

Minutes of the  
**Newport Zoning Board of Review**

A meeting of the Zoning Board of Review was held on Monday, December 18, 2023, in the Council Chambers of City Hall, 43 Broadway at 6:30 p.m.

PRESENT: Sam Goldblatt, Chair  
Wick Rudd, Vice Chair  
Russell Johnson, Secretary  
David Riley  
Bart Grimes  
  
Girard Galvin, Assistant City Solicitor  
Nicholas Armour, Zoning Officer

ABSENT: Susan Perkins, Alternate  
Nicole Shevory, Alternate

The following meeting minutes were considered and accepted:

- October 23, 2023 Minutes
- November 27, 2023 Minutes

The following requests to withdraw without prejudice were considered and accepted:

- 47 Eustis

The following items were considered and adopted:

- 2024 Meeting Schedule
- Proposed Zoning Application Submittal Requirements

**D E C I S I O N S**

A motion to adopt the staff reports, plans and applications as the Board’s findings of fact on items listed below on the Summary Calendar section of the agenda was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved.

App. #2023-Dec-007 PETITION OF GARRETT and JACQUELINE BENTON, applicants and owners, **39 Kay Street**, TAP 22, Lot 088, (R-10 Zone, Historic Overlay) for a special use permit and dimensional variance to relocate two HVAC condensers from the north side of the property to 9’-8” from the south Pell Street front property line (15’ required).

A motion to approve the afore-mentioned summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-011 PETITION OF MATTHEW and JULIA REINHARDT, applicants and owners, **90 Third Street**, TAP 09, Lot 130, (R-10 Zone, Historic Overlay) for a special use permit and dimensional variances to construct a canopy roof overhang above entry door, located 2'-3" from south (side) property line (10' required), increasing the lot coverage from 53.8% to 54.1% (20% allowed).

A motion to approve the afore-mentioned summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-016 PETITION OF JEFFREY B. and MARY CASO MILLER TRUST, applicants and owners, **43 Eustis Avenue**, TAP 11, Lot 298, (R-10A Zone) for a dimensional variance to construct a new driveway and parking space, requiring backing out onto the public right-of-way (not permitted on multi-family properties).

A motion to approve the afore-mentioned summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-001 PETITION OF FELISA NOBLES, applicant and owner, **108 Van Zandt Avenue**, TAP 09, Lot 432, (R-10 Zone) for a special use permit and dimensional variances to construct an egress staircase, located 6' from the rear property line (20' required) and 3'-4" from the east (side) property line (10' required), and installation of two HVAC condensers located 6" from the east (side) property line (10' required), increasing the lot coverage from 51.4% to 53.9% (20% allowed).

Owner Felisa Nobles was present. The Board asked a question about the previous project and deck. The applicant confirmed that there would be no deck.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-003 PETITION OF DANA PICKUP, applicant, JULIA HOGAN, owner, **38 Simmons Street**, TAP 39, Lot 315, (R-10 Zone) for retroactive approval of a special use permit and dimensional variance for a revised deck, increasing the lot coverage from 31.3% to 34.4% (20% allowed).

Applicant Dana Pickup and owner Julia Hogan were present. The Board asked what the size difference was between this deck and the previously proposed deck. The previously proposed deck was 16'x14' whereas this deck is 10'x12'.

A motion to find that this application was substantially different from the previous application before the Board was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-008 PETITION OF STEPHEN and ANN QUARRY, applicants and owners, **20 Toppa Blvd.**, TAP 11, Lot 625, (R-10A Zone) to re-approve a previously granted special use permit and dimensional variance, allowing the construction of an in-law apartment (ADU) located 2' from the north (side) property line (10' required) that was approved in 2022 but not substantially completed prior to expiration of the approval, and to add a new, covered front porch, increasing the lot coverage from 20% to 26.5% (20% allowed).

