



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 NOT BE ACCEPTED

I. VARIANCE INFORMATION

1. ADDRESS OF REQUEST 5 Scotia Way Nashua NH 03062

Zoning District R9 Sheet C Lot 1736

2. VARIANCE(S) REQUESTED:

Driveway width 24' permitted 29' proposed

II. GENERAL INFORMATION

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

(Print Name): Larry Berger

Applicant's signature [Signature] Date 3/8/2022

Applicant's address 5 Scotia Way

Telephone number H: 603 809 0672 C: E-mail: larryb1979@gmail.com

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

*Owner's signature [Signature] Date

Owner's address 5 Scotia Way

Telephone number H: C: E-mail:

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

OFFICE USE ONLY Date Received 3/8/22 Date of hearing 4/12/22 Application checked for completeness: CF

A# 22-0047 Board Action

\$ application fee Date Paid Receipt #

\$ signage fee Date Paid

\$ certified mailing fee Date Paid

Land Use Code Section(s) Requesting Variances From: 190-17 (E)(1)



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 it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

New Circumstances have happened where I no longer need a variance for the garage so thats why I am resubmitting my driveway variance

cc: Carter Falk

- 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 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.

[Empty rectangular box for providing details on special conditions]

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:

[Empty rectangular box for describing general business operations]

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

[Empty rectangular box for describing site renovations]

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 points specifically mentioned are affected by action taken on this appeal.

Signature of Applicant

Larry Berger

Print Name

Date

3/8/2022

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

Addendum to Variance Application

Larry Berger – 5 Scotia Way

Summary of Prior Proceeding:

The owner previously filed an application for variance on ^{7/28/20}~~[date]~~ to construct a garage that exceeded the accessory use percentage. That application included an ancillary request for the same driveway width expansion. The prior application should not be considered binding for purposes of the current application for two reasons.

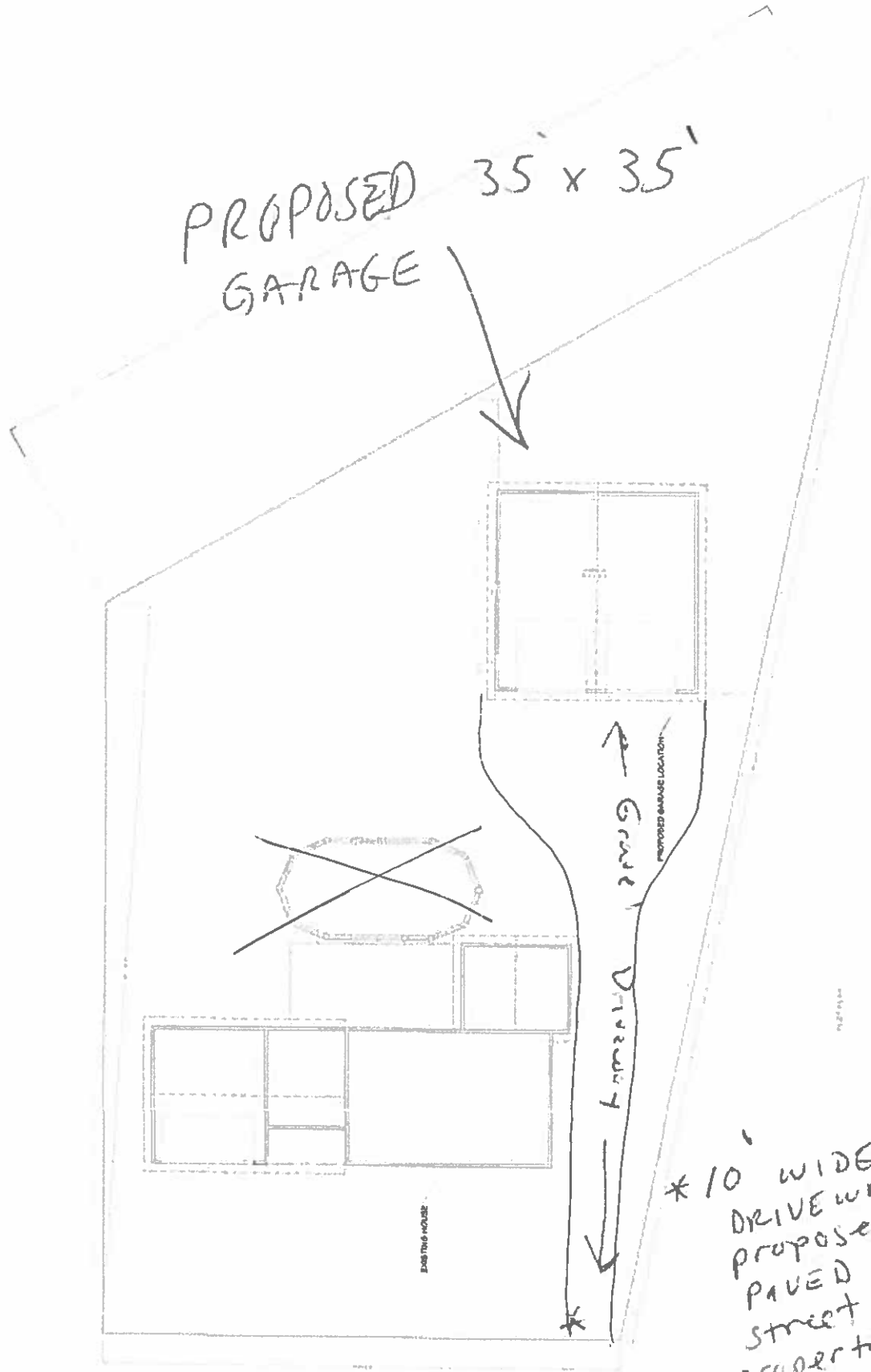
First, the Zoning Board did not reach the merits of the driveway variance during the prior hearing. Both the abutter testimony and Board discussion was devoted to consideration of the accessory use request, with only passing reference being made to the driveway, which was considered “collectively” with the accessory use variance request. Accordingly, the owner would not have had adequate notice that the Board was making a substantive decision regarding the driveway variance independent of the accessory use.

