

**City of Newburyport
Zoning Board of Appeals
June 25, 2019
Council Chamber**

The meeting was called to order at 7:09 P.M.
A quorum was present.

1. Roll Call

In Attendance:

- Ed Ramsdell (Chair)
- Robert Ciampitti (Vice-Chair)
- Maureen Pomeroy
- Edward Cameron
- Mark Moore

Absent:

- Renee Bourdeau

2. Business Meeting

a) Approval of Minutes

Minutes of the 6/11/19 meeting

Ms. Pomeroy made a motion to approve the minutes as amended and Mr. Cameron seconded the motion.

The motion passed unanimously.

Votes Cast:

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

3. Public Hearings

2019 022
Address: 3 Vernon Street
Dimensional Variance
Adjust lot lines requiring relief for side and rear setbacks

2019 023
Address: 10 Auburn Street (Lot A)
Dimensional Variance
Adjust lot lines requiring relief for lot area, side and rear setbacks, and parking

2019 024

Address: 10 Auburn Street (Lot B)

Dimensional Variance

Adjust lot lines requiring relief for lot area, lot coverage, front, side, and rear setbacks, and parking

2019 025

Address: 1 Vernon Street

Dimensional Variance

Adjust lot lines requiring relief for lot area, frontage, lot coverage, open space, side and rear setbacks, and parking

2019 026

Address: 12 Auburn Street

Dimensional Variance

Adjust lot lines requiring relief for lot area, lot coverage, and front and rear setbacks

These hearings were continued from the 5/28/19 meeting.

Nick Cracknell, 13 Pickard Street, Amesbury & Keystone Planning & Design LLC presented the application.

Mr. Ciampitti has ongoing business with Mr. Cracknell, representing the applicant and recused himself. The application were filed back in February, ZBA met first on 4/9, had a site visit on 4/27, and met again on clarification on findings and variance criteria on 5/28. A draft preservation restriction presented at the 5/28 meeting went to NHC 6/12. Minor refinements included; termination vents included, small dormer on back of the keeper's house, pedestrian openings in the wall, privacy screen between the keeper's house and the jail, a potential opening in the wall on Auburn Street to the Bartlett Mall, raising the wall on the railroad side to 10', as the wall was never built to full height in sections. Next step is NHC review final draft and submit recommendation on the Preservation Restriction to the Mayor and City Council.

Chair Ramsdell opened the hearing to public comment.

In Favor:

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

The Preservation Trust is very supportive of the application and saving these buildings. He complimented the Board on their questions, site visit, and due diligence.

In Opposition:

None

Questions from the Board:

The Board had no questions.

Deliberations:

Chair Ramsdell confirmed five applications and addresses versus the matrix. It was decided to vote on each application separately.

Mr. Cracknell noted that there should be a stipulation related to the Planning Board subdivision of 10a and 10b Auburn Street.

Ms. Pomeroy noted that the approvals should be subject to approval of the Preservation Restrictions by City Council.

Mr. Moore commented that he was happy that others felt that the Board did homework on these applications. Everything is finally lined up to move on.

Ms. Pomeroy applauded the efforts on getting this together.

Motion to approve application 2019-022 subject to City Council approval of Preservation Restrictions made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2019-023 subject to Planning Board approval of subdivision and City Council approval of Preservation Restrictions made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2019-024 subject to Planning Board approval of Subdivision and City Council approval of Preservation Restrictions made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2019-025 subject to City Council approval of Preservation Restrictions made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2019-026 subject to City Council approval of Preservation Restrictions made by Ms. Pomeroy, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

2019 034
Address: 47 Storey Avenue
Special Permit
Allow outdoor café seating (Use #503) and drive through (Use #504)

The applicant requested a continuance to 7/23/19 as they are engaged with the Planning Board currently.