Owners Ann and Stephen Quarry were present. The Board asked clarification questions regarding the timing and occupant in the ADU.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-009 PETITION OF JAMES B. GROSVENOR, applicant and owner, **8 Cliff Avenue**, TAP 31, Lot 106, (R-10 Zone) for a special use permit and dimensional variance to convert an existing rear deck to one-story living area, install an in-ground pool and bulkhead, and construct a new, covered front porch, increasing the lot coverage from 29.3% to 32% (20% allowed).

Owners Nina and James Grosvenor were present. There were no questions from the Board.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-010 PETITION OF 95 BROADWAY, LLC, applicant and owner, **95 Broadway**, TAP 21, Lot 004, (GB Zone) for a special use permit to convert the existing commercial tenant space to a fast-food restaurant and market.

The applicant was represented by Attorney Richard D'Addario. Applicant Rich Willis was present. The Board asked about their hours of operation and if food will be prepared there. Their hours of operation will be 7am-8pm, and they will prepare food and some drinks.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Attorney D'Addario to prepare the draft decision.

App. #2023-Dec-012 PETITION OF JARED LAZOR, applicant and owner, **8 Cranston Avenue**, TAP 19, Lot 050, (R-10 Zone) for special use permit and dimensional variances to construct a 180 sq.ft. garden shed, located 6' from the west and east (side) property lines and 1.5' from the north (rear) property line (10' required for all, increasing the lot coverage from 30.7% to 36.1% (20% allowed).

Owner Mrs. Lazor was present. The Board asked why the shed needed to be located there.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Staff to prepare the draft decision.

App. #2023-Dec-015 PETITION OF THE DIANA C. BUNTING TRUST - 2015, applicant and owner, **3 Almy Court**, TAP 37, Lot 085, (R-10A Zone) for a dimensional variance to demolish a one-story portion of the existing building and an existing deck, and construct a new, one-story addition and covered porch, increasing the lot coverage from 16.78% to 24.84% (20% allowed).

Attorney Matt Leys and the architect were present. The Board asked what the hardship was and why the square footage was necessary. Mr. Leys answered that it is a small 1950s house and the family room is being removed. The owners want a first floor addition and a wheelchair ramp so that they can age in place.

A motion to approve the afore-mentioned abbreviated summary item with the conditions that the project be started and substantially completed within 18 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was made by Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved. Attorney Leys to prepare the draft decision.

App #2019-Aug-1. PETITION OF HARBOUR REALTY, LLC, applicant; HARBOUR REALTY, LLC., TOMORL, LLC., 20 WEST EXTENSION, LLC., WAITES WHARF REALTY ASSOCIATION, LLC., AND THOMAS B. ABRUZESE, owners; 0, 1, 16 & 25 Waites Wharf, 23 Coddington Wharf, and 20 West Extension Street, TAP 32, Lots 155, 267, 268, 272, 248, & 293, (WB zone); for a special use permit and a variance to the dimensional requirements for permission to demolish the existing structures and construct a 150-room transient guest facility, (91 rooms allowed), with a standard restaurant, banquet and wedding facilities, and provide 266 off-street parking spaces on a noncontiguous lot, (all off-street parking must be on the same lot as the use required), and to allow of use of public right of way to maneuver into and out of spaces, (Use of public right of way not allowed). **(Continued from December 11, 2023 for Deliberation and Decision; Materials can be found on December 11, 2023 Agenda)**

Attorney Russell Jackson represented the applicants and Attorney Scott Spear represented the objectors. The Chair Goldblatt stated that this application has been heard over 3 special meetings, which amounts to 12 hours, this meeting, and has heard over 40 witnesses and members of the public.

A motion to approve the afore-mentioned full-hearing items, with the conditions proposed by the applicant, and with the conditions that the project be started and substantially completed within 24 months of the date of the decision and that all outstanding invoices for abutter notification be paid

prior to the recording of the decision was moved by Mr. Rudd, seconded by Mr. Riley. Mr. Rudd proposed adding a condition that the south gate will only be used for emergencies. The applicant was amenable, Mr. Spear objected, and the condition was accepted by the Board.

