

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
February 9, 2021

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 9, 2021 at 6:30 PM, via Zoom.

Steve Lionel, Chair, asked for a Roll Call. All members stated that they are alone:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Efstathia Booras

Matt Sullivan, Planning Manager
Carter Falk, Deputy Planning Manager/Zoning
Kate Poirier, Zoning Coordinator

Mr. Lionel explained the Board's procedures, stating that the Board is operating under the Governor's Executive Order via Zoom. Mr. Lionel explained how public access is available by telephone, and additional access means by video or other electronic access, as well as the meeting being streamed through the City's website on Nashua's Community Link and also on Channel 16 on Comcast. Mr. Lionel identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Lionel 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. Falk stated that the request by Crimson Properties for a multi-family development at 115 Concord Street has been withdrawn by the applicant, and will not be heard.

Mr. Lionel stated that Alderman Dowd has requested to speak before case #1, as he had another meeting beginning at 6:45 p.m.

Alderman Richard Dowd. He said that he submitted a letter earlier with his thoughts on it. He said that the applicant believes that they can proceed under a grandfathered clause, and doesn't see anything that warrants a grandfathering clause for the intended use, and for the variance, they would have to meet the five points of law. He said that he doesn't believe that there is any hardship on this property, it can be used for

something that is allowed in the R40 Zone, and recommends that the grandfathering not be allowed and the variance for the intended use be denied.

1. Ernest & Constance Gagnon Family Trust (Owner) JLS Holdings, LLC, by its Attorney, Thomas Hildreth, McLane Middleton Law Firm (Applicant) 49 Buckmeadow Road (Sheet C Lot 18) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#148) to allow a landscaping business and landscaping equipment storage. R40 Zone, Ward 5.

Voting on this case:

Steve Lionel, Chairman
Jack Currier, Clerk
Rob Shaw
JP Boucher
Efstathia Booras

Attorney Tom Hildreth, Counsel for Stanton Landscaping, 900 Elm Street, Manchester NH. Atty. Hildreth thanked the Board for the continuances that have occurred since December 8th. He said that when they were here in December, they focused on four sources of information about the historical use of the property, and had an affidavit from the owner who had been there for 75 years, and letters from his two abutters who had been there for 25+ years, and 40 years on the other side, City records, and aerial photographs, all which spoke to the historical use of the property as both a home and non-residential uses, a contractors yard, commercial businesses of various kinds. He said the Board had asked for additional information from the applicant.

Atty. Hildreth said that they provided substantial additional information in the form of affidavits from the four parties named in Mr. Gagnon's affidavit, a compilation chart of the overlapping time that some of the users were on the property, a detailed list of proposed conditions, and an assessment of the character of the neighborhood, and traffic.

Atty. Hildreth said that there are substantial records from the City about this property. He said that they included the 1988 ZBA minutes when Mr. Gagnon asked for a vehicle repair operation shop, and the 1998 building permit for the Quonset hut that was specifically approved and added for his construction business, concrete forms, and the 1999 reference which is where the City

was made aware of the logging operations, which indicated that the City observed the landscaping business and wood brought in from offsite, the composting of grass, loam piles. He said that the two Google Earth photos, one from 2001 and one from 2008, that showed the uses occurring at the site. He said that the 2008 photo shows the 2009 investigation by the City, in which it resulted in the letter of January 2010 that said that the City found no land use violations. He said that there were at least five City staff members that were involved with that letter. He said that they've submitted affidavits from the four landscape companies, and all say the amount of equipment they have and how they use the property, how many trucks and employees, and when they were there, as shown on the graph. He said that the affidavits all indicate many details of the landscape companies that were there.

Atty. Hildreth said that no variance is required because of the continuance of the use on the property. He said that there was a fair amount of documentation provided in December in the form of the aerial photos, the affidavit of the 75-year property owner corroborating statements from his two largest, closest longest tenured neighbors, and several documents from the City's own records. He said that he is starting with the presumption that the City actors were diligent, competent and acting on good faith when they heard Mr. Gagnon's testimony to the ZBA in 1988 about the longstanding commercial use of his property, and then took no action to shut it down, and when building permits were issued in 1998, to construct the 2,500 square foot Quonset hut for the commercial excavation business, and when they wrote their letter on January 4, 2010, after an active investigation with no less than five members of City staff, that the use was consistent with past practice, and not a violation of the City land use code, and when Carter drew a similar conclusion last summer, his letter said similar. He said that the evidence exists to support both of those letters. He said that Mr. Gagnon said that he rented portions of my land and Quonset hut building to area landscaping companies continuously for decades, and provided examples of the type of equipment stored and estimated that there could be over 25 pieces stored at any one time in the rear.