Second, there have been material changes in circumstances since the Board considered the prior accessory use variance request. In an effort to bring the property into conformity with the accessory use limitations, the owner removed the pool on the property and finished the basement, thus both increasing the square footage of the property and reducing the existing accessory use amount. This was done at significant time and expense to the owner, with the understanding and recommendation from City staff that this would make the proposed garage conforming with the accessory use standards, which is indeed now the case. The driveway variance now being requested is thus entirely distinct from the previous request, in that it is being considered on a stand-alone basis and not in conjunction with the proposed garage.

The owner deserves the opportunity to have his request for a variance to driveway width considered on its own merits. Failure to do so would deprive the owner of substantive and procedural rights without having had an adequate opportunity to be heard.

BERGER RESIDENCE
 3 SCOTTA WAY
 NASHUA NH 03062

DATE: 6/14/2011
 SCALE:
 SHEET: P.1



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


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

would not have any of the detrimental issues that we would have seen for an EMC.

Mr. Boucher said that he is in favor.

Mr. Kanakis said that he is also in favor. He asked about the easement for the sign in the right-of-way.

Mr. Falk said that the applicant will have to finalize everything with the Department of Public Works to get any and all approvals for the sign in the right-of-way. He said that he believes that the applicant has already done this.

Mrs. MacKay said that she is in favor.

MOTION by Mr. Lionel to approve the application on behalf of the applicant as advertised. Mr. Lionel stated that the variance is needed to enable the applicant's proposed use of the property, given the special 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 variance, he said that the Board has discussed different types of signs, and initially they applied for an EMC which was denied, but a manually changeable sign, the Board believes is much more in line with the neighborhood, and typical for churches.


Mr. Lionel said that the request is within the spirit and intent of the Ordinance.

Mr. Lionel stated that the request will not adversely affect the property values of surrounding parcels.

Mr. Lionel said that it is not contrary to the public interest, and substantial justice to the owner will be served.

SECONDED by Mr. Minkarah.

MOTION CARRIED UNANIMOUSLY 5-0 BY VERBAL ROLL CALL OF THE VOTING MEMBERS.