Motion to continue application 2018-034 to 7/23/19 made by Mr. Ciampitti, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

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

2019 041
Address: 155 High Street
Special Permit for Non-conformities
Modify previously granted permit to allow the construction of an additional 223 s.f. second floor addition resulting in an upward extension of a pre-existing non-conforming side yard setback

Attorney Lisa Mead of Mead, Talerman and Costa LLC, 30 Green Street presented the application on behalf of the applicant Jeremy C. Healey. On 7/2/18 the Board approve a special permit for this property. A fire took place on 1/14/19 and destroyed the home. The Building Commissioner pursuant to State Building Code issued a demolition order. The foundation remains, including a new poured foundation that was approved by board last year. The house was completely constructed and weeks away from occupancy. Under section IX-G of the Newburyport Zoning Ordinance, the applicant can reconstruct the non-conforming structure, limited to the same footprint and dimensions that existed

pre-catastrophe, within two years. In this situation, the applicant cannot stay within the limits of the prior structure originally built in 1750 due to complying with present day State Building Code. A number of changes needed to be made for reconstruction, according to architect Al DiBlasio. The old stairs did not comply with width, riser height, tread depth, headroom, and winder shape. The new stairs would require 48 s.f. where the original stairs required only 25 s.f. Bedrooms in the original structure did not have proper egress into the hallway. The first floor at the rear of the original structure was below grade, To comply with code, the first floor deck must be raised 7", contributing to the height of the proposed structure. Ceiling heights in the original structure were 7'7" on the first floor, 7'6" on the second floor, and 7'8" on the third floor. The proposed ceiling heights must be 7'9" on the first and second floors, and 8'6" on the third floor. The floor structure in the original structure was 8" thick, and when rebuilt must be 12", resulting in an increase of 16" from the original third floor. The ridge height of the rebuilt structure will increase due to; keeping the front pitch the same to match the other buildings in the row on High Street, the eave must be 30" higher than the neighboring roof to comply with fire separation. She noted that to maintain the three bedrooms, the additional space is needed, and that they have a net loss of 8 s.f. due to code.

The applicants are asking to modify the existing SPNC. There would be no new non-conformities added. The application would not be substantially more detrimental to the neighborhood. The addition is in the rear, on an already approved foundation and modestly sized. The architectural style fits in with the attached row houses and maintains a "bookend" look. The applicants are not looking to add luxurious space, they are merely satisfying State Building Code. Attorney Mead provided letters of support from three neighbors.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

*Tom Kolterjahn, 64 Federal Street, Co-President Newburyport Preservation Trust
The Preservation Trust strongly opposes the application. Concerns included; Detrimental to neighborhood, portrayal of added square footage due to code, overpowering the row of houses, clearly does not fit in with the row houses, DCOD not followed, out of character and should be brought back to reasonable proportions.*

*Brian Buckley, 10 Vernon Street
Opposed to height increase.*

*Glenda Buckley, 10 Vernon Street
Opposed to square footage increase.*

*Bronson de Stadler, Senior warden, St. Paul's Church
Appeared on behalf of church leadership. They are sad for the loss of the house. Concerns include; it does not fit in to the historic row house block, this is an iconic area.*

*Attorney Mark Griffin, Finneran and Nicholson on behalf of Katherine Catalano, 157 High Street
Ms. Catalano shares a building wall with the petitioner and the fire impacted her home significantly. She did not object to the 2018 special permit and regretted this. Mr. Griffin presented photos of*

preconstruction and post construction of the approved 2018 special permit. Concerns include; no filings with the Historical Commission at the time of the 2018 application or today and there are roofline changes and dormers involved. There is no permit for adding more than 500 s.f. because as part of the 2018 special permit they added less than 500 s.f. and today they are requesting again for additional square footage under 500 s.f. After catastrophe, the applicant can rebuild by right and maintain non-conforming status, but there is a question of whether this means the original structure or the 2018 approved structure. He also argued that you cannot alter a structure that has not yet been built. He suggested that the Board ask for NHC input in the context of row houses. The application is substantially more detrimental as touched on by neighbors; the original home was 1500 s.f. to a proposed 2600 s.f., The footprint of original home has expanded, it does not fit in with surrounding property.