Atty. Hildreth said that Mr. Gagnon's testimony is buttressed by every available historical aerial photo of the property which shows the area surrounding the Quonset hut and running to the rear as being involved with the storage of equipment, vehicles

and materials. He said that there are detailed affidavits of the four companies named in Mr. Gagnon's affidavit. He said when all these pieces are put together, it reconstructs exactly what City officials saw when the property was inspected in 2010. He said that there are sworn testimonies of the companies who were occupying and using the property. He said that Mr. Metcalf was correct in 2010 and Mr. Falk was correct in 2020. He said that the applicant merely seeks to continue the same use in the same place and in the same manner. He said that the evidence shows that no variance is required.

Atty. Hildreth pointed out photographs of the site distance at the end of the driveway, he said that looking right, it is over 400 feet, and looking left towards Main Dunstable Road, and it is 900 feet. He said that there is no blind corner affecting this property, and each of the affidavits from the landscaping companies further testify that there have been no motor vehicle accidents on BuckMeadow Road, and their combined years of operation approaches half a century when added together.

Mr. Currier said that by using the average for the three affidavits, he said he came up with 22 employees, and that was from a span of 2007 and 2014. He said that for 28 employees, that would be 28 cars pulling into the lot every morning to pick up their trucks and do their jobs for the day. He asked if that was the level of intensity that was going on from 2007 to 2013.

Atty. Hildreth said that one detail he does not know is whether every employee went to the site, or whether they met at jobsites, as they only need one vehicle to drive to the site.

Mr. Currier said that his feeling is that while those affidavits describe a level of intensity that is enormous, he said he doesn't feel that might have been anywhere near the level of intensity of the use. He said that the affidavits show an enormous intensity.

Atty. Hildreth said that from the Stanton Landscape side, their employees typically get to their storage yard at 6:30, and by 7:00, they're gone. He said he imagined that the other landscape companies probably had a similar pattern, but doesn't have all that detail from their statements.

Mr. Currier asked about the limitations that Santos is offering.

Atty. Hildreth said that there are a series of narrative statements that describe the fact that there will be no retail operations, no signage, no processing of materials on site.

Mr. Sullivan said that there is a detailed sheet, named proposed conditions on operations, it has a picture of the use area in the middle of the page.

Mr. Shaw said that it shows that Stanton enterprise included in the numbers, and asked if that would show how they would interact with Southern New Hampshire Tree.

Atty. Hildreth said yes.

Mr. Shaw said that the numbers indicate 21 vehicles for those two operations, but the conditions note of a maximum of 30 registered vehicles, and asked if that alluded to perhaps that number being around the peak usage in the 2008-2014, 2015 time frame, and asked if that the basis for that number, as it seems a little high versus what the proposed usage would be.

Atty. Hildreth said that the other number that he had in the record before collecting the affidavits was the statement from Mr. Gagnon, who said that there were 25+ vehicles, or more than 25 vehicles. He said that in looking at the old aerial photos, there is a four or five year stretch when there are 39 vehicles there. He said that Stanton is not looking to restore the site to that level of utilization, he really just wants it for his own purposes, and to keep Southern NH Tree & Landscaping there as long as they want to stay.

Mr. Shaw said that the hours of operation would be 6:30 am to 6:30 pm, Monday through Saturday. He said that this doesn't preclude any sort of snow removal or plow operation to be done, by Stanton or any other entity. He asked if this is implicit in this request.

Atty. Hildreth said certainly not, and they don't want to be precluded from snow plowing, so if there is a plow event that requires them to get their vehicles out on the roads, they'd want to be able to do that.

Mr. Shaw said that he thought that Stanton did snow removal, and asked if that is part of their operation already.

Atty. Hildreth said yes, he does that.

Mr. Shaw said that he has some concern about it.

Atty. Hildreth said that when there's a snow event, his drivers take their trucks home and have them at their own property where they live.

Mr. Lionel said that there was a reference made that someone came before the Zoning Board in 1988, he said that his understanding was that they would be seeking a variance, but no variance was granted or requested in the past.

Atty. Hildreth said that the minutes of the 1988 request are in the package, and it was an application by Mr. Gagnon to add a use where they would be permitted to bring vehicles in offsite, customers, and do repairs. He said that they've had a longstanding practice of repairing their own vehicles, their farm equipment, their construction equipment and their personal vehicles, they have a lot of garage space to do it. He said that it was Mr. Gagnon's son that was taking this from a hobby into a business, and that was denied.

