

**City of Newburyport
Zoning Board of Appeals
July 24, 2018
Council Chamber**

The meeting was called to order at 7:12 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Maureen Pomeroy
Edward Cameron (Associate Member)
Christopher Zaremba (Associate Member)

Absent:

Renee Bourdeau

2. Business Meeting

a) Approval of Minutes

Minutes of the 07/10/18 meeting

Mr. Zaremba made a motion to approve the minutes and Ms. Pomeroy seconded the motion.
The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Christopher Zaremba – approve
Edward Cameron – approve

b) Request for Minor Modification – 333 Merrimac Street (2017-007)

Aileen Graf, of Graf Architects asked for a continuance for more time to speak with abutters.

Mr. Cameron made a motion to continue the request for minor modification to 8/14/18 and Mr. Zaremba seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
Robert Ciampitti – approve
Renee Bourdeau – absent
Maureen Pomeroy – approve
Christopher Zaremba – approve
Edward Cameron – approve

c) Request for Permit Extension – 55 Washington Street (2017-068)

Attorney Lisa Mead presented on behalf of the applicants. They are requesting a six-month extension. They relocated to Colorado for a year and were unable to undertake construction until now.

Mr. Ciampitti made a motion to approve the request for permit extension and Mr. Cameron seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve
 Robert Ciampitti – approve
 Renee Bourdeau – absent
 Maureen Pomeroy – approve
 Christopher Zaremba – approve
 Edward Cameron – approve

3. Public Hearings

2018 023

Address: 79 Parker Street

Variances

Construct light industrial building and include tap room with food service (Use #501) therein, include entertainment use (Use #407) and meeting space (Use #421) on the property, requires side setback relief for light industrial building, and relief for required parking spaces on site

2018 024

Address: 79 Parker Street

Special Permit

Allow retail accessory use (#614) in light industrial building/brewery

This hearing is continued from 6/26/2018. Attorney Lisa Mead of Mead, of Talerman and Costa LLC, 30 Green Street presented the application. At the last meeting, further detail was requested by the Board on aspects of the project.

-Barn Use – It was decided that it was not necessary to have the restaurant designation, so they withdrew the variance request.

-Entertainment and meeting space – The purpose of this space is to hold special events and private events with catered food. The kitchen would be used for storage and preparation of food brought in by caterers.

-Barn and outdoor space – would be limited to 125 people inside or outside or a combination of both inside and outside. Updated seating plans were presented.

-Parking - parking calculations were done based on the seating calculation. Parking originally proposed covered this amount of seats. If the barn is hosting an event inside or outside, the taproom may not host an outdoor event. If taproom hosts outdoor event, they must reserve the barn.

-Maximum seating in the taproom – a maximum of 175 seats, 135 inside and 40 seasonal outside. Maximum seats on the whole site are 300. The 300 seats require 76 parking spaces. Immediate parking on the 79 Parker Street site is 68 spaces. On 79A Parker Street an additional 16 spaces are provided, and on 77 Parker Street an additional 24 spaces are provided, totaling 108 parking spaces. At maximum

capacity 104 spaces are required. The applicants intend to make every effort working with a wetlands specialist to add additional parking spaces if possible.

-Access to parking – There is a proposed pathway. Conservation Commission is in support of a walkway per a memo from the Conservation Administrator. There is also a sidewalk from 79 Parker Street to 77 Parker Street proposed.

Revised proposed conditions;

