

**City of Newburyport
Zoning Board of Appeals
8/13/19**

1. Roll Call

Present: Robert Ciampitti, Renee Bourdeau, Mark Moore, and Edward Cameron

Absent: Maureen Pomeroy

2. Business Meeting

a) Approval of Minutes

Minutes of the 7/9/19 meeting

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

Votes Cast:

Ed Cameron – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Mark Moore – approve

Maureen Pomeroy - absent

b) Election of Officers

Chair Ciampitti made a motion to elect Ms. Bourdeau for Chair, Robert Ciampitti for Vice Chair and Ms. Pomeroy to Secretary. Mr. Cameron seconded the motion. Motion was passed unanimously.

Votes Cast:

Ed Cameron – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Mark Moore – approve

Maureen Pomeroy – absent

c) Request for minor modification- 5 Olive Street

Attorney Mead requested a continuance of the Public Hearing for 5 Olive Street until 8/27/19.

Chair Bourdeau noted that due to the number of hearings scheduled for this evening, particularly for those applications which have already had a continuance from a previous night, and for the purposes of efficiency, the Board would be looking to hear only new information (and public comment about that new material) this evening.

Chair Bourdeau announced the opening of the Board's Public Meeting.

3. Public Hearings

Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC
193 High Street
2018-064b - Special Permit for Non-Conformities
(Continued from 7/23/19)

Chair Renee Bourdeau notes that this Public Hearing was continued in part because the Board sought a legal opinion as to its authority to review and vote on the remaining “bifurcated” application, due to the pending litigation on the portion of this project involving a parking area. Chair Bourdeau noted that Counsel advised the Board to proceed with the hearing process from here as usual.

Attorney Mead showed revised plans that show a reduction in size of the parking area, reduced to 18 ft in width, additional landscaping, the removal of a fence, and the inclusion of “shoebox” style light cutoff fixtures. Additional details regarding the architectural design were provided.

Attorney Mead showed an aerial photo of several houses along High St. showing driveways the same size as the proposed driveway.

Chair Renee Bourdeau opened the hearing to public comment.

In Favor:

Pat Cannon, 185 High St., 3 houses down on the same side spoke in favor.

In Opposition:

Attorney Scofield, representing Joseph & Nicole Devlin, 3 Dexter Lane: Argued that the proposed garage construction as an attempt to recreate a non-conforming use rather than modifying a preexisting nonconformance.

Attorney Heney representing Eric and Ellen Goodness abutters, argued that approval of the application would allow a preexisting nonconforming use in a residential neighborhood to continue longer than its appropriate lifespan, and allow an expansion of it more detrimental to the neighborhood. Widespread neighborhood opposition should be evidence that the application is likely to be more detrimental to the neighborhood.

Eric Goodness, 189 High Street, argued that the project would allow a 40% expansion to the preexisting nonconforming commercial use in a residential district. He also argued that the earlier abandonment of rights for a detached shed precluded the applicant’s ability to request a special permit for nonconformities to construct the proposed garage.

Joe Devlin, 3 Dexter Lane, noted that Attorney Mead’s earlier references to neighborhood garages along High Street of comparable size did not consider that these were not commercial uses like the one in this application. The Carriage House was a nice buffer to the commercial

use at the front of the structure for those residents living at the rear. Mr. Devin noted some discrepancy in the plan dates and versions being referenced and the lack of “abutter outreach” undertaken by the applicant to resolve potential issues during permitting. Mr. Delvin stated his opinion that the proposed project would be substantially more detrimental to the neighborhood.

Stephen DeLisle, resident at 195 High St., recently appointed to the Board, but not yet sworn in to office. Mr. DeLisle described some prior conversations and interactions between the applicant and the abutters, including himself. He also brought into question the residential or commercial status of vehicles being parked on the site and their characterization in the application.

Pat Cannon offered support for the application.

Eric Goodness, 189 High Street noted that [the prior speaker] was a florist doing business with the subject funeral home.

Direct abutter at 185 High Street worried about impacts on the neighborhood, including potential change of use down the road to something cumulatively worse or more commercial in nature, now that a large parking lot is available on site.

