

1. Zoning Board Of Adjustment Regular Webex Meeting Agenda(PDF)

Documents:

[20200728 ZBA AGENDA.PDF](#)

2. 20200728 ZBA Case Packets

Documents:

[20200728 17 ORLANDO AVE.PDF](#)  
[20200728 9 DEERHAVEN DR.PDF](#)  
[20200728 58 MARIE AVE.PDF](#)  
[20200728 19 LEGACY DR.PDF](#)  
[20200728 1 LONG AVE.PDF](#)  
[20200728 105 HILLS FERRY RD.PDF](#)  
[20200728 130 SPIT BROOK RD.PDF](#)  
[20200728 5 SCOTIA WAY.PDF](#)

3. 20200728 ZBA Decision Sheets

Documents:

[20200728 ZBA DECISIONS.PDF](#)



**City of Nashua**  
**Planning Department**  
229 Main Street  
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
Fax 589-3119  
WEB [www.nashuanh.gov](http://www.nashuanh.gov)

July 14, 2020

The following is to be published on ROP July 19 2020, under the Seal of the City of Nashua, Public Notice Format 65 MP 51.

The Zoning Board of Adjustment will meet on Tuesday, July 28, 2020 at 6:30 PM via WebEx. Real-time public comment can be addressed to the Board utilizing WebEx virtual meeting software for remote access. This will allow users to view the meeting and ask questions to the Board via the chat function. The public is also encouraged to submit their comments via email ([planningdepartment@nashuanh.gov](mailto:planningdepartment@nashuanh.gov)) to the Department email or by mail (please make sure to include your name/address and comments) by 5:00 p.m. on July 28, 2020 and read into the record at the appropriate time. Letters should be addressed to City of Nashua, Planning Department, P.O. Box 2019, Nashua, NH 03061. Plans can be viewed online starting July 24, 2020, at [www.nashuanh.gov](http://www.nashuanh.gov) in the Calendar or Agendas and Minutes.

To access WebEx:

<https://nashuanh.webex.com/nashuanh/j.php?MTID=m175daa06408db13ffcff096ac712b007>

Meeting number/access code: **129 741 0659**

Password: **8fdUHY4cHu8**

To join by phone: 1 (408) 418-9388

If you are not able to connect to WebEx, please contact the Planning Department at **(603) 589-3056**.

1. Andre L. Roy (Owner) 17 Orlando Street (Sheet 130 Lot 25) requesting variance from Land Use Code Section 190-192 (C) to repave and replace existing driveway, 24 feet permitted, two driveways at 9' and 24' existing - the 24' driveway proposed at 26' for a total width of 35 feet. RB Zone, Ward 4.
2. Mark P. & Kelli G. Wholey (Owners) 9 Deerhaven Drive (Sheet G Lot 324) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) for an attached accessory (in-law) dwelling unit proposed above existing garage. R18 Zone, Ward 3.

3. Oscar L. Annis & Charles R. Cobb (Owners) 58 Marie Avenue (Sheet 138 Lot 372) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 5 feet into the 10 foot required left side yard setback to construct a 12'x22' attached garage addition. R9 Zone, Ward 1.
4. Frank E. & Jane L. Andrews Rev. Tr. (Owners) 19 Legacy Drive (Sheet B Lot 3154) requesting the following variances from Land Use Code Section 190-31: 1) to encroach 2 feet into the 6 foot required right side yard setback; and, 2) to encroach 4 feet into the 6 foot required rear yard setback - to install a 12'x18' shed. R18 Zone, Ward 9.
5. Eleanor M. Macdougall Family Trust (Owner) 1 Long Avenue (Sheet E Lot 82) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 22 feet existing, 24 feet permitted - 41 feet proposed. RA Zone, Ward 4.
6. Natalie & Marc Blattenberger (Owners) 105 Hills Ferry Road (Sheet 117 Lot 253) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, requesting to repave one 12 foot wide driveway on Hills Ferry Road and one 18 foot wide driveway on Hillside Drive for a total width of 30 feet. RA Zone, Ward 3.
7. Grace Lutheran Church (Owner) Signs Now (Applicant) 130 Spit Brook Road (Sheet B Lot 2428) requesting the following: 1) A determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the variance for an electronic changing message [EMC] sign that was denied by the ZBA on 4-28-2020; and, if so: 2) variance from Land Use Code Section 190-101, Table 101-7 (K) to allow manually changeable copy on ground sign. PI/R18 Zone, Ward 8.
8. Lawrence Berger (Owner) 5 Scotia Way (Sheet C Lot 1736) requesting the following variances: 1) from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted, 74% proposed, to construct a detached 35'x35' one-story garage in rear yard; and, 2) from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, 19 feet existing - an additional 10 foot wide driveway proposed on right side of lot, for a total width of 29 feet. R9 Zone, Ward 5.

OTHER BUSINESS:

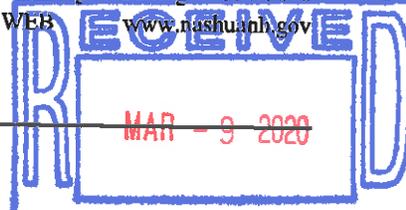
1. Review of Motion for Rehearing:
2. Review of upcoming agenda to determine proposals of regional impact.
3. Approval of Minutes for previous hearings/meetings.

"SUITABLE ACCOMMODATIONS FOR THE SENSORY IMPAIRED  
WILL BE PROVIDED UPON ADEQUATE ADVANCE NOTICE."



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**Planning Department**  
 229 Main Street  
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**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST 17 ORLANDO ST NASHUA NH 03064

X Zoning District RB Sheet 0130 Lot 00095 ✓

2. VARIANCE(S) REQUESTED:

① NEW PAVING AND REPLACEMENT PAVING OF DRIVEWAY & EXISTING PAVINGS IS 24' WOULD LIKE TO ADD 2' OF ADDITIONAL PAVING TO MAKE DRIVEWAY WALK TO WALK.

② REDUCE THE WALKWAY FROM 9' TO APPLICABLE SIZE WALKWAY.

**II. GENERAL INFORMATION**

1. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): ANDRE L ROY

Applicant's signature Andre L Roy Date 3/9/2020

Applicant's address 17 ORLANDO ST NASHUA NH 03064

Telephone number H: \_\_\_\_\_ C: 603-231-7539 E-mail: ANDRE.L.ROY@YAOU.COM

2. **PROPERTY OWNER** (Print Name): ANDRE L. ROY

\*Owner's signature Andre L. Roy Date 3/9/2020

Owner's address 17 ORLANDO ST NASHUA NH 03064

Telephone number H: \_\_\_\_\_ C: 603-231-7539 E-mail: ANDRE.L.ROY@YAOU.COM

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

<b>OFFICE USE ONLY</b>	Date Received <u>3/9/20</u>	Date of hearing <u>4/28/20</u>	Application checked for completeness: <u>CF</u>
PLR# <u>20-0011</u>	Board Action _____		
\$ <u>530.00</u> application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ <u>15.00</u> signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
Land Use Code Section(s) Requesting Variances From: <u>190-192 (C)</u>			

III. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest, because:** (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

This change will not be contrary to public interest because adding the new driveway will <sup>not</sup> smother and have no health, safety, or other conditions to the neighborhood.

- 2. **The proposed use will observe the spirit of the ordinance, because:** (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The change will not conflict with explicit or implicit purpose of the ordinance & will not alter the character of the neighborhood because it will look better than existing driveway and walkway.

- 3. **Substantial justice would be done to the property-owner by granting the variance, because:** (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

This will be justified by the improvement of the property with the new driveway & walkway.

- 4. **The proposed use will not diminish the values of surrounding properties, because:** (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The improvement of my property will enhance to the neighborhood!

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

Not really applicable because of no hardships to the neighborhood.

IV. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees \_\_\_\_\_ Number of employees per shift \_\_\_\_\_
- b. Hours and days of operation \_\_\_\_\_
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors \_\_\_\_\_
- d. Number of daily and weekly commercial deliveries to the premises \_\_\_\_\_
- e. Number of parking spaces available \_\_\_\_\_
- f. Describe your general business operations: \_\_\_\_\_

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation: \_\_\_\_\_

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Andre, J. Roy  
Signature of Applicant

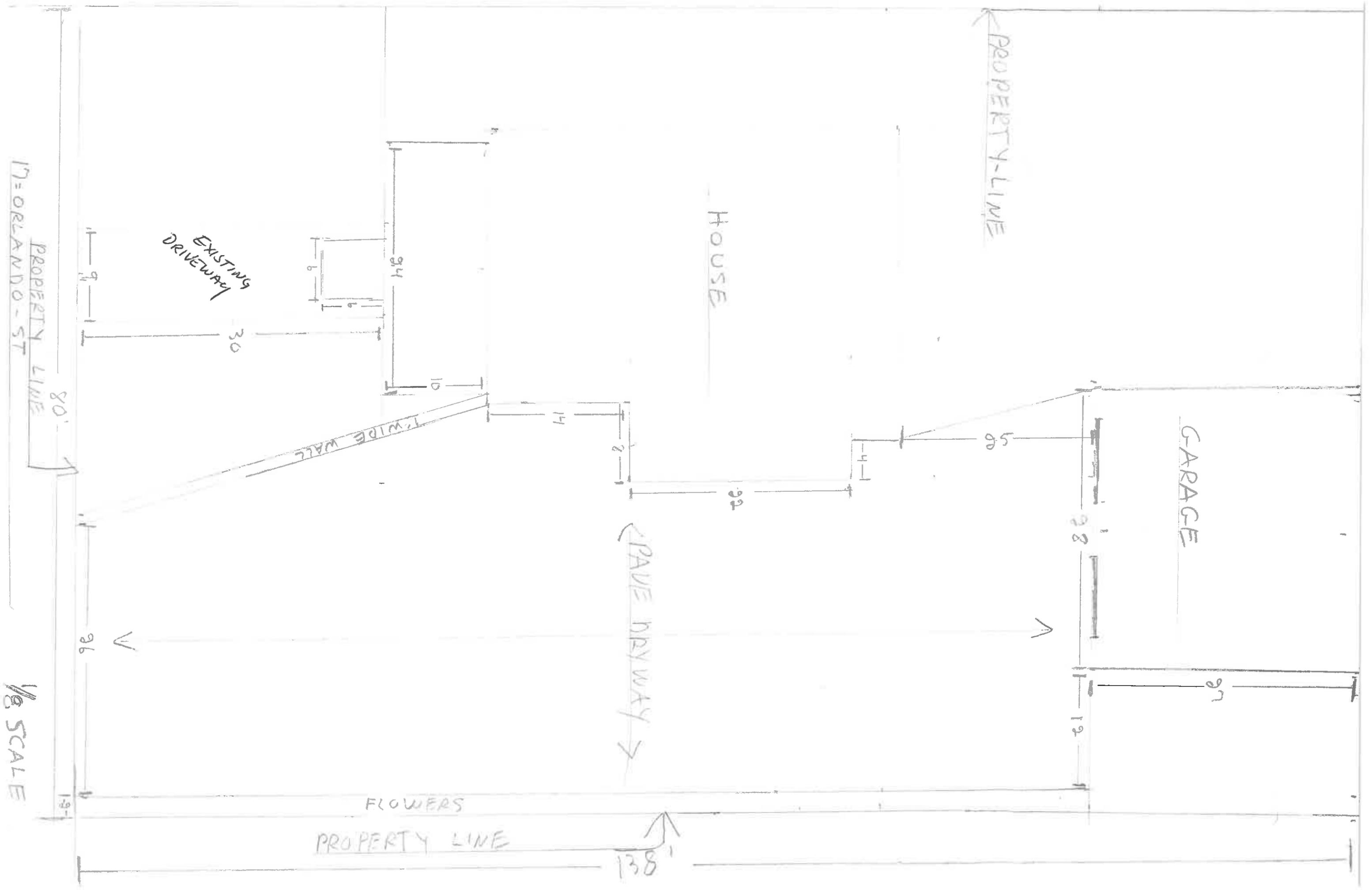
3/9/2020  
Date

ANDRE L ROY  
Print Name

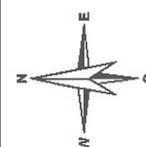
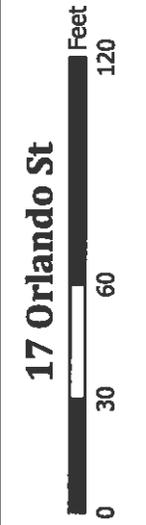
3/9/2020  
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at \_\_\_\_\_
- Please mail it to me at \_\_\_\_\_







this would be something he had to talk to an insurance agent about as far as liability.

Mrs. Picard said the driveway is so long she doesn't see how anyone would want to back out of it.

Mr. Duffy agreed, especially in the winter. He said when he saw the topography of the driveway nobody is going to back out.

**MOTION** by Mr. Duffy to grant the special exception for 75 Conant Road for a day care for a maximum of nine children. This is listed in the Table of Uses. It will not create additional undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewer, or other municipal systems. The criteria for a major home occupation are met. (He covered these in his motion). This use will not impair the integrity or be out of character of the neighborhood or be detrimental to the health, welfare or morals of the residents. Special Conditions: No outdoor play before 9:00AM. Hours of operation Monday through Friday from 7:00AM - 5:30PM. All day care participants not to back out onto Conant Road - exit in a forward direction.

**SECONDED** by Mr. Malkasian

 **MOTION CARRIED UNANIMOUSLY**

9. **Andre L. Roy (Owner) 17 Orlando Street (Sheet 130 Lot 25) requesting the following two variances: 1) to exceed maximum accessory use area, 40% allowed - 67% requested, and 2) to exceed maximum height for an accessory building, 20 feet allowed, 24 feet requested - both requests to construct a 30'x30' two-car garage with room above. RB Zone.**

Andre Roy, 17 Orlando Street. Mr. Roy said he would like to replace an existing 26' X 28' garage with a 30' X 30' with a room above.

Mr. Milligan asked Mr. Roy to go through the five points of law in order to prove he meets the criteria for the variance

to be granted.

Mr. Roy said his existing garage is falling apart and he needs a new one. At this point he faltered indicating he didn't understand due to his language barrier.

Mr. Milligan asked if he would feel comfortable just reading the answers from the application and Mr. Roy said he could do that.

Mr. Roy said the house was built many years ago, prior to existing zoning regulations. This will improve an existing building. This will increase the value of the property. By improving the property, the taxable value will increase without impacting City services. He will be able to upgrade an old building up to current construction standards and enjoy the use of the building. The current use of the property is a single family residence with a two car garage.

Mr. Duffy said the current garage is a single story and he is requesting two stories. He asked what the use of the second story would be.

Mr. Roy agreed. He said the second story would be used for a recreation room.

Mr. Milligan asked if it would be heated or have plumbing.

Mr. Roy said it will probably have heat. He said he is going to have a bathroom and sink downstairs.

Mr. Duffy asked if there were other houses in the neighborhood that have garages and additions as big as this one.

Mr. Roy said when he bought the house fifteen years ago the existing garage was there. He wants a larger garage.

Mrs. Picard asked if there was a foundation on the garage.

Mr. Roy said there is no foundation. He wants to put in a frost wall.

Mr. Malkasian asked why this garage with room above is so high.

Mr. Roy said he doesn't know the rules about the height. He said he thought 24' would give him a nice pitch.

Mr. Malkasian said the maximum height is 20'. He asked if this was acceptable and Mr. Roy said it is.

Mr. Malkasian asked the height of the arborvitae on Mr. Roy's property.

Mr. Roy said 13'.

Mr. Milligan asked Mr. Roy if he had spoken to his neighbors about this.

Mr. Roy said he had not, but he is sure they will be glad to see it replaced because of its condition.

Mr. Milligan said he was concerned about the height of the structure because it might cast a shadow on the abutting property.

Mr. Falk explained the building height is measured at the mid point between the eave and the ridge, not the very top of the building.

Mr. Milligan asked how tall the peak of the building would be.

Mr. Roy said he was going to do the first floor at 9', 1' for the floor, and then another 8' and another 5' for the roof.

Mr. Jenkins said with the size building there is a lot of potential for an apartment, especially if there is plumbing, heating, and electricity.

Mr. Duffy asked if Mr. Roy would be amenable to keeping the size of the new garage 26' X 28' and have a second story.

Mr. Roy said he would be.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Malkasian said 67% is a lot.

Mrs. Picard & Mr. Jenkins said it is already there.

Mr. Malkasian agreed. He said the current garage is only one story. The proposal is to have a second story and the peak might go to 27'.

Discussion ensued.

Mr. Jenkins said he isn't opposed to the 26' X 28' as it already exists. He said they don't necessarily have to grant the second request for the height.

**MOTION** by Mr. Jenkins to grant a 26' X 28' garage with a room above at 17 Orlando Street. The hardship is that this predates zoning and the garage already exists.

**SECONDED** by Mr. Malkasian.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Jenkins to deny the request for the height variance at 17 Orlando Street because it is out of character with the neighborhood.

**SECONDED** by Mr. Milligan.

**MOTION CARRIED UNANIMOUSLY**

10. Sandra A. Fabre & Olga A. Gombins (Owners) 32 Wilder Street (Sheet 96 Lot 71) requesting special exception for



**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

3

**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST 9 Deerhaven Drive  
 Zoning District R-18 Sheet G Lot 324

2. VARIANCE(S) REQUESTED:

CONSTRUCT AN ADDITION ABOVE EXISTING SINGLE-STORY PORTION OF STRUCTURE TO INCLUDE ADU FOR IN-LAW USE (1 BEDROOM, BATH, KITCHEN/LIVING)

**II. GENERAL INFORMATION**

1. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): MARK P. WHOLEY  
 Applicant's signature [Signature] Date 7-2-2020  
 Applicant's address 9 Deerhaven Drive  
 Telephone number H: (603-765-5027) C: (603-765-5027) E-mail: NFR5078@gmail.com

2. **PROPERTY OWNER** (Print Name): MARK P. WHOLEY

\*Owner's signature [Signature] Date 7-2-2020  
 Owner's address 9 Deerhaven Drive  
 Telephone number H: (603-765-5027) C: (603-765-5027) E-mail: NFR5078@gmail.com

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

<b>OFFICE USE ONLY</b>	Date Received _____	Date of hearing _____	Application checked for completeness: <u>CF</u>
PLR# _____	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
Land Use Code Section(s) Requesting Variances From: _____			

III. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

1. Granting of the requested variance will not be contrary to the public interest, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

- ADDITION OF ADU LIVING SPACE SHALL BE 748 FT<sup>2</sup> TO MEET NASHUA CODE. EXTENSION OF CLOSET FROM EXISTING MASTER WILL BE DONE TO KEEP LIVING SPACE UNDER 750.  
 - ADDITION STYLE INTENDED TO ENSURE CONSISTANT STYLE IN NEIGHBORHOOD.  
 - NO NEW ENTRY ADDED, NO CHANGE TO DRIVEWAY

2. The proposed use will observe the spirit of the ordinance, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

OWNERS OF EXISTING PROPERTY WILL REMAIN AS PRIMARY OCCUPANTS, SINGLE OCCUPANT OF THE ADU IS THE MOTHER OF PRIMARY OCCUPANT AND OWNER OF EXISTING PROPERTY. A SINGLE-DOORWAY WILL CONNECT THE TWO LIVING SPACES ON INTERIOR OF STRUCTURE. PROPERTY WILL REMAIN AS SINGLE-FAMILY DWELLING, OWNER OCCUPIED

3. Substantial justice would be done to the property-owner by granting the variance, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

OWNER IS A 20-YEAR MEMBER OF NASHUA F.R. WHO WORKS 24-HOUR SHIFTS. OWNER HAS SEEN COMMUNITY IMPACTS OF OLDER GENERATIONS LIVING ALONG. GRANTING THIS REQUEST WILL ENSURE LONG-TERM CARE FOR IMMEDIATE FAMILY WHEN NEEDED.