1. Rehabilitation of the existing farmhouse and renovation of its addition shall comply with design recommendations of the Newburyport Historic Commission.
2. Industrial building; retail use shall be located within the industrial building and shall not exceed 250 s.f., the accessory taproom shall be accessory solely to production, and no other use, and shall not exceed 3500 s.f., only alcoholic beverages produced by the tenant shall be served at the accessory taproom, live entertainment may be performed solely as an incidental part of the accessory taproom and adjacent outdoor space, and not as a separate accessory entertainment/club use, the accessory taproom shall be limited to occupancy as set by the state building and fire code and shall not include more than 135 indoor and 40 adjacent seasonal outdoor seats, and shall include no more than 175 seats in total including a combination of seasonal outdoor seating of which a maximum of 135 seats applies to indoor seating, the outdoor seating area shall be contiguous to the taproom for seasonal use only, and serving hours shall not extend beyond 10:30pm, the entertainment use variance shall be limited only to live entertainment and shall specifically not include membership clubs, lodges, or video game arcades. The taproom may not host an outdoor event or outdoor live entertainment if there is an event occurring either inside or outside the barn. The brewery may not use the designated outdoor event space if the barn is operating a function in the outdoor space. The taproom will include messaging and signage that stipulates No Parking on Parker Street. Employees of the taproom, industrial building and any hired contractors shall be instructed to park off-premises at 77 Parker Street during planned outdoor events.
3. Meeting Space/Barn/Function Facility; principal meeting space shall be limited to occupancy in accordance with state building and fire code and shall not include more than 125 seats indoors and 125 seat outdoors in the designated seating area for outdoor events, principal meeting space shall be limited to the hours of 8:00am to 12:00am with last service at 10:30pm regardless of the day, the uses granted in the barn and incorporated support facilities are limited to special occasions and/or corporate business events, food and service operations shall not include daily restaurant use nor table service typical of a sit-down restaurant, live entertainment may be performed solely as an incidental part of the principal meeting space use and are allowed in adjacent outdoor spaces, the entertainment use variance shall be limited only to live entertainment and shall specifically not include membership clubs, lodges or video game arcades. All events will include messaging and signage that stipulates No Parking on Parker Street. Employees of the Barn and any hired contractors shall be instructed to park off-premises at 77 Parker Street during planned outdoor events.
4. Entire site; shared parking shall be no fewer than 68 spaces on the immediate property or 84 spaces if you include the abutting parcel known as 77A. An additional 24 parking spaces shall be provided on 77 Parker Street for a total of 108 spaces, petitioner shall provide and confirm overflow parking on 79A and 77 Parker Street as evidenced by a lease agreement, which shall be provided to the Building Commissioner prior to the issuance of occupancy for the buildings on property. No final occupancy permit shall issue for the brewery until either 1. A pathway is constructed across the property accessing the leased parking at 79A and 77 Parker Street or 2. A

sidewalk is constructed from the property entrance to the leased parking at 79A and 77 Parker Street.

Attorney Mead went over the hardship determination for the requested variances. Soil condition, shape and topography of the land were argued. The property is unique and significantly challenged by wetlands and river front area on three sides.

A Special Permit for Use; Accessory Retail Use (250 s.f.) in the new industrial building (Use #604) is requested. The following general conditions were fulfilled according to Attorney Mead;

1. The use requested is listed in the table of use regulations or elsewhere as in the ordinances requiring a special permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.
2. The requested use is essential and/or desirable to the public convenience or welfare. The use is allowed in the I-1-B district by Special Permit. It is convenient, desirable to have retail space. Dianne's Desserts and Fastenal are among others in the business park with accessory retail uses
3. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
4. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare.
5. Any special regulations for the use, set forth in the special permit table are fulfilled. There are no special regulations for use in this case.
6. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare. This use is permitted utilized in the business park currently.
7. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.
8. The proposed use is in harmony with the purpose and intent of this ordinance.
9. The proposed use shall not be conducted in a manner so as to emit any dangerous, noxious, injurious or otherwise objectionable fire, explosion, radioactive or other hazard, noise or vibration, smoke, dust, odor or other form of environmental pollution.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Heather Shand, City Councilor

Councilor Shand thanked the applicants for the updates. She urged them to consider No Parking signage on Parker Street.

In Opposition:

Tom Kolterjahn, 64 Federal Street, Newburyport Preservation Trust

Mr. Kolterjahn asked for clarification on what will happen to farmhouse. Attorney Mead explained that the demolition delay was released. What was proposed can be built. They withdrew a request for alternate demolition.

Rob Germinara, 2 Ashland Street

Mr. Germinara was not against the brewery project. Concerns included; what is appropriate for the industrial park, unique nature of site relative to wetlands, off site parking a bad precedent, project could be completed on a smaller scale, flooding, and ongoing legal dispute for involving 77 Parker Street.

Jeanette Isabella, 1 Lime Street

Concerns included; project too large, everything in town being over developed.

Questions from the Board:

Attorney Mead commented on offsite parking with approval of ZBA with a lease is consistent with what the zoning ordinance allows.

Ms. Pomeroy asked if the 250 s.f. of retail space was in addition to the 3500 s.f. taproom space. The retail space is included in the 3500 s.f. Ms. Pomeroy clarified that the hours for the taproom are until 10:30pm every night. Yes, that would be latest they could stay open.

