

Minutes of the
Newport Zoning Board of Review

A meeting of the Zoning Board of Review was held on Monday, April 24, 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
Nicole Shevory, Alternate
Susan Perkins, Alternate

Girard Galvin, Assistant City Solicitor
Nicholas Armour, Zoning Officer

The minutes of the following meetings were approved:

February 13, 2023 – Special Meeting
February 27, 2023 – Regular Meeting

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-Mar-009 PETITION OF RICH OSLON, applicant and owner **21 Hope Street**, TAP 11, Lot 120, (R-10 Zone) for a special use permit and dimensional variance to place an integrated bulkhead 11' from the rear property line (15' required), increasing the lot coverage from 32.1% to 32.5% (20% permitted).

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-Apr-001. PETITION OF CURTIS SPEER, Lessee, **KARL NURSE**, owner, **35 Broadway**, TAP 17, Lot 160 (GB zone), for a special use permit and a variance to the dimensional requirements to convert an existing office space to retail (art gallery), providing zero additional parking spaces (1 additional 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.

App. #2023-Apr-003 PETITION OF NANNETTE HERRICK, applicant, CHERRY COTTAGE, LLC, owner, **363 Gibbs Ave**, TAP 23, Lot 159 (R-20 Zone, Historic Overlay) for a special use permit and dimensional variance to construct a plunge pool, increasing the lot coverage from 15.61% to 16% (15% permitted).

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-Apr-006 PETITION OF DOUGLAS COLSON, applicant and owner, **2 Berkeley Terrace**, TAP 33, Lot 080, (R-10 Zone) for a special use permit and dimensional variance to construct a second story addition, located 14'-6" from the rear property line (20' required), increasing the lot coverage from 38.75% to 42.3% (20% permitted).

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-Apr-008 PETITION OF TYLER BERNADYN, applicant and owner, **6 Curry Avenue**, TAP 07, Lot 586, (R-10 Zone) for a special use permit and dimensional variance to place a condenser 7' from the side property line (10' 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.

App. #2022-Nov-002. Corrected PETITION OF BEACON ROCK, LLC, applicant and owner, **147 Harrison Avenue**, TAP 41, Lot 001, (R-120 Zone, Historic Overlay) for a special use permit and a variance to dimensional requirements to construct a detached garage, located 0' from front property line (75' required).

The applicant was represented by Attorney Peter Regan and addressed the withdrawn objection. Board Member Johnson asked about the location of the garage door on the site.

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 Regan will prepare the draft decision.

App #2023-Mar-004 PETITION OF NEWPORT RESTORATION FOUNDATION, applicants and owner, **46 Clarke Street**, TAP 24, Lot 093, (GB Zone, Historic Overlay) for a special use permit to convert an existing single-family home to a historical institution.

The applicant was represented by Attorney Stephen MacGillivray. Gina Tangorra from the Newport Restoration Foundation was also present.

Board Member Rudd asked about the objector. Board Member Goldblatt asked what the parking impact of the program would be. Ms. Tangorra stated that the program would run from June through October, Friday through Sunday, from 11AM to 4PM. Two staff members would park at 51 Touro Street and visitors would be encouraged to take public transportation or walk. There is an ADA accessible parking space on-site and the property is near the municipal parking lot at Mary Street.

Board Member Grimes asked if they will still pay property taxes if the use is changed to a historical institution. Ms. Tangorra replied yes. Board Member Goldblatt commented that there is no minimum parking standard for historic institutions. Board Member Johnson asked what the program was. Ms. Tangorra stated that it is a free art exhibit, timed by reservation with up to 25 people per half hour.

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 MacGillivray will prepare the draft decision.

App. #2023-Jan-010. APPEAL OF WILLIAM F. VARR, III, VICTORIA A. MORRO, AND CHRISTINE W. SMITH, appellants, JOHN & KATHLEEN TRENTOS, owners, **93 Second Street**, TAP 9, Lot 320 (R-10 Zone, Historic Overlay), appealing the decision of the Historic District Commission approving the owners' application for a Certificate of Appropriateness to construct a new single-family dwelling.

Attorney Russell Jackson represented the appellants and Attorney Peter Regan represented the owners.

Mr. Jackson contended that there was clear error and procedural error which prejudiced the decision. The Trentos' original application was denied in May 2022. The HDC Application for Certificate of Appropriateness states that a denied application may not be resubmitted to the HDC for one year after denial unless the proposal has been changed substantially. Two months after the denial, the Trentos submitted a revised application that was heard at the September 2022 HDC meeting. When hearing the new application, the HDC needed to deliberate if the proposal constituted a substantial change before considering approval. As the HDC was about to deliberate if the change was substantial, the HDC Chair stated that there was a precedent that an application needed to be 20% different to be considered significantly different, that this 20% standard is not in the HDC ordinances, and that the HDC needed to make a motion deciding if the application was 20% different to hear the case. The HDC voted that the application was significantly different with no further deliberation. Mr. Jackson argues that the 20% standard is arbitrary and prejudiced the vote of the HDC. The appellants believe that the case should be overturned, not remanded, so that the application can be reheard.