Mr. Lionel said that at no time, a variance request was submitted for operating a landscape business out of this property.

Atty. Hildreth said that is correct.

Mr. Lionel said that they've received a message from Attorney John Cronin asking if the previous public hearing had been closed, and is objecting to adding new material to the hearing. He said that the previous public hearing was closed on December 8, 2020.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Attorney John Cronin, Cronin, Bisson and Zelinski, 722 Chestnut Street, Manchester, NH. Atty. Cronin said he is speaking on behalf of Sean Tebbetts, 54, 55 Buckmeadow Road and 88 Ridge Road, Nashua, NH. Atty. Cronin said that Mr. Christiansen

should hope this case should be denied, his document has no personal knowledge about. He said that the fact that it's even titled affidavit is not good, it doesn't really even contain any relevant facts, neither do the other affidavits, all they say is that there is a gentlemen that owns the house, and used his land for a lot of different things, and at one point had a landscaper that had some materials there, but the house still remained a house for Mr. Gagnon to live in, there was never a full-scale identified commercial operation that Stanton there. He said that what kills the grandfathering, is that to have grandfathering, you have to have a legally permitted use that is continuous. He said that by their own admission, the landscaping use went away in 2016. He said that to his knowledge, none of the landscaper businesses had obtained any permits to use that property. He said that the starting point in any grandfathering analysis, is what were the legally permitted uses that were ongoing, that were legally continuing permitted uses that existed before the adoption of the regulations. He said that they never got any permitting, and they have no status whatsoever. He said that the grandfathering issue as detailed, does not exist. He said he finds it odd that a licensed real estate broker that has an economic state in the transaction can render an opinion that there would be no impact whatsoever to any of those values.

Atty. Cronin said that he can't believe that the firms' broker would support a letter of that type and kind. He said that they'd have to stand personally and take responsibility for any damages that flow out of it. He said that when you look at the criteria and the five points of law for the variance, they don't meet a single one of them. They don't meet the hardship and there is nothing special about this property that distinguishes it from anything else, and it certainly can be used with the existing ordinance. He said that this use will be a detriment to the entire neighborhood. He said that maybe this argument is better for a zoning change, but under the current zoning, and the criteria for variances, they just don't meet it. He said that if you look at the balancing test, there are certainly other different locations within Nashua where Stanton Landscaping could locate, but this is clearly not the right place.

Ald. Rick Dowd stated that the westerly looking picture on Buckmeadow Road, 36 Buckmeadow Road, starting in the spring, the City will be building an access road to the new Middle School,

and there will be construction vehicles coming in and out of that all day long until September 2023, when the school opens and there will be 800+ students in that school with parents, buses accessing the school via that property, so the traffic on that street will increase significantly, and the City would prefer not to have school buses and parents fighting commercial vehicles coming in and out of that lot.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Hildreth said that he can't understand the double standard. He said that the Tebbetts family, including Atty. Cronin's client, own five properties on Buckmeadow Road, three of which are employed in the exact same way as 49 Buckmeadow Road, as storage yards for landscapers. He said that Stanton Landscaping was located at one of those, 34 Buckmeadow, immediately adjacent to the new driveway to the school for the five-year period ending last summer, when they parted ways as unhappy landlord/tenant, and the proposed use is a perfectly appropriate use for these properties as a continuous use that has been going on for decades. He said that Atty. Cronin has repeatedly overstated the size of Stanton's operations, by him stating that there are 20 vehicles, there are actually four or five trucks and trailers, and they were all located on a relative of his clients property at 34 Buckmeadow Road for five years. He asked why they're fine located on the Tebbetts property, and don't impact safety, they don't detract from property values, it's only when they request to be across the street on the Gagnon property, that somehow it has these pernicious affects. He said this looks like nothing more than trying to shut down the competition.

Atty. Hildreth said that on the five points of law, they are summarized in the initial testimony, and can add that the case of Belanger v. Nashua, when the character of an area has a particular use, and someone asks to make a similar use, they are entitled to relief. He said that they've demonstrated in spaces relative to the character of the neighborhood, and the character of the proposed use, which is completely consistent with the character of the other landscapers who have used it. He said that it was pointed out that the landscaping uses have stopped in 2016, when in fact they have not, Southern NH Tree and Landscape are still there, so the use has continued.