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 on this case:

Mariellen MacKay, Chair
Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Nick Kanakis

Lawrence Berger, 5 Scotia Way, Nashua, NH. Mr. Berger said that he is seeking approval for a garage in the back corner of his property, as he has a work van, a pick-up truck, a 30-foot camper all in the front driveway, as well as three cars. He said that he had a variance a few years ago for a small shed on the left side of the house which will be taken down if the variance is approved. He said that he's talked with a few surrounding neighbors, one of which is in favor, as it directly affects him because the driveway would be abutting his property line.

Mr. Berger said that the garage would have 16 feet off the back and 12 feet from the right side, so it would not encroach into any setbacks.

Mr. Lionel said that there is an existing two-car garage, and asked why a rather enormous building is proposed.

Mr. Berger said that he is a contractor with two large vehicles, one is a work van that is 12 feet tall, and has a 30-foot camper, and his niece stays with them. He said that his garage doesn't fit two cars, and said that he doesn't like things out front, and all the vehicles could fit in the back. He said that all the surrounding trees cover the back yard in the summer, and can't even see the neighbor's houses in the summer months. He said it will protect his investments with the work and personal vehicles.

Mr. Lionel said that he didn't see any drawings about the style or height of the garage.

Mr. Berger said it will be one-story, the walls will be 12 feet high, and is waiting on the truss design, which he believes will be 8-10 feet, it's just a standard truss. He said it won't look out of style, it will be a barn-style garage to match his colonial house.

Mr. Currier asked what the topography is in the back yard, flat, or sloping. He asked if the 12-foot height of the wall, with the roof trusses on top of that, what the height will be.

Mr. Berger said that the walls will be 12 feet, to fit the 11 foot tall work van, and the trusses haven't been approved yet. He said that the lot would be leveled a little bit, there is about a 3 foot difference from where the front yard is to the back, so some fill will need to be brought in.

Mr. Boucher asked what the height allowance is for a one-story garage.

Mr. Falk said that the maximum height for an accessory structure is 20 feet. He said that the building height is measured at the midpoint between the eave and the ridge, so if it is 12 feet to the top of the eave, he said he is not sure what the ridge line is, so it would be the midpoint between the eave and ridge.

Mr. Minkarah asked what the need is for the widening the driveway.

Mr. Berger said that the main driveway to the house is 19 feet, and a new 10 foot wide driveway is a normal driveway width. He said it would be an additional driveway on the other side of the lot.

Mr. Falk said that the regular driveway is 19 feet wide that goes to the garage. He said that the new driveway would be on the other side of the house, on the right side of the property, going past the house to the back yard where the garage would be, so it would be two separate driveways.

SPEAKING IN FAVOR:

Adam Varley, 3 Scotia Way, Nashua, NH. Mr. Varley said he would recap what was written in his email. He said that he's talked to the applicant a number of times over the years about this, he really has no width on the other side of the house, it's narrow.

He said that the new driveway that is proposed would directly abut his lot, and would run from the street to the back of his lot. He said that this proposal mostly affects his lot, and has no concerns and fully support the applicant's request for a variance, and understand the need and limitations.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Joe Tringali, 12 MacDonald Drive, Nashua, NH. Mr. Tringali said that Mr. Berger already has a two-car garage, and the proposed structure is 35'x35', which is rather excessive for a three-car garage. He said that he is concerned with the number of cars and commercial vehicles, this is a family residence and not a commercial zone. He said that the proposal is out of character with the neighborhood, and half of the green space in back of his lot has been wiped out for clearing the space for the garage. He said that the foundation wall is exposed, it is 10 feet high and 35 feet long, and the 74% accessory use area is nearly double the permitted level of 40%, and this is clearly not in the spirit and intent of the ordinance, and has concerns that this will negatively impact his property values.

Nick Bourgeois, 20 MacDonald Drive, Nashua, NH. Mr. Bourgeois said that in the chat box, he would let his email speak to his comments. Mrs. MacKay read his email into the record, stating that the Board should deny the request for variances, as the structure would be an eyesore in his backyard, the foundation has been poured and the backhoe is already tall. He asked how tall the garage would be, and how close would it be to his property line, if it will be used for business purposes, or personal use, as there is already an attached garage, and last, why was the foundation poured in June, but this is going for a variance now.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Berger said the structure is on the right side, about 10 feet tall, it steps down to 8, 6 and then 4, it will all be filled in and leveled, and there will be a fence surrounding the area. The garage would be 16 feet from the property line, and there will also be a retaining wall, backfilled and fenced, and it will be used for personal use, not commercial. He said he took down three trees in his own yard, one of which was fully rotten through. He said that the height requirement is 20 feet for the building itself.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Tringali said that he's looking at a very tall wall, he said he can't see it well now but will in the winter.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Boucher said he understands the applicant's proposal, and doesn't have a problem with its size. He said that the benefit may be that it adds value to the neighborhood, as it takes vehicles off the front of the property and puts them in the back. He said that it would be a one-story garage, its new construction. He said that the driveway request is an extra five feet from the 24 feet maximum, and has no problem with the overage.