Boardman Rudd stated that standard “substantial change” is arbitrary as everyone has a different sense of what substantial change means, and asked Mr. Jackson if an arbitrary criterion really needs findings. Mr. Jackson stated that finding the change to be substantial is a decision of the HDC, and that the Zoning Enabling Act requires that boards articulate the reasoning of their decision.

Mr. Regan disagrees with Mr. Jackson that there was no deliberation on the merits. Mr. Regan stated that at the November 2022 HDC meeting, the HDC spent 10 minutes discussing their positions on the application one-by-one before making the motion to approve the application. He argued that the HDC Chair was expressing that 20% was his personal rule of thumb and had made clear that 20% was not an official standard.

Board Member Goldblatt asked Mr. Regan if he believes that the HDC’s statements from the November meeting should be used to explain their reasoning for the vote at the September meeting. Mr. Regan believes that enough information can be gleaned from the HDC’s statements at the November meeting to understand the previous vote. Board Member Johnson stated that he viewed the HDC’s decisions in two separate parts: the motion regarding substantial change at the September meeting and the approval of the project at the November meeting. Mr. Johnson believes that there should have been discussion at the September meeting.

A motion to sustain the appeal to reverse the HDC’s decision was made by Mr. Rudd, seconded by Mr. Riley. A roll call vote was taken.

Mr. Goldblatt did not care about the HDC Chair’s 20% comment, but found that the HDC improperly made the decision at the September meeting and that they should not look at the November record. The HDC did not state their reasoning in September and the HDC Chair did not call for a discussion, only a vote. Mr. Goldblatt believes there was clear error and prejudicial error, voting to sustain the appeal and to remand the decision to the HDC. Mr. Johnson, Mr. Rudd, and Mr. Riley agreed with Mr. Goldblatt, stating similar reasoning, and voted to sustain the appeal.

Mr. Grimes does not see prejudicial error or clear error, and believes the HDC based their vote on the evidence. Mr. Grimes indicated he would vote to deny the appeal and uphold the HDC decision.

Mr. Goldblatt made a motion to sustain the appeal and remand the decision back to the HDC, seconded by Mr. Johnson. The motion was unanimously approved. Mr. Goldblatt made another motion to sustain the appeal, reverse the HDC decision and remand back to the HDC, seconded by Mr. Rudd. Four members voted to approve and Mr. Grimes voted to deny the motion.

App. #2023-Mar-007 PETITION OF GEORGE BRINIUS, applicant and owner, **11 Warner Place**, TAP 13, Lot 171, (R-10 Zone) for a dimensional variance to place a storage shed 1’-0” from the side and rear property lines (10’ required for both).

George Brinius was present to represent the application. Sophie Delecour was present in opposition. The applicant and the objector reached an agreement to revise the application. The shed will be located 2 feet from the side property line and 10 feet from the rear property line. The objector is no longer objecting with the condition that the shed is not to be used as a dwelling.

A motion to approve the afore-mentioned full hearing item with the conditions that the shed not be used as a 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-Mar-008 PETITION OF JONATHAN BERGMANN, applicant and owner, **78 Ayrault Street**, TAP 22, Lot 121, (R-20 Zone) for a special use permit and dimensional variances to remove and replace a wood deck with a stone patio, construct a bedroom addition located 11' from North front property line (23' required), entrance portico, and covered entrance; construct a pool, and construct an equipment shed 4' from property line (10' required), increasing lot coverage from 16% to 25.8% (15% permitted).

The applicant was represented by Attorney Tanner Jackson. Applicants Jonathan Bergmann and Staci Caputi-Bergmann, and real estate expert James Houle were also present. Exhibit 1 – Report by James Houle was accepted.

Mr. Jackson stated that since the Bergmann's original application, the applicants have reduced the size of the proposed pool to 8 ft by 16 ft and relocated the equipment shed to comply with the 10-foot accessory structures setback in response to the two letters of objection. The proposed lot coverage has now been reduced by 2% to 23.8%. Mr. Bergmann then described the project from his perspective, stating that the addition was a first-floor bedroom suite to age in place and negate the need for stairs, and the plunge pool will be for the use of him and his wife. The pool equipment will be 50 dB loud, will be placed in an equipment shed to reduce the noise, and it can be turned off.