Atty. Hildreth said that there is a concept in the law called

municipal estoppel. He said that the municipality made a decision in 2010, after a detailed investigation involving at least five staff members. He said that the result of it was that what was going on there was permitted, and had been going on for a long time, and was not a violation of the Land Use Code. He said that nothing was hidden, it was all out in the open. He said that when Mr. Metcalf said that when the investigation was made, the use is ok. He said that that is a decision, it is an administrative decision, it was never appealed, that became the law of the case.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR COMMENTS - REBUTTAL:

Atty. Cronin said that they don't meet the standard for grandfathered use. He said that there are no approvals, and whether the people were there beforehand, before Dionne, they left in 2016 or 2017. He said that today is the first time that he's heard that this logger is now a landscaper. He said that if it is, that landscaping business is very different than what is being proposed here.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING.

Mr. Currier said that his struggle with this application is that the affirmative use conditions are limitations there, but feels that the use of the property, if it's legalized through a variance, as a business, could be substantially more than what is seen. He said that he is struggling with the affidavits, because they show a tremendous amount of activity on the property, and it may or may not have had a lot of activity, but feels that if a variance were granted, it would allow substantially more activity, even with those affirmative conditions. He said that a maximum of 30 vehicles, but there could be a lot more cars coming and going. He said that it is a big property, but it is perfectly fine for what it is zoned for, and struggles with a variance being granted, and doesn't find merit in the brokers conclusion that there is no negative impact. He said that if it is legalized along the way, there is a negative impact, and doesn't think that the application meets the points of law.

Mr. Shaw said he agrees with a lot of what Mr. Currier said. He said that he is struggling with working through whether or not that there has been this grandfathered use, and this continuity of usage that is being proposed, and some of what has been

presented to the Board, especially when it comes to landscaping operations, and doesn't feel generally that this variance criteria can be met from a simple look at property and the nature of the usage that could be pursued otherwise, without the granting of a variance. He said he is still wondering if the usage has continued for the past number. of years.

Mr. Boucher said he appreciates the amount of documentation the Board got. He said his conclusion is that this is consistent with what's been going on there for many years. He said that what has been going on there for many years, in some respects, in his opinion, the affidavits, perhaps the site could have been more of an impact ten years ago than now. He said that the use that is there has co-existed in the neighborhood for many years, and believes that notwithstanding the issues here, as far as traffic goes, you're going to have a school there, and doesn't believe that 25 vehicles will always be an issue with anywhere they will be. He said that this road is not restricted to any type of truck or tractor use, and anyone can be riding down this road and not go into the site. He said that if this application were to come to the Board with no existing or prior use, or the use had ceased to exist, he'd have a hard time supporting the application. He said that when it comes to this particular property, he supports this in general. He said that he used to live in this area, and used to go by the property frequently, and always recognized that there were things going on there, and knows that in the past, there was a lot more going on this site than today. He said that he has full confidence that if supported by the Board, that there would be a site plan required and the issues would be even more solidified for this site.

Ms. Booras said that she concurs with Mr. Boucher's statements, and believes that it is consistent use of the property and is in support.

Mr. Lionel said that the notion of grandfathering does not exist. He said that a new owner is coming in, wanting to operate a business that is not permitted in that zone, and the previous owner was storing vehicles and owned a business that was not allowed in that zone, he said he has difficulty seeing how that meets the spirit and intent of the ordinance, and agrees with Mr. Currier that there is no special condition of this property that makes it uniquely suitable for running a landscaping business. He said that the Board received a lot of affidavits that don't really mean anything, and some of them are

just opinions. He said that no variance application has ever been made for running a landscaping business out of this property, it has never come before this board before, and the case that was mentioned had nothing to do with running a landscaping business. He said that he is drawn to the five points of law and just doesn't see how the application meets all of them, and is not in support.

Mr. Currier said that in reference to the 1988 case, the Board then, in 1988, was struggling, they recognized that the land was used for more than just a home, but the Board struggled with legalizing that into a business, and the Board struggled then, as he is tonight, with the fact that if it becomes a legalized business, the growth could be substantially more. He said that he is struggling with memorializing this as a business for the further growth.

MOTION by Mr. Lionel to deny the application on behalf of the applicant as advertised. Mr. Lionel said that the variance may be needed to enable the applicant's proposed use of the property, but there are no special conditions of the property and the benefit sought by the applicant could be achieved by some other method, since the land is being sold for a new owner, and the Board believes that there is some other method reasonably feasible for the applicant to pursue, other than the variance.

