

**Zoning Board of Appeals
City Hall
April 13, 2010**

The meeting was called to order at 7:05 P.M.
A quorum was present.

1. Roll Call

In Attendance: Ed Ramsdell, Rob Ciampitti (7:18), Duncan LaBay, Charles Ciovacco, Jamie Pennington, and Sean Leonard

2. Business Meeting

a) Approval of Minutes

Minutes of the March 23, 2009 meeting

Mr. LaBay made a motion to approve as submitted.
Mr. Pennington seconded the motion.
The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve
Duncan LaBay – approve
Charles Ciovacco – approve
Jamie Pennington - approve

3. Public Hearings

a) Keystone Development Corporation

254 High Street

Special Permit for Non-Conformities: reconfiguration and reconstruction of eight existing units into six units on a parcel with pre-existing, nonconforming open space and front yard setbacks

Mr. Pennington is recused from this hearing.

Attorney Lisa Mead stated that the applicant has submitted the accurate square footage numbers and updated architectural and site plans that the board had requested at the last meeting. The structure and proposed setbacks were altered due to board comments and feedback from the neighbors. The applicant has also entered into an agreement with the abutting neighbors at 252 High Street. The applicant submitted a letter from these neighbors stating that they are no longer opposed to the plan. The applicant is requesting that the board add the conditions that there will be no parking adjacent to 252 High Street and that no structure will be constructed within 24 feet of the lot line adjacent to 252 High Street. The applicant has removed the two proposed parking spaces off of High Street from the plan. The number of units has been reduced from six to five

units. The structure has been pulled back from the rear lot line. The building is thinner and longer. The applicant will have to come back before the board for the setback issue that is a result of the parking reconfiguration.

The project architect went over the changes to the architectural plans. The changes create more of a separation between the existing structure and the proposed structures. There is now a net decrease in living square footage of roughly 1,000 square feet. The structures are set back quite a ways from the street so that they will look like four single family homes from the street. This was important to the Historical Commission and the neighbors.

Chairman Ramsdell opened the hearing to public comment.

In Favor:

Craig Holt, 33 Carter Street: He spoke against project at the last meeting. He has since had an chance to review the changes and he is now in support of the project.

Jon Crawshaw, 254 High Street: He thinks this is an excellent proposition and that it will dress up the whole area.

No one spoke in opposition.

Chairman Ramsdell closed the public comment portion of the hearing.

Questions:

Mr. Ciovacco asked for the reason for the second condition. **It is a result of the agreement made with the neighbor at 252 High Street.**

Mr. Ciampitti asked if the applicant contemplates any need for an access/egress onto High Street from the lot. The plan still shows the proposed curb cut on High Street. **There is no longer a need for the curb cut.**

Mr. LaBay asked about the parking spaces for units one and two. **The applicant detailed the parking spaces. There will be 9 spaces for 5 units, including the garage.**

Deliberation:

Mr. Ciampitti stated that he believes this is an excellent example of an adaptive reuse of a historic structure. The only issue he had was the tandem parking on High Street. He supports the application and commends the applicant for attending to the parking concerns on High Street.

Mr. LaBay concurred and noted that there was some question on how many units have existed in this structure. It has been documented that there have been anywhere from four to eight units. He complements the applicant for reducing the number of units to five which should create no further detrimental use of the structure. He supports the application.

Chairman Ramsdell concurred and stated that the applicant has done a nice job of addressing the board's and the neighbors' concerns.

Mr. Ciampitti made a motion to approve the special permit for non-conformities.

Mr. LaBay seconded the motion.

The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve

Rob Ciampitti - approve

Duncan LaBay – approve

Charles Ciovacco – approve

b) Stephen Paul Kowalyshyn

3-5 Currier's Court

Dimensional Variance: construct a basement level garage with roof deck and an 8' extension to the right rear side of the home which will result in a 0' rear yard setback where 20' is required

The notice of public hearing was read aloud for the record.

The proposed plan will only add 64 square feet of living space but will provide stairway access from the kitchen to the new garage and allow the applicant to construct a first floor bathroom. Having a bathroom off of the first floor bedroom would allow him to retire and stay in this home. Virtually every structure in the neighborhood is built on the property lines. There was a retaining wall on the lot that collapsed in 1985. The applicant removed the backfill and excavated the cellar enough so that it could be stood in. All of the excavation was completed in 1988. The proposed roof deck would be no higher than the collapsed wall. The applicant did obtain a building permit for the repair and replacement of the foundation and the retaining wall. He just wants to construct a garage with a roof deck so that he can recover the side yard that used to exist on the property.

