

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

A meeting of the Zoning Board of Review was held on Monday, February 27, 2023, in the Council Chambers, City Hall, 43 Broadway at 6:30 p.m.

PRESENT: Sam Goldblatt, Chair  
Wick Rudd, Vice-Chair  
Russell Johnson, Secretary  
David Riley  
Bart Grimes  
Susan Perkins, Alternate

Girard Galvin, Assistant City Solicitor  
Nicholas Armour, Zoning Officer

ABSENT: Nicole Shevory, Alternate

The minutes of the following meetings were approved:

November 21, 2022  
November 28, 2022

The following extension requests were considered and accepted:

- 18 Cliff Avenue, Heiden – Request for 24-month extension
- 435 Broadway, Island Moving Company – Request for 24-month extension

The proposed Briefing Schedule for the appeal of 93 Second Street was considered and accepted.

**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. Mr. Rudd, seconded by Mr. Riley. The motion was unanimously approved.

App. #2022-Dec-005. Corrected PETITION OF 4-6 RUSSELL AVENUE LLC, owner and Mark Donahue, applicant, 4-6 Russell Avenue, TAP 07, LOT 297, (R-10 zone), for a special use permit and dimensional variance to construct a detached, single-car garage on a 5,606 sq.ft. lot (10,000 sq.ft. required), located 3' from the east side lot line, (10' required), 5' from the north rear lot line (10' required), increasing the lot coverage from 24.7% to 30% (20% allowed).

A motion to approve the afore-mentioned summary item with the conditions that the detached garage will not be finished and used as an accessory dwelling, 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.

App. #2023-Feb-005 PETITION OF EOIN HOWLETT, applicant and owner, 16 Poplar Street, TAP 17, Lot 006, (R-10 Zone, Historic Overlay) for a special use permit and variance to the dimensional requirements to construct a garden shed, located 5' from the right side property line (10' required) and 5' from the rear property line (10' required), increasing the lot coverage from 24.32% to 28.74% (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.

App. #2023-Feb-006 PETITION OF 38 BELLEVUE, LLC, applicant and owner, 38 Bellevue Avenue, TAP 25, Lot 062-H, (GB Zone, Historic Overlay) for a special use permit to convert an existing office space in a condominium complex to a single-family dwelling unit.

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.

App. #2023-Feb-008 PETITION OF ROLAND NENTWICH, applicant and owner, 359 Spring Street, TAP 32, Lot 089-4, (R-10 Zone) for a special use permit and variance to the dimensional requirements to demolish and reconstruct a cupola reaching a height of 36'-7" (30' limit).

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.

App. #2022-Dec-003. PETITION OF JAMES AND CLAIRE HALL, applicants and owners, 5 Champlin Street, TAP 23, Lot 18, (R-10 Zone, Historic Overlay), for a special use permit and variance to dimensional requirements to construct three new staircases, one of which located 8 feet from the front property line (15 required), which will increase the lot coverage from 36.6% to 36.8% (20% allowed).

A motion to approve the afore-mentioned abbreviated summary item was made by Mr. Rudd, seconded by Mr. Riley with the conditions that the project shall 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.

The motion was unanimously approved.

App. #2023-Feb-001 PETITION OF RUPERT NESBITT, applicant and owner, 15 Johnson Court, TAP 14, Lot 013, (R-10 Zone) for a special use permit and variance to the dimensional requirements to construct a second-story addition to an existing non-conforming accessory structure, located 3' from the right (southwest) property line, 0' from the left (northeast) property line, and 1 foot from the rear property line (10' required for each), on a property with a lot coverage of 39.4% (20% allowed).

Board Member Grimes asked one question about the previously-approved demolition of the building. The applicant responded that the previous demolition had been approved but expired. He also stated there were no plans for a residence. There would be water and power, but no separate dwelling.

A motion to approve the afore-mentioned abbreviated summary item was made by Mr. Rudd, seconded by Mr. Riley with the conditions that the project shall 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.

The motion was unanimously approved.

App. #2023-Feb-007 PETITION OF BULL SHOT, LLC, applicant and owner, 140-144 Broadway, TAP 18, Lot 123, (GB Zone) for a special use permit and variance to the dimensional requirements to construct a first floor deck, expanding service area by 600 sq.ft., providing zero (0) additional parking spaces, where 4 additional spaces are required.

Board Member Riley suggested adding a condition to prohibit this area from being enclosed without coming back to the Board. No opposition to that condition was raised.