Mr. Lionel said that the Board finds that the request is not within the spirit and intent of the ordinance.

Mr. Lionel said that the Board has testimony, some testimony about property values of surrounding parcels, but there is not finding there.

Mr. Lionel said that the Board finds that it is contrary to the public interest, and substantial justice to the applicant would be served, but not enough points of law are met, and the motion is to deny.

SECONDED by Mr. Shaw.

Mr. Currier votes in favor of motion.

Mr. Shaw votes if favor.

Mr. Boucher votes not in favor.

Ms. Booras votes not in favor.

Mr. Lionel votes in favor, so the **MOTION carries 3-2**, to deny the variance.

2. First Church of Christ Scientist (Owner) Crimson Properties, LLC (Applicant) 115 Concord Street (Sheet 48 Lot 49) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to remove existing church and construct a multi-family building with 10 units. RA Zone, Ward 3. [POSTPONED FROM THE 1-26-21 MEETING BY APPLICANT REQUEST]

CASE WITHDRAWN WITHOUT PREJUDICE BY THE APPLICANT

3. O'Glesian Farm, LLC, Denis Gleeson (Owner) Deborah A. Gleeson (Applicant) 10 Groton Road (Sheet D Lot 621) requesting variance from Land Use Code Section 190-101, Table 101-7, to exceed maximum number of ground signs, 1 permitted, 2 requested - to install a four sq.ft sign on each side of proposed stone walls at driveway entrance. R40 Zone, Ward 5.

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Efstathia Booras

Debra Gleeson, 17 Gregg Road, Nashua, NH. Mrs. Gleeson said that she is here on behalf of Second Nature Academy at 10 Groton Road. She said that the request is for signage, and currently, there is a white wood post with a two-sided sign that drivers can see going in either direction on the road. She said it is small, and hard to see and read.

Mrs. Gleeson that the property is a working farm, and from the road, you cannot see the school buildings that are set back, and it is not discernable to see what kind of businesses are back there, so many people drive by and not know what's down the driveway, and other drivers come to a complete stop on Groton Road to look and try to read the sign. She said that the

proposed sign should be easier to read from the road, so passersby can identify the school easier.

Mrs. Gleeson said that the existing sign will be removed, and a stone wall will be put up in its place, with posts on either side of the wall, it will be a curved stone wall as shown in the second picture. She said that the drawing at the top is the type of lettering that they'd like, its cast metal. She said that they will not exceed the size of the sign area that is allowable, but it will be split into two separate signs, one on either side of the driveway, it will be much safer. She said that they are observing the spirit and intent of the ordinance, as it will make the property look nicer, the houses in the neighborhood are spread apart, not close together, and they will not be interfering with anyone's view. She said that there is a public park across the street and there is a sign to identify the entrance to the park. She said they operate a private school, and cannot have the same type of signs that a public school can have. She said that they're really not asking for more than a double-sided sign could have, it's just taking those two sides and spreading them on either side of the driveway, versus one double-sided sign hanging from the post. She said that other private schools in the City have received variances for larger signs.

SPEAKING IN FAVOR:

No one.

SPEAKING WITH QUESTIONS, CONCERNS OR OPPOSITIONS TO THE CASE:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Board members all expressed support for the application.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, specifically, they are that with the nature of having the stone walls erected for the entrance, it is not possible to do a two-sided sign and have visibility for the sign for traffic approaching from either direction, having a sign on both sides of the wall at the

driveway entrance will allow that to be accomplished, and the actual square footage proposed is less than what is allowed, and this will serve to support potentially the safety benefits as far as helping direct people to the property.

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

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

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

SECONDED by Mr. Boucher.

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

4. Hartwell Brook Condo's (Owner) PSNH d/b/a Eversource Energy (Applicant) Hartwell Brook Drive, generally between 553 & 559 South Main Street (Sheet A Lot 323) requesting special exception from Land Use Code Section 190-115 (A)(1) for temporary work in an "other" wetland buffer to access transmission line pole for overhead wire replacement work. RA Zone, Ward 7.

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Efsthathia Booras

Tom Tetreau, Wetland Scientist, Stantec Consultants, Topsfield MA. Mr. Tetreau said that he is a consultant for Eversource Energy. He said the project is to maintain the P-134 line for Nashua and Hudson, the overhead transmission line. He said that in order to access the structure, they need to change out the optical ground wire, it's the highest line on there, and in order to get to this structure, #65, they need to cross a wetland, it's an "other" wetland with a 40-foot buffer.