Regarding the open space requirement, the applicant stated that he has always considered this a landscaping project, not a paving project. The driveway is pervious and any additional water collects in the catch basin at the bottom of the yard. It is deep enough that it never freezes. He has never had an issue with flooding of the driveway or cellar. His driveway does not contribute any runoff to sewer system or the waterways.

Chairman Ramsdell noted that the existing open space is listed as 39.7 % and the proposed is 70.5%. This cannot be because to ask for a variance, the proposed open space would decrease. Mr. Ciampitti suggested that the open space would decrease by 9%.

Chairman Ramsdell opened the hearing to public comment.

In Favor:

Maureen Adams, 6 Curriers Court: She is a neighbor and in favor of the changes. The design adds to the aesthetics of the neighborhood.

Karen Kelly, 31 Kent Street: The applicant has always worked to improve the neighborhood and tastefully landscaped the open space on his lot. He has made the most of a small property in a tight neighborhood.

Anne Lourie, 16 Merrill Street: She lives on the other side of the fence and sees no reason to object to the proposed plan.

In Opposition:

Tom Williamson, 25 Kent Street: He owns the abutting property and it is a very small lot. The proposed roof deck is going to look down on the patio that he spent about \$10,000 to put in and will also look directly into his bedroom windows. The proposed plan will adversely affect the value of his property.

Todd Rousseau, 21 Kent Street: He is concerned about the height of deck, the decrease in his privacy, and runoff from the deck.

Chairman Ramsdell closed the public comment portion of the hearing.

Questions:

Mr. Pennington asked the two neighbors in opposition to show where their properties are located.

Mr. Ciampitti asked if the applicant would like to respond to the neighbors' comments. **The applicant stated that the deck would not be any higher than the retaining wall that is there now. There is a privacy fence between the properties right now. The deck would not be any higher than the wall or the fence. As far as Mr. Rousseau's privacy, there is a tool shed that blocks the view from the deck to his house.**

Mr. LaBay asked if the deck would be on top of the garage. **No, the deck is on the first floor.** Mr. LaBay asked if the applicant was building a structure underground. **Yes.** Mr. LaBay asked if the deck will sit on top of that structure. **Yes.** Mr. LaBay asked if the deck will sit approximately 10 feet above the level of the earth. **No, the cellar level is at least 3 feet below the level of Mr. Rousseau's property. It will be 8 feet above the level of the current ground level.**

Mr. Pennington asked the applicant if the deck will be close to where the ground was in the submitted picture taken in 1985. **Yes, it will be a deck instead of the excavated ground.**

Mr. Ciampitti asked if the applicant's cellar floor is at the same height as the yard below because each property on Kent Street slopes down toward the river. **The applicant believes that is correct.** Mr. Ciampitti asked if the deck, at grade, sits at the mean of the peak of the accessory structure. **Yes, but the fencing will provide privacy for the neighbors.** Mr. Ciampitti stated that all of the fencing appears to create a "Marginot line of fencing" since the neighbors feel that

it will not actually provide screening and privacy. **The applicant is only requesting is to have the side yard returned to its original height.**

Mr. LaBay asked the applicant to review the reasons for requesting the dimensional variance. **It is not substantially different than what was there before. It is not out of character with the abutting structures.** Mr. LaBay asked if the abutting structures are non-conforming. **Yes. He is asking for a zero foot setback where 20 feet is required. He does not believe any of the lots have a 20 foot setback.**

Mr. Ciampitti asked if the hardship is tied to the topography of the land because it is unique due to the retaining wall. **Some of the other lots in the neighborhood may have a retaining wall but he is not sure.**

Discussion of the discrepancy regarding the open space percentage. The home covers 20% of the lot. Mr. Pennington stated that the open space is not changing. The Building Commission told the applicant that there is not enough open space because of the size of the driveway.