A motion to approve the afore-mentioned abbreviated summary item, was made by Mr. Rudd, seconded by Mr. Riley with the conditions that the project shall be started and substantially completed within 12 months of the date of the decision, that all outstanding invoices for abutter notification be paid prior to the recording of the decision, and that the service area not be enclosed without the applicant returning to the Board

The motion was unanimously approved. Attorney David Martland to prepare the decision.

App #2021-July-1. PETITION OF WILLIAM & LISA RUH, applicants and owners; 88 Washington Street, TAP 12, Lot 46, (R-10 zone); for a special use permit and a variance to the dimensional requirements for permission to construct a new single-family dwelling

and add a deck to an existing structure both of which will increase the lot coverage from 8% to 28%, (20% allowed). (Continued from 2/13/2023 Special Meeting for closing statements, deliberation, and vote)

The Applicants representative, Attorney Jay Lynch, provided closing arguments. Board Member Wick Rudd asked other Board Members if they would be open to a condition that the deck would not be enclosed. There was no objection.

Chairman Sam Goldblatt asked if there was any status as to the CRMC application. Mr Lynch indicated that an application to CRMC had not been submitted because it would require approval by the Building Official. Chairman Goldblatt asked whether a denial by CRMC would mean a re-design of the project. The applicant confirmed it would, and would require a new Zoning application. Chairman Goldblatt indicated he wanted to add a condition that if CRMC modifies the project, it would have to come back to the Zoning Board for review. He followed up with a question about the HDC conceptual approval, related to the size, scale, massing, and siting. He additionally confirmed from the applicant's attorney that there was no City ordinance protecting the tree, nor loss of views. He then asked for confirmation that the hardship on the property was the existence of the Tripp House and the slop of the lot.

Objector's attorney, Josh Parks, presented his closing arguments. Chairman Goldblatt asked a series of questions, including whether Attorney Parks felt the existence of the historic house should constitute a hardship (Mr. Parks said "no"), and whether it was his position that no house could be built on this property (Mr. Parks said "hypothetically, yes."). Board Member Johnson asked him to confirm that statement. Board Member Grimes asked whether there was enough room in the Tripp House for "modern living". Mr. Parks said, no, but that there was enough room.

Attorney MaryJo Carr, representing an abutter across the street, gave a five-minute closing statement, focusing on how the State defines hardship, and that this was not the least relief necessary. She cited and provided two state court cases, which focused on hardship and least relief necessary, and concluded that this project was not the least relief necessary, and therefore, the Board should deny the proposal.

A motion was made by Board Member Rudd to approve the project, with three added conditions: 1) condition that the deck and walkway not be enclosed without further Zoning Board approval, 2) that if CRMC changes the application, it should return to the Board, and 3) that the HDC grant final approval or it has to come back to the Board. My. Riley seconded the motion.

Board Member Grimes began the discussion, indicating he would be voting the deny the application based on the application not meeting the minimum relief necessary standard, and that the owner was aware of the hardship of the Tripp House when he purchased. He stated this house would not be in character with the neighborhood, being too large, out of scale, and too massive for the lot.

Board Member Johnson indicated he would also be voting to deny the application, as it is not the least relief necessary and the hardship has not been adequately proven. He encouraged them to build the house they want, just not on this property.

Board Member Riley indicated that this project met many of the criteria to grant a special use permit and variance, but it fell short on two criteria: hardship and least relief necessary. He stated he would vote to deny the application.

Board Member Rudd indicated this was a close case, but would be voting to deny. He did feel that the Tripp House presented a hardship case, but there was a lot of massing on the street side of the property. He was originally supporting of the lot coverage request, but was swayed by Attorney Carr's case that this was not the least relief necessary.

Chairman Goldblatt concluded the discussion, recapping all that was heard from the witnesses and the three attorneys. He clarified that this application was for the special use permit and variance, not as an appeal of the HDC application. He indicated the lot coverage variance request was unique, as most lot coverage variances are for properties that are undersized, and that was not the case in this project. He stated that they were not satisfied that the presence of the Tripp House was a hardship that constituted granting of the variance. He stated that he did not agree with the objector's attorney that nothing could be built on the lot, and that there could be some use of the property with the right project. He concluded that this was not the least relief necessary and that he would be voting to deny.

A roll call vote was taken. All Board Members voted to deny the application. Attorney Parks agreed to prepare the decision.

App. #2022-Jun-11. PETITION OF ERIC MARTIN, applicant and owner; 9 Tyler Street, TAP 19, Lot 105, (R-10 zone); for a special use permit and a variance to the dimensional requirements for permission to construct a 3rd floor dormer which will be located 2.8' from the north property line, (10' required).