The Board discussed the application. Mr. Rudd discussed the Planning Board's finding and his time on the Planning Board where he co-authored the Comprehensive Plan. Mr. Rudd stated that housing is a large part of the Comp Plan, and that this application is about that. He referenced the study that found that there was a lack of hotel rooms in Newport, which leads to more short-term rentals and affects year-round housing. For this reason, he feels the hotel is in conformance with the Comprehensive Plan. Mr. Rudd also pointed to the difference between the General Business and Waterfront Business requirements for room density (400 sf vs. 1,500 sf). He feels that this is an anomaly and is inclined to grant the density variance because of this. Mr. Rudd found that the toxicity of the site is a hardship, that the proposed green space, walkways, and harbor walk improvements would be an improvement to the site, and that there would be a financial viability hardship if the applicants had a lower room number. Mr. Rudd voted to approve.

Mr. Grimes stated that the Planning Board reviewed the project twice and recommended a negative finding of consistency. He believes that the area is complex as it is on the cusp of the Waterfront Business and R-10 districts. He stated that this is a transition area and feels that hotels have a softer noise impact than other uses in the district. Mr. Grimes referenced the traffic issues raised by the Planning Board. He stated that financial viability is a big question and feels that the project could not happen if not for the room count. He feels that the hardship has been proven and that the project complies with the Comp Plan and Waterfront district. Mr. Grimes voted to approve.

Mr. Goldblatt discussed the special use permit standards and looked at the application through 2 lenses: the impact on the general public and the impact on the immediate neighborhood. He stated that the variance findings put the burden of proof on the applicant. He did not feel that the application met the SUP standards or the burden of proof standards. He agreed with the Planning Board that this is not in accord with the public convenience and welfare and is insufficient mixed-use. Hotels are also not promoted uses in the Waterfront district in the Comp plan. Mr. Goldblatt stated that there were positives to this project, including tax revenue, cleaning up the site, supporting the goal of a continuous Harbor Walk, and having sufficient parking, but that the applicants failed to meet the burden of proof of impacts to the immediate neighborhood. He felt persuaded by the comments of neighbors to the south, that this project threatened this neighborhood, though the closing of the gate condition gives him some pause. Mr. Goldblatt disagrees with Mr. Wick on the density limit of the Waterfront zone, believing that the legislative intent of the City Council is for limited hotels in the Waterfront vs. General Business districts. Mr. Goldblatt felt that traffic posed a significant issue in this project as the site does not have direct access to a major arterial and they cannot divert traffic into the neighborhood. He does not believe the problem is solved by a proposed condition to close the gate. He does not feel that the hardship requirement for a variance has been met as all Waterfront Business sites have similar toxicity and flooding issues, and the right of way splitting the two merged sights is an applicant-created hardship for their project goals. He is still unconvinced about financial viability. Mr. Goldblatt voted to deny.

Mr. Johnson saw differences with this hotel project verses others (Hammet's, Brenton, Lee's Wharf), which have a second means of egress, and believed that this project would make traffic in the area worse. Mr. Johnson stated that he does not believe this application is the least relief necessary or

harmonious with the surrounding area, and suggested changing the application to lessen the impact. Mr. Johnson voted to deny.

Mr. Riley stated that he benefitted from the numerous questions raised by fellow Board members and that he was not persuaded that the project would promote pedestrian safety nor be less impactful than the existing use. He noted that Waites Wharf at Thames St is only 16-ft wide and believed that there would be a higher rise of pedestrian injuries here should there be traffic from the proposed hotel. Mr. Riley stated that the proposal does not conform to the Comp Plan regarding promoting mixed use and promoted Waterfront Business uses. He found that the room request of 31% over the allowable number of rooms to be too great, though the project analysis for financial viability was a convincing argument. He stated that the drafters of the Zoning Code knew what they were doing when they set the room density to a lower level. And that the petitioner had not met their burden of proof. Mr. Riley voted to deny.

A roll call vote was taken. The petition was denied, with Mr. Grimes and Mr. Rudd voting to support and Mr. Goldblatt, Mr. Johnson, and Mr. Riley voting to deny. Attorney Jackson to prepare the draft decision.