Attorney William Sheehan, representing Stephen and Elizabeth DeLisle who are abutters to the project at 195 High Street, cited Section 9A of the Newburyport Zoning Ordinance regarding the principal the ZBA should use when deciding whether to allow continuation or expansion of preexisting nonconforming uses throughout the City. Section 4D indicates the regulations that apply are those governing the first floor use (a funeral home).

Attorney Mead pointed to different section of the Newburyport Zoning Ordinance regarding uses, application and preexisting nonconforming uses. She cited the Powers Test and language in the Zoning Act and Newburyport Zoning Ordinance as appropriate criteria and framework for determining whether the proposed project was more or less detrimental to the neighborhood. Attorney Mead argued that she and her client had taken measures to reach out to abutters.

Discussions ensued between residents about not having a neighborhood discussion with the owners of 193 High St.

Attorney Bill Shannon opposes the building of the garage stating that it is going to be used for commercial use on residential land.

Attorney Mead states that this proposal does not trigger any of the “Powers tests”. The structure and the use is not detrimental to the neighborhood.

Back and forth discussion between Attorneys ensued regarding implications of the so-called Powers Test on the subject application.

Questions from the Board:

Vice Chair Ciampitti asked Attorney Sheehan about the Powers test, who went into detail explaining the history.

Vice Chair Ciampitti asks how it is similar when the Powers Test was in regards to add a second floor commercial area and this is simply a garage.

Attorney Mead states the shed was always used for commercial use.

Attorney Sheehan disputed facts relevant to historical uses of the shed.

Chair Renee Bourdeau interrupts to stop the debate between attorneys.

Vice Chair Ciampitti asked for clarification from Attorney Mead regarding the nature and location of preexisting nonconforming uses on the property.

Chair Renee Bourdeau asks if they would consider meeting with neighbors and about reducing the size of the structure.

Attorney Mead states that they would like a motion on the application and request before the Board, rather than a continuation for further meetings with abutters.

Deliberations:

Mr. Moore states that there seems that there could be a solution to this problem. It's clear that there is a problem with communication with the neighbors. He also noted that there was reason to view the project as a commercial encroachment further into a residential district.

Vice Chair Ciampitti agrees. He states that the board has received a lot of comments/information from the neighbors. He believes that this is not a cut and dry issue and the board will try to render their best decision.

Chair Renee Bourdeau concurs with Vice Chair Ciampitti that it is not an easy process and decision to make, but she wants it noted that they have taken everyone's opinion into consideration. Chair Renee Bourdeau noted that the key questions for the board were whether the proposed project would intensify a nonconforming structure or use, and whether it would be more detrimental to the neighborhood. She valued abutter input when determining whether the project would be more detrimental.

Motion to approve application 2018-064b made by Vice Chair Ciampitti, seconded by Mr. Cameron.

Votes Cast:

Ed Cameron – No

Robert Ciampitti – No

Renee Bourdeau – No

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Mark Moore – No
Maureen Pomeroy – Absent

Motion to approve unsuccessful. Approval denied.

Chipotle Mexican Grill, Inc.
47 Storey Avenue
2019-034 - Special Permit
(Continued from 7/23/19)

This hearing is continued from 7/23/19. Tony Capachietti from Hayes Engineering presented the application and noted changes to the plan since he was last before the ZBA including the removal of one parking space and having addressed issues raised by the abutter. Mr. Capachietti noted that the Planning Board recently approved the 47 Storey Avenue Site Plan.

Chair Renee Bourdeau opened the hearing to public comment.

In Favor:

Attorney Meade who represents the abutter, the owner of the Shaws Plaza commented that her client is neither speaking for nor against but asks that the ZBA include the same conditions as the Planning Board has voted on. Attorney Meade handed out proposed conditions.

In Opposition:

None

Questions from the board:

Mr. Cameron asked for clarification of the location of the pick-up window. Mr. Capachietti provided clarification on location and circulation details. Mr. Cameron and Mr. Capachietti discussed differences between queuing for traditional drive thru use and the proposed pick up only use.