Mr. Ciovacco asked if the applicant had spoken to the neighbors about the project. **No, but he had spoken to Mr. Rousseau about it a couple of years ago and he did not have any objections then.**

Mr. Pennington asked if the applicant would extend the privacy wall. **He always expected to do so.** Mr. Pennington asked if the applicant would accept this as a condition of approval to make some sort of a barrier or privacy wall. **Yes.**

Mr. Ciampitti asked the neighbors in opposition if they would accept that condition. **Mr. Williamson stated that the applicant has a privacy fence that is about 10 feet high. If he puts a fence up on the roof deck than he will have to look at a 16 high foot fence.**

Deliberation:

Mr. Ciampitti stated that there appears to be an opportunity for the applicant to revisit the project and discuss the options with his opposing neighbors to try and come to a resolution. The applicant agreed to do so and he will also speak with the Building Commissioner to get the correct open space calculations.

Mr. LaBay made a motion to continue the hearing to the May 11, 2010 meeting.

Mr. Pennington seconded the motion.

The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve

Rob Ciampitti - approve

Duncan LaBay – approve

Charles Ciovacco – approve

Jamie Pennington – approve

c) **Stephen Paul Kowalyszyn**

3-5 Currier's Court

Special Permit for Non-Conformities: construct a basement level garage with roof deck and an 8' extension to the right rear side of the home, which is pre-existing non-conforming in respect to open space and side yard setback

Mr. LaBay made a motion to continue the hearing to the May 11, 2010 meeting.

Mr. Pennington seconded the motion.

The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve

Rob Ciampitti - approve

Duncan LaBay – approve

Charles Ciovacco – approve

Jamie Pennington – approve

d) **ZHA, LLC c/o Mark Griffin, Esq.**

28 Green Street

Special Permit for Non-Conformities: construction of a 1,061 square foot addition to a building with pre-existing non-conforming front and side setbacks

Attorney Mark Griffin stated that ZHA is comprised of Dr. Saira Naseer and her husband, Dr. Salman Ghiasuddin. The plan proposes to redevelop the former Carlson Real Estate building which is located in the business district. The applicant would like to convert the building into doctor's offices. The plan proposes an addition to the rear of the structure that will only add 584 square feet of new space because 477 square feet will be demolished. Constructing the addition at the rear of the structure will have less impact on the abutters than adding it to the front of the building. The lot size requirement is 10,000 square feet and the lot is 22,000 square feet. The plan proposes to provide a secondary means of access, an elevator, handicap-accessible bathrooms, and a welcome area on all three floors. The lot and structure conform except for the front and westerly setback which are both pre-existing and non-conforming. The plan will not extend any existing non-conformities.

Architect Scott Brown stated that the applicant is required to add an elevator, a secondary means of egress, and handicap-accessible bathrooms in order to provide services to her elderly patients. The only way to do this without changing the historic integrity of the building is to put the addition at the rear of the building. Mr. Brown indicated the section of the building that the applicant is proposing to demolish and where the addition would be built.

The applicant, Dr. Saira Naseer, stated that she began practicing in Newburyport 13 years ago. She has always wanted to extend her practice to provide preventative care in the downtown area. One of her patients informed her that the building was for sale. She was told that an ophthalmologist and a dentist used to have practices in the building. She has many elderly patients which is why she needs wheelchair access, an elevator, and wheelchair accessible bathrooms. She worked with the architect for a long time to renovate the building while still keeping the historic architectural integrity of the building.

Attorney Griffin stated that the building was constructed in 1790. The applicant went before the Historical Commission and the project was approved. The Historical Commission was pleased that the applicant will be keeping the period detail of the building. Attorney Griffin requested that the board take into consideration the large size of the lot and the minimal impact the addition will have on the neighborhood. Letters of support from the abutting neighbor that is most impacted by the proposed project and from other area neighbors were submitted. Attorney Griffin stated that the proposed plan will not be substantially more detrimental to the neighborhood than the existing structure.

Chairman Ramsdell opened the hearing to public comment.

In Favor:

Margaret Laufer, 21 Titcomb Street: She is not against the plan but she has some questions. How many offices will there be, how much parking and where will it be, and will there be any residential units? She is a resident of that inner neighborhood. She is not opposed to the plan but thinks that congestion is already an issue and there is a character to that inner neighborhood that she would like to see preserved. She also requests that the applicant preserve the bush that sits near the addition and that some trees be planted across the back. Dr. Naseer stated that this office will be an extension of her practice at North Shore Internal Medicine. There are enough parking spaces and there will initially be only one doctor and one nurse at the office. There will only be one medical practice in the building. She wants to maintain the beauty of the property and is happy to address Ms. Laufer's concerns and requests.