4. The proposed use will not diminish the values of surrounding properties, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

THE PROPOSED ADDITION IS COMMON WITH HOMES IN DEERHAVEN AREA. SIMILAR ADDITIONS ARE SEEN IN NEIGHBORHOOD. OTHER HOMES IN NEIGHBORHOOD HAVE IN-LAW STYLE SET-UPS IN-USE.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

CONSTRUCTION OF ADDITION AS PROPOSED KEEPS ALL SET-BACKS IN-PLACE. PROPOSED ADDITION IS WITH-IN CHARACTER OF HOMES IN NEIGHBORHOOD. APPROVAL OF ADU AS PROPOSED IS CONSISTANT WITH NASHUA ADU ORDINANCE AND WITHIN THE INTENTIONS OF THE ADU PROVISIONS.

IV. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees  Number of employees per shift
- b. Hours and days of operation
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors
- d. Number of daily and weekly commercial deliveries to the premises
- e. Number of parking spaces available
- f. Describe your general business operations:

THIS IS NOT A BUSINESS VARIANCE REQUEST

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:

FOOTPRINT OF EXISTING WILL NOT CHANGE  
DRIVEWAY LAYOUT WILL NOT CHANGE

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

MPW  
Signature of Applicant

7-2-2020  
Date

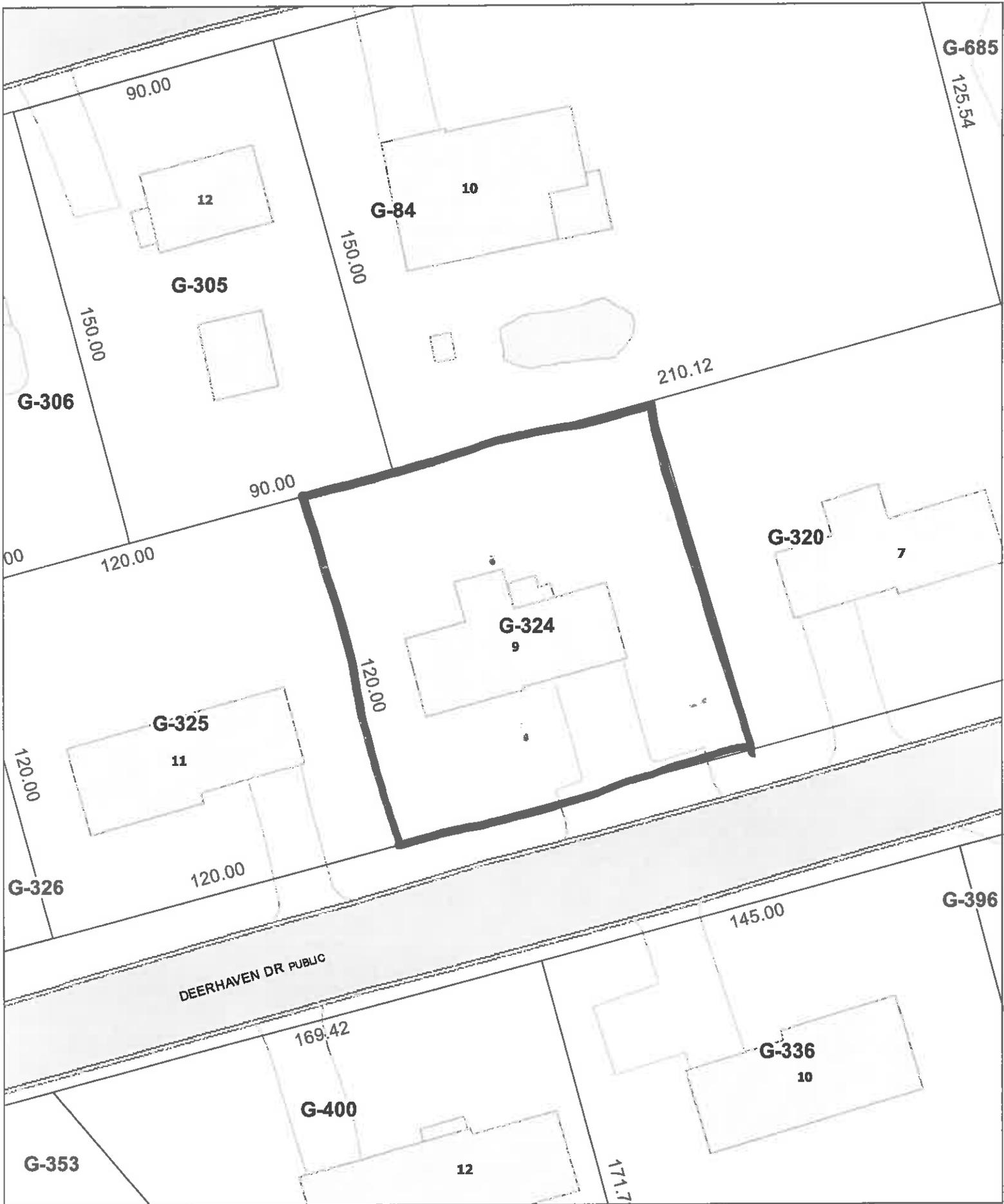
MARK P. WHALEY  
Print Name

7-2-2020  
Date

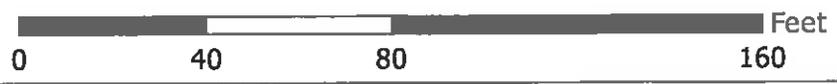
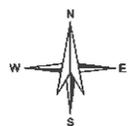
The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at
- Please mail it to me at





# Nashua, NH



**Falk, Carter**

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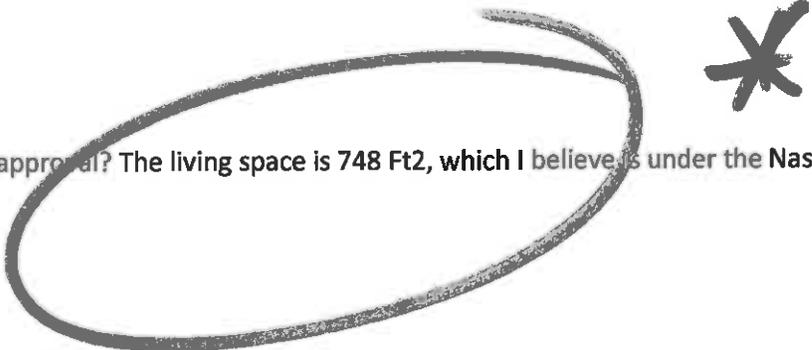
**From:** Mark Wholey <nfr5078@gmail.com>  
**Sent:** Wednesday, July 01, 2020 2:16 PM  
**To:** Wilkins, Marcia  
**Cc:** Poirier, Kate; Falk, Carter  
**Subject:** Re: 9 Deerhaven Dr, Building and Land Use application

**CAUTION:** This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Thank you.

What is the reason for ZBA approval? The living space is 748 Ft<sup>2</sup>, which I believe is under the Nashua building code requirement for ADU?

Sent from my iPhone



On Jul 1, 2020, at 12:51 PM, Wilkins, Marcia <WilkinsM@nashuanh.gov> wrote:

Mr. Wholey,  
Good afternoon, the application you have submitted, (we call an Accessory Dwelling Unit / ADU) requires additional approvals from the ZBA such as a Special Exception for the use, and variance for the size of the ADU. I've attached the Land Use Code ordinance for ADU's and the Zoning Board applications.  
I've also added Zoning Department Staff to make them aware of possible application coming in and if you have any questions you can email all of us. The meeting schedule is at the end of the Special Exception attachment. The fee for this request is \$545.00 for the Special Exception and the second request is the Variance for the area.

Have a great holiday weekend.

Marcia Wilkins, Planner I  
Planning & Zoning Department  
Community Development Division  
229 Main Street  
P.O. Box 2019  
Nashua, NH 03061

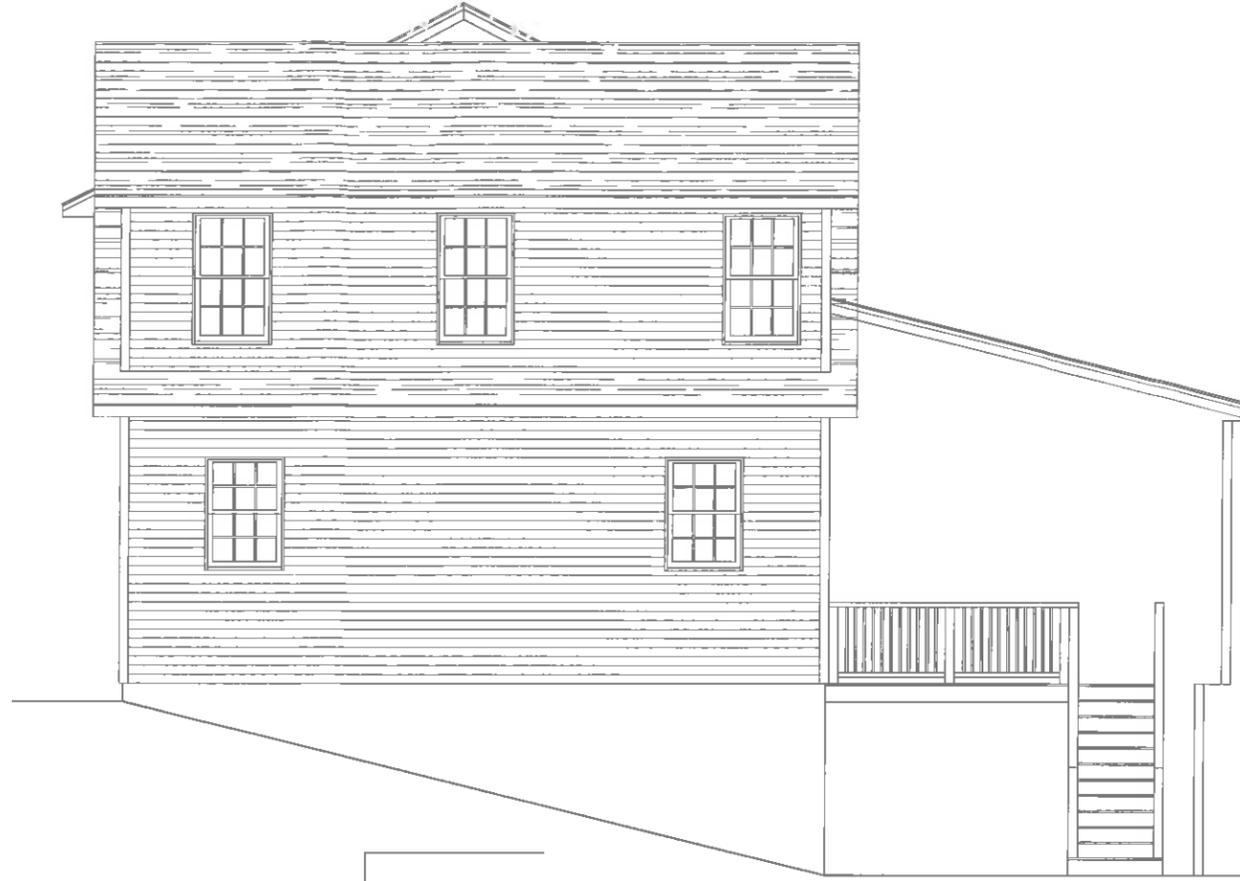
603-589-3103 ph  
603-589-3109 fax  
[wilkinsm@nashuanh.gov](mailto:wilkinsm@nashuanh.gov)

<Accessory Dwelling Unit 190-32.pdf>  
<Special Exception Application for Web.pdf>  
<Variance Application for Web.pdf>



**REAR ELEVATION**

SCALE: 1/4" = 1'-0"



**RIGHT ELEVATION**

SCALE: 1/4" = 1'-0"

**PROJECT: WHOLEY RESIDENCE  
9 DEERHAVEN RD.  
NASHUA, NH**

**RIGHT AND REAR  
ELEVATIONS**

DATE: 3/15/2020  
SCALE: 1/4" = 1'-0"

CONSTRUCTION DOCUMENTS

REVISIONS

DATE

REVISIONS	DATE

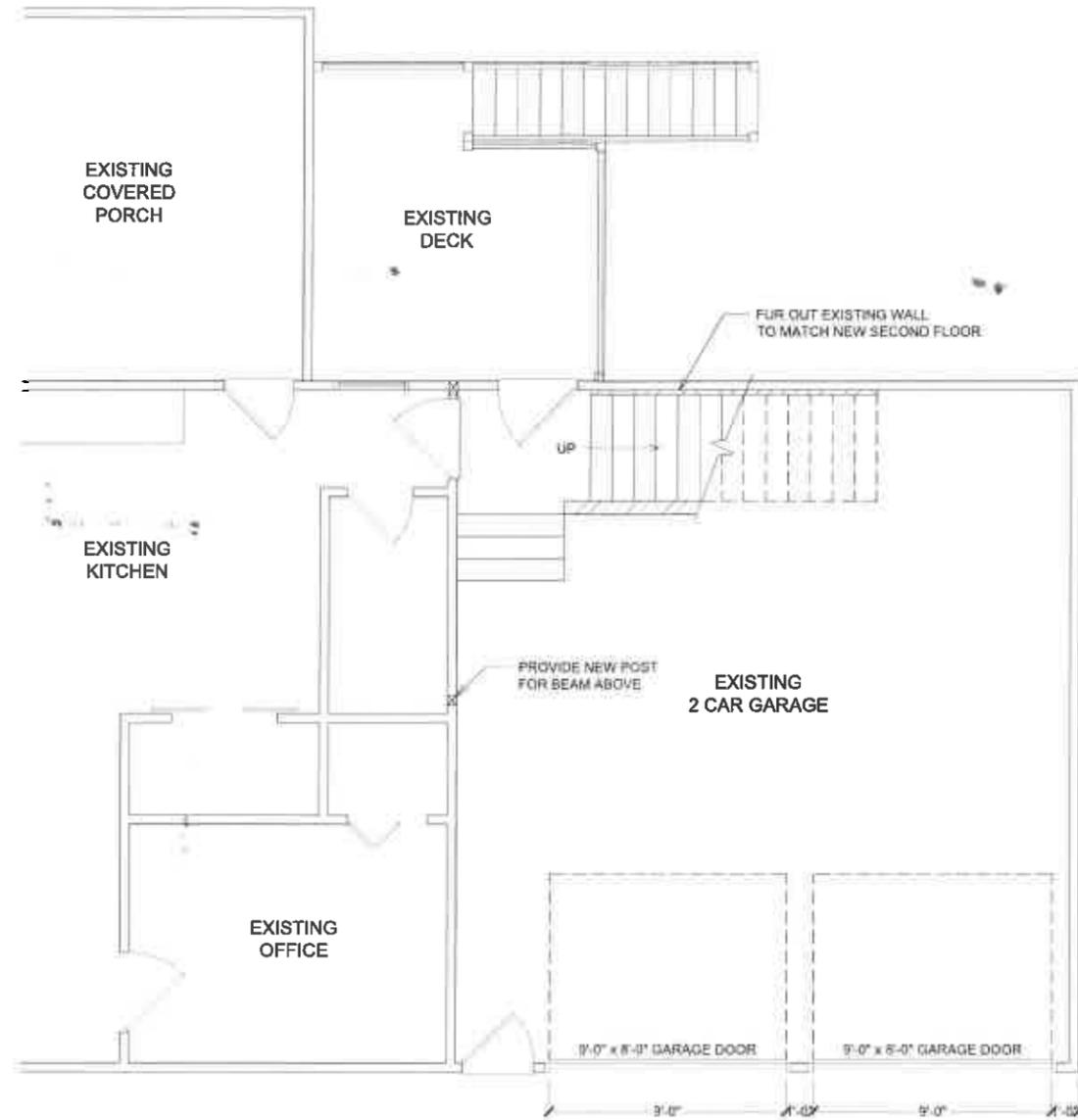


EXISTING DOOR

FRONT ELEVATION  
SCALE: 1/4" = 1'-0"

EXISTING 2-CAR GARAGE

DATE	3/15/2020	FRONT ELEVATIONS	PROJECT: WHOLEY RESIDENCE 9 DEERHAVEN RD. NASHUA, NH
REVISIONS	DATE	CONSTRUCTION DOCUMENTS	



**FIRST FLOOR PLAN**

SCALE: 1/4" = 1'-0"