Deliberations:

Members discussed conditioning the Special Permit approval with the same conditions as the Planning Board that that drive through use is limited to pick up window only and that snow storage must be directed away from the rear fence and snow piles must be no greater in height than 4 feet.

Motion to approve application 2019-034 with conditions made by Vice Chair Ciampitti, seconded by Mr. Moore.

The motion passes unanimously.

Votes cast:

Ed Cameron – approve
Robert Ciampitti – approve
Renee Bourdeau – approve

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Mark Moore – approve
Maureen Pomeroy - absent

Benjamin Becker, BLB Custom Building
16 Olive Street
2019-036 - Special Permit for Non-Conformities
(Continued from 7/23/19)

This hearing is continued from 7/23/19. Mr. Ben Becker provided an update to the ZBA that the 16 Olive Street project has received approval from the Newburyport Historical Commission.

Chair Bourdeau opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

None

Deliberations:

Vice-Chair Ciampitti commented that it appears the applicant has met the criteria for granting a Special Permit for Non-Conformities. The members were in agreement that they felt comfortable voting on the application.

Motion to approve application 2019-036 made by Vice Chair Ciampitti, seconded by Mr. Moore.

The motion passed unanimously.

Votes Cast:

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

Jeremy C. Healey c/o Lisa Mead, Mead, Talerman & Costa, LLC
155 High Street
2019-041 - Special Permit for Non-Conformities
(Continued from 7/23/19)

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This hearing is continued from 7/23/19. 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 approved a special permit for this property. The applicant is now requesting to modify that approval. Members of the Board requested more information at the last meeting including a context rendering and views of the proposal from different vantage points. Attorney Meade described the requested rendering showing the project in context of the surrounding the structures. Attorney Meade also revisited proposed dimensions and rationale of previously submitted plans. Attorney Meade commented on a letter submitted by Attorney Griffin. Attorney Meade presented new plans and compared them with what was proposed in 2018. Attorney Meade requested that the Board approve the Special Permit for Non-Conformities based on the plans submitted on 8/13/19.

Mr. Jeremy C. Healey read a statement.

Chair Bourdeau opened the hearing to public comment.

In Favor:

Phil Bean, 159 High Street

Plans are in keeping with the neighborhood.

Mr. Habbelinck, 193 High Street spoke in support.

In Opposition:

Neighbor #1

Concerns included: the plans are not consistent with the neighborhood.

Tom Kolterjahn, 64 Federal Street

Concerns included: have not had time to review new plans

Neighbor #2, 14 Vernon Street

Concerns included: height of the building, effect proposal has on property values

Stephanie Niketic, 93 High St

Concerns included: review process for the application and there has not been enough time to review new plans

Attorney Griffin (for 157 High Street)

Concerns included: there has not been enough time to review new plans, review process, design, snow load concerns, incorporate by reference all previous letters

Chair Bourdeau expressed that she had wanted to ask the applicant if the plans being shown are new plans. As a note, Chair Bourdeau commented that she wants the Board members and

the public to have an opportunity to review any new plans in advance to be able to provide accurate comments.

Neighbor #3, 10 Vernon Street

Concerns included: View of church from their property could be changed

Neighbor #4, 5 Vernon Street

Concerns included: there has not been enough time to review new plans

Neighbor #5, 157 High Street

Concerns included: not enough time to review new plans, review process

Neighbor #6

Concerns included: request for new rendering showing other views from other angle (inaudible)

Chair Bourdeau asked Attorney Meade if she would like to address any of the public comments.

Attorney Meade rebutted specific points voiced by public commenters.

Chair Bourdeau commented that there needs to be time to review the new plans to be able to prepare new opinions. Chair Bourdeau opened up questions from the Board.

Questions from the board:

There was a question related to the height of the ridge (inaudible)

Deliberation:

Vice Chair Ciampitti would like to give more time to the residents to look over the new plans and would like to continue the application.

Chair Bourdeau would like to understand more about the rear addition and hear from the abutters about the new plans.

Mr. Cameron commented that there needs to be more time to review plans and but he does not want to delay the application.

Discussion ensued on timing of continued hearing.

