

**City of Newburyport
Zoning Board of Appeals
August 14, 2018
Council Chamber**

The meeting was called to order at 7:25 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Robert Ciampitti (Vice-Chair)
Renee Bourdeau
Edward Cameron

Absent:

Maureen Pomeroy
Christopher Zaremba (Associate Member)

2. Business Meeting

a) Approval of Minutes

Minutes of the 07/24/18 meeting

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

Votes Cast:

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

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

Applicant requested to withdraw the request without prejudice.

Mr. Ciampitti made a motion to withdraw the request for minor modification without prejudice and Mr. Cameron seconded the motion.

The motion passed unanimously.

Votes Cast:

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

c) Request for Minor Modification – 81 Prospect Street (2018-018)

The project is moving along. The applicants are requesting a change from a standard staircase to a stainless steel spiral staircase on the rear exterior of the project.

Mr. Ciampitti commented that this seems modest and appropriate. The rest of the Board agreed.

Mr. Ciampitti made a motion to approve the request for minor modification and Mr. Cameron seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – absent

Christopher Zaremba – absent

Edward Cameron – approve

3. Public Hearings

2018 028

Address: 1 Inn Street, Unit 7

Appeal

Appeal of the denial of a request for issuance of a cease and desist letter by the Zoning Enforcement Officer dated 4/6/18 for noise and vibration in excess of what is allowed under the Zoning Ordinance due to operations associated with the property located at 35 Market Square

This hearing is continued from 7/10/2018. The applicant requested a continuance.

Motion to continue application 2018-028 to 8/28/18 made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – absent

Christopher Zaremba – absent

Edward Cameron – approve

2018 031

Address: 339 High Street

Variance

Convert 2nd floor of existing detached barn/garage into an in-law apartment

2018 033

Address: 339 High Street

Special Permit

Allow an in-law apartment (Use #109)

This hearing is continued from the 7/10/2018 meeting. Erik Kaminski of Kaminski Construction and Vijay Joyce of Cummings Architects presented the application. Mr. Kaminski explained the plan to lift the existing barn and create an in-law apartment, saving a historic structure. The barn must be raised and foundation re-worked in order to save. There was mention of moving the barn forward, but they do not want to impact the neighbors in that way. Hardship argued was the odd shapes lot in which the front and rear yard setbacks overlap each other and Myrtle Avenue is considered the frontage. The Conservation Commission and Historical Commission have approved this project.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Chair Ramsdell had trouble with the overlapping setbacks used as a basis for hardship. An in-law is not construction, it is a use change. Overlapping setbacks don't impair the use in any way. He did not have anything against the project, but had trouble with the hardship. Mr. Kaminski commented that they would have to set down the barn on a new foundation. This is considered demolition in many towns, and could be considered new construction in a way. The structure used to house animals, now cars, and proposed in-law; the use has changed over the years.

Ms. Bourdeau asked if they needed to have the barn as an in-law. Yes, his in-laws live in Newbury and have sold a property. In-laws will move in to assist with children and split time out of town. Mr. Kaminski commented that if they cannot put in a kitchen, they could get over it.

Deliberations:

Mr. Ciampitti commented that the Board has to follow code, but he kept coming back to the human component. If the barn were attached to structure, this in-law variance would not be needed. It is a good proposed project that preserves the barn. It is in line with the Master Plan and sustainable living in Newburyport. There are also no abutters in opposition.

The Board discussed being rigidly compliant and losing the organic piece of the Board. They had been lectured before for not following the ordinance. However, this is a discretionary Board that does no set precedent, and in this case, approving the project seems like the right thing to do. Ultimately, it comes down to whether or not the space can have a stove.

Chair Ramsdell still had reservations on the in-law use variance, as a variance is the only relief that is specifically spelled out in what the hardships are. He did think the project was positive.

Conditions;

-Sidewalks and Street Trees: The applicant shall submit a cumulative construction cost estimate for the entire project 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. \$420,300, then the applicant must comply with

the following recommendations by DPS per the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance: Install a new brick or concrete sidewalk along the Myrtle Avenue frontage as well as one or two new street trees at the back of the sidewalk on the private property and install new granite curbing and a new brick or concrete sidewalk along the High Street frontage. If the applicant's estimated cost of construction were less than this amount, the applicant is not required to comply with the stated recommendations.

-Barn Doors: The extant hayloft door on the barn shall be re-used above the new garage doors on the Myrtle Avenue elevation if the hayloft door is in good enough shape for effective re-use in this location. Note: this condition is based on NHC conditions.

Motion to approve application 2018-031 with above conditions made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

Motion to approve application 2018-033 with above conditions made by Mr. Ciampitti, seconded by Mr. Cameron.

The motion passed unanimously.

Votes Cast:

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

2018 039

Address: 8 Charron Drive

Special Permit

Allow an in-law apartment above new attached garage

This hearing is continued from the 7/10/2018 meeting. Ms. Pomeroy had asked for a third party to look into potential drainage issues affecting neighbor. An engineer came out to inspect and submitted a letter to the Board. As long as drive way is sloped 3%, runoff would not have an adverse affect on the neighbor.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Cameron asked if they had spoken to neighbor. The engineer letter was sent to the neighbor and they have not heard back.

Deliberations:

Mr. Ciampitti commended the applicant for addressing the concerns of the Board. Follow up and no opposition is telling. The applicant meets criteria and understands in-law requirements.

Mr. Cameron added that at the last meeting rain barrels were discussed as a condition to cover runoff from the new garage structure. He thanked the applicant.

Chair Ramsdell commended the applicant as well. They could have done everything by right except the in-law use. He thanked the applicant.