PROJECT: WHOLEY RESIDENCE  
 9 DEERHAVEN RD.  
 NASHUA, NH

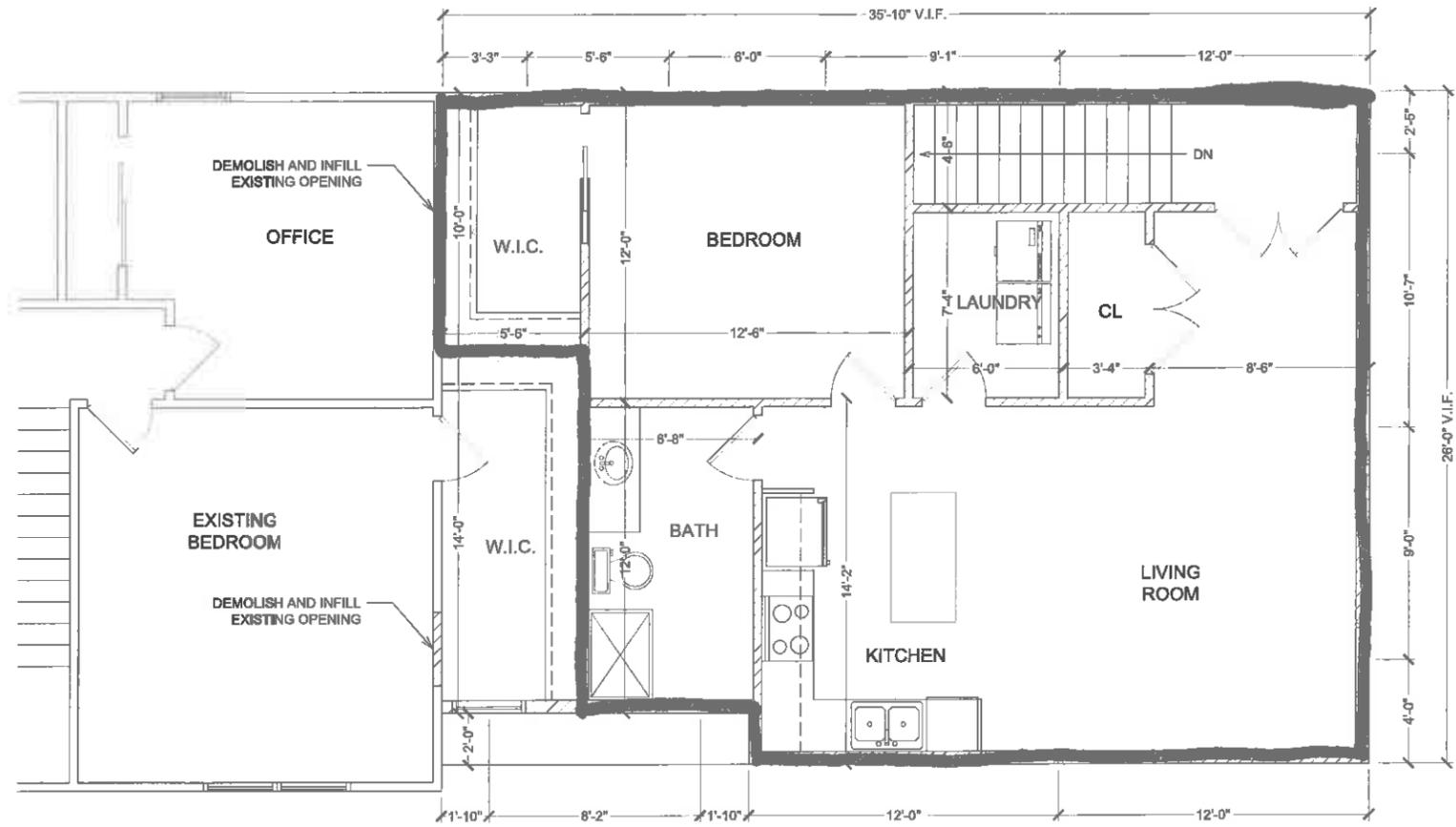
**FIRST  
 FLOOR PLAN**

DATE: 3/10/2020  
 SCALE: 1/4" = 1'-0"

CONSTRUCTION DOCUMENTS

REVISIONS

DATE



**SECOND FLOOR PLAN**

SCALE: 1/4" = 1'-0"

PROJECT: WHOLEY RESIDENCE  
 9 DEERHAVEN RD.  
 NASHUA, NH

**SECOND  
 FLOOR PLAN**

DATE: 3/15/2020  
 SCALE: 1/4" = 1'-0"

CONSTRUCTION DOCUMENTS

REVISIONS

DATE

REVISIONS	DATE



**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST   
 Zoning District  Sheet  Lot

2. VARIANCE(S) REQUESTED:

*190-16, Table 16-3*

**II. GENERAL INFORMATION**

1. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name):   
 Applicant's signature  Date   
 Applicant's address   
 Telephone number H:  C:  E-mail:

2. **PROPERTY OWNER (Print Name):**

\*Owner's signature  Date   
 Owner's address   
 Telephone number H:  C:  E-mail:

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

*CF ✓*

*A20-0068*

**III. PURPOSE OF REQUEST**

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

No. It will not be contrary to the public interest. The existing garage will be enlarged slightly to accomodate a 2nd vehicle.

2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

Yes, the proposed use will observe the spirit of the ordinance. I've already spoken to some of the neighbors and they agree.

3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

My first winter, living in our home at 58 Marie Ave, I attempted to install a temporary structure to protect one of our cars for the winter. (The other car could be parked inside the existing one car garage.) The temporary shelter broke under the weight of a heavy wet snow storm. The car sustained damage and the shelter was a complete loss. A permanent structure, such as extending the garage so we can fit both vehicles is needed.

4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The neighborhood and throughout the surrounding area is heavily populated. This proposed garage extension is common in this area both in it's proximity to the property line as well as the final design asthetics.

5. **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship,** because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

With the steep incline to the driveway, there is no other location possible to build a structure to protect a second vehicle.

IV. USE VARIANCE ADDITIONAL INFORMATION *N/A*

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees  Number of employees per shift
- b. Hours and days of operation
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors
- d. Number of daily and weekly commercial deliveries to the premises
- e. Number of parking spaces available
- f. Describe your general business operations:

g. Describe any proposed site renovations, including, but not limited to -- landscaping, lighting, pavement, structural changes, signage, access and circulation:

Extending the existing garage to accomodate a second vehicle.

*I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.*

Signature of Applicant \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at
- Please mail it to me at



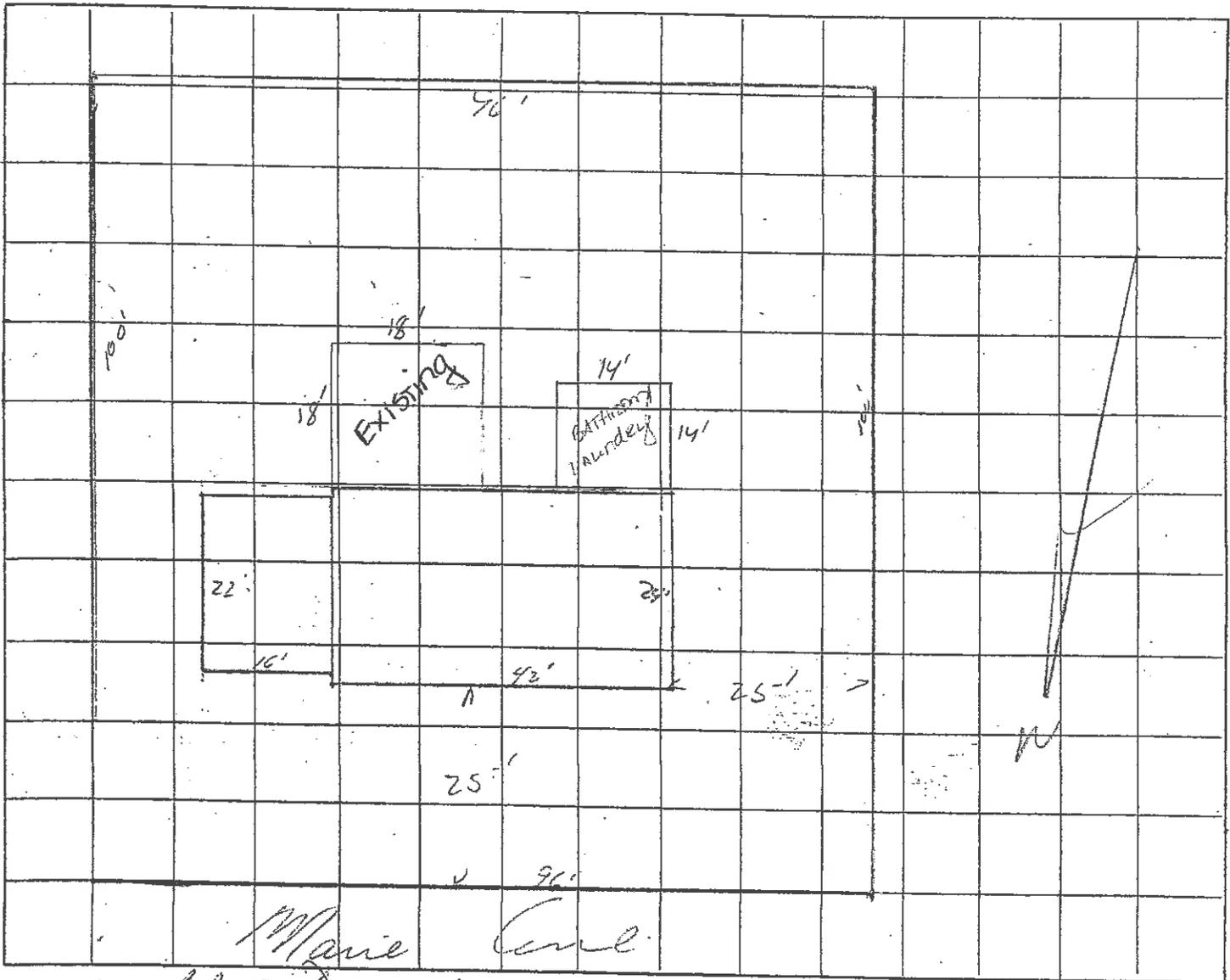
PLOT PLAN

LOT 34 JOSEPH DUBOCHER  
 SHEET 730 58 MARIE AVE  
 SCALE 1"=20 ft. A"  
 District \_\_\_\_\_

Occ. No.	Date	Permit No.
	11/12/64	1879-3

REMARKS Sing Res. 42x24'  
CARPORT 16x22'

R9



I, Joseph R. Dubocher certify this plot. Date \_\_\_\_\_

Open Space 9,600 <sup>68</sup>

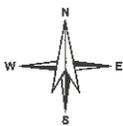
- 2029 = House & Gar.
- 3065 196 = Addition
- 168 = Shed
- 1.77 = Dia

Send your map to the printer.





# 58 Marie Avenue



**NOTES:**

1. OWNER OF RECORD:  
ANNIS, OSCAR L JR & COBB, CHARLES R  
58 MARIE AVE  
NASHUA, NEW HAMPSHIRE 03062  
VOL. 9192 PAGE 739 (2/13/1963)
2. THE LOTS ARE CURRENTLY ZONED R-9, MINIMUM FRONT SETBACK OF 20 FEET, SIDE YARD 10 FEET AND REAR YARD OF 30 FEET.
3. OPEN SPACE REQUIREMENT: 50%.  
EXISTING OPEN SPACE 6,359 S.F. (66%).  
PROPOSED OPEN SPACE 6,180 S.F. (64%).
4. FEMA DFIRM PANEL NUMBER 33011C0494D, EFFECTIVE DATE SEPTEMBER 25, 2009, GRAPHICALLY DEPICTS THE LOT IN ZONE X, AREAS OF NOT SUBJECT TO THE 0.2% ANNUAL CHANCE FLOOD ZONE.

PREPARED BY DAVID

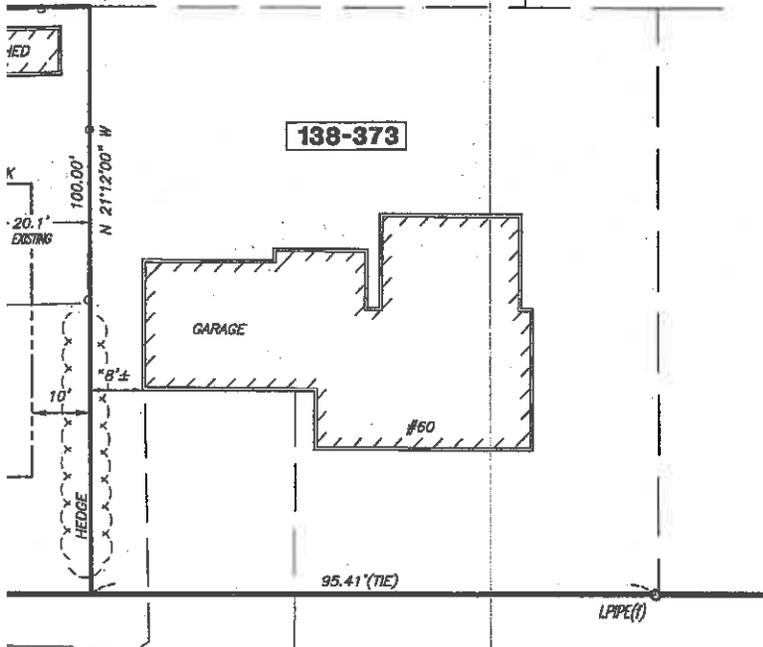
SCALE 1"=50'

SCALE 1"=50'

50' - PREPARED

138-403

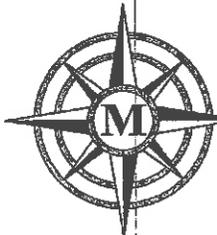
138-373



CONSTRUCTION PLOT PLAN  
LAND OF  
**OSCAR L ANNIS**  
TAX MAP 138 LOT 372  
58 MARIE DRIVE  
NASHUA, NEW HAMPSHIRE

SCALE: 1" = 20'

JUNE 2, 2020



**MERIDIAN**

LAND SERVICES, INC.

ENGINEERING | SURVEYING | PERMITTING  
SOIL & WETLAND MAPPING | SEPTIC DESIGN

31 OLD NASHUA ROAD, AMHERST, NH 03031 TEL. 603-673-1441  
MERIDIANLANDSERVICES.COM FAX 603-673-1584

COB  
No. 1038  
MICHAEL  
AMHERST  
6-12-20

FILE:11240C00.dwg

PROJECT NO. 11240.00

SHEET NO. 1 OF 1



**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST 19 Legacy Drive, Nashua, NH 03062

Zoning District B18 Sheet B Lot 3154 ~~NOTE - I DO NOT KNOW THE ZONING DISTRICT OR SHEET.~~

2. VARIANCE(S) REQUESTED:

I am requesting a variance for the location of a shed on my property. The shed should be 6' from the side property line, and 6' from the back property line. I am requesting that my shed be only 4' from the side property line (abutting lot 3153 - Paul and Sue Curtis) and 2' from the back line, which abuts lot 3152 "open space". I do not know my zoning district or "sheet".

**II. GENERAL INFORMATION**

1. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): Frank Andrews

Applicant's signature signed as FE Andrews *FE Andrews* Date July 3, 2020

Applicant's address 19 Legacy Dr Nashua, NH 03062

Telephone number H: 521-7288 C: 978-284-9116 E-mail: fe.andrews.3256@gmail.co

2. **PROPERTY OWNER (Print Name):** Frank Andrews

\*Owner's signature Signed as FE Andrews *FE Andrews* Date July 3, 2020

Owner's address 19 Legacy Dr, Nashua, NH 03062

Telephone number H: 521-7288 C: 978-284-9116 E-mail: fe.andrews.3256@gmail.com

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

<b>OFFICE USE ONLY</b>	Date Received _____	Date of hearing <u>7/28/2020</u>	Application checked for completeness: <u>CF</u>
PLR# <u>A20-0079</u>	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
Land Use Code Section(s) Requesting Variances From: <u>190-31</u>	_____		

III. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The requested variance will not alter the essential rights of any abutter or the neighborhood writ large.

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- 2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The proposed variance does not threaten public safety or enjoyment of the open space.

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- 3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

My lot is rather small and by allowing the variance my backyard is able to maintain a bit more usable space.

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- 4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The only neighbors who would possibly be impacted are Paul and Sue Curtis, located on lot 3153, 17 Legacy Drive. I have spoken with the Curtis' and they will allow the variance.

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- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

SEE ATTACHED

IV. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees  Number of employees per shift
- b. Hours and days of operation
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors
- d. Number of daily and weekly commercial deliveries to the premises
- e. Number of parking spaces available
- f. Describe your general business operations:

- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Frank Andrews  
 Signature of Applicant

7.3.20  
 Date

FRANK ANDREWS  
 Print Name

7.3.20  
 Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

fe.andrews3256@gmail.com

I will pick it up at City Hall

Please email it to me at

The proposed variance does not threaten public safety.

My lot is rather small and by allowing the variance my

## Poirier, Kate

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**From:** Frank Andrews <fe.andrews.3256@gmail.com>  
**Sent:** Tuesday, July 07, 2020 11:02 AM  
**To:** Poirier, Kate  
**Subject:** Re: 19 Legacy Dr

**Categories:** Applications

**CAUTION:** This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hi Kate,

In regard to question 5, which refers to special conditions, the size of my backyard is so very small as it abuts the back property line, and neighbor, if I had to set the shed in 6' on the side and back it would severally limit the enjoyment of my property. Please add this to question 5 for me.

Many thanks,

Frank Andrews  
978.284.9116

On Mon, Jul 6, 2020 at 4:25 PM Frank Andrews <[fe.andrews.3256@gmail.com](mailto:fe.andrews.3256@gmail.com)> wrote:  
Hi Kate,

My wife told me you called me earlier. I tried calling back but it went to voice-mail. Call me when you are able, my cell is 978.284.9116.

Best,

Frank

On Mon, Jul 6, 2020 at 9:31 AM Poirier, Kate <[PoirierK@nashuanh.gov](mailto:PoirierK@nashuanh.gov)> wrote:  
Good Morning,

I'll keep an eye out for it. If it went in the mail today, you'll meet the July 14th deadline with no issues. If we have any questions about your application, we'll let you know.