Mark Moquin, 70 High Street: He is the President of the Newburyport Affordable Housing Association. and the owner of the abutting property along the back lot line. Nothing that the applicant is proposing is going to affect his property in any way. There is approximately 80 feet between the existing building and the lot line. He is currently performing construction on his property and the applicant has allowed him to use their driveway to get trucks access to his property. He has been sensitive to the existing vegetation and asked the applicant to wait until his construction is done his project before she does any landscaping.

No one spoke in opposition.

Chairman Ramsdell closed the public comment portion of the hearing.

Questions:

Mr. LaBay asked if there are any plans to have residential units in the building. **No.**

Deliberation:

Mr. Ciampitti stated that the applicant is a well conceived request. He is happy to hear that attention is being paid to screening in the back of the lot and that the architectural integrity of the building will remain. The property is unique due to the size of the lot. The applicant has

demonstrated that the plan is not more detrimental than the existing structure. It is in keeping with this zone and district to have mixed-use of this type. The applicant proposes to renovate the building in a sensitive and appropriate manner and he supports the application.

Mr. LaBay concurred and noted that it is important that the alteration and changes are not on the sides or front of the building.

Mr. LaBay made a motion to approve the special permit for non-conformities.

Mr. Ciampitti seconded the motion.

The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco – approve

Jamie Pennington – approve

e) Blake Wilcox and Jacqueline Little-Wilcox

33 Market Street

Special Permit for Non-Conformities: add a third story to existing non-conforming residence

The notice of public hearing was read aloud for the record.

Architect Bob Gould reviewed the proposed plan. The footprint will not change. The existing eave line will remain but the roof will be reconfigured to a Gambrel style roof. The applicants want to construct a two-story apartment on the second and third floors of the home. The height of the addition would go up 4 feet and the mean would go up 2.5 feet. The mean height of the roof remains about 12 feet below the 35 foot line. The Gambrel roof is the least obtrusive option.

The applicant stated that they met with the Historical Commission five or six times to try and work out a compromise. They were not able to gain approval from the Historical Commission. They did show them 3 sets of drawings the plan before the board is the Historical Commission's choice if the board is going to grant the special permit. The Historical Commission just did not seem willing to approve any change to the roofline. There is a demolition delay on the property at this time.

Chairman Ramsdell the hearing to public comment.

In Favor:

Richard Summers, 48 Market Street: The applicants are good neighbors and have been willing to go out on a limb to try and improve their property. It does not seem that the plan will create any adverse affects on any of the surrounding homes. The roofline will be different but he does not think it will have an adverse affect on any surrounding property.

Jean Carosi, 38 Market Street: She agrees with Mr. Summers' comments. The design works in the neighborhood and the height will not affect any of the neighboring properties.

Robin Blair, 14-18 Market Street: His house has a gambrel roof and he does not believe that it decreases the historical integrity of the home. He is in favor of the application.

Maris Ditolla, 17 Smith Street: She is friends with the applicants and believes that it is important to maintain the integrity of the building and the applicants have worked hard to do so. She bought a home that had a third floor added to it and would never have done so if the third floor was not added.

Laurette Brissett, 40 Market Street: She agrees with Mr. Summers and Ms. Carosi.

Michelle Little, 17 Charter Street: She is Jackie's mother and fully supports the application.

In Opposition:

Bill Harris, 56 Lime Street: This house is one of the important Georgian buildings in the city. The Historical Commission thinks it is a first period home. People come to Newburyport because the city has the largest number of Georgian homes in the state. This house is on a historic street with a number of other historic Georgian homes. He understands that the applicants want to gain 860 feet of extra space but they can do this by taking over the first floor which they are now renting out. They can just use the house as a single family home, as it has been previously. The Secretary of the Interior stated that changing or destroying a roof should not be done. IT would take away from the significance of the home, the street, and the city. This is a self imposed hardship because they want more space. If they want to be a landlord, this is a great time to buy other rental property. The scale, roofline, and new windows are improper for the architectural integrity of the home. The proposed plan will impair the integrity of the property and the district. The Historical Commission was so opposed to the plan that they imposed a demolition delay.

Gerry Mullins, 7 Parsons Street: He commend the applicants for making a tremendous effort on improving the plan. A Georgian home can have a Gambrel or Gabled roof and can have dormers which is part of the proposed plan. However, the problem is that Newburyport is not a phony tourist town. It is full of authentic historic homes. This violates the character and historic nature of Newburyport.