Conditions;

-Rain Barrels: The applicant/owner shall install gutters on the roof of the new garage to catch rainwater. Said gutters shall be directed into rain barrels at grade so as to reduce the amount of storm water flow off of the garage.

-Slope of Driveway: The applicant shall engage an engineer to design the driveway so that it shall slope toward the applicant's front lawn so that storm water runoff will be directed toward this pervious surface. The construction of said driveway shall conform to the engineer's specifications regarding the appropriate slope so as to ensure that storm water does not drain onto abutting property(ies).

Motion to approve application 2018-039 made by Mr. Cameron with above conditions, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – absent

Christopher Zaremba – absent

Edward Cameron – approve

2018 041

Address: 16 Highland Avenue

Special Permit for Non-conformities

Construct two additions which will extend the pre-existing non-conforming front and side yard setbacks

Attorney Mark Griffin of Finneran and Nicholson, 30 Green Street, presented the application. Stacey and Robert MacMillan, owners were also present. The existing home is a single family in the R2 zoning district. The property is non-conforming with regard to frontage (60' where 90' required), front yard setback (22.9' where 25' required), and side yard setback (6.7' where 10' required). The applicants are proposing two small additions totaling 84 s.f., filling in gaps along the side setback. Open space and lot

area would be improved due to an existing deck being removed and replaced with a smaller deck. The application will not substantially change the neighborhood or neighbor views, and should be more aesthetically pleasing to neighbors.

Chair Ramsdell opened the hearing to public comment.

In Favor:

Stacey MacMillan, applicant

In Opposition:

None

Questions from the Board:

Mr. Cameron clarified which porch/deck was being decreased in size. The back deck will be decreasing in size.

Deliberations:

Ms. Bourdeau commented that the request is very minimal. It does not appear to negatively impact the neighborhood. No opposition was present.

The rest of the Board agreed.

Chair Ramsdell noted that this project does not trigger the tree and sidewalk ordinance.

Motion to approve application 2018-041 made by Mr. Cameron, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – absent

Christopher Zaremba – absent

Edward Cameron – approve

2018 043

Address: 39 Summit Place

Special Permit for Non-conformities

Construct an addition over 500 s.f. resulting in an upward extension of pre-existing non-conforming setbacks

Attorney Mark Griffin or Finneran and Nicholson, 30 Green Street presented the application on behalf of Michael and Kerry Jones. The existing two-family home with small artist studio at the rear of the lot is located in the R2 zoning district, abutting the rear of the Nock Middle School at the “elbow” of Summit Place. The lot is 33,231 s.f. with 110’ of frontage. The proposal is to convert to a single-family home. The westerly side setback is 7.6’ where 10’ are required. The lot would comply with zoning in all other aspects. The plan is to remove an existing artist studio, renovate and expand the residence, and add three-car garage. Attorney Griffin commented that he believed the Zoning Administrator was wrong and

questioned the SPNC requirement for an increase of living space in excess of 500 s.f. as the lot is conforming in both frontage and area as a single-family. The applicants submitted amended plans tonight after working with the abutter to the left. He was concerned that the upper stories would be overlooking his pool. Amended plans show gables with windows removed. The abutter submitted a letter of support with this minimal change.

Michael Graf, architect presented floor plans and existing and proposed elevations. He noted that the street view remains 1.5 stories.

Attorney Griffin noted that the neighbors are in favor. The use will be less dense and the project will not be substantially more detrimental to the neighborhood.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

None

Questions from the Board:

Mr. Cameron asked if the two-family was within the main structure or if the artist studio as the second unit. Yes, the main structure housed the two units.

Ms. Bourdeau asked about the home office use. Attorney Griffin noted that this would be office space for the home, not a business. Chair Ramsdell noted that the staff report made specific notation that the space above the garage not be used for an in-law apartment without proper permits. Attorney Griffin had no objection.

Chair Ramsdell noted that DPS made recommendations on sidewalks and trees if the project cost triggered the ordinance. Attorney Griffin did not think the property is right for a sidewalk to be added. They have a meeting schedule with Mr. Amaral at DPS on this matter. Mr. Cameron noted that this would not be up to the Board, but rather a DPS determination. Ms. Bourdeau suggested they condition that they work with DPS on this requirement if triggered.

Deliberations:

Conditions;

-Sidewalks and Street Trees: 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. \$443,150, then the applicant must comply with the following recommendation of the DPS: install a 5' wide concrete or brick sidewalk with granite curbing from the access ramp of the nock school to utility pole 12/22VZ per the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance. If the applicant's estimated cost of construction be less than this amount, the applicant is not required to comply with the stated recommendation. It is noted that the applicant is meeting with DPS to discuss the appropriateness of the DPS recommended sidewalk. If DPS determines the sidewalk is not recommended, the ZBA will adopt the recommendation relative to this condition.

-Home Occupation: The occupant is responsible for obtaining any zoning relief required, if necessary, to utilize the space indicated as a "Home Office" located above the three-car garage.

-No In-Law Apartment: The space above the proposed garage shall not be used as an in-law apartment or dwelling until such time that the owner/applicant seek the necessary permits and approvals from the Newburyport Zoning Board of Appeals and/or the Newburyport Planning Board.

The applicant questioned the SPNC requirement for an increase of living space in excess of 500 sq.ft. As the lot is conforming in both frontage and area the ZBA concurred that the relief was not required.

Motion to approve application 2018-043 with above conditions, made by Mr. Ciampitti, seconded by Ms. Bourdeau.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – approve

Renee Bourdeau – approve

Maureen Pomeroy – absent

Christopher Zaremba – absent

Edward Cameron – approve

The meeting adjourned at 8:42pm

Respectfully submitted, Katie Mahan - Note Taker