Sincerely,  
Kate

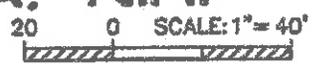
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From: Frank Andrews [[fe.andrews.3256@gmail.com](mailto:fe.andrews.3256@gmail.com)]  
Sent: Monday, July 06, 2020 9:16 AM  
To: Poirier, Kate  
Subject: Re: 19 Legacy Dr

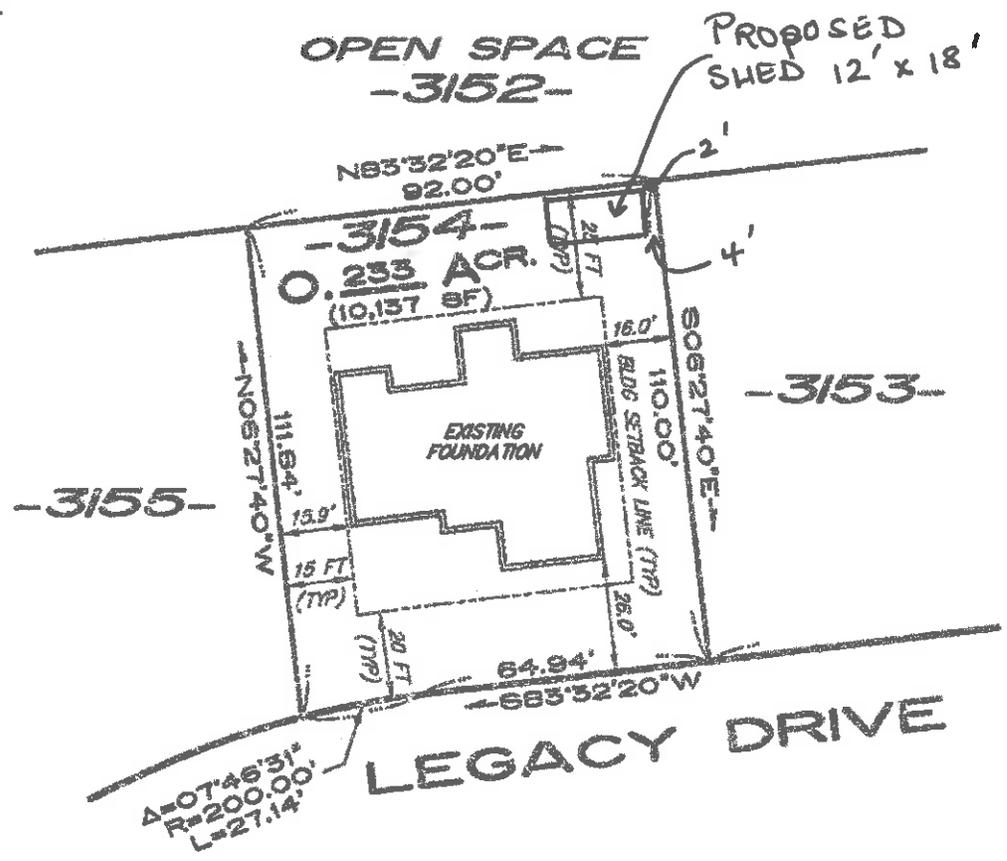
P/A 51974

**CERTIFIED FOUNDATION PLAN**  
**LOT 3154**  
**19 LEGACY DRIVE**  
**NASHUA, N.H.**  
03/18/15

**HSI** Hayner/Swanson, Inc.  
Civil Engineers/Land Surveyors  
Three Congress Street  
Nashua, N.H. 03062  
(603) 883-1057



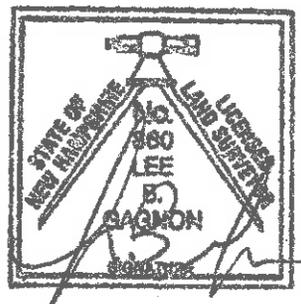
THE ZONING/BUILDING SETBACKS DEPICTED ON THIS PLAN ARE THOSE WE HAVE INTERPRETED FROM THE LATEST ZONING ORDINANCE OF THE MUNICIPALITY AND, AS SUCH, ARE ONLY OPINIONS EXPRESSED BY HAYNER/SWANSON, INC. THE FINAL INTERPRETATION OF THE ORDINANCE CAN ONLY BE MADE BY THE APPROPRIATE ZONING AUTHORITY. SINCE BUILDING ORIENTATION, PROPOSED USES, AND OTHER FACTORS CAN AFFECT THE SETBACKS, PRIOR TO ANY DEVELOPMENT OF THIS PROPERTY, THE BUILDER/OWNER MUST CONSULT WITH THE TOWN/CITY TO INSURE THE CORRECT APPLICATION OF THE ZONING ORDINANCE.



**PLAN REFERENCE:**

SUBDIVISION PLAN (MAP 'B' LOTS 20 & 57), MONIS FARM ESTATES, SEARLES & MIDDLE DUNSTABLE ROADS, NASHUA, NEW HAMPSHIRE, PREPARED FOR/RECORD OWNER: PHYLLIS MONIS 2013 REVOCABLE TRUST, SCALE: 1" = 100', DATED: 8 MAY 2013 WITH REVISIONS THRU 03/07/14 AND PREPARED BY THIS OFFICE. RECORDED: HCRD PLAN No. 38031

I CERTIFY THAT THE FOUNDATION AS SHOWN ON THIS PLAN IS LOCATED FROM AN ACTUAL FIELD SURVEY ON MAR. 16, 2015 AND THE LOT OF RECORD IS NOT LOCATED WITHIN THE SPECIAL FLOOD HAZARD SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD AS DETERMINED FROM THE FLOOD INSURANCE RATE MAP PREPARED BY THE FEDERAL INSURANCE ADMINISTRATION AS SHOWN ON MAP DATED: 9/25/09.

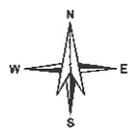


3/18/15

DWG: 2632 CPP 3154	FIELD BK: 1190/64	2632
LOCATION: R:\2632\DWG\2632 CPP		File Number

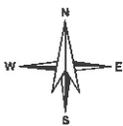


# 19 Legacy Drive





# 19 Legacy Drive





**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

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**VARIANCE APPLICATION (ZBA)**

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This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST 1 LONG AVE. NASHUA NH 03064  
 Zoning District RA Sheet E Lot RA

2. VARIANCE(S) REQUESTED:  
DRIVEWAY PAVING - OVER SIZE  
L.U.C. # 190-192 (C)

**II. GENERAL INFORMATION**

1. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)  
 (Print Name): ELEANOR M MACDOUGALL  
 Applicant's signature Eleanor M MacDougall Date 5/28/20  
 Applicant's address 958 N. MAIN ST. LACONIA NH 03246  
 Telephone number H: 603-527-8901 C: 603-566-0542 E-mail: \_\_\_\_\_

2. **PROPERTY OWNER** (Print Name): ELEANOR M MACDOUGALL  
 \*Owner's signature Eleanor M MacDougall Date 5/28/20  
 Owner's address 958 N. MAIN ST. LACONIA NH 03246  
 Telephone number H: 603-527-8901 C: 603-566-0542 E-mail: mac.emac958@gmail.com

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

**OFFICE USE ONLY** Date Received 6/22/20 Date of hearing 7/28/2020 Application checked for completeness: CF  
 PLR# A20-0007 Board Action \_\_\_\_\_  
 \$ \_\_\_\_\_ application fee  Date Paid \_\_\_\_\_ Receipt # \_\_\_\_\_  
 \$ \_\_\_\_\_ signage fee  Date Paid \_\_\_\_\_ Receipt # \_\_\_\_\_  
 \$ \_\_\_\_\_ certified mailing fee  Date Paid \_\_\_\_\_ Receipt # \_\_\_\_\_  
 Land Use Code Section(s) Requesting Variances From: \_\_\_\_\_

III. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. Granting of the requested variance will not be contrary to the public interest, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

DRIVEWAY WAS ONCE CONCRETE BUT HAD  
 DETERIORATED AND BEEN FILLED WITH GRAVEL

- 2. The proposed use will observe the spirit of the ordinance, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

REPLACING THE OLDER DRIVEWAY (CONCRETE)  
 WITH PAVEMENT

- 3. Substantial justice would be done to the property-owner by granting the variance, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

LESS DIRT, DUST AND DEBRIS

- 4. The proposed use will not diminish the values of surrounding properties, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

LESS DUST DIRT AND DEBRIS

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

APPLICANT REQUESTS THE ADDITIONAL  
WIDTH TO ADD OFF STREET PARKING  
FOR 1 ADDITIONAL VEHICLE

IV. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees  Number of employees per shift   
 b. Hours and days of operation   
 c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors   
 d. Number of daily and weekly commercial deliveries to the premises   
 e. Number of parking spaces available   
 f. Describe your general business operations:

- g. Describe any proposed site renovations, including, but not limited to -- landscaping, lighting, pavement, structural changes, signage, access and circulation:

1 ADDITIONAL PARKING SPACE

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Eleanor M MacDougall  
Signature of Applicant

5/28/20  
Date

Eleanor M MacDougall  
Print Name

5/28/20  
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall  
 Please email it to me at   
 Please mail it to me at

## Poirier, Kate

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**From:** emac emac <mac.emac958@gmail.com>  
**Sent:** Tuesday, June 23, 2020 6:20 AM  
**To:** Poirier, Kate  
**Subject:** Fwd: Attn Zoning Board: Driveway for 1 Long Avenue in Nashua, NH

**CAUTION:** This email came from outside of the organization. Do not click links/open attachments if source is unknown.

----- Forwarded message -----

**From:** Jesse MacDougall <[blacklegnami@gmail.com](mailto:blacklegnami@gmail.com)>  
**Date:** Mon, Jun 22, 2020 at 5:07 PM  
**Subject:** Fwd: Attn Zoning Board: Driveway for 1 Long Avenue in Nashua, NH  
**To:** emac emac <[mac.emac958@gmail.com](mailto:mac.emac958@gmail.com)>  
Hi Kate,

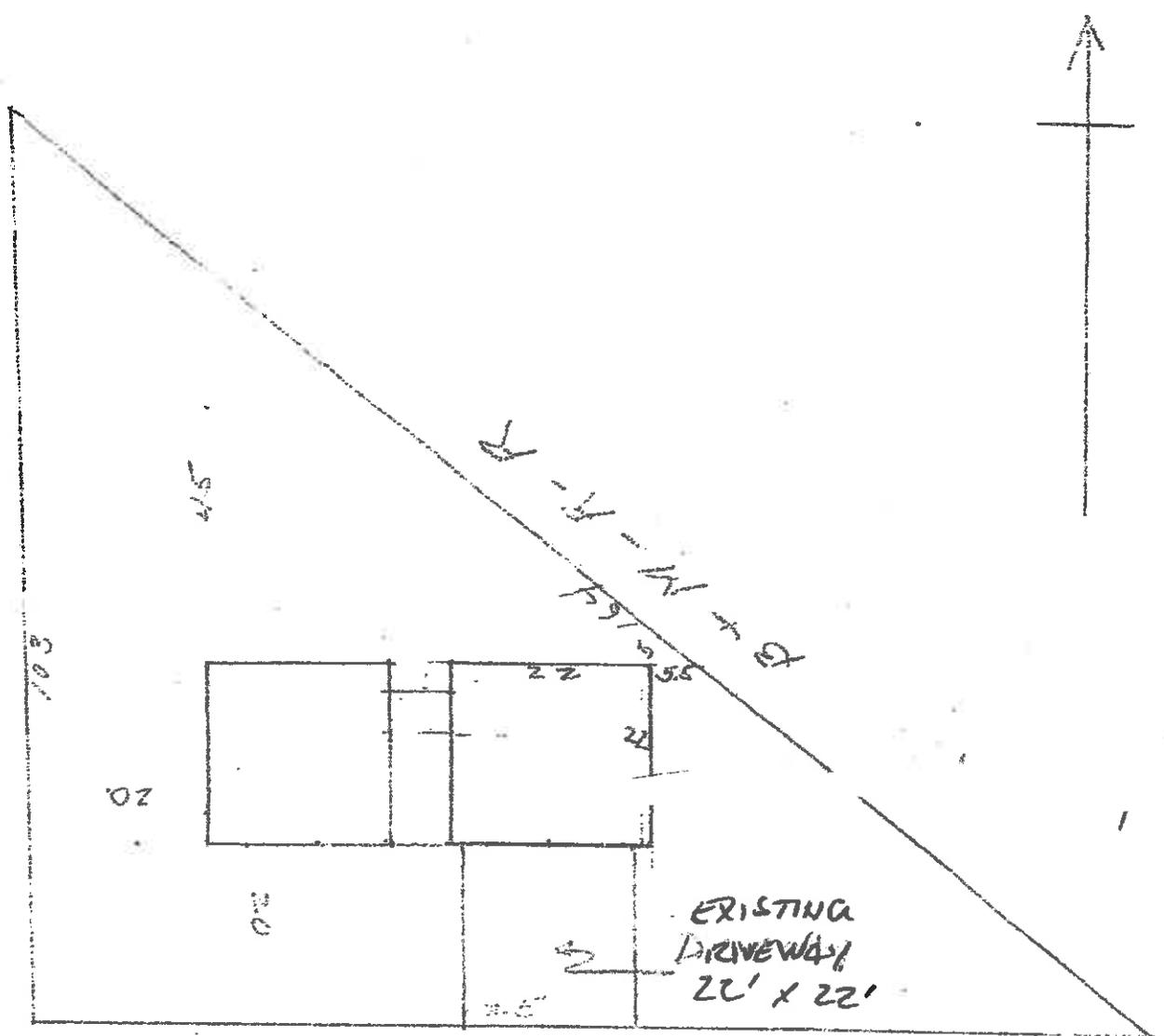
My name is Eleanor (Ellie) MacDougall and I am the owner of 1 Long Ave., Nashua, NH. What I am trying to accomplish is having the driveway paved and widened. When we bought the house in 1984 the driveway had two cement parking spots. Several years ago I wanted to update the driveway and let the contractor talk me into putting black gravel down. That was a mistake. When it snows the snow plow guy removes the gravel as well as the snow leaving a big mess. I had Tate Bros Paving Co. of Hudson come to the house to give me an estimate. About a week or so after I received the estimate, I got an email from their office informing me that because the widened driveway would be more than 21 feet I would need to get a variance. My husband, Barry, filled out the application. Because we don't have a scanner at home, my daughter sent the application to you. Barry and I live in Laconia. I asked the folks at Tate Bros Paving to give me some details to pass on to you and as you can see what he gave me was that drawing. This will not be harmful to the public as it will be a paved driveway. Other houses in the neighborhood also have paved driveways so it will fit in better than what is here now. I don't see how it would affect any property values as it is just a driveway. This will be beneficial as we will have enough parking so no one will have to park on the street. Please let me know if this is not enough information. My email address is [mac.emac958@gmail.com](mailto:mac.emac958@gmail.com). I apologize for the brevity of the initial request. This is the first time I've ever done this. Thank you for your time and patience with us.

Warmest Regards,

Ellie MacDougall

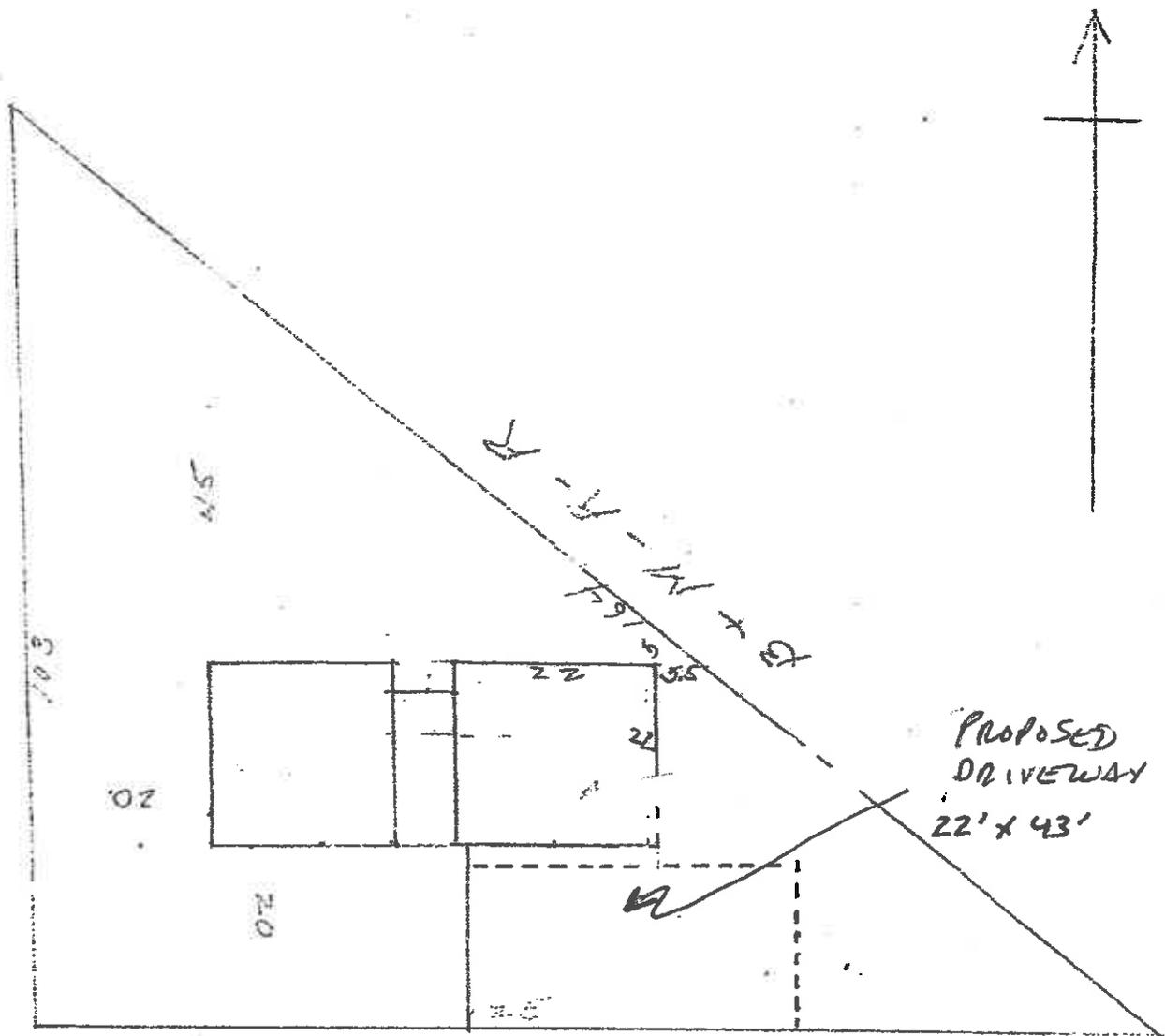
**From:** "Poirier, Kate" <[PoirierK@nashuanh.gov](mailto:PoirierK@nashuanh.gov)>  
**Date:** June 22, 2020 at 3:05:59 PM EDT