Motion to continue application 2019-041 – Special Permit for Non-Conformities to Sept 10th made by Mr. Moore, seconded by Mr. Cameron. The motion passed unanimously.

Votes cast:

Ed Cameron – approve

Robert Ciampitti – approve

Renee Bourdeau –approve

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Mark Moore – approve
Maureen Pomeroy- absent

Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC
193 High Street
2019-042 - Appeal
(Continued from 7/23/19)

Attorney Meade gave an overview of the agenda item.

Chair Bourdeau commented that there is still ongoing litigation and this item should be continued until that litigation is settled.

Discussion ensued on timing of continued hearing.

Motion to continue application 2019-042 to Dec 10th 2019 made by Mr. Cameron seconded by Mr. Moore.

Votes cast:

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

Thomas Smith and Jamie Smith
10 Virginia Lane
2019-044 - Special Permit
(Continued from 7/23/19)

Chair Bourdeau read the public hearing notice. This hearing is continued from 7/23/19. Thomas Smith and Jamie Smith gave an overview of their application for a special permit to allow for an in-law apartment.

Chair Bourdeau opened the hearing to public comment.

In Favor:

None

In Opposition:

None

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Questions from the board:

None

Deliberation:

Vice Chair Ciampitti commented that the application seems to be in compliance with the Newburyport Zoning Code.

Motion to approve application 2019-044 special permit by Vice Chair Robert Ciampitti, seconded by Mr. Ed Cameron.

Votes cast:

Ed Cameron – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Mark Moore – approve

Maureen Pomeroy - absent

Christopher Horan c/o Lisa Mead, Mead, Talerman & Costa, LLC

3 63rd Street

2019-045 - Special Permit for Non-Conformities

(Continued from 7/23/19)

Chair Bourdeau read the public hearing notice. This hearing is continued from 7/23/19.

Attorney Meade presented the application and Aileen Graf presented the project elevations and design.

Attorney Meade commented that if there are any changes made to plans by other reviewing bodies (i.e. Conservation Commission) that the applicant would be back before the ZBA. Attorney Meade commented that the applicant has reached out to the neighbors.

In Favor:

The neighbors at 7 65th Street are in favor.

In Opposition:

None

Questions from the board:

A Board member asked the applicant to speak to the materials. Aileen Graf is looking to use low maintenance materials/ treated shingles.

Chair Bourdeau asked how many bedrooms are in the existing house. Attorney Meade responded that there will be three bedrooms and no additional bedrooms added.

Deliberation:

Vice Chair Ciampitti commented that the project is modest and seems in keeping with the neighborhood and appreciates that there is not abutter opposition.

Chair Bourdeau made note that the application triggers the Tree and Sidewalk Ordinance.

Motion to approve application 2019-045 - Special permit for Non-Conformities by Vice Chair Ciampitti, seconded by Mr. Cameron.

Votes cast:

Ed Cameron – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Mark Moore – approve

Maureen Pomeroy - absent

Christopher Horan c/o Lisa Mead, Mead, Talerman & Costa, LLC

5 63rd Street

2019-046 - Special Permit for Non-Conformities

(Continued from 7/23/19)

Chair Bourdeau read the public hearing notice. This hearing is continued from 7/23/19.

Attorney Meade presented on the application. Aileen Graf presented the project elevations and design. Aileen Graf indicated that the project is proposed to shift on the site.

Chair Bourdeau opened the hearing to public comment.

In favor:

The neighbors at 7 65th Street are in favor.

In Opposition:

None

Questions from the board:

Mr. Cameron and Attorney Meade discussed the number of units. Chair Bourdeau commented on the letter received by DPS indicating that additional bedrooms would put a strain on the Plum Island infrastructure and that the applicant would need to take measures to mitigate the impacts (new valve pit). Attorney Meade indicated that the applicant is open to paying for that upgrade.

Deliberation:

Vice-Chair Ciampitti commented that this is a unique project to Plum Island and that he would feel comfortable voting to approve this project with conditions if the Board was inclined to do that.

Chair Bourdeau commented that she has a hard time understanding what the project would look like after shifting ten feet as Aileen Graf proposed and that she would like to see and have the abutters see the newly shifted project plans.