Patricia Peknik, 4 Dove Street

Concerns included; height, square footage increase, scale, massing, volume, substantially more detrimental.

Katherine Catalano, 157 High Street

Concerns included; 2018 addition bump out was larger than expected, construction while working from home was unbearable, losing view, air, sunlight, has been displaced since the fire, the home will be nearly twice the size of her home after construction.

Letter received from Joni Vetne

Attorney Mead responded to some of the comments. She noted Attorney Griffin, representing a direct abutter, raised several concerns in his letter of opposition including the applicant not complying with DCOD in the 2018 special permit. The Zoning Enforcement Officer made the determination that not more than 25% of the exterior walls were removed. The time to appeal this has long passed on applications from 2018. Only an additional 291 s.f. were requested to comply with building code. Height increases have been explained and are primarily driven by the 30" difference in height needed for fire separation.

Questions from the Board:

Mr. Moore clarified with Attorney Mead that construction techniques today have certain requirements. Ceiling height was driven by the 30" differential needed for the fire separation.

Mr. Cameron asked for clarification on the height. Approved height in 2018 was 29'2", this is 34'9" in proposed. Attorney Mead explained that the calculation begins at the neighbor's eave.

Chair Ramsdell asked Attorney Griffin to comment. He added that value is part of the consideration as well. If the applicant is asked to reduce size or redesign, they will likely come back with something different and smaller.

Mr. Moore asked about the "bookend" explanation and whether the height on the other end was less. Height is less than the other end.

Chair Ramsdell asked Attorney Griffin about the DCOD and demo delay and applicability. Attorney Griffin responded that if the 2018 special permit structure is the pre-existing non-conforming structure for the 2019 special permit, demolition delay applies. They are changing roof pitch, roofline, adding dormers. The building is demolished. Code trumps DCOD.

Mr. Ciampitti asked Mr. Griffin if the applicants proposed to rebuild to the 2018 special permit exactly, if anything would change in his argument. If they seek to modify the special permit, he thought they would have to build the 2018 structure and then apply.

Mr. Ciampitti asked if Attorney Mead had a response. The issue is they cannot rebuild exactly. Per code, the eave has to be higher. Mr. Ciampitti was understanding what was there cannot be replicated in our modern world. In order to adjust reality, these changes have to happen and necessitate the mathematical changes. Where it departed for him was the alteration of the bump out.

Mr. Cameron asked if they had a drawing of ridge height compared to the other existing structures in the row. They did not.

Deliberations:

Mr. Ciampitti needed to see massing of the structure among row. He noted the impassioned opposition and was trying to decide if the addition reaches substantially more detrimental.

Mr. Cameron agreed. The Board needs to be careful here. The applicant and abutter have been through a lot. He wanted to see and think about height in comparison to the rest of the row.

Chair Ramsdell also wanted to see heights of row houses. He had a more significant concern with the second story addition.

Mr. Moore commented that where the height might be able to be justified, he was concerned with the addition as well.

Ms. Pomeroy could understand the ridgeline change due to code.

The applicants requested a continuance to the next meeting. Chair Ramsdell noted that the next meeting on 7/9 was full and the next available would be 7/23. Mr. Ciampitti thought the application should be given some priority with their situation. The rest of the Board agreed they would prefer to continue to 7/9.

Motion to continue application 2019-041 to 7/9/19 made by Mr. Cameron, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

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

3. Executive Session:

- Pursuant to M.G.L. C. 30A Section 21, to discuss strategy with respect to litigation in the matter of Hebbelink Real Estate LLC v. City of Newburyport Zoning Board of Appeals (193 High Street), as an open meeting may have a detrimental effect on the litigating position of the public body.

- 6/6/19 Executive Session Minutes

Executive session minutes have been filed with the Planning Office as a separate document.

The meeting adjourned at approximately 9:41pm

Respectfully submitted, Katie Mahan - Note Taker