Chair Ramsdell asked in the permits required for the current brewery, what time they closed. They currently close at 10pm. They would be agreeable to carry 10pm to the new location. Chair Ramsdell clarified when referencing the number of seats, they were referencing number of people. Yes, seats or patrons.

Mr. Zaremba asked about the parking lease. If 5 years from now they do not renew the lease for parking, what would happen? Attorney Mead explained there is a provision in there that if terminated, they have to notify city immediately. Then it would be an enforcement issue. The lease has to be recorded prior to occupancy and building permits. Mr. Zaremba asked if the goal was to have a walkway between 77 and 79 Parker Street. Yes, that is the preference. If they cannot get the walkway approved, they would install a sidewalk. If neither, they would have to come back to the ZBA.

Chair Ramsdell asked how it would play out if the parking goes away and there is a violation. The occupancy permit for the taproom and barn would have to be changed. A cease and desist from zoning enforcement would have to be issued.

Deliberations:

Mr. Ciampitti thanked the applicant and professionals for refining the plans and answering questions. This is a difficult application, as the City and Business Park evolve. These are sensitive and smart changes. The hardship tied to topography, shape, and size of lot was argued. There is an inability to satisfy parking on site. He commented that we cannot engage in paralysis due to nature and flooding. There is a concern that either a sidewalk or path is needed. This will go through Conservation Commission and Site Plan review and is the beginning, not an end to conversation. These revisions are positive and in the right direction. If there ever were a place for this to happen, this would be it. He was not as concerned with infill here. This is a well thought out and rational approach.

Ms. Pomeroy commented that there was movement in the right direction. She has concerns with the size and capacity of the taproom and barn, and with parking. The conditions are difficult for the City to enforce. She was in support of the taproom. She would be in support of the whole project if it was on a smaller scale and they did as much on site as possible.

Mr. Zaremba appreciated changes made, but continued to be concerned with parking overflow.

Chair Ramsdell was concerned with parking and conditions being enforced. Chair Ramsdell commented on the DPS recommendation of a 6' wide sidewalk.

Councillor Jared Eigerman noted that it is within the power of ZBA to condition parking. Offsite parking would have to be in a private parking lot with parking lot use.

Mr. Zaremba asked what the parking required for meeting spaces would have been, as opposed to the calculations used. It would have been 25 spaces required, as opposed to 32 for restaurant that was used. Attorney Mead noted that they used the more conservative restaurant parking calculation.

Ms. Pomeroy saw more harm than good in the plan for the barn. It does not fit in with the industrial park area.

Mr. Ciampitti commented that master plan skewed away from the industrial park to business park. He was less troubled by the barn use.

Attorney Mead commented that the entertainment use already exists for the brewery at their current location. She noted that if function space did not exist, they would still propose 300 seats/people. There was discussion of withdrawing the variance for entertainment/meeting space use in barn, but keeping a max 300 seats for taproom use.

Ms. Pomeroy would prefer to see the project come back with how the changes would come together.

The applicant requested to withdraw the entire application.

Motion to withdraw applications 2018-023 and 2018-024 without prejudice made by Mr. Ciampitti, seconded by Mr. Zaremba.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – approve

Edward Cameron – non-voting

2018 026

Address: 20 Walnut Street

Special Permit for Non-conformities

Construct a two-story addition over 500 s.f. to a pre-existing non-conforming structure

This hearing is continued from the 6/26/2018 meeting. Attorney Lisa Mead of Mead, Talerman and Costa LLC, 30 Green Street presented the application. At the last meeting, there were concerns of the view of the addition from the street, and the cohesion of design of the addition. Aileen Graf of Graf Architects took a fresh look at the proposal. She took the addition and narrowed it, slightly increasing the footprint. While 2' deeper into the rear setback, the setback is met. This change moved the addition 3' further from the neighbor. Ms. Graf presented plans and renderings where slight were made.

Attorney Mead noted no new non-conformities are being added. The home is a modest size in this neighborhood, and with the changes presented; the project is not substantially more detrimental to the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Bronson DeStadler, 19 Walnut Street

Concerns; primarily 1800s homes on the street, cohesive two block neighborhood, substantial space added onto the house already because land slopes back. This will be seen from street. Also concerned with infill in the City, mass of the addition. Zoning exists for the common good and should not have a detrimental affect on others.