Mr. Tetreau said that they recently gained approval by the Conservation Commission and access will be from South Main Street and across an intermittent stream and temporary matting will be used to avoid any permanent impacts to those wetlands, to gain access to the corner structure, and it will be a bucket truck going there to unclip the old wire and install a pulley, so the new wire can be pulled through and permanently clipped in with the new wire, and then all the equipment will come out, and the area will be restored, and any ground disturbance will be seeded and mulched and returned to the existing conditions.

Mr. Lionel asked about the nine special conditions to work in a wetland buffer.

Mr. Tetreau said he is aware of them.

Mr. Lionel read the nine special conditions, and Mr. Tetreau said that they agree to all the conditions.

Mr. Currier asked if there was a summary letter from the Conservation Commission, it's only the minutes in the package.

Mr. Falk said that he did not have the approval letter, but did include the two sets of meeting minutes that approved this request.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Ed Martucci, 10 Hartwell Brook Drive, Nashua, NH. Mr. Martucci said that the line is somewhat close to one of the homes in the cul-de-sac and wants to know if there will be any scaffolding or construction in the area by the houses.

Adam Genetti, 553 South Main Street, Nashua, NH. Mr. Genetti asked about the stream, it is an intermittent stream. He said that if the work starts in the spring, that is the time when the stream runs the most. He said he wants to know how long the stream will be blocked off, and if water will be running down the street.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Tetreau said that the work is only immediately around the base of the pole, it's literally a bucket truck raising someone up to clip and unclip the wire.

Jeni Menendez, Eversource, 13 Legends Drive, Hooksett NH. Ms. Menendez said that they'll be driving in a bucket truck, lifting a man into the bucket to unclip the wire, install rollers, and clipped in for security, and will drive the truck off and will remove all the wetland mattings, so there is no major construction going on in this area.

Mr. Tetreau said that the timber mats are a 4'x16' logs tied together, and use a combination of those to mat across resources, but here, they won't block the water at all.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Board members all expressed support for the application.

MOTION by Mr. Boucher to recommend approval for the application on behalf of the applicant as advertised. He said that it is listed in the Table of Uses, Section 190-115 (A)(1).

Mr. Boucher stated that the proposed use will not create undue traffic congestion or unduly impair pedestrian safety.

Mr. Boucher said that it will not overload public water, drainage, or sewer or other municipal systems.

Mr. Boucher said that all special regulations are fulfilled, and the wetland special conditions are met per testimony of the applicant.

Mr. Boucher stated that the use will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

Mr. Boucher said that the request received approval by the Conservation Commission on 12-1-2020 with no special stipulations.

SECONDED by Mr. Shaw.

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

5. State of New Hampshire (Owner) Timothy Sullivan (Applicant) 52 & 54 Baldwin Street (Sheet 62 Lots 228 & 229) requesting variance from Land Use Code Section 190-16, Table 16-3, for minimum land area, 12,445 sq.ft required, 8,518.2 sq.ft proposed after lot line relocation - to construct a two-family dwelling unit on Lot 228. RB Zone, Ward 4.

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Efsthathia Booras

Attorney Gerald Prunier, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that the area is off of the Broad Street Parkway. He said it is zoned RB, and the proposal is to put up two duplex units, one on each lot, and they are allowed in this zone, with a land density of 12,444 sq.ft. He said that the topography is a problem with each lot, as they go down in back, significantly down. He said that Lot 62-229, with a lot line adjustment, will be a legal conforming lot for a two-family. He said that the area in question is lot 62-228. He said that for both lots, there are no variances being requested for setback requirements on either lot.

Atty. Prunier said that the northerly lot, 62-228, abuts the State of New Hampshire and has 8,518 square feet in area. He said that the lots would meet all setbacks. He said that Lot 62-228, it abuts the State of New Hampshire land, which is wide open and not to be built on. He said that there will be a lot of open space on the northerly side of the lot. He said that the City is in need of housing, and there is not a lot of land left, and this is an opportunity to get some housing that would be three-bedroom duplex units, they'd have their own garage, and a driveway. He said that the buildings will be very attractive, and should add to the neighborhood. He said that the intent is to build towards the front of Baldwin Street, not towards the

back.

Mr. Currier asked what would happen if no variance were to be submitted, if it would be single family house.

Atty. Prunier said that is a consideration.

Mr. Currier asked if there was a consideration to maintain the current zoning versus a variance.

Atty. Prunier said that there was, the idea was to provide some decent housing here, as there is an opportunity to provide another dwelling unit.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Robert Zