.

Mr. Goulet agreed.

Mr. Ramsdell agreed. If this becomes a DEP problem, DEP will have to work to remedy it.

Mr. Pennington and Ms. Bourdeau agreed.



**Motion to approve application 2016-043 made by Mr. Goulet, seconded by Mr. LaBay.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell – approve

Robert Ciampitti – absent

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – approve

**The meeting adjourned at 8:55pm**

**Respectfully submitted, Katie Mahan - Note Taker**