

**City of Newburyport  
Zoning Board of Appeals  
June 14, 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 05/24/16 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      012**

**Address: 1 Kent Street**

**Sign Variance**

*Erect a free-standing externally illuminated sign and (2) canopy signs fir existing gas station*

Michael Lowry of Newburyport One Stop presented. The Board wished to see changes in sign design. Mr. Lowry presented updates made to the free-standing sign. The applicant proposed the removal of

this image from the freestanding sign and some reordering of the lettering to accommodate this redesign - a representation of the change was submitted. In discussion with the Board the applicant agreed to make the same change to the canopy signs so that they reflected the same design as the freestanding sign (excluding the gas pricing and wording "Regular Gas" that will appear on the freestanding sign).

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

**In Favor:**

*None*

**In Opposition:**

*Rob Germinara, 2 Ashland Street, Caldwell's Corner*

*Mr. Germinara is involved in a lawsuit where the crux is related to the title. He requested the Board continue the hearing until the suit is over in approximately six months.*

**Questions from the Board:**

Mr. LaBay asked why one sign was changed and the others left alone. Mr. Lowry thought most of the opposition was on the freestanding sign only.

**Deliberations:**

Mr. Pennington thought it an improvement, but still great. The title matter is not a ZBA issue. Prepared to support.

Mr. LaBay was where he was before. The free-standing sign is better. Caldwell's Corner had a better sign. He was ok with the free-standing sign, but hung up with canopy signs.

Ms. Bourdeau agreed with Pennington.

Mr. Ramsdell commented the free-standing sign made a major step forward. Canopy signs were not much of a problem.

Mr. LaBay commented that signs should be used as identification of a business versus sign for advertising. These are not attractive. If canopy signs match the freestanding sign, he would be accepting.

The applicant agreed.

**Motion to approve application 2016-012 updating free-standing sign as revised, and canopy signs to be the same as the top 2/3 of the updated free-standing sign made by Mr. LaBay, seconded by Mr. Pennington.**

The motion passed unanimously.

**Votes Cast:**

Ed Ramsdell— approve

Robert Ciampitti – absent

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – recused

Renee Bourdeau – approve

**Public Hearing #2-3:**

**2016      018**

**Address: 300-302 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: 300-302 Merrimac Street**

**Special Permit**

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

This hearing was continued from the 2/23/16 meeting. Nick Cracknell presented on behalf of the applicant. Craig Pessina, Mark Griffin, Jim Lagoulis and Steve Sawyer were also present. The applicants are looking to subdivide into two lots, building 11 townhouse units on the smaller lot. This will allow for the long-term preservation of Newburyport Yacht Club. Improvements would be made to the club and neighborhood. After an intensive collaboration with the neighborhood, a list of stipulations was established. Some of the main issues included;

- Traffic impact – After a traffic study submitted by a consultant, it was concluded that there would be no significant impact on volumes and queuing. Enhancements to sidewalks would be made as well.
- Boat storage plan – The plan is have 135 boats stored on the remaining lot. If necessary the yacht club would pay to have more boats stored elsewhere.
- Future expansion of the yacht club and impact on boat storage and view – an example of future expansion was shown
- Rear elevation/building architecture – The architect gave the building another run-through adding texture by adding bay windows that project out and garage door changes.
- Neighborhood on the streetscape of Woodland Street – The abutter concerned with this worked with Mr. Lagoulis and Mr. Pessina. An improvement plan is being worked on with a landscape architect to include vegetation management, low level fencing in the boat storage, way finding signs, among other improvements. The next step is to appear before the Conservation Commission.

In the last eight weeks the applicants have continued to look at additional improvements with abutters. A land transfer to widen the driveway is in process, where curbstones and a retaining wall would be put in on abutter land. The building height was reduced to just over 28'. They widened the building and raised to 3 steps out of the flood plain. A sign on Merrimac Street would be adjusted to 2/3 smaller.