Mr. Bergmann answered several questions from the Board about the patio and pool size. Mr. Bergmann stated that they had tried iterations of a reduced patio, but doing so would create narrow and dark spaces in the house and reduce privacy. The terrace is approximately 2 feet (3 risers high), the pool is surrounded by bluestone, and the pool can comfortably accommodate 4-5 adults.

Ms. Caputi-Bergmann spoke, stating that her parents were the original owners of the house, that they do not intend to rent the house out, and that they have had no noise complaints. She explained that the neighbors were concerned with the removal of a cherry tree, but that tree is sick and needs to be removed. Mr. Houle was recognized as an expert and was asked about data from his survey. Mr. Houle stated that the lot has a hardship as it is 16,000 sq ft where 20,000 sq ft is required and it has two front setbacks being on a corner lot.

Board Member Rudd suggested adding a condition that they shall not enclose the deck.

A motion to approve the afore-mentioned full hearing item with the conditions that the terrace not be enclosed, 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. A roll call vote was taken. The motion was unanimously approved.

Attorney Jackson will prepare the draft decision.

App. #2023-Mar-012 PETITION OF CHRISTINE FOSTER, applicant and owner, **39 Holland Street**, TAP 35, Lot 112, (R-10 Zone) for a special use permit and dimensional variances to reconstruct the front entry stair, add an entry portico located 0'-9" from the front property line (15' required),

construct a 3rd floor addition 3'-2" from the west side setback (10' required), add a roof deck reaching a height of 34'-11 1/2" (30' permitted), increasing the lot coverage from 28% to 33% (20% permitted).

Applicant Christine Foster and architect Spencer McComb were present to represent the application. Mr. McComb presented the project, explaining that the house and lot were very small with a lot size of 3,000 sq ft and a current building footprint of 700 sq ft, with the house already built outside of the setback requirements. With limited lot space, the applicants are proposing to dormer the 3rd floor and add a roof deck to increase living space.

Board Members Johnson and Goldblatt asked about the building height and square footage of the outdoor areas. Board Member Grimes questioned the impacts of the roof deck and asked if they had considered alternatives. The building height would be 35 ft and the combined square footage of the decks is 255 sq ft. They had considered reducing the size of the roof deck, but the configuration would be awkward. The roof deck is visible from the street. Ms. Foster explained that the roof deck and additions are for the enjoyment of the view for her and her family whose primary residence is in Connecticut, that her family is quiet with no intention to rent, and that she believes the objections are in response to the previous owner of the property who had several noise complaints.

A motion to approve was made by Mr. Rudd, seconded by Mr. Riley.

Mr. Rudd believes the tiny lot is a hardship but that the idea of a roof deck needs further discussion. He would vote to approve. Mr. Riley believes most of the proposal is the minimum relief needed for the reasonable use of the property, but does not think the roof deck is necessary and would not be supportive of the roof deck. Mr. Johnson, Mr. Grimes, and Mr. Goldblatt also agreed with Mr. Riley's perspective and would vote to deny the roof deck.

An amended motion was made to approve the afore-mentioned full hearing item with the conditions to remove the roof deck from the proposal, 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. A roll call vote was taken. The motion was unanimously approved.

App. #2022-Oct-10. PETITION OF THOMAS & CHERI DUGAN, applicant and owner; **79 Connection Street**, TAP 39, Lot 026, (R-10 zone); for a special use permit and a variance to the dimensional requirements for permission to extend exterior stairs and construct additional story with attic, reducing front setback from 9.6' to 7.6' (15' required); Also, to add 6'x12' shed, located 2' from rear and side property line (10' required); increasing lot coverage from 36% to 40% (20% allowed).

The applicant was represented by Attorney Matt Leys. Applicant Thomas Dugan was present. Architect Brian Shull was also present and was accepted as an expert. Exhibit 1 – Flood Elevation Certificate was accepted.

Mr. Leys and Mr. Shull presented the application and explained that the house is very small on a very substandard lot. Due to flood zone constraints, the applicants are adding another level to increase living space. The house would be 38 ft 6 in to comply with flood zone requirements. Mr. Dugan stated that he spoke with his neighbors and received no objections, and that it is more manageable to upgrade and move in to this property than to renovate the older house next door, where they currently live.

Motion to approve made by Mr. Goldblatt, seconded by Ms. Shevory. A roll call vote was taken. The applicant requested 18 months to start and substantially complete the project. All board members concurred that the application meets the requirements for a special use permit and variances, that the lot size and flood zone presented hardships, and that the project was in harmony with the neighborhood.

A motion to approve the afore-mentioned full hearing 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. A roll call vote was taken. The motion was unanimously approved.

Attorney Leys will prepare the draft decision.

All remaining Petitions were continued.

Meeting was adjourned at 10:41pm.