Amended App. #2023-Apr-005 PETITION OF DAVID PLATT, applicant and owner, **70 Bridge Street**, TAP 16, Lot 078, (R-10 Zone, Historic Overlay) for a special use permit, dimensional variance, and regulatory variance to construct a second principal residential building on a property, increasing the lot coverage from 25.58% to 35.28% (20% permitted).

Owner Jessica Platt and architect Spencer Alexander were present. One abutter was present in support of the petition. One letter of objection was received regarding concern for increased lot coverage in an area that is prone to flooding. Ms. Platt stated that she is looking to build a second dwelling for their in-laws. The Board asked questions regarding the use of the second dwelling, ADUs, and future state and local laws. Staff answered questions from the Board regarding ADUs. The applicant explained that they would not want to attach the second unit to the principal structure as the current house is not ADA accessible and an addition would likely not be acceptable to the HDC.

A motion to approve the afore-mentioned full-hearing items, with the conditions proposed by the applicant, and with the conditions that the project be started and substantially completed within 12 months of the date of the decision and that all outstanding invoices for abutter notification be paid prior to the recording of the decision was moved by Mr. Rudd, seconded by Mr. Riley.

The Board discussed the petition. Mr. Riley stated that current zoning does not allow for 2 separate dwellings on one lot and that he did not see the hardship of needing to have 2 units on this property. Mr. Grimes concurred with Mr. Riley, stating that the lot is nearly compliant and does not meet the minimum requirements of a variance. Mr. Rudd was concerned about the flooding issues raised by the objector. Mr. Johnson was not as concerned with the lot coverage, but stated that he struggled with the second dwelling. Mr. Goldblatt was sympathetic to their proposal and would vote to approve, but felt he was outweighed. The applicant was advised to consider removing the kitchen or considering a condition not to rent the unit.

A motion to continue the application to the February 26<sup>th</sup> meeting was made by Mr. Goldblatt, seconded by Mr. Riley. The motion was unanimously approved.

App. #2023-Jul-011 PETITION OF 49 & A HALF THIRD STREET, LLC, applicant and owner **49 ½ Third Street**, TAP 12, Lot 269, (R-10 Zone, Historic Overlay) to demolish an existing single-family dwelling and detached garage and construct a new single-family dwelling and attached garage, located 5'8" from the north side property line, 3'6" from the east side property line (10' required for both), construct a bulkhead 4'9" from the north side property line and two AC condensers 4'3" from the north side property line (10' required for both), establishing a lot coverage of 39% (20% allowed).

Attorney Jay Lynch represented the applicant and attorney Russell Jackson represented an objector of 2-4 Katzman Pl, Sean Burns. Architect Madeline Melchert and real estate expert Jim Houle were present and were recognized as an experts.

Mr. Lynch asked Ms. Melchert a series of questions regarding the proposed dwelling. The new dwelling would increase the lot coverage by 3% compared to the existing lot coverage. The increase is due to the skinny nature of the lot and the connector between the dwelling and garage.

Mr. Jackson cross-examined Ms. Melchert. Mr. Jackson's client is mainly concerned with the east garage setback of 3.5 ft. In response to Mr. Jackson's questions, Ms. Melchert stated that it was possible to reduce the connector slightly but not entirely, and that if the structure was moved to be compliant with the east side setback, it would then be noncompliant with the front setback. Mr. Houle testified, stating that the average lot coverage of the area is 37%, with many properties over 40%.

Objector Sean Burns spoke and raised concerns regarding the higher garage structure in close proximity to his property. He requested that it be moved 6.5 ft to the west. The Board asked if there was a reasonable compromise. Both parties were agreeable to move the structure 6.5 ft to the west and Mr. Lynch requested a continuance to January 22<sup>nd</sup> to re-advertise.

A motion to continue the application to the January 22<sup>nd</sup> meeting was made by Mr. Goldblatt, seconded by Mr. Riley. The motion was unanimously approved.

All remaining Petitions were continued.

Meeting was adjourned at 10:13 pm.