Vice Chair Ciampitti suggested that hand edited plans could be submitted tonight with the expectation that final plans be submitted to the Planning Office. The vote could be conditioned that way.

Chair Bourdeau commented that she wants a written statement from DPS that the proposal is appropriate.

Attorney Meade and Chair Bourdeau discussed the amount of bedrooms proposed as it relates to the intent of the Newburyport Master Plan as well as the proposed increase in FAR.

Vice Chair Ciampitti commented that it seems like the best thing to do would be to continue the application to allow time to gather more information. Chair Bourdeau agreed.

Mr. Cameron agreed that he would like there to be a more definitive written response from DPS.

Mr. Moore agreed that he would like the plans to be more final and worked out before there could be a vote.

Chair Bourdeau commented that she will not make a decision until she hears more from DPS and that she would like to continue the application. Chair Bourdeau asked the Board if they felt comfortable with the proposed 10 bedrooms.

Attorney Meade commented that the Board's jurisdiction is FAR which is different than bedroom count.

Members of the Board commented that conceptually there was comfort with the proposal and discussion ensued regarding the timing of a continued hearing.

Motion to continue application 2019-046 Special Permit for Non-Conformities to Sept 10th 2019 by Mr. Cameron, seconded by Mr. Moore.

Votes cast:

Ed Cameron – approve

Robert Ciampitti – approve

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Renee Bourdeau – approve
Mark Moore – approve
Maureen Pomeroy – absent

Aileen Graf, Graf Architects
50 Prospect Street
2019-047 - Special Permit for Non-Conformities

Chair Bourdeau read the public notice. Aileen Graf presented on the application, project elevations and design.

Chair Bourdeau opened the hearing to public comment.

In Favor:

The neighbor from 48 Prospect Street is in favor of the project.

In Opposition:

None

Questions from the board:

Mr. Moore asked about the materials to be used. Aileen Graf answered that the materials will match the rest of the structure.

Deliberation:

None

Motion to approve application 2019-047 – Special Permit for Non-Conformities by Mr. Cameron, seconded by Mr. Ciampitti.

Voted cast:

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

Newburyport Renovations, LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC
16 Hancock Street
2019-048 - Special Permit for Non-Conformities

Chair Bourdeau read the public notice. Attorney Meade presented on the application. Scott

Brown presented the property history, project elevations and design. Scott Brown said that last night he decided to lower the height of the new building and alter the roof pitch to better fit in with the neighborhood and to address some of the neighbors' concerns. Scott Brown said this is a minor change that has a big impact.

Attorney Meade reiterated the key points in the application.

Chair Bourdeau opened the hearing to public comment.

In Favor:

Two neighbors from Hancock Street inquired about the project height change. Scott Brown commented that the new building will now be 18 inches lower which is a result of changing the slope of the roof.

One of the neighbors and Attorney Meade discussed the potential of natural fencing which could be worked out with the builder.

In Opposition:

Tom Kolterjahn, 64 Federal St commented that the developer has approached the Newburyport Preservation Trust to discuss the project but agreement on the project could not be reached. Mr. Kolterjahn opposes the project with respect to the alterations to the existing historic building. He commented he is concerned about losing an affordable house in the neighborhood and does not think the new house will fit in the neighborhood.

Questions from the board:

Mr. Cameron asked if the small existing building could be kept as a single family. Attorney Meade answered that it is not realistic.

George Hazelton provided comments regarding outreach to the Newburyport Preservation Trust and neighbors.

Deliberation:

Board members discussed the application and comments expressed at the meeting. Mr. Cameron and Chair Bourdeau commented that they appreciate the comments from the Newburyport Preservation Trust regarding the existing structure and also the outreach efforts made by the developer.

Chair Bourdeau commented that there will be a condition to approval added that the developer will work with the neighbor to provide natural fencing.

Motion to approve application 2019-048 – Special Permit for Non- Conformities by Vice Chair Ciampitti, seconded Mr. Cameron.

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Votes cast:

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

The meeting adjourned at 11:06 pm.

Respectfully submitted,
Dawn Gettman - Note taker