Allison Lawless, 18 Walnut Street

Concerns; uses yard often and this is intrusive of privacy, infill, mass, size, volumes and location of the additions, revisions by Council to close loopholes in the zoning ordinance, there have been 17 revisions in the last 6 years on section IX.

David Tessler, 18.5 Walnut Street

Concerns; 2.5 story addition, negative impact, size and proximity to yard, massing and scale, interior layout in that less than 1/3 of the living area will be usable by Mr. Morse, detrimental visual impairment, window overlooking living area, visually overwhelming the structure.

Donna George 18.5 Walnut Street

Concerns; privacy, a tree that will potentially be lost during construction, although not intended, no objection to finished living room one level addition.

Tom Kolterjahn, 64 Federal Street, Newburyport Preservation Trust

Urged the Board to pay great attention to neighbors. This started as small historic building with a significant addition added onto it. It is out of scale and detracts from the historic structure and the neighborhood.

Questions from the Board:

The Board invited Attorney Mead to address concerns. The impact of the addition is minimal from public view.

The addition meets existing setback requirements. Based on square footage from the Assessor, the home stays in the massing and scale of the neighborhood.

Ms. Graf clarified confusion on stories. The view from the street is 1.5 stories. Due to nature of slope of property, the view from the back appears as 2.5 stories.

Chair Ramsdell clarified that the rear addition would extend a total of 14' further back.

Deliberations:

Mr. Zaremba appreciated all changes made from where it started. He was on the fence, although a large structure, it does not seem substantially more detrimental from the public view.

Ms. Pomeroy was on the same line of thought. She was struggling to see where this would be more detrimental to the neighborhood. There are similar size homes in neighborhood, although understood neighbor concerns.

Mr. Ciampitti is always moved by neighborhood input. From the line of public view, not much changes with the façade. He wished it were not the case in this situation. He thanked neighbors for taking the time to voice concerns. He was in support of the application.

Chair Ramsdell thought the applicant did a lot of work to redesign. The addition is minimally seen from the street. The addition only runs back 14' from the existing structure, meets all setbacks; this is some indication that it is not huge. Interior design is out of the purview of the Board.

Condition;

-The applicant shall submit a construction cost estimate with the application for a building permit. Should this estimate be equal to or exceeds 50% of the current assessed value for the property, i.e. \$221,100, then the applicant must comply with the following recommendations: install one new street tree (applicant may consult with the City Tree Warden as to species and location). If the applicant's estimated cost of construction were less than this amount, the applicant is not required to comply with the stated recommendations.

Motion to approve application 2018-026 with above condition made by Ms. Pomeroy, seconded by Mr. Zaremba.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – approve

Edward Cameron – non-voting

2018 040

Address: 26 Plummer Avenue

Special Permit for Non-conformities

Construct an addition to rear of pre-existing non-conforming home

Attorney Lisa Mead of Mead, Talermin and Costa LLC, 30 Green Street presented the application. An application has been before the Historical Commission as the home falls under the demo delay provision. It has been released from delay. The property is non-conforming with regard to lot area, lot coverage, frontage, front and side yard setback. No work is proposed on the sides or front of the house where existing non-conformities are. They intend to take off a later added addition in the rear and add a 663 s.f. addition in its place.

Scott brown, architect went over the architecture. This is a late 1920s craftsman style home. They would remove an addition on the back left corner and right side addition – both one story. They will completely renovate the house, replacing all windows, working with an existing dormer on the third floor. The proposed modest addition would be stepped back from the side of the house and have a lower roofline than the existing house.

Attorney Mead noted there are no new non-conformities being added, and the addition would not be substantially more detrimental to the neighborhood. It will not be seen from Plummer Avenue.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Cameron asked if the neighbors are in favor. The homeowners reached out to neighbors and they are all supportive.

Chair Ramsdell asked what materials would be used. High quality simulated divided light aluminum clad wood windows and hardy composite cement board siding would be used.

Ms. Pomeroy asked if there was any input from the Historic Commission. Given the age and location of the addition, they reviewed, but did not consider it for preservation.

Mr. Cameron commented that there is a long driveway between the addition and neighboring property.

Deliberations:

Ms. Pomeroy noted the application met all criteria for a Special Permit for Non-conformities.

The rest of the board agreed.

Motion to approve application 2018-040 made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – absent

Maureen Pomeroy – approve

Christopher Zaremba – approve

Edward Cameron - approve

The meeting adjourned at 9:55pm

Respectfully submitted, Katie Mahan - Note Taker