Mr. Lionel said that the garage meets all the setbacks, but doesn't think it meets the character of the neighborhood. He said that the accessory use number is excessive, and the fact that applicants buy and have enormous vehicles is not a good reason to support variances. He said that 35'x35' is just too much to support.

Mr. Kanakis said that that he's leaning more towards being against this application for the reasons stated by Mr. Lionel. He said he doesn't think it meets the character of the neighborhood, and it would really stand out.

Mr. Minkarah said he is concerned about the size of the structure. He said that they already have a two-car garage, and a second garage at this size seems excessive and is not customary, and is not compatible in the neighborhood, and doesn't see the additional driveway as being compatible with the neighborhood.

Mr. Currier said that he's struggling with the application. He said that the pool is also there, and the request would be 55% if the pool wasn't there. He said that he's struggling to see how this would fit in the character of the back yards here. He said he's relying on what the neighbors say, and two say it is not in character.

Mrs. MacKay said that she understands the logic and reasoning for the garage, and the need for the garage with his vehicles.

She said that she also understands that with the Covid-19, he has an additional family member living there with a vehicle. She said that she is coming down more on the side of support.

MOTION by Mr. Lionel to deny the application on behalf of the applicant as advertised, with both requests considered collectively. Mr. Lionel stated that the variance is not needed to enable the applicant's proposed use of the property, there are no special conditions of the property that would require this much overage on accessory use, and extra driveway. He said that the applicant has essentially brought this on himself by obtaining multiple vehicles and storing possible work vehicles, and already has a perfectly good two-car garage and a driveway, so the Board does not believe this variance is needed.

Mr. Lionel said that the request is not within the spirit and intent of the Ordinance.

Mr. Lionel stated that the Board has testimony from neighbors that it will adversely affect the property values of surrounding parcels.

Mr. Lionel said that it is contrary to the public interest, as it is not in character with the neighborhood, and substantial justice would not be served.

SECONDED by Mr. Kanakis.

MOTION CARRIED 3-2 BY VERBAL ROLL CALL OF THE VOTING MEMBERS (Mr. Boucher and Mrs. MacKay against Motion, and both vote not in favor of the denial).

MISCELLANEOUS:

MINUTES:

None.

REGIONAL IMPACT:

Board members stated that they did not see any cases of Regional impact

ADJOURNMENT:

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

Falk, Carter

From: David Pearlstein <dpearlstein54@comcast.net>
Sent: Thursday, March 10, 2022 7:27 PM
To: Falk, Carter
Subject: Variance

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

Dear Members of the Board,

We live at 6 Scotia Way, directly across the street from Larry Berger. We are writing to express our support for Larry's application for a variance to create a new driveway on his property. He has discussed it with us and we understand that he needs this driveway expansion to be able to access the new garage for which he is seeking a permit. The plan does not cause any concerns for us and we are happy to be able to support Larry's request.

Thank you,

Dave and Anne Pearlstein, 6 Scotia Way

Sent from my iPhone

Falk, Carter

From: Armando Toruno <adtoruno@outlook.com>
Sent: Friday, March 11, 2022 12:41 PM
To: Falk, Carter
Subject: 5 Scotia Way

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

Hi Mr. Falk, my name is Armando Toruno of 4 Scotia Way in Nashua, and I am writing to you regarding 5 Scotia Way. Larry Berger is my neighbor, and I am favor of his new driveway and garage being installed. We have no issues or concerns regarding of it. Any question or concerns please feel free to contact me to this email address or if you prefer you can call to my personal cell# 508-405-6284. Thanks for your help in this matter.

Appreciate it,

Armando Toruno



5 Scotia Way





5 Scotia Way

