

Minutes of the
Newport Zoning Board of Review

A special meeting of the Zoning Board of Review was held on Monday, February 13, 2023, in the Council Chambers, City Hall, 43 Broadway at 6:00 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

D E C I S I O N S

Appeal

App #2020-Oct-5. APPEAL OF TIMOTHY & MAUREEN WEST, appellants and owners; 45 Everett Street, TAP 22, Lot 17, (R-10 zone); appealing the decision of the Historic District Commission denying permission to replace a slate roof with an asphalt roof and remove existing dormers.

Appellants were represented by Michael Monti of Sayer, Regan, and Thayer, who presented a brief summary of the appeal petition. Motion was made by Board Member Wick Rudd and seconded by David Riley, to sustain the appeal and overturn the HDC decision.

Chairman Samuel Goldblatt began the discussion, citing Rhode Island General Law in relation to the work "Act". He restated the timeline of events, including the initial hearing and subsequent continuances, and indicated that the HDC did act, in hearing the item and continuing for modifications. He stated there was no evidence they acted improperly. He concluded it would not be equitable or fair or in the public's best interest to overturn the HDC decision, and he would be voting to deny the appeal. Board Member Rudd agreed with the Chairman and added that it was clear from the weight of the evidence that the project would have been denied, had the applicant not agreed to a continuance to make modifications. He also added that the continuances, which happened at the early stages of the pandemic, was a City-wide approach to applications until virtual hearings could be properly conducted. He stated he would be voting to deny the appeal.

Board Member Bart Grimes indicated there may have been some question as to the weight of the evidence regarding the project, but the Zoning Board's role was not to replace the judgement of the HDC. On the question of the 45-day rule, he agreed with Chairman Goldblatt and Member Rudd that there were no grounds to sustain the appeal,

and would be voting to deny the appeal. Board Member David Riley agreed with the previous Board Members, and stated that there was no prejudicial error, no procedural error, the initial project was heard within 45 days, and he would be voting to deny the appeal. Board Member Russ Johnson concurred with the previous Board Members and the memo provided by the Assistant City Solicitor, Girard Galvin, and would vote to deny the appeal.

A roll call vote was called. The appeal was unanimously denied 5-0.

Full Hearings

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).

The applicants were represented by Attorney Jay Lynch. Mr. Lynch presented 4 witnesses: Madeline Merchant (Architect), William Ruh (owner), Jerry Kirby (project contractor), and James Houle (appraiser). Objectors were represented by Attorney Josh Parks. Mr. Parks presented two witnesses: (Glen Fontecchio (architect) and Matthew Largess (tree expert). Attorney MaryJo Carr also appeared to represent an abutter directly across the street.

Applicant's side presented the application, and had Mrs. Melchert answer questions about the architecture of the proposed buildings and the constraints on the property due to the requirement to retain the Tripp House (a historic home moved to this location in the 1960s), which led to a design of a new, separate house and the proposed modification of the Tripp House to remove the kitchen, and therefore, the dwelling. Constraints also included an existing, large tree at the northeast corner of the property, as well as the CRMC setbacks. Cross examination by Mr. Parks led to an understanding that the total square footage of all of the buildings on the site was approximately 5,500 sq. ft. Board Members also asked questions of Mrs. Melchert regarding the size of the house, why they designed the house within the CRMC setbacks, and the changes to the design of the house over multiple iterations of the project. They further asked whether the project could have complied with the 20% lot coverage maximum, given the size of the property. Mrs. Melchert answered that it could not, due to needs of modern living. She stated that the hardship was the need to respect the existing tree, the existing Tripp House, the neighbors, offsite views, the flood zone, slope of the property, and CRMC setbacks.

Board Member Rudd asked about the size comparison between the Tripp House and the new building. Board Member Riley asked about the fact that the plans showed notes about livable area in the basement, which should be permitted given the flood zone issues. Mrs. Melchert clarified this area could not be finished living space. Board Member

Johnson brought up the fact that most people come before the Zoning Board seeking relief from lot coverage due to their undersized lots, but this property is over 13,000. Stated that he felt this house should be built to a compliant size, and questioned why they didn't design the house to comply. He further questioned why the decks needed to be so large. Mrs. Melchert indicated that the property owner wanted to connect the main house with the Tripp House.

Contractor Jerry Kirby was called as the second witness, who gave testimony on the effort to save and protect the large tree in the front of the property, and used Bartlett Tree Experts to understand retention techniques. He also discussed his experience with over 100 CRMC applications, and his belief that the CRMC variance would be granted. Mr. Parks cross examined Mr. Kirby and asked questions about the Bartlett Tree review. Mr. Kirby stated they did not submit it as part of the application.

The next witness called by Mr. Lynch was the applicant and owner, William Ruh, who discussed the process to get to this point, including multiple design modifications and how they ended up with the size that they did. Mr. Parks cross examined Mr. Ruh, and questioned whether he was aware of the "hardship" of the Tripp House when he purchased the property. Mr. Ruh stated that he was, but thought that the house may be approved to be moved, as it had not always been present at 88 Washington. Board Member Johnson asked how the Tripp House would be used if the new House was built. Mr. Ruh indicated that it would be a house for guests, such as family and friends. Board Member Grimes asked about how much of the deck was making up the 28% lot coverage. The applicant responded approximately 6% of the total.

The last witness called was James Houle. Mr. Houle presented his appraisal report and indicated the building was comparable in size to other buildings in the area.

Mr. Parks called Glen Fontecchio, architect, and entered his CV into the record as objector's Exhibit A. The Board recognized Mr. Fontecchio as an expert in architecture. The Expert's opinion letter, which was been included as an attachment to the agenda was entered as Exhibit B. Mr. Parks and Mr. Fontecchio presented a PowerPoint (Accepted as Exhibit C). Mr. Lynch cross examined the witness and questioned whether he was aware the HDC conceptually approved the project, including the massing. The witness stated he was aware. No further questions were asked by Mr. Lynch. A couple clarifying questions were asked by the Board.

The second witness called by the objectors was Matthew Largess, arborist. His CV was entered as Exhibit E. The Board recognized him as an expert arborist. His written opinion was entered as Exhibit F. A photo of the Tree was entered as Exhibit G. Mr. Largess discussed the size of the tree, the crown, the species, and questioned whether the dripline was accurate in the plans. He also discussed the root zone of the tree and potential impacts. He stated the tree is significant and very healthy and that the compaction of the dirt in the root zone would potentially affect the tree. It was noted that nothing in the ordinance prevents the tree from being cut down. Board Member Rudd asked about the

age of the tree. It was estimated to be between 80-100 years old, and able to live another hundred years, and that this is one of the largest in Newport of this species.

An objector, Peter Denton, also gave a few statements. He was represented by Mr. Parks, but chose to speak.

Attorney MaryJo Carr spoke briefly, and while having no evidence or witnesses, she requested to have the opportunity to submit a written brief.

Chairman Goldblatt queried the Board on whether they were willing to finish the deliberations at this hearing. The consensus was no. Mr. Goldblatt then suggested a continuance to the February 27, 2023 meeting, and that the applicant and objectors be given limited time at that meeting for closing arguments, and then the Board would deliberate. It was decided that Mr. Lynch and Mr. Parks would each be given 10 minutes, and Mrs. Carr would be given 5 minutes. A Motion to continue was made by Mr. Rudd, seconded by Mr. Riley. All were in favor. Application continued to February 27, 2023 Regular Zoning Board meeting.

Meeting was adjourned at 10:05pm.