Chairman Ramsdell closed the public comment portion of the hearing.

Questions:

Mr. LaBay asked about the existing height and the proposed height. The existing height is 25.3 feet to the peak and the proposed would be 28.10 feet to the peak. The numbers in the application do not match the numbers on the latest drawing. **The correct numbers are 25.3 feet to the existing peak and 28.2 feet to the proposed peak.**

Mr. Ciampitti asked about the exterior material choices. **They will maintain the existing exterior. They may use hardy plank on the southern end because it is very close to the lot line and may need to get a fire rating on that wall.**

Mr. Ciampitti asked about the demolition delay and if the application does not get approved tonight will they knock the building down. **No. Mrs. Wilcox grew up in the home and they want to raise a family there.**

The applicants submitted a petition with signatures of support. Mr. LaBay noted that twelve signatures of support were on the petition, in addition to the neighbors that spoke in favor of the application this evening.

Deliberation:

Mr. Pennington commends the applicants for coming some distance with the application. He is a bit conflicted because he respects the position that the Historical Commission has taken on this application but he is prepared to respectfully disagree with them. There is considerable support for the project from the neighborhood and that carries a lot of weight with him. He respects what the opposition has said but he understands the realities of needing to change historic structures to make it economically viable just to maintain. The application has come a long way. It may not be as perfect as keeping it exactly as it exists today but homes do evolve. This is a rational next step for the longevity of this home. He has no serious objection to the application.

Mr. Ciampitti agrees in part with Mr. Pennington. He thinks the historic roots of the home are extremely important and he respects the knowledge and comments of Mr. Harris. The issue is how to weigh preservation versus paralysis and how to retain historic homes while making them livable. In order for this home to be viable for another 100 years, it must live and breath to survive. Projects like this are the result of this need. He is torn but he thinks he can support it.

Mr. LaBay thinks the applicants have done a good job of showing an appropriate use and he fully supports the application.

Chairman Ramsdell thinks the applicants have done a good job. For better or worse, the function of the Historical Commission has been exercised. The applicants have had multiple discussions with the Historical Commission but no agreement was reached. He is concerned that the Historical Commission determined that nothing could be done on this property. He applauds preservation but the city cannot be a museum. The city needs to do as much as possible to preserve historic structures but everything cannot just remain in their original condition. This structure has undergone changes over the years and this is another change.

Mr. Pennington made a motion to approve the special permit for non-conformities.

Mr. Ciovacco seconded the motion.

The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve

Rob Ciampitti - approve

Duncan LaBay – approve
Charles Ciovacco – approve
Jamie Pennington – approve

- f) **Christopher and Pamela Kealey**
8 Payson Street
Special Permit for Non-Conformities: construct a 20' x 24' great room and a 8' x 12' mudroom to a pre-existing non-conforming home

The notice of public hearing was read aloud for the record.

The applicant is proposing a mudroom on the side of his single story home.

Chairman Ramsdell opened the public comment portion of the hearing.

No one spoke in favor or in opposition.

Chairman Ramsdell closed the public comment portion of the hearing.

Questions:

Mr. Pennington asked if the applicant had any other drawings to show the board. **No.**

Mr. LaBay asked if the applicant spoke with the neighbors. **Yes, he spoke to all of the neighbors and there were no objections to the plan.**

Mr. Pennington asked if the applicant is intentionally creating a flat roof. **It is going to be more of a hip roof.** Mr. Pennington asked if there will be a flat piece of roof. **Yes.** Mr. Pennington stated that he is concerned about the plans not showing how the addition will connect to the existing structure. **The applicant showed how the two will connect on a drawing that is different than the submitted plan.**

Mr. Pennington asked if that drawing could be made part of the record. The applicant submitted the drawing.

Deliberation:

Mr. Ciampitti stated that this is a responsible and appropriate application.

Mr. LaBay concurred.

Chairman Ramsdell concurred and the addition of the submitted drawing makes the applicant's case clear.

Mr. LaBay made a motion to approve the special permit for non-conformities.
Mr. Pennington seconded the motion.

The motion passed unanimously.

Votes Cast:

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco – approve

Jamie Pennington - approve

4. Adjournment

Motion made to adjourn.

Motion seconded.

Motion unanimously approved.

Meeting adjourned at 9:31 P.M.

Respectfully submitted, Jennifer Stone - Note Taker