# EXISTING



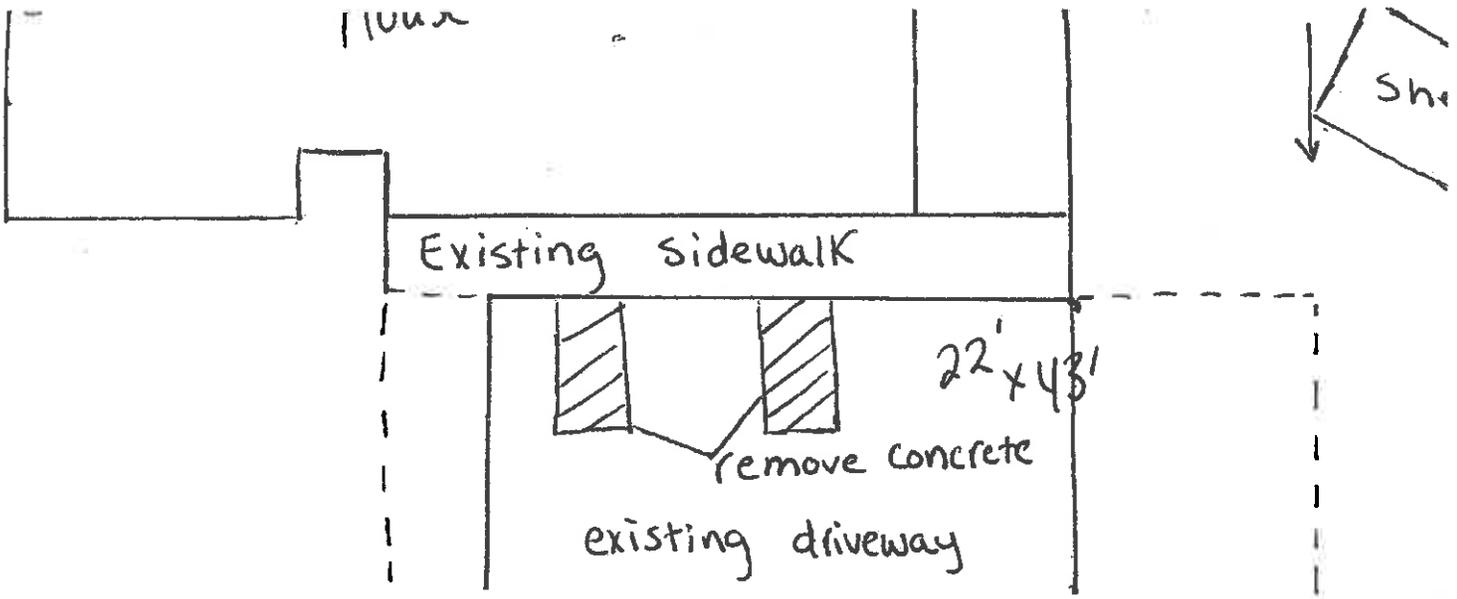
ONE LONG AVE

# PROPOSED



ONE LONG

AVE





**Gmail**



Search mail

**Compose**

**Inbox**

76

**Driveway**

Inbox x

**Starred**

**Snoozed**

**Important**

**Sent**

**Drafts**

2

**Categories**

**Social**

1

**Meet**

New

**Start a meeting**

**Join a meeting**

**Chat**

**Tatebrospaving** <tatebrospaving@aol.com>

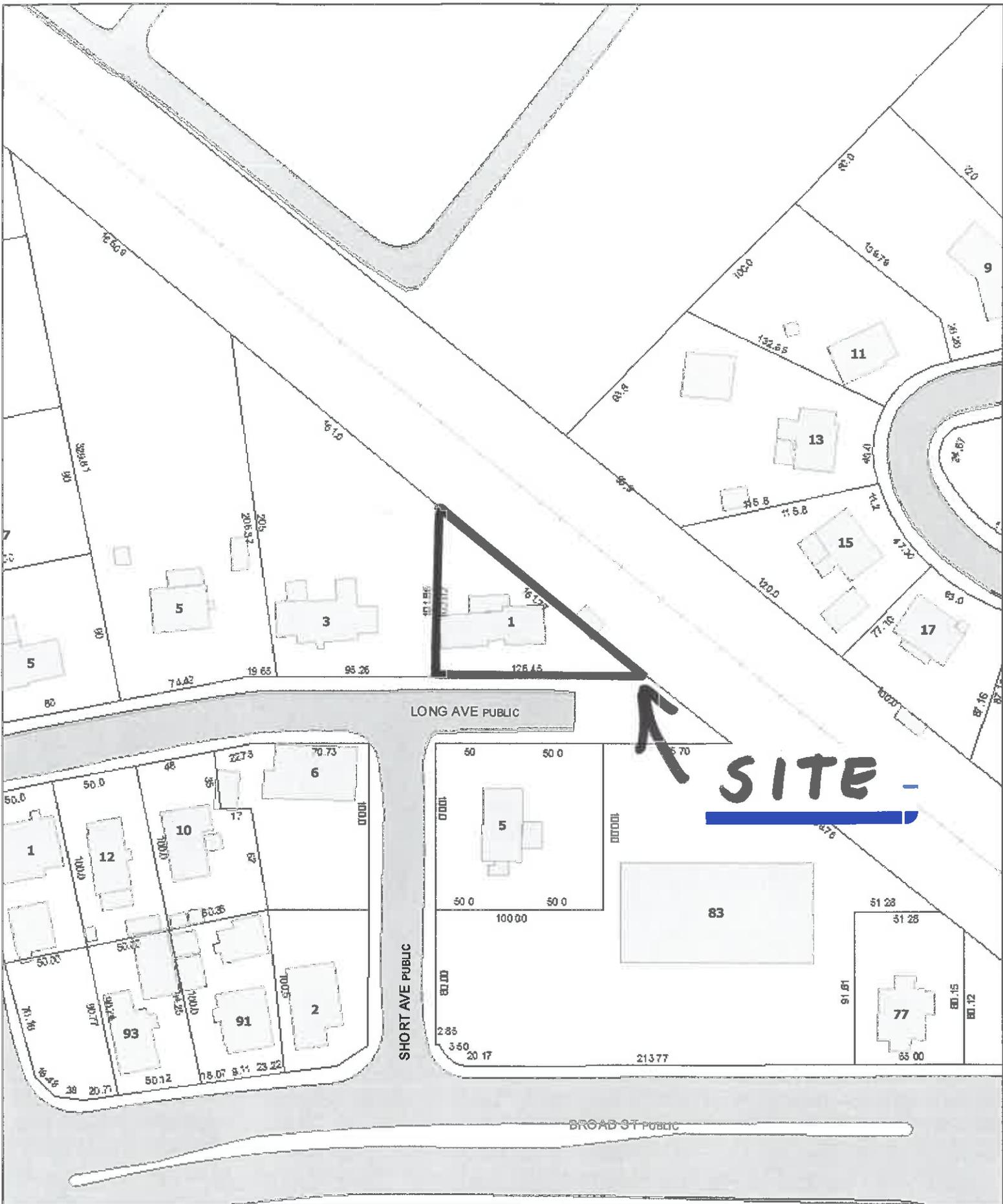
to me

Thank you for choosing Tate Brothers. I just realize you are widening the driveway to 43 feet wide and the City only allows 24' without a variance. In order to widen it that much, you need to apply for a variance. As soon as you receive it, we will do your driveway.

Donna Lindquist  
Office Manager  
Tate Bros Paving  
(603) 882-0527  
[tatebrospaving@aol.com](mailto:tatebrospaving@aol.com)

Reply

Forward





**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST 105 Hills Ferry, Nashua, NH

Zoning District RA Sheet 117 Lot 253

2. VARIANCE(S) REQUESTED:

Repaving existing driveways and installing stone retaining walls

**II. GENERAL INFORMATION**

1. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): Natalie Blattenberger and Marc Blattenberger

Applicant's signature [Signature] Date 6-30-20

Applicant's address 105 Hills Ferry, Nashua, NH

Telephone number H: 6035218173 C: 6034386824 E-mail: NTullis@hotmail.com

2. **PROPERTY OWNER** (Print Name): Natalie Blattenberger and Marc Blattenberger

\*Owner's signature [Signature] Date 6-30-20

Owner's address 105 Hills Ferry, Nashua, NH

Telephone number H: 6035218173 C: 6034386824 E-mail: NTullis@hotmail.com

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

<b>OFFICE USE ONLY</b>	Date Received _____	Date of hearing <u>7-28-20</u>	Application checked for completeness: <u>CF</u>
PLR# <u>A20-0071</u>	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
Land Use Code Section(s) Requesting Variances From: _____			

III. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. Granting of the requested variance will not be contrary to the public interest, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

This request is to repair and replace the 2 existing driveways and remove  
And install new stone retaining walls on both driveways (driveway A and B)

- 2. The proposed use will observe the spirit of the ordinance, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The replacing of the retaining walls and repaving of the driveways will be  
Utilizing the existing footprints. Neither the walls or the driveways will  
Take up more room or impede on neighboring plots.

- 3. Substantial justice would be done to the property-owner by granting the variance, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

Replacing the existing walls will create sturdy retaining walls, currently  
driveway A has timber ties which are rotting and falling apart. Driveway B  
Has one side (right) with no existing wall, allowing the ground to recede into  
The driveway. Driveway A also multiple cracks, divots, bumps. Driveway B  
was never properly sealed.

- 4. The proposed use will not diminish the values of surrounding properties, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

By placing stone retaining walls to both driveways and sealing/replacing  
The driveways will not diminish property values of the neighborhood, it  
will actually do the opposite. By removing the rotting wood from Driveway A  
And fixing the receding wall of Driveway B with stone retaining walls will  
actually increase value, appeal and desire to the neighborhood.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

~~This is a residential property, this variance application is for the ability to repave/seal both existing property driveways. Both driveways already existed when the property was purchased in 2015. The replacement/ installation of the retaining walls is to make them secure, strong and sturdy. To remove the rotting wood and protect the receding ground~~

IV. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- Total number of employees \_\_\_\_\_ Number of employees per shift \_\_\_\_\_
- Hours and days of operation \_\_\_\_\_
- Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors \_\_\_\_\_
- Number of daily and weekly commercial deliveries to the premises \_\_\_\_\_
- Number of parking spaces available \_\_\_\_\_
- Describe your general business operations: \_\_\_\_\_

N/A

- Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:  
Repaving/Sealing existing driveways, replace/install stone retaining walls

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

[Signature]  
Signature of Applicant

Blatten

6-30-20

Date

Marc Blattenberger  
Print Name

Natalie Blattenberger

6-30-20

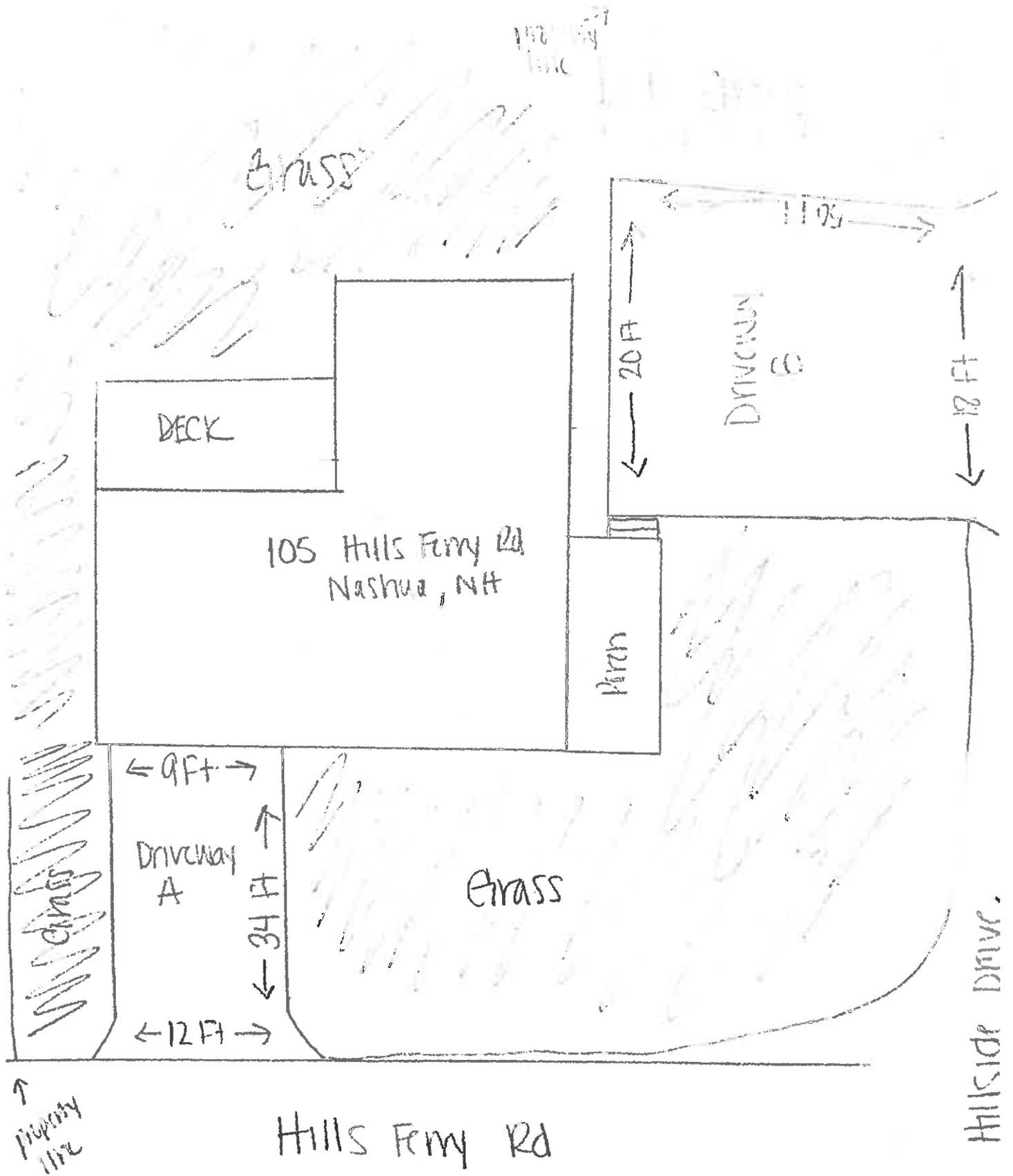
Date

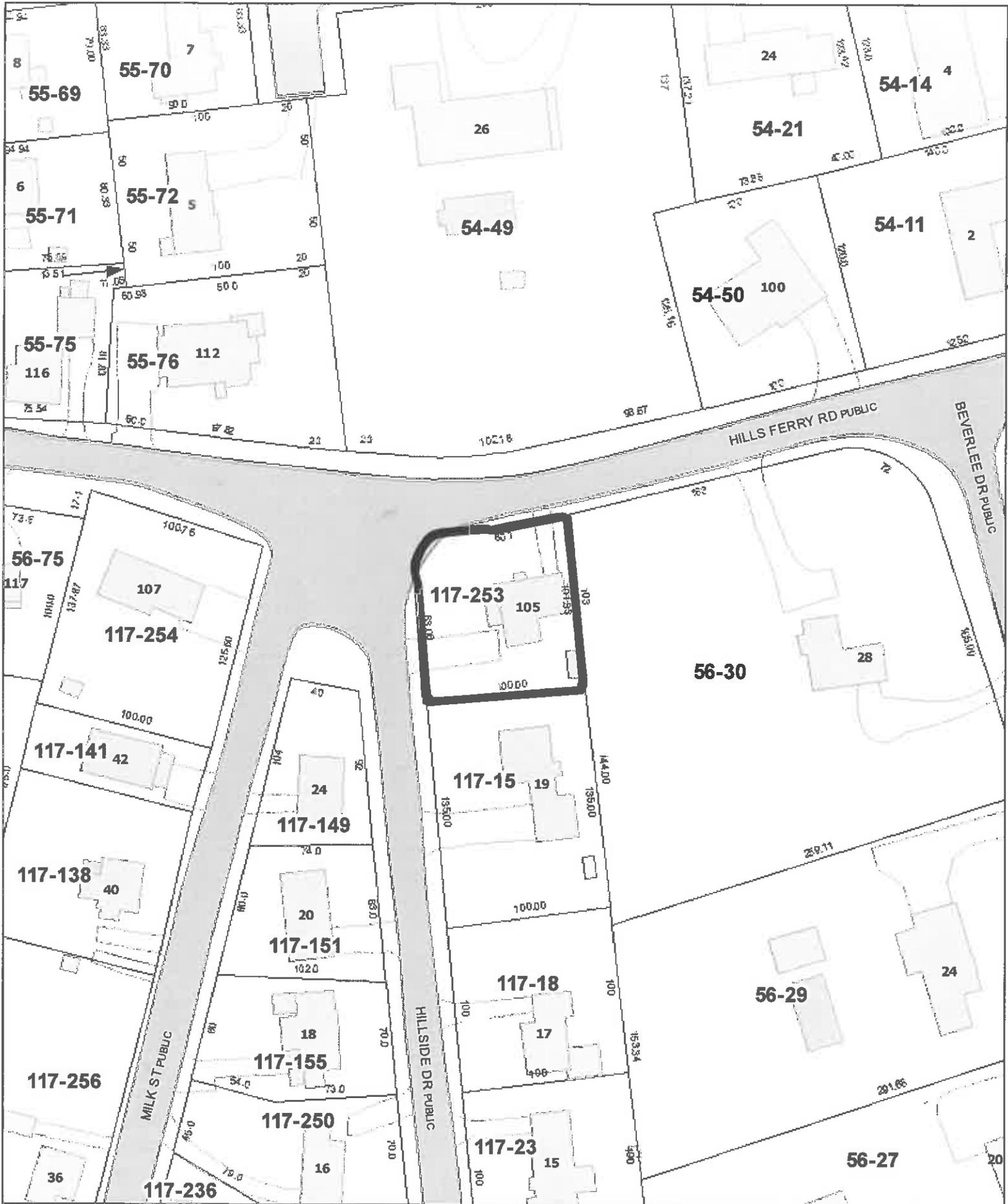
The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

I will pick it up at City Hall

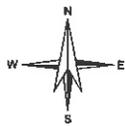
Please email it to me at \_\_\_\_\_

Please mail it to me at NTullis@hotmail.com





# 105 Hills Ferry Road





## Falk, Carter

---

**From:** Jennings, Mark  
**Sent:** Tuesday, June 30, 2020 3:38 PM  
**To:** Falk, Carter  
**Cc:** Hudson, Daniel; Gill, Amy; Kohalmi, Pete  
**Subject:** FW: 105 Hills Ferry RD variance application  
**Attachments:** new doc 2020-06-30 06.25.01\_20200630063212.pdf

Hi Carter,

I looked at this site and found 2 driveway one 11 feet wide and the other 18 feet wide. I spoke with the home owners and they want a variance for the widths. She said she would mail a check to the city hall planning department.

Thanks Mark jennings

---

**From:** Natalie Tullis [<mailto:ntullis@hotmail.com>]  
**Sent:** Tuesday, June 30, 2020 6:33 AM  
**To:** Jennings, Mark  
**Subject:** 105 Hills Ferry RD variance application

**CAUTION:** This email came from outside of the organization. Do not click links/open attachments if source is unknown.



**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**1. VARIANCE INFORMATION**

a. ADDRESS OF REQUEST 130 Spit Brook Road  
 Zoning District P1 Sheet B Lot 2428

b. VARIANCE(S) REQUESTED:  
 1) To allow an Changeable Letter Message Center in an R18 zone where none is permitted (\$330.00)  
 2) Fisher v. DOVER determination

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM ~190 -161 Table 101-7 (E)

**2. GENERAL INFORMATION**

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)  
 (Print Name): Signs Now NH C/O Charles Raz  
 Applicant's signature \_\_\_\_\_ Date \_\_\_\_\_  
 Applicant's address 71 Bridge Street, PO Box 184 Pelham, NH 03076-0184  
 Telephone number H: 603.635.2292 C: \_\_\_\_\_ E-mail: info@SignsNowNH.com

b. **PROPERTY OWNER (Print Name):** Grace Lutheran Church  
 \*Owner's signature [Signature] Date 6-22-2020  
 Owner's address 130 Spit Brook Road  
 Telephone number H: (603) 888-7579 C: 603-305-6982 E-mail: treasurer@gracelutherannashua.org

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

<b>OFFICE USE ONLY</b>	Date Received <u>6/24/20</u>	Date of hearing <u>7/28/2020</u>	Application checked for completeness: <u>CF</u>
PLR# <u>A20-0069</u>	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

Allowing the requested variances for a sign with a changeable letter area will provide interested individuals with up to date information concerning dates and times for meetings and available services such as our Food Pantry donations, block parties, and other free events. A changeable letter sign would appear static an unchanging just like a static sign until a periodic need to change meeting times or dates. Changeable letters would fit the location on Spit Brook Road adjacent to the Park Industrial (PI) zone portion of property.

- 2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The requested sign variances is in the public interest The proposed sign type does not alter the character of the neighboring properties and will not appear any different from other signs on Spit Brook Road. Most of the property is in the PI zone, and the ordinance allows changeable copy signs in a PI zone. The sign location is next to the property entrance in the small portion of the property zoned residential. The changeable letter portion of the sign allows viewing of text by passing vehicles, while also allowing changes periodically; such as new times of worship service for summer season and again in fall.

- 3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

The changeable letter sign does not harm the public, but does allow the property owner's identification of up to date information concerning dates and times for meetings and available services such as our Food Pantry donations, block parties, and other free events. The majority of the property is zoned park industrial. PI zoning allows changeable copy signs. However access to the properties where the sign is located is in residential zone. Allowing the changeable letter sign fits the zoning of majority of the property.

- 4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The proposed changeable letter sign will not diminish the values of the surrounding properties on Spit Brook Road as the sign will look similar to other signs on neighboring commercial Spit Brook Road properties. The permanently mounted well constructed sign match the aesthetics of other signs on the roadway. The proposed sign is smaller than the existing sign, that is to be removed.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

The property split between residential and park industrial zones with only the small access from Spit Brook Road in the residential zone restricting sign type, thus the property line established a Special Condition for this property that literal enforcement would cause unnecessary and unreasonable hardships for the property owner. Locating the sign away from the entrance in the PI zoned portion would cause safety hazards. Thus, allowing the changeable letter sign at the entrance would remove the unfair and unreasonable restriction without increased public safety risk compared to other similar properties on Spit Brook Road, without diminishing property values.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees 6 Number of employees per shift 6
b. Hours and days of operation Sunday through Saturday; 7 am to 9 pm
c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors ~100-200/day
d. Number of daily and weekly commercial deliveries to the premises 3 per day
e. Number of parking spaces available 120

f. Describe your general business operations: Religious organization providing church services, Christian education and charitable services such as food pantry, and nonprofit meeting space.

g. Describe any proposed site renovations, including, but not limited to - landscaping, lighting, pavement, structural changes, signage, access and circulation: Location of a changeable letter sign close to roadway for improved viewing

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Signature of Applicant (Handwritten signature)

Date 6/23/2020

Print Name Charles Raz for Signs Now NH

Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:
I will pick it up at City Hall
Please email it to me at chuck@SignsNowNH.com
Please mail it to me at

# FISHER v. DOVER

Grace Lutheran Church (Owner) Signs Now (Applicant) 130 Spit Brook Road (Sheet B Lot 2428) requesting the following: 1) A determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the variance for an electronic changing message [EMC] sign that was denied by the ZBA on 4-28-2020; and, if so: 2) variance to allow manually changeable copy on ground sign. PI/R18 Zone, Ward 8.

## **Synopsis**

Application to allow Manually Changeable Copy [MCC] ground sign is materially different in nature and degree from the rejected variance for an Electronic Message Center [EMC] sign.

1. Appearance differences between MCC and EMC. The MCC portion of a ground sign has same appearance as the other portions of the ground sign as same material is used for both portions of sign. EMC portion of ground sign appears different from other portions of sign due to different materials used (LED for EMC and Plexiglas for MCC).
2. Daytime lighting difference between MCC and EMC. MCC provides a message viewable in daylight without the need to illuminate or brighten the message. EMC messages are not viewable in daylight without illumination and brightening of the LED lights of the message center.
3. Frequency of message change difference between a MCC and EMC. Property owner must physically go to MCC ground sign to change each letter of the message, thus limiting changes each day. In contrast, the property owner can remotely change an EMC message many times each hour without the need to visit the ground sign or even schedule the electronic cycling of the messages multiple times each hour. Thus city planning rules differentiate the material differences between EMC from MCC signs by identifying special unique rules for EMC that do not apply to MCC signs.
4. Fitting the neighborhood difference between MCC and EMC. The operational brightness and the look and feel of the EMC claimed by some as a commercial, big city or 'Las Vegas' style designed to grab the attention of passing traffic, thus not fitting within a residential neighborhood. In contrast, the much more subdued MCC look and feel is often used for signs in and close to residential neighborhoods.

conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variances. Mr. Boucher said he will refer to the previously approved application with the same rationale that was there, it was found that it is a reasonable amount of units on the property, the special conditions are the fact that asbestos was found on the property, and they're trying to place the parking lot in a position with minimal impact to the asbestos area. He said that as far as the driveway is concerned, it is a net gain benefit for all, as taking a driveway off of busy Amherst Street and moving it to Putnam, it is a one-way street with much less traffic.

Mr. Boucher said that the request is within the spirit and intent of the ordinance.

Mr. Boucher stated that the request will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

4. Grace Lutheran Church (Owner) Signs Now (Applicant) 130 Spit Brook Road (Sheet B Lot 2428) requesting the following variances: (1) from Land Use Code Section 190-101, Table 101-7, to allow an electronic message center [EMC] sign in the R18 zone; 2) to encroach more than 10 feet into the 10 foot required front yard setback for said EMC sign, proposed within the Spit Brook Road right-of-way, 40 feet from roadway; and 3) from Land Use Code Section 190-102, Table 102-8, to exceed maximum area of proposed sign, 12 sq.ft permitted, 32 sq.ft proposed - all requests to remove existing triangular shaped ground sign and replace with EMC sign. PI/R18 Zone, Ward 8. [POSTPONED FROM 3-24-2020 MEETING]

Voting on this case:

Mariellen MacKay, Chair  
Steve Lionel, Vice Chair  
Jack Currier, Clerk  
Rob Shaw  
JP Boucher

Chuck Raz, Signs Now New Hampshire. Mr. Raz said he is here with representatives from the church.

Kent Heubner, speaking for owner of Grace Lutheran Church. Mr. Heubner said that the property line is about 80 feet in back of the edge of the right of way, and there is a ground sign at the property line, but it's often not seen, and people often miss the driveway.

Mr. Heubner said that what they want to do is to remove the existing ground sign, and install the one shown in the application. He said that this has been submitted to the DPW Engineering staff, and have not received any negative comments yet. He said that they'd like to have the electronic changing message center so that they can notify the public of events at the church; there are many activities at the facility that the public can see. He said that they have a food pantry as well.

Mr. Heubner is aware of the regulations for the electronic signs so that they do not become a distraction for drivers. He said that they'd like to put up a new message every day, it would not be flashing. He said that the size of the sign is adequate, and it would be forty feet back from the road. He said that the sign would be about half the size of the existing sign.

Mr. Raz said that they know it's an accepted practice in other parts of the City to have a free-standing sign in the right-of-way of similar conditions, where the line for the property is quite a bit back from the roadway. He said that they need the proper size sign of about 14-15 square feet to get the proper letter height for three lines of text that would be readable from the roadway at a safe distance. He said that the message center is under 50% of the size of the sign as required. He said that the Grace Lutheran name would be on the top. He said that the changing message that they'd do can be up for about three weeks.

Mr. Currier asked to compare the size of the proposed sign and the existing triangular sign.

Mr. Heubner said that the existing sign is 55 square feet, and the proposed sign is 32 square feet.

Mr. Shaw asked to confirm the frequency of the changing sign, as

the Ordinance allows every five seconds, and wanted to know how many messages they'd have.

Mr. Heubner said once a day or once every other day they'd change the message.

Mr. Shaw asked if they would be amenable to something more restrictive than the every five second rule. He said that there is no limitation to the number of messages that can be displayed within the five seconds.

Mr. Heubner said that they would be open to something more restrictive.

Mr. Shaw asked about the lighting of the sign, internally or externally, also, about the brightness levels for the EMC part of the sign.

Mr. Raz said that the static portion of the sign would be internally illuminated, and it has a dark background with white letters, it will help to reduce the light pollution at night. He said that the EMC portion has a dimming feature, and said that is a concern of theirs, and should be able to allow the dimming.

Mr. Shaw asked if the sign would be operational 24 hours per day, or not having it on or lit at night. He said that he's seen some poor adherence in the City with EMC's, but said that he believes that there would be compliance with the church's sign.

Mr. Heubner said that there's not much traffic on Spit Brook Road after 11:30 pm, so it would be a way to reduce their energy by not having it lit at night. He said the EMC could be off at night, but would want the other part of the sign illuminated, perhaps at a lower intensity so people can see the entryway.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one on WebEx in attendance to speak in opposition.

Letter received from Mr. James Ryan, dated 4-27-2020, in opposition. Mrs. MacKay read the letter into the record.

Letter received from Mr. Tim Dolan, 8 Chaucer Road, received 4-28-2020. Mr. Falk read it into the record.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Raz said that they're proposing a change in message once per day which is once every 24 hours, so that would help. He said that the brightness would be controlled, and the message center would be off at night. He said he understands the concern with these types of signs in Nashua with miss-using these signs, and they are amenable with stipulations, and the church provides a lot of services to the community and people who meet at the church, and it is of good citizenship that these events are held at the church.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

No one is present in the audience to rebut.

**END OF PUBLIC HEARING, AND BEGINNING OF PUBLIC MEETING.**

Mr. Shaw said he would like to see some restrictions or stipulations added on the EMC. He said he would prefer the EMC portion to be off at night. He said he would also appreciate the dimmer option to be available on the sign, as it could be bright to neighbors and it would limit light pollution and it would be less distracting to drivers. He said he has some concern about the setback and placement of the sign, but with the right-of-way coming such an extreme amount from Spit Brook Road, it is reasonable, and shouldn't come into any sight lines, and the size of the sign would be reduced.

Mr. Falk said that there is an Easement Agreement with DPW, as this sign is in the Spit Brook Road right-of-way, so they've been working with the Board of Public Works, which includes insurance and other matters. He said it hasn't been signed by the Mayor yet, but should be part of any approval.

Mr. Lionel said he doesn't have a problem with the placement of the sign, but this is another request for a church EMC in a residential zone, and the Board has previously denied such requests. He said he would be inclined to deny the EMC.

Mr. Minkarah said that the setback and size of the sign is ok, and the EMC portion of the sign isn't particularly troubling, as it is an increasing common method of messaging, as schools and many other institutions use them, and they're increasingly acceptable.

Mr. Boucher said he is in support of the application as a whole, the relocation and size of the sign is reasonable, and their explanation for the EMC is supportive.

Mr. Kanakis said that he is not in support of the EMC as is, but if it is supported, the items mentioned in discussion should be adhered to.

Mr. Currier said that he is in support of variances #2 and 3, as it would match the World Learning School sign. He said that he is against the EMC, it's a shared entrance. He said that the EMC doesn't buy anything for safety. He said he concurs with the two letters in opposition with the EMC. He said that drivers need to stay focused on the road, and it is a dangerous area for traffic.

Mrs. MacKay said that she has no issues with variances #2 and 3 as previously discussed. She said that the EMC portion has some variables with the brightness and dimming, and the distraction to drivers.

**MOTION** by Mr. Lionel to deny variance #1 on behalf of the owner and applicant as advertised. Mr. Lionel stated that the variance is not needed to enable the applicant's proposed use of the property, given that there are no particular special conditions of the property, and the benefit sought by the applicant can be achieved by some other reasonably feasible method.

Mr. Lionel stated that the request is not within the spirit and intent of the ordinance.

Mr. Lionel said that the Board has no opinion on property values of surrounding parcels, and believes that it is contrary to the public interest, and substantial justice would be served to the applicant, but that is not all of the criteria.

SECONDED by Mr. Shaw.

**MOTION CARRIED 4-1 (Mr. Boucher) - PER VERBAL ROLL CALL**

**MOTION** by Mr. Lionel to approve variances #2 and 3 on behalf of the owner and applicant as advertised, both requests considered collectively. Mr. Lionel stated that the variance is needed to enable the applicant's proposed use of the property, given the location of the church and the driveway, it is hard to see and is shared by another property, and the church is set way back from the roadway, and the Board doesn't believe that there is another reasonably feasible method to pursue other than a variance.

Mr. Lionel stated that the request is within the spirit and intent of the ordinance.

Mr. Lionel said that the Board believes it will not adversely affect the property values of surrounding parcels. Mr. Lionel stated that the request is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Mr. Shaw.

**MOTION APPROVED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.**

**\*\*\* 5-MINUTE BREAK \*\*\***

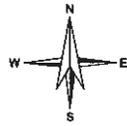
5. Daniel L. & Jane S. Richardson, Rev. Tr. (Owners) 70 Berkeley Street (Sheet 48 Lot 61) requesting the following variances from Land Use Code Section 190-31; 1) to encroach up to 5 feet into the 6 foot required side yard setback (western property line); and, 2) to encroach up to 5 feet into the 6 foot required side yard setback (northern property line) - both requests to replace a nonconforming 12'x20' detached garage on a corner lot with a 24'x24' detached two-car garage with storage above. RA Zone, Ward 3.

Voting on this case:

Mariellen MacKay, Chair  
Steve Lionel, Vice Chair  
Jack Currier, Clerk  
Rob Shaw  
JP Boucher



# 130 Spit Brook Road





B-76  
GARY E. NELSON  
KATHLEEN H. NELSON  
"WORLD ACADEMY"  
97 BEAC DRIVE  
MILLS NH 03048

SPIT BROOK ROAD

World Academy sign  
at R.O.W.

New Changeable  
Letter sign at  
R.O.W.

Remove Existing  
50 sqft sign

Existing 20 amp buried  
power line to current  
sign location

40 ft  
80 ft

State Highway R.O.W. Line  
Reported Class IV Road  
(BK 2989 Pg 158 )  
Actual Status Unknown

Extension of 20 amp  
buried power line from  
current sign to new  
sign location

Map B Lot 2428  
GLC  
130 Spit Brook Rd

GLC sign plot plan drawings-  
4-10 x 6-6 alternative-r2.docx  
1 inch = 40 feet 4/1/2020

B-1999  
CITY OF NASHUA  
P.O. BOX 2019  
733 MAIN STREET  
NASHUA NH 03041





**B-76**  
**GARY E. NELSON &**  
**KATHLEEN H. NELSON**  
**"WORLD ACADEMY"**  
97 BREKE DRIVE  
ROLLS NO: 03349

**SPIT BROOK ROAD**

BUILDING SETBACK LINE (TYP)

**RESIDENTIAL R-18 ZONE**  
**PARK INDUSTRIAL ZONE**

CHAPEL

COMMUNITY CENTER

**B-1909**  
**CITY OF NASHUA**  
P.O. BOX 2019  
229 MAIN STREET  
NASHUA NO: 03001



**City of Nashua**  
**Planning Department**  
229 Main Street  
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
Fax 589-3119  
WEB [www.nashuanh.gov](http://www.nashuanh.gov)

April 29, 2020

Mr. Kent Heubner  
Grace Lutheran Church  
130 Spit Brook Road  
Nashua, NH 03062

**RE:** Grace Lutheran Church (Owner) Signs Now (Applicant) 130 Spit Brook Road (Sheet B Lot 2428) requesting the following variances: (1) from Land Use Code Section 190-101, Table 101-7, to allow an electronic message center [EMC] sign in the R18 zone; 2) to encroach more than 10 feet into the 10 foot required front yard setback for said EMC sign, proposed within the Spit Brook Road right-of-way, 40 feet from roadway; and 3) from Land Use Code Section 190-102, Table 102-8, to exceed maximum area of proposed sign, 12 sq.ft permitted, 32 sq.ft proposed - all requests to remove existing triangular shaped ground sign and replace with EMC sign. PI/R18 Zone, Ward 8.  
**[POSTPONED FROM 3-24-2020 MEETING]**

Dear Mr. Heubner;

Your recent application for the above referenced variance request was partially approved by the Zoning Board of Adjustment on April 28, 2020, with Variance #'s 2 and #3 approved, and Variance #1 denied, with the following stipulations/reasons:

**Approval for Variances #2 and #3:**

- 1) The Board found that the variances are needed to enable the applicant's proposed use of the property, and given the special conditions of the property, the Board stated that the driveway is difficult to see, and it shares entry to the school as well, also, it is reasonable due to the extra wide width of the right-of-way.
- 2) The Board found that the spirit and intent of the ordinance is being kept in good faith.
- 3) The Board found that property values should not be negatively impacted.
- 4) The Board found that the request is not contrary to the public interest.
- 5) Substantial justice is served to the applicant by granting this request.

Denial for Variance #1:

1. Variance is not needed to enable the applicant's proposed use of the property, there are no special conditions to warrant allowing an EMC, when the current sign ordinance is sufficient to allow drivers to see the sign in the right-of-way, thereby identifying the building.
2. Spirit and intent of the ordinance is met by not allowing the EMC in this location.
3. Property values may be adversely affected with the EMC sign.
4. Allowing an EMC sign will be contrary to the public interest.
5. Substantial justice would only be granted to the applicant for this sign, it is served by not allowing it in this location.

IMPORTANT INFORMATION:

Per RSA 677:2, any party to the action or proceedings, or any person directly affected by any order or decision of the Zoning Board of Adjustment may apply for a rehearing within 30 calendar days following the date of decision. Building permits issued during this appeal period are at the sole risk of the owner/applicant.

A variance or special exception shall be null and void two (2) years from the date of its approval if, within this period a building permit or sign permit has not been secured or, in the case of a variance or special exception relating to lot area, preliminary or final subdivision/site plan approval, is not obtained. Proper permits are required before the erection of any sign, construction, or subdivision/site plans are commenced.

**Granting of the variance or special exception does not relieve the owner/applicant of the requirement to obtain Planning Board approval for site plan, preliminary or final subdivision of land. Please contact the Planning Department to determine whether Planning Board approval will be necessary.**

The Zoning Board of Adjustment appreciates your cooperation in this matter. Should you have any questions regarding this notice, please contact Carter Falk at 589-3090.

Respectfully,



ZONING BOARD OF ADJUSTMENT  
City of Nashua, New Hampshire

CF/cf

Cc: Chuck Raz, Signs Now New Hampshire  
Mark Jennings, City Surveyor, Department of Public Works  
Marcia Wilkins, Planner 1, Planning Department  
Bill McKinney, Building Department Manager  
Mark Collins, Plans Examiner  
Louise Brown, Assessing Department

#7

**Poirier, Kate**

---

**From:** John Norris <seattlesox42@gmail.com>  
**Sent:** Sunday, July 19, 2020 3:38 PM  
**To:** CD- Planning Dept  
**Subject:** Case #7 re: Grace Lutheran Church 130 Spit Brook Rd.

**Categories:** Final Conversation

**CAUTION:** This email came from outside of the organization. Do not click links/open attachments if source is unknown.

I strongly support the installation of a sign with the capability of manually changeable messages as requested by Grace Lutheran Church at 130 Spit Brook Rd., Nashua. The proposed sign would benefit the community by providing announcements of service times, special events, activities for the neighborhood, and special services like the needed food bank. The proposed sign would be clearly visible and uncluttered. It would not be inconsistent with signs in the neighborhood, including The World Academy sign next door to the church.

Respectfully,  
John C. Norris  
349 Brook Village Rd. Apt. #11  
Nashua, NH 03062

#7

**Poirier, Kate**

---

**From:** Desclos Louise <lsdesclos240@gmail.com>  
**Sent:** Saturday, July 18, 2020 8:43 AM  
**To:** CD- Planning Dept  
**Cc:** Kent Huebner  
**Subject:** Case #7, Manual Changeable copy (MCC) sign for Grace Lutheran Church  
  
**Categories:** Final Conversation

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

To the members of the City of Nashua Planning Board, Nashua NH

re: Case #7: Manual Changeable Copy (MCC) sign for Grace Lutheran Church, 130 Spit Brook Road, Nashua, NH

As a resident of Nashua, I respectfully submit my comments for the approval of the MCC sign for Grace Lutheran Church.

The sign will not be a distraction to traffic. As a matter of fact, it is a safer sign in that it is readily viewable from a distance from both directions. Whereas the older pyramid sign which is set below street level and 80' off the road is more difficult for the driver to find and a clear distraction when looking for the church.

I find the MCC to be esthetically pleasing with its clean uncluttered appearance. The sign marks the location of the church plus has a changeable copy area to advertise ongoing functions for the benefit of the neighborhood and beyond. Because these two functions are combined in one sign, the temporary banner sign and the pyramid sign can be removed to present a undistracted view.

I find the design of the sign to be harmonious and within the character of the neighborhood. It is a more elegant sign than the banner sign currently in use for advertising church functions.

Louise E. Desclos  
361 Main Dunstable Road  
Nashua, NH 03062-1883  
603-426-9057



**City of Nashua**  
**Planning Department**  
 229 Main Street  
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
 WEB www.nashuanh.gov

**VARIANCE APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**I. VARIANCE INFORMATION**

1. ADDRESS OF REQUEST 5 Scotia Way Nashua NH 03062  
 Zoning District  Sheet  Lot

2. VARIANCE(S) REQUESTED:

- 1) Aus percentage
- \* 2) Driveway width - 24' permitted, 29' proposed

\* CF per Larry Berger via phone call 7-8-2020

**II. GENERAL INFORMATION**

1. APPLICANT / OPTIONEE (List both individual name and corporate name if applicable)

(Print Name): Larry Berger  
 Applicant's signature [Signature] Date 6-29-20  
 Applicant's address 5 Scotia Way  
 Telephone number H: 603 809 0672 C:  E-mail: larryberger@electrx@gmail.com

2. PROPERTY OWNER (Print Name): Larry Berger

\*Owner's signature [Signature] Date 6-29-20  
 Owner's address 5 Scotia Way  
 Telephone number H: 603-809-0672 C:  E-mail:

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

**OFFICE USE ONLY** Date Received 6/29/20 Date of hearing 7/28/2020 Application checked for completeness: CF

PLR# A20-0070 Board Action \_\_\_\_\_

\$ \_\_\_\_\_ application fee  Date Paid \_\_\_\_\_ Receipt # \_\_\_\_\_

\$ \_\_\_\_\_ signage fee  Date Paid \_\_\_\_\_ Receipt # \_\_\_\_\_

\$ \_\_\_\_\_ certified mailing fee  Date Paid \_\_\_\_\_ Receipt # \_\_\_\_\_

Land Use Code Section(s) Requesting Variances From: 190-264, DEFINITIONS  
190-192 (C)

**III. PURPOSE OF REQUEST**

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

Ive enclosed an email with all the answers

- 2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")


- 3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)


- 4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)


- 5. **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship,** because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.


**IV. USE VARIANCE ADDITIONAL INFORMATION**

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

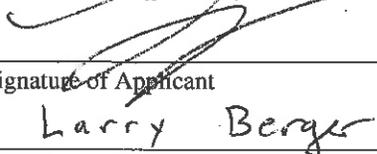
- a. Total number of employees  Number of employees per shift
- b. Hours and days of operation
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors
- d. Number of daily and weekly commercial deliveries to the premises
- e. Number of parking spaces available
- f. Describe your general business operations:

--

- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:

--

*I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.*

  
 \_\_\_\_\_  
 Signature of Applicant  
 Larry Berger  
 \_\_\_\_\_  
 Print Name

6-29-20  
 \_\_\_\_\_  
 Date  
 6-29-20  
 \_\_\_\_\_  
 Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at
- Please mail it to me at

June 29, 2020

Via Email

Jean-Paul Boucher, Chairman  
City of Nashua Zoning Board  
229 Main Street  
Nashua, NH 03060

**Re: Application for Variance**

Dear Chairman Boucher:

I am a resident of 5 Scotia Way in Nashua. On June 15, 2020, I requested a building permit from the City of Nashua Building Department for the construction of a detached garage on my property. By email of June 17, 2020 from Marcia Wilkins, I was advised that the zoning staff had determined that a variance is required to comply with the "accessory use percentage" requirements of the Nashua Land Use Code. I thereafter requested further clarification of this decision, and explained my concerns with the application of the standard; I received an email from Carter Falk on June 26, 2020, indicating that the staff had confirmed their initial decision that a variance is required.

I am enclosing my variance application, along with the required \$345 fee. While I believe that I meet the criteria for a variance for the reasons stated in my application, I wanted to reiterate some of the questions and concerns that I relayed to staff, both because it goes to the issue of whether a variance is required and also supports my request for the variance.

According to staff, a variance is required here because of the "accessory use percentage" standard referenced in NRO § 190-264, specifically in the definition of "Use, Accessory." That definition, in full, reads as follows:

A use incidental and subordinate to the principal use of a structure or lot, or a use not the principal use, which is located on the same lot as the principal structure. Accessory use by area shall not exceed 40% of the area of the total use of the structure and/or lot on which it is located.

This is the only reference to an "accessory use percentage" in the Nashua Land Use Code. According to staff, the above standard has been interpreted as limiting the size of the combined accessory uses to 40% of the finished (or air conditioned) square footage of a person's house. While I understand that this is a long-time interpretation by staff, I think it is still important to look at the language of the ordinance itself. An equally reasonable interpretation of this ordinance is that my garage (as an accessory use on the lot) could not exceed 40% of the size of my property (i.e., the "lot on which it is located"). (I have also attached my email correspondence with staff on this issue.)

Even if the Board does not agree with this alternative interpretation, I think that it supports my request for a variance because I meet the spirit of the ordinance. My proposed garage, combined with other existing accessory uses, would be well under 40% of the total lot area (being less than 10%). In my view, this is not unreasonable given the size of the lot and the nature of the neighborhood, and it is therefore consistent with the goal of the ordinance to have reasonable control over the size of accessory uses. My proposed garage also otherwise meets all of the applicable Land Use Code requirements, including the open space requirement, which is 50% in this zone.

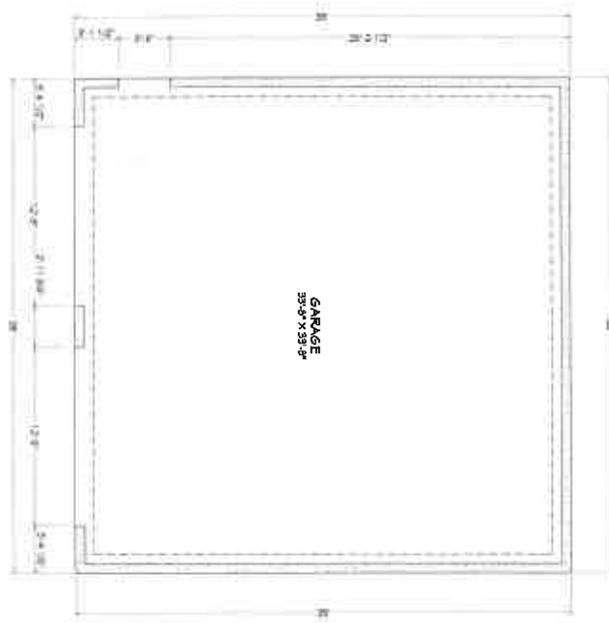
Finally, according to the staff, if I were to ask for a permit to build a garage of the exact same size that were attached to my house, I would not need to seek this variance. This suggests that the ordinance, as interpreted by the staff, is not so much concerned with the size of the garage but whether it is attached to the house. Again, I think that this supports my request for a variance here because it remains consistent with uses that would be permitted for other lots of similar size and type.

Thank you very much for your time and consideration of my variance petition.

Sincerely,

Larry Berger

FOUNDATION PLAN  
8' x 4' FOOT WALL



P.2

SHEET

SCALE

DATE: 11/14/2020

DRAWING PROVIDED BY

BERGER RESIDENCE  
5 SCOTIA WAY  
NASHUA NH, 03062

REVISION TABLE		
NO.	DATE	DESCRIPTION



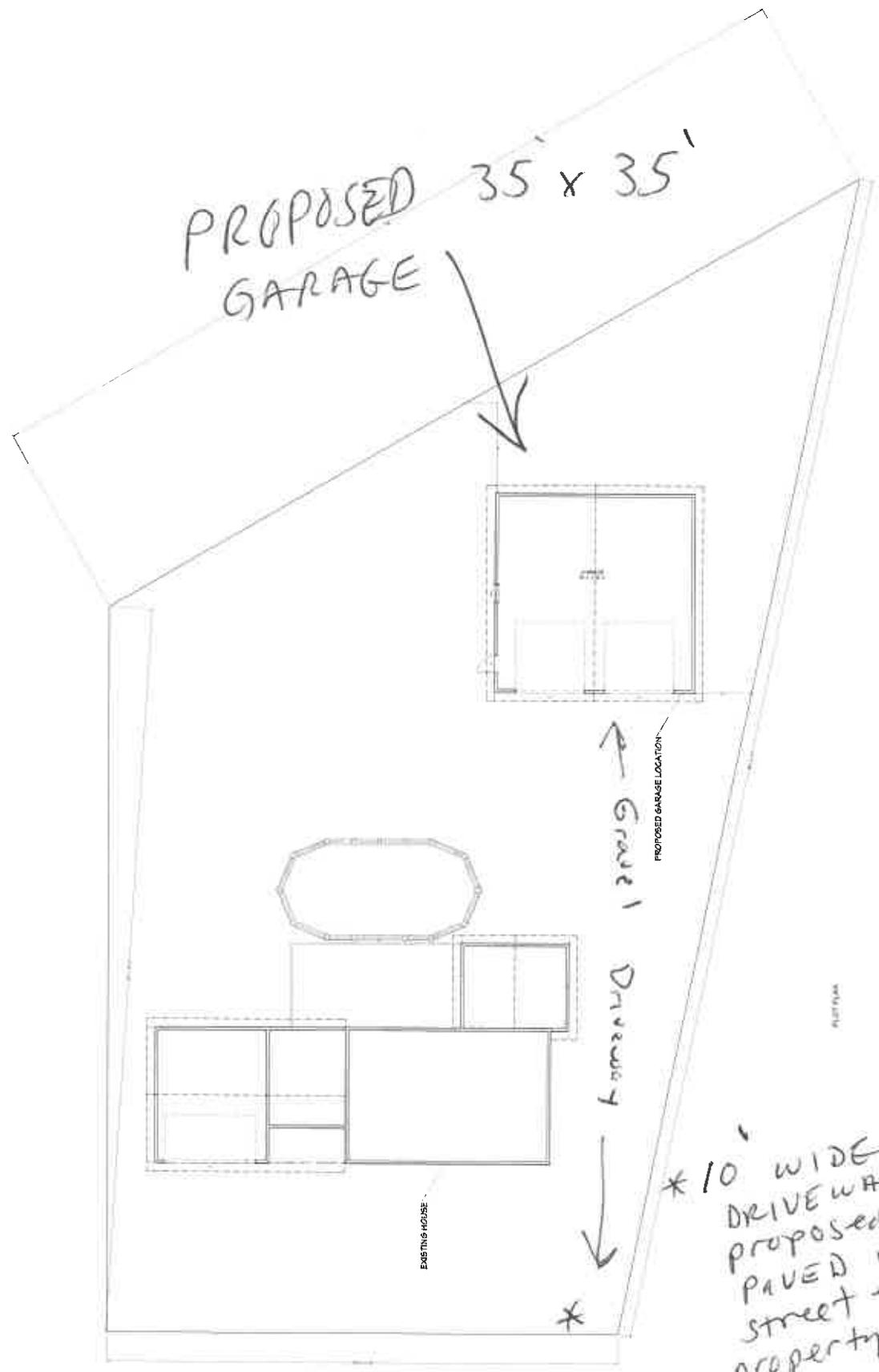

BERGER RESIDENCE  
5 SCOTIA WAY  
NASHUA NH, 03062

ISSUANCE NUMBER: 18

DATE: 6/14/2018

SCALE: 1/8" = 1'-0"

SHEET: P-1



PROPOSED GARAGE 35' x 35'

Gravel Driveway

\* 10' WIDE DRIVEWAY PROPOSED. PAVED FROM STREET TO FRONT PROPERTY LINE

EXISTING HOUSE

SCOTIA WAY



Larry Berger &lt;larrybergerelectric@gmail.com&gt;

---

**Proposed 35'x35' garage**

---

Larry Berger &lt;larrybergerelectric@gmail.com&gt;

Thu, Jun 25, 2020 at 5:55 PM

To: "Falk, Carter" &lt;CarterF@nashuanh.gov&gt;

Cc: "Wilkins, Marcia" &lt;WilkinsM@nashuanh.gov&gt;, "Poirier, Kate" &lt;PoirierK@nashuanh.gov&gt;

Carter,

Thank you for your response and explanation. While I appreciate that this may be how the City has applied this requirement over the years, I am still struggling to understand where in the Code you are looking to establish this requirement. It may be that many other communities have made the determination that this standard is fair and reasonable by adopting it as part of their codes, but Nashua apparently has not chosen to do so, or at least not in the way that you are describing. If I'm simply missing some reference in the code, please let me know.

Again, reading the words of the code (which is all there is here), I don't think that a variance is required. However, I am going to go ahead and complete the variance application, because I want to make sure that I can be heard at the Zoning Board meeting on 7/28.

I understand that there is also a formal process for appealing interpretations of the zoning ordinances to the Zoning Board. Can you please send me any application or instructions with respect to such an appeal?

Thanks,

Larry"

On Thu, Jun 25, 2020, 2:59 PM Falk, Carter &lt;CarterF@nashuanh.gov&gt; wrote:

Hi Mr. Berger,

Marcia asked me to review the information relative to the proposed 35'x35' detached garage that you are considering. The Accessory Use issue is a dimensional criteria that our Staff reviews on every land use permit. In my 22+ years as the Zoning Administrator, it has been consistently applied. In real simple terms, if you have a 1,000 sq.ft house (ONLY air conditioned, living space - not counting attics or basements), you are allowed 40% of DETACHED structure area, such as a shed, pool, garage....so 400 sq. ft would be permitted.

Our records indicate that you have 2,272 sq.ft of living area. It has nothing to do with footprint of the house, it is solely the a/c area. Therefore, 40% of that is 909 sq.ft. The pool is 466.5 sq.ft. The proposed 35'x35' garage is 1,225 sq.ft. So - 466.5 + 1,225 = 1,690.5 sq.ft, which would be 74% of the 2,272 sq.ft of living area of the house.

The intent of the 40% accessory use criteria is to have a better control, and size limitation, of detached accessory structures. It is a fair and reasonable Code requirement that I have seen in my research of hundreds of Land Use Ordinances around the country.

Therefore, I completely agree with Marcia's determination that a variance would be required to allow this. The Zoning Board sees variances of this nature on a regular basis, and in my tenure here, I have seen several dozen such requests.

Also, since the garage would be located in the rear yard, we would need to see if there is any driveway or paving to gain access to it.

I believe Marcia sent you a variance application. If not, please let me know and we'll make sure you get one to submit.

Thanks,

Carter

Carter W. Falk, AICP

Deputy Planning Manager/Zoning

Community Development Dept.

229 Main Street

P.O. Box 2019

Nashua, NH 03061-2019

[falkc@nashuanh.gov](mailto:falkc@nashuanh.gov)

603 589-3116 p

603 589-3119 f



Larry Berger &lt;larrybergerelectric@gmail.com&gt;

---

**Proposed 35'x35' garage**

---

**Falk, Carter** <CarterF@nashuanh.gov>

Fri, Jun 26, 2020 at 11:42 AM

To: Larry Berger &lt;larrybergerelectric@gmail.com&gt;

Cc: "Wilkins, Marcia" &lt;WilkinsM@nashuanh.gov&gt;, "Poirier, Kate" &lt;PoirierK@nashuanh.gov&gt;

Mr. Berger,

Land Use Code Section 190-264, Definitions, states the following for the accessory use area:

*USE, ACCESSORY – A use incidental and subordinate to the principal use of a structure or lot, or a use not the principal use, which is located on the same lot as the principal structure. Accessory use by area shall not exceed 40% of the area of the total use of the structure and/or lot on which it is located.*

First sentence: DETACHED SHEDS AND GARAGES, POOLS, DECKS – are incidental and subordinate to the PRINCIPAL USE of a structure or lot –which is the **house**. I think that's a given.

Second sentence: Accessory use by area shall not exceed 40% of the **total use of the structure**.... Our Department has interpreted that 40% is the air-conditioned living space. This is how the Department has interpreted this issue – consistently – for probably 40+ years, with review of perhaps several hundred or thousands of land use permits. I gave you an example earlier how it works numerically. This has been supported by not only me (with an advanced degree, professional certification and 32yrs experience as a City Planner), but my Director, with even significantly more experience than I, as well as every City Attorney that I have worked with here, and dozens of Zoning Board of Adjustment members over the years.

I cannot break this down any clearer. This definition, and the accessory use percentage, is to not have single family homeowners having very large structures that are NOT the principal use on their property. The Board of Alderman thought enough of this to have it as a dimensional criteria that our staff reviews, and our professional Planning staff has interpreted this consistently, fairly and correctly.

If you want to appeal this – you have the right to do so. Appeals are advertised like any other land use case, the cost is \$330. Our decision stands.

Thanks,

Carter

Carter W. Falk, AICP

Deputy Planning Manager/Zoning

Community Development Dept.

229 Main Street

P.O. Box 2019

Nashua, NH 03061-2019

[falkc@nashuanh.gov](mailto:falkc@nashuanh.gov)

603 589-3116 p

603 589-3119 f

---

**From:** Larry Berger [mailto:[larrybergerelectric@gmail.com](mailto:larrybergerelectric@gmail.com)]

**Sent:** Thursday, June 25, 2020 5:55 PM

**To:** Falk, Carter

**Cc:** Wilkins, Marcia; Poirier, Kate

**Subject:** Re: Proposed 35'x35' garage

**CAUTION:** This email came from outside of the organization. Do not click links/open attachments if source is unknown.

[Quoted text hidden]



Larry Berger &lt;larrybergerelectric@gmail.com&gt;

---

**Proposed 35'x35' garage**

---

**Falk, Carter** <CarterF@nashuanh.gov>

Thu, Jun 25, 2020 at 2:59 PM

To: "larrybergerelectric@gmail.com" &lt;larrybergerelectric@gmail.com&gt;

Cc: "Wilkins, Marcia" &lt;WilkinsM@nashuanh.gov&gt;, "Poirier, Kate" &lt;PoirierK@nashuanh.gov&gt;

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Also, since the garage would be located in the rear yard, we would need to see if there is any driveway or paving to gain access to it.

I believe Marcia sent you a variance application. If not, please let me know and we'll make sure you get one to submit.

Thanks,

Carter

Carter W. Falk, AICP  
Deputy Planning Manager/Zoning  
Community Development Dept.  
229 Main Street  
P.O. Box 2019  
Nashua, NH 03061-2019

[falkc@nashuanh.gov](mailto:falkc@nashuanh.gov)

603 589-3116 p

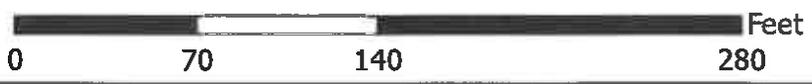
603 589-3119 f

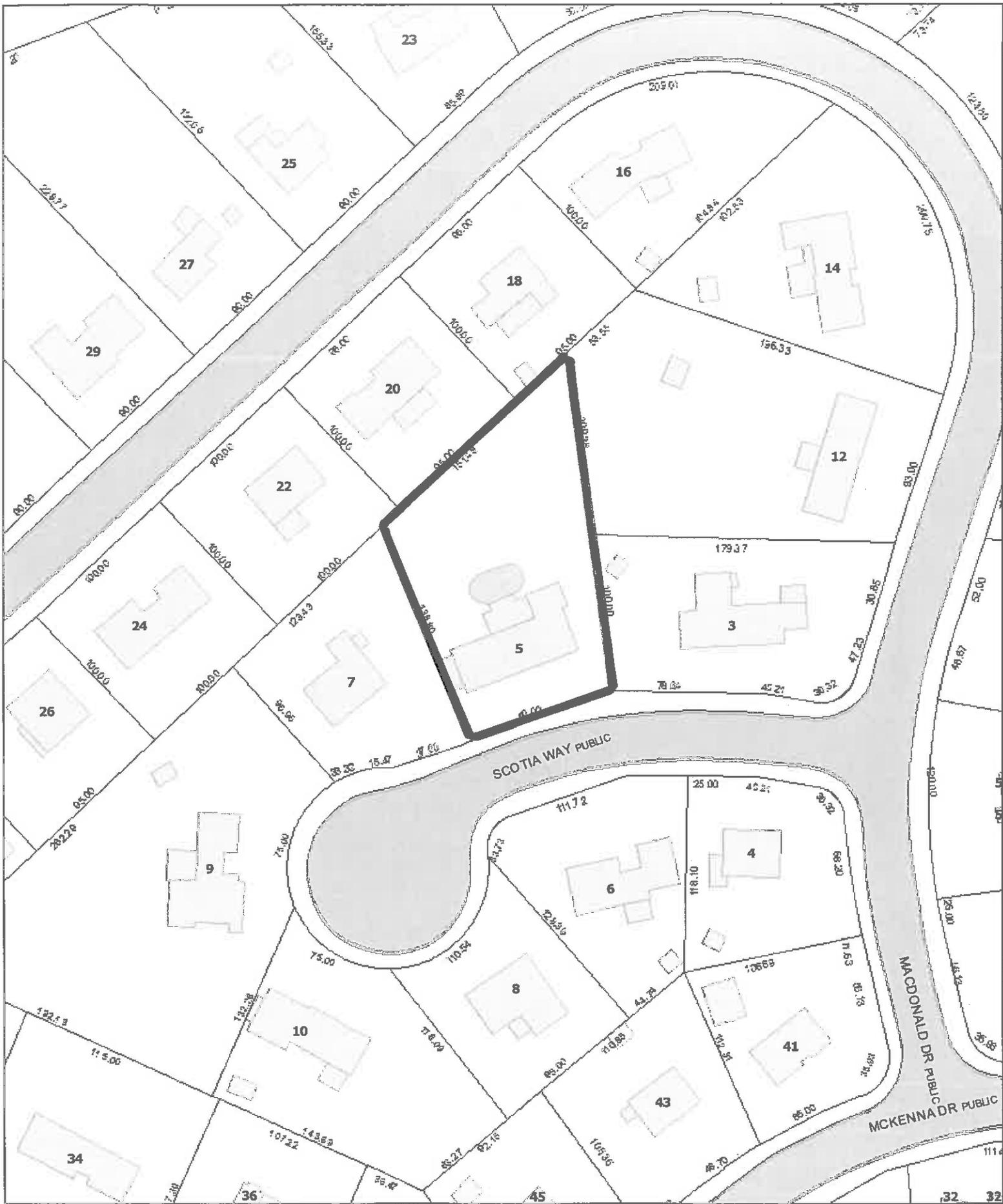


SCOTIA WAY PUBLIC

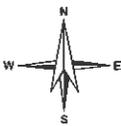
McDONALD DR PUBLIC  
McKENNA DR PUBLIC

# 5 Scotia Way





# 5 Scotia Way



ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
December 8, 2015

A public hearing of the Zoning Board of Adjustment was held on Tuesday, December 8, 2015 at 6:30 PM in Room 208, City Hall.

Gerry Reppucci, Chair  
Jack Currier, Vice Chair  
J.P. Boucher, Clerk  
Kathy Vitale  
Mariellen MacKay

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Reppucci explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Reppucci explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Reppucci also explained procedures involving the timing light.

1. Lawrence Berger (Owner) 5 Scotia Way (Sheet C Lot 1736) requesting variance to encroach 7 feet into the 10 foot required left side yard setback to construct an attached 8'x16' shed onto left side of garage. R9 Zone, Ward 5.

Voting on this case:

Gerry Reppucci  
Jack Currier  
J.P. Boucher  
Kathy Vitale  
Mariellen MacKay

Larry Berger, 5 Scotia Way, Nashua, NH. Mr. Berger said he built a shed, attached to the garage, and was under the assumption that since it's less than 200 square feet in size, that a permit was not required. He said that he was building it for two days, and then got a stop work order, and learned that a variance was required because it was too close to the property line.

Mr. Reppucci read a letter of support into the record from Adam Varley, at 3 Scotia Way.

Mr. Berger said he spoke to both of the side yard abutters, and both of them are ok with it, and the abutter at 7 Scotia Way was

actually helping him build it.

Mr. Currier asked what would be in the shed.

Mr. Berger said a lawnmower, snow blower, yard tools.

Ms. Vitale asked if it will be finished off to look like the house.

Mr. Berger said yes, it will look the same as the house, and will all tie in.

**SPEAKING IN FAVOR:**

Mr. Reppucci read the letter into the record from Adam Varley.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Joe Tringali, 12 MacDonald Drive, Nashua, NH. Mr. Tringali said that his house is behind. He asked if the 8'x16' structure is going to be made any bigger on the side or in the back of it.

Mr. Reppucci said that the shed that the applicant started to build will be finished off like the rest of the house, per testimony. He said that there is nothing else before the Board for this property except the proposed request.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Berger said that nothing else is going to be built, and the only people who can see the shed are the neighbors at 7 Scotia. He said that nothing else is going to be built on the property.

Mr. Currier said it's a benefit that the finish of the shed will look just like the house, and the abutter is fine with it, also, there is enough room to maintain it to get to the back of the house, so there shouldn't be any safety issue.

Mr. Reppucci said he'd agree to it, and liked the testimony that the owner would have it sided to match the house, perhaps by the end of Spring, because right now, it looks out of place.

**MOTION** by Mr. Currier to approve the variance application as advertised on behalf of the owner. Mr. Currier said that the

variance is needed to enable the applicant's proposed use of the property, the special conditions of the property is that the property is like a cul-de-sac, where the property lines that widen as you go back, so the front of the lot is the thinnest part, and if you want to have an attached structure, this property has a special situation where the house is existing up front, and if you want to have an attached structure you're right up against the property line. He said if the house were placed back some, you'd have all kinds of room. He said that you can walk around it to the left and get a vehicle around on the right.

Mr. Currier said that it's within the spirit and intent of the ordinance, is not contrary to the property values, it is not contrary to the public interest, and substantial justice is served by allowing the shed as requested.

Mr. Currier said for a special condition, the shed must be promptly finished and to match the rest of the house, which is the testimony of the homeowner, by the time of the certificate of occupancy that this would be effective.

Mr. Reppucci suggested the spring time, in case there is bad weather.

Mr. Currier said it should be done by the end of March.

**SECONDED** by Mrs. Vitale.

**MOTION CARRIED UNANIMOUSLY 5-0.**

2. Jason Dionne (Owner) 110 Ridge Road (Sheet C Lot 20) requesting variance to exceed maximum accessory use area, 40% allowed, 57% existing - 63% requested, to construct an 80 square foot shed. R40 Zone, Ward 9.

Voting on this case:

Gerry Reppucci  
Jack Currier  
J.P. Boucher  
Kathy Vitale  
Mariellen MacKay



1. **Andre L. Roy (Owner) 17 Orlando Street (Sheet 130 Lot 25) requesting variance from Land Use Code Section 190-192 (C) to repave and replace existing driveway, 24 feet permitted, two driveways at 9' and 24' existing – the 24' driveway proposed at 26' for a total width of 35 feet. RB Zone, Ward 4.**

**VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Shaw**

**REQUEST #1**

MOTION TO: **Approve**

MOTION BY: Boucher

SECONDED BY: Shaw

- 1) The Board found that the variance **is** needed to enable the applicant's proposed use of the property, and given there **are** special conditions associated with the property, the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue.
- 2) The Board found that the spirit and intent of the ordinance being kept in good faith to **Approve** this request.
- 3) The Board found that property values **will not** be negatively impacted by this request.
- 4) The Board found that the request **is not** contrary to the public interest.
- 5) Substantial justice **will** be served to the applicant by granting this request.

**Stipulations of Approval:** The existing 9' driveway is to be eliminated or reduced to a maximum 5' wide walkway, resulting in a total driveway width of 26' for the existing driveway on the right hand side of the property.

VOTE: Unanimous 5-0

2. **Mark P. & Kelli G. Wholey (Owners) 9 Deerhaven Drive (Sheet G Lot 324) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) for an attached accessory (in-law) dwelling unit proposed above existing garage. R18 Zone, Ward 3.**

**VOTING MEMBERS: MacKay, Currier, Lionel, Boucher, Shaw**

**REQUEST #1**

MOTION TO: **Approve**

MOTION BY: Boucher

SECONDED BY: Lionel

- 1) This use **is** listed in the Table of Uses, City of Nashua Land Use Code Section **190-15 Table 15-1 (#3)**
- 2) This use **will not** create undue traffic congestion or unduly impair pedestrian safety.
- 3) This use **will not** overload public water, drainage or sewer or have negative impacts on municipal systems.
- 4) Special use regulations **are** fulfilled. This includes the 9 ADU criteria
- 5) This use **will not** impair the integrity, **will not** be out of character with the neighborhood, and **will not** be detrimental to the health, morals or welfare of residents.

**Stipulations of Approval: None**

VOTE: Unanimous 5-0

3. **Oscar L. Annis & Charles R. Cobb (Owners) 58 Marie Avenue (Sheet 138 Lot 372) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 5 feet into the 10 foot required left side yard setback to construct a 12'x22' attached garage addition. R9 Zone, Ward 1.**

**VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Shaw**  
**REQUEST #1**

MOTION TO: **Approve**

MOTION BY: Lionel

SECONDED BY: Shaw

1. The Board found that the variance **is** needed to enable the applicant's proposed use of the property, and given there **are** special conditions associated with the property, the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue.
2. The Board found that the spirit and intent of the ordinance being kept in good faith to **Approve** this request.
3. The Board found that property values **will not** be negatively impacted by this request.
4. The Board found that the request **is not** contrary to the public interest.
5. Substantial justice **will not** be served to the applicant by granting this request.

**Stipulations of Approval:** None

Special Conditions: Board finds that the abutting property on the left side has a garage located adjacent to the proposed garage expansion, and that this mitigates impact to the left abutter.

VOTE: Unanimous

4. **Frank E. & Jane L. Andrews Rev. Tr. (Owners) 19 Legacy Drive (Sheet B Lot 3154) requesting the following variances from Land Use Code Section 190-31: 1) to encroach 2 feet into the 6 foot required right side yard setback; and, 2) to encroach 4 feet into the 6 foot required rear yard setback –to install a 12’x18’ shed. R18 Zone, Ward 9.**

**VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Shaw**

**REQUEST #1 & #2**

MOTION TO: **Approve**

MOTION BY: Shaw

SECONDED BY: Boucher

1. The Board found that the variance **is** needed to enable the applicant’s proposed use of the property, and given there **are** special conditions associated with the property, the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue.
2. The Board found that the spirit and intent of the ordinance being kept in good faith to **Approve** this request.
3. The Board found that property values **will not** be negatively impacted by this request.
4. The Board found that the request **is not** contrary to the public interest.
5. Substantial justice **will** be served to the applicant by granting this request.

VOTE: Unanimous 5-0

**Stipulations of Approval:** None

Board finds the special conditions being that open space exists on the rear side of the lot and that the proposed setbacks allow the homeowner to maintain the shed.

5. Eleanor M. Macdougall Family Trust (Owner) 1 Long Avenue (Sheet E Lot 82) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 22 feet existing, 24 feet permitted - 41 feet proposed. RA Zone, Ward 4.

VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Minkarah

**REQUEST #1**

MOTION TO: **Approve**

MOTION BY: Boucher

SECONDED BY: Minkarah

1. The Board found that the variance **is** needed to enable the applicant's proposed use of the property, and given there **are** special conditions associated with the property, the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue.
2. The Board found that the spirit and intent of the ordinance being kept in good faith to **Approve** this request.
3. The Board found that property values **will not** be negatively impacted by this request.
4. The Board found that the request **is not** contrary to the public interest.
5. Substantial justice **will** be served to the applicant by granting this request.

**Stipulations of Approval:**

**Special Conditions:** Board finds that the lot is at the end of a short, dead end street. The house is located close to the street, the lot is triangular shaped, and abuts a railroad, and that these special conditions warrant the 41' proposed width.

VOTE: Unanimous 5-0

Clerk: Jack Currier

6. **Natalie & Marc Blattenberger (Owners) 105 Hills Ferry Road (Sheet 117 Lot 253) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, requesting to repave one 12 foot wide driveway on Hills Ferry Road and one 18 foot wide driveway on Hillside Drive for a total width of 30 feet. RA Zone, Ward 3.**

**VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Kanakis**

**REQUEST #1**

MOTION TO: **Approve**

MOTION BY: Boucher

SECONDED BY: Lionel

1. The Board found that the variance **is** needed to enable the applicant's proposed use of the property, and given there **are** special conditions associated with the property, the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue.
2. The Board found that the spirit and intent of the ordinance being kept in good faith to **Approve** this request.
3. The Board found that property values **will not** be negatively impacted by this request.
4. The Board found that the request **is not** contrary to the public interest.
5. Substantial justice **will** be served to the applicant by granting this request.

**Special Conditions:** Board finds that the 2 driveways pre-existed this owner, and has not been a problem / burden to the neighborhood.

**Stipulations of Approval:** None

VOTE: Unanimous 5-0

7. **Grace Lutheran Church (Owner) Signs Now (Applicant) 130 Spit Brook Road (Sheet B Lot 2428) requesting the following: 1) A determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the variance for an electronic changing message [EMC] sign that was denied by the ZBA on 4-28-2020; and, if so: 2) variance from Land Use Code Section 190-101, Table 101-7 (K) to allow manually changeable copy on ground sign. PI/R18 Zone, Ward 8.**

**VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Minkarah**

**REQUEST #1**

MOTION TO: **Approve**

MOTION BY: Currier

SECONDED BY: Minkarah

1. A material change of circumstances affecting the merits of the application **has** occurred.
2. The application is for a use that **is** materially different in nature and degree from the prior request. (In summary, the Board finds that the currently proposed MCC sign is substantially different than the previously proposed EMC sign).

**VOTE: Unanimous 5-0**

**REQUEST #2**

MOTION TO: **Approve**

MOTION BY: Lionel

SECONDED BY: Minkarah

1. The Board found that the variance **is** needed to enable the applicant's proposed use of the property, and given there **are** special conditions associated with the property, the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue.
2. The Board found that the spirit and intent of the ordinance being kept in good faith to **Approve** this request.
3. The Board found that property values **will not** be negatively impacted by this request.
4. The Board found that the request **is not** contrary to the public interest.
5. Substantial justice **will** be served to the applicant by granting this request.

**VOTE: Unanimous 5-0**

**Stipulations of Approval: None**

Special Conditions: The Board finds that the lot is split-zoned (PI & R18) and that the property slopes down from the street, and that the building is set back on the parcel – these special conditions warrant the approval of the MCC variance.

Clerk: Jack Currier

8. Lawrence Berger (Owner) 5 Scotia Way (Sheet C Lot 1736) requesting the following variances: 1) from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted, 74% proposed, to construct a detached 35'x35' one-story garage in rear yard; and, 2) from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, 19 feet existing – an additional 10 foot wide driveway proposed on right side of lot, for a total width of 29 feet. R9 Zone, Ward 5.

VOTING MEMBERS: MacKay, Lionel, Currier, Boucher, Kanakis

**REQUEST #1**

MOTION TO: **Deny**

MOTION BY: Lionel

SECONDED BY: Kanakis

1. The Board found that the variance **is not** needed to enable the applicant's proposed use of the property, and given there **are not** special conditions associated with the property, the benefit sought by the applicant **can** be achieved by some other method reasonably feasible for the applicant to pursue.
2. The Board found that the spirit and intent of the ordinance being kept in good faith to **Deny** this request.
3. The Board found that property values **will** be negatively impacted by this request.
4. The Board found that the request **is** contrary to the public interest.
5. Substantial justice **will not** be served to the applicant by granting this request.

VOTE: In favor of denial: Lionel, Kanakis, Currier Not in favor: MacKay, Boucher

**REQUEST #2**

MOTION TO: **Deny**

MOTION BY: Lionel

SECONDED BY: Kanakis

6. The Board found that the variance **is not** needed to enable the applicant's proposed use of the property, and given there **are not** special conditions associated with the property, the benefit sought by the applicant **can** be achieved by some other method reasonably feasible for the applicant to pursue.
7. The Board found that the spirit and intent of the ordinance being kept in good faith to **Deny** this request.
8. The Board found that property values **will** be negatively impacted by this request.
9. The Board found that the request **is** contrary to the public interest.
10. Substantial justice **will not** be served to the applicant by granting this request.

VOTE: In favor of denial: Lionel, Kanakis, Currier Not in favor of denial: MacKay, Boucher

**Stipulations of Approval:**

Clerk: Jack Currier