Attorney Michael Monti represented the application. In attendance were the owner, Eric Martin, and the architect, Jeff Moniz. One objector, Brian Kenney, owner of 7 Tyler, was present.

Attorney Monti presented the applicant's case and Mr. Moniz described the architecture of the proposed addition of dormers. Mr. Martin indicated he bought the property 10 years prior, and that they needed the added space for his family and for working from home. Board Member Grimes asked for clarification that the dormers would not be increasing the non-conforming setbacks on the north. Mr. Monti confirmed, and indicated that the hardship was not something created by the applicant, and that this proposal was in-line with the neighborhood.

Objector, Mr. Kenney, stated that he believed the house was already over the height limit and that the heights on the plans were wrong. He said this would create a situation of a tower overlooking his property and that this was too large of a house for the small lot. He also indicated that he believed the rear stairs to the third floor would lead to a short term rental. Mr. Moniz confirmed that the heights were accurate, and that the height would be 28'-11 ¼", and that an internal reconfiguration of the stairs would mean there would be no independent access to the third floor.

Board Member Rudd confirmed the numbers for the footprint of the house and that there was no change to the lot coverage.

Board Member Rudd made a motion to approve, and included a condition that the stairwell be constructed to eliminate the possibility of an independent access. Board Member Riley seconded the motion.

Board Member Riley began the discussion, indicating that this was the least relief necessary, and that the addition was only for a master bedroom and no additional relief was necessary. He concluded that there was a hardship present, it would be in harmony with the neighborhood, and that he would support the application.

Board Member Johnson agreed with the previous statements, and while he heard the objections, he did not think this was an unreasonable request. He indicated that he would be voting to approve.

Board Member Rudd stated that this was a dense neighborhood of houses with lots of lot coverage. Felt the lot coverage is too high, and he agreed with the privacy concerns of the neighbors. He doesn't see the hardship, and would be voting to deny the application.

Board Member Grimes agreed with Board Member Rudd, that the lot coverage is too high and there is a privacy issue, and that he would be voting to deny.

Chairman Goldblatt agreed with Board Members Johnson and Riley, and thinks the applicants met their burden of proof, and would be voting to approve the application.

A roll call vote was taken. Board Members Goldblatt, Riley, and Johnson voted to approve. Board Members Rudd and Grimes voted to deny. As the application did not receive the necessary four positive votes, the vote fails, and the application is denied. Staff to prepare the decision.

App. #2022-Jun-18 Amended PETITION OF BRENDA SABBAG, applicant and owner, 311 Broadway, TAP 06, Lot 017-4, for a modification to a special use permit and a variance to the dimensional requirements to expand the existing fast-food restaurant, (bakery), by constructing a 400 sq. ft 2-story addition and provide 0 additional off-street parking spaces (5 provided, while 9 are required).

Attorney J. Russell Jackson represented the owner, Brenda Sabbag, who was also present. The owner answered a few questions about the operation of the business, the hours of operation, the frequency of deliveries, and the volume of production of goods. Tom Braden, traffic expert, was also present to discuss any impacts to the traffic due to the parking variance request.

A motion to approve the afore-mentioned full hearing item was made by Mr. Rudd, seconded by Mr. Riley, 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. The motion was unanimously approved. Attorney Jackson to prepare the decision.

App. #2022-Oct-4. Corrected PETITION OF TIMOTHY CORBETT, applicant and owner, 40 Eastnor Road, TAP 40, Lot 171, (R-10 zone), for a special use permit, a variance to the dimensional requirements, and a regulatory variance to allowable number of principal dwelling units on a single property to demolish an existing garage and build a new garage with full second floor containing a dwelling unit; located 6' from rear property line (20' required).

Attorney J. Russell Jackson represented the owner, Timothy Corbett, who was also present. Appraiser James Houle was also present as a witness on behalf of the applicant. The home owner answered questions about the proposed use of the new dwelling, which he stated would be for his father-in-law. A conversation amongst Board Members was had regarding accessory dwelling units or second principal residential dwellings. The applicant answered further questions about the size of the unit. Mr. Houle presented his appraisal report. He cited over 8000 lost dwelling units between 2010-2020. Board Member grimes asked about the lot coverage. The proposal would increase the lot coverage to 18%.

A motion to approve the afore-mentioned full hearing item was made by Mr. Rudd, seconded by Mr. Riley, with the conditions that the project be started and substantially completed within 12 months of the date of the decision, that all outstanding invoices for abutter notification be paid prior to the recording of the decision, and that there be no window on the back of the garage. The motion was unanimously approved. Attorney Jackson to prepare the decision.

All remaining Petitions were continued.

Meeting was adjourned at 10:36pm.