The use would not be more detrimental to the neighborhood and would not overburden any public systems. The project would enhance operations of the yacht club and make public improvements. Lot shape, soil and topography were argued as hardship for the dimensional variance.

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

**In Favor:**

*None*

**In Opposition:**

*None*

**Questions from the Board:**

Mr. Pennington asked for clarification on the lowered height of the building. Height was changed before the Feb 23<sup>rd</sup> meeting, so the numbers on the plans are correct. Mr. Pennington was concerned with the traffic study and configuration of the intersection at the driveway and Woodland Street. Mr. Cracknell commented that the intersection alignment would be looked at as part of the Planning Board site plan review. The traffic consultant had not raised this as a concern at all. After some discussion with an abutter, it seems the project may actually mitigate some current issues.

Mr. Pennington also asked for clarification on the elevations changes. There would be bay windows on the 2<sup>nd</sup> floor and recessed garage bays.

Ms. Bourdeau asked about the #8 stipulation that stated they would widen the drive to 20' – this is a typo and should read to 22'. There was discussion 'building envelope' permitted without return to ZBA. Mr. Cracknell attempted to clarify that this would be for something like a maintenance building.

**Deliberations:**

Mr. Goulet had a level of comfort that they still must go before the planning board. He was comfortable with the variance and special permit case.

Mr. Pennington commented his concerns were mainly height and the intersection/traffic impact at Woodland Street.

Mr. Ramsdell commented that the site plan review is intense.

Mr. LaBay commented on the future building envelope. There are sufficient protections in place. He was pleased by lack of negative public testimony. The applicant provided argument for variance.

Ms. Bourdeau had one last question on the Merrimac Street sign and changes to it. Changes to the sign would be a subsequent filing.

**Motion to approve application 2016-018 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

**Motion to approve application 2016-019 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

**Public Hearing #4:**

**2016      022**

**Address: 9 School Street**

**Dimensional Variance**

*Modify existing dimensional variance to allow the construction of a 12'x20' detached garage*

Richard Kallman attorney based in Ipswich, MA presented. Mr. Kallman was not part of the initial variance granted, or part of the first hearing on this subsequent variance request. This was an unusual situation in his from his view. He believed the same 'test' that got the Board to approval of the initial variance would apply here. The location of the existing structure and unique shape of the lot were argued initially. In addition, the applicants would be not putting the land to the best use. But for this approved variance, this property would qualify for a garage. There are many homes with a dwelling so large it fills the lot not leaving room for garage.

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

**In Favor:**

*A letter from neighbors submitted in February stated there were no objections.*

**In Opposition:**

*Lisa Mead, 11 School Street represented Jack and Laura Bois. She noted that the Board requested a submittal of new materials two weeks before the meeting and this did not happen. A scale plan for the garage was not submitted. The plan for lot split was presented the hand drawn garage. She could not see how this plan for variance could be accepted. The foundation was poured after a cease and desist was issued. Her client felt pressured that the 'by right' plan would be built unless the project was supported. The existing house was not renovated according to renderings; no copper downspouts, shutters, and there is metal pipe instead of a chimney. The garage looks to be 8" from the house. There is no basis for a variance and the hardship is self-created.*

*Mr. Ramsdell commented on the burden a variance places on a property. While the applicant was not a physical participant, he is in that chain.*

*Mr. Kallman was not putting aside past history, but nothing in the decision would have alerted a buyer. If something should be done to existing house, it should have been in the decision.*

*Tom Kolterjahn, 64 Federal Street*

*Mr. Kolterjahn owns property across the park. He felt this was a bait and switch. The developer presented beautiful plans. This would be placing variance on top of variance. The building does not look anywhere near as initially presented.*

*Don Walters, 15 Smith Street*

*Commented it is the responsibility of any homeowner to do his or her own title work. This is not a ZBA responsibility.*

*Stephanie Niketic, 93 High Street*

*If she were in the neighborhood she would be furious. The original applicant sold a highly detailed project with beautiful renderings and then the project was sold off.*

*Mr. Kallman responded that the stipulations were speaking to the new structure only. The decision doesn't reference the original structure.*

*Ms. Mead responded that it is clear the application applies to 7-9 School Street. The plans reference restoration and the new single family home. Renderings reference both structures as well.*

**Questions from the Board:**

None

**Deliberations:**

Mr. LaBay commented it was an unfortunate aspect of the case that there was a building permit issued by former building commissioner. He was appalled that the foundation was in place and not approved and not part of the approved application.

Mr. Ramsdell brought up the bait and switch reference.

Mr. Goulet did not like acting as the post approval police; it's a difficult spot. This seems like an incomplete application.

Ms. Bourdeau concurred.

Mr. Pennington was on the fence, but heard tone of Board. The approach was all wrong on how this was delivered to the Board.

Mr. Ramsdell asked the underlying question; if the garage had come in on the original plan, would have seen same reaction from neighborhood.

Mr. LaBay responded that a year later one couldn't predict how abutters might have reacted.

**Motion to approve application 2016-022 made by Mr. LaBay, seconded by Mr. Goulet.**

The motion failed.

**Votes Cast:**

Ed Ramsdell– no

Robert Ciampitti – absent

Duncan LaBay – no

Jamie Pennington – no

Richard Goulet – no

Renee Bourdeau – no

**Public Hearing #5:**

2015	045
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**Address: 0 Hillside Avenue**

**Special Permit for Non-conformities**

*Construct an addition for a garage and first floor bedroom within a pre-existing non-conforming rear setback*

Paul Benoit presented the application. The applicant is looking to put in a 1<sup>st</sup> floor bedroom addition with garage underneath. This is a 100-year-old house with steep stairs and they are in need of a bedroom and bath accessible for the mother in law. The home has an existing rear yard non-conforming setback. The property abuts Highland Cemetery.

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

**In Favor:**

*None*

**In Opposition:**

*Don Walters, 15 Smith Street*

*No in opposition, but curious as to how the Board comes to their decision.*

**Questions from the Board:**

Mr. Pennington asked if elevations were provided. An architect's rendering was given to the Board. The addition would be kept in character with the house.

Mr. Goulet asked if a retaining wall was proposed. Yes, one would be added.

Mr. Pennington asked about permission for a curb cut. They intend to get permission after permitting.

**Deliberations:**

Mr. Pennington said this project had an attractive design and would not be substantially more detrimental.

Mr. LaBay commented on the issue of setbacks. The rear setback was at approximately 18.4'; 1.5' short of 20' required. The proposed garage would bring the setback to 8.1'. Abutters do not have any opposition. There is no issue in this case.

The rest of the Board agreed.

**Motion to approve application 2016-045 made by Mr. LaBay, 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 #6-7:**

**2016      046****Address: 90 Water Street****Dimensional variance***Variances for parking and lot area for a two-family structure***2016      047****Address: 90 Water Street****Special Permit***Allow a two-family use (#102)*

Attorney Lisa Mead of Blatman, Bobrowski, Mead and Talerman presented the application on behalf of George Haseltine, Trustee. The applicant is requesting dimensional and use relief to allow the existing structure, which is functioning as a two-family, to remain a two-family building. The home has been used as a two-family for many years, but upon inspection of the building records, previous owners did not obtain the necessary paperwork to make the former single-family into a two-family. The applicant is not making any alterations to the exterior of the home. The dimensional relief sought is due to the existing parcel and structure being non-conforming. Some of these non-conformities are intensified as the use changes from single-family to two-family. The two-family use would require variance for lot area and parking.

The use is consistent with the neighborhood and they would like to formalize and legalize it. The shape of the lot being long and narrow was the hardship argued. It is also an interior pre-existing, non-conforming lot, surrounded non-conforming lots.

The applicants have been the Historical Commission. This is an important structure on the streetscape; likely a laborer or dockworker lived here. A preservation restriction would be added by the applicant as a condition to approval.

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

**In Favor:***None***In Opposition:***Dan Anthony, 7 Smith Street**The elevation of roofline was a concern. He is now in support.**Tom Kolterjahn, 64 Federal Street**He was pleased with the preservation restriction, fixing windows and going before NHC.**Don Walters, 15 Smith Street**He was concerned the applicant was being presumptive that the two-family was approved in 1981.**Parking is horrific in the area.**Paul Needham, 92 Water Street**Just because it was being used as a two-family does not mean it necessarily should be now.*



*Ms. Mead commented that the assessor record is evidence, not proof. On parking, whether legal or not, it has functioned this way.*

**Questions from the Board:**

Mr. Pennington asked why they did not appeal the letter from the building commissioner. Ms. Mead explained they would have if they could have. Mr. Pennington was also concerned that there would be some changes to the exterior with the preservation restriction.

Mr. Ramsdell asked the neighbor at 15 Smith Street what change approving the special permit would make in the neighborhood. To him, it is illegal and a causing nuisance to the neighborhood. A single family would lessen the impact.

Ms. Mead said her client would be willing to restrict the units to two-bedroom and a one-bedroom.

Mr. LaBay asked if there was one bath in each unit. Yes, there was.

**Deliberations:**

Mr. Pennington was hung up on the preservation restriction. Ms. Mead asked if they could add a condition to the decision that prior to certificate of occupancy will have preservation restriction in place.

Mr. LaBay was not worried about this, except for parking. The applicants agreed to reduce number of bedrooms, which was good.

Mr. Goulet and Ms. Bourdeau agreed.

Mr. Pennington commented the use is ok. It was the process that he was concerned with.

**Motion to approve application 2016-046 with conditions; 1. The applicant will reduce the number bedrooms to a two-bedroom and one-bedroom unit. 2. Prior to issuance of an occupancy permit, a fully executed preservation restriction must be in place 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 with conditions; 1. The applicant will reduce the number bedrooms to a two-bedroom and one-bedroom unit. 2. Prior to issuance of an occupancy permit, a fully executed preservation restriction must be in place 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 #8:**

**2015      048**

**Address: 49 Marlboro Street**

**Dimensional Variance**

*Construct a 22'x28' garage with storage above within the required setback*

Britt McCloy presented the application. There is currently a shed on the property lot line. They would like to construct a two car garage 2' from the lot line. Hardship argued is that they are a corner lot where other neighbors are non-conforming. If they were to construct the garage 10' from the lot line, it would be right in middle of the yard and would take up the entire yard space.

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

**In Favor:**

*None*

**In Opposition:**

*Craig Batchelder, 2 Reilly Avenue*

*His mother's house is a cape on small lot next door. His concerns included a row of trees on the lot line that would be affected, and light and air affected by the size and location of the garage. It may affect his property value later on.*

**Questions from the Board:**

Mr. LaBay asked for the existing shed dimensions. It is approximately 8'x14' and single story with a pitched roof. He asked the proposed garage dimensions. It would be approximately 22'x28', 21' to top of roof with a 2<sup>nd</sup> floor storage area with dormer facing their home. There is no attic in the home and storage is needed.

Mr. Goulet asked if any curb cuts would be needed. No, they did not need any curb cuts.

Ms. Bourdeau asked if they would consider moving the garage to 5' from the property line to work with the neighbor. The applicant considered it, but needed to consult with his wife before making any decision.

There was discussion on whether this proposed garage would qualify as an accessory structure.

**Deliberations:**

Mr. LaBay thought there was too much building too close to the property line. He would like to see a map view of the neighborhood. He believed they could come into compliance with lot coverage if they made it smaller.

Mr. Ramsdell agreed. This probably does not fall under an accessory building as presented.

Mr. LaBay commented an accessory structure must be 6' from the property line and be maximum 22'x24' and 15' mean height. If this was the case they may not need permitting.

Request to continue the application.

**Motion to continue application 2016-048 to 6/28/16 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

**The meeting adjourned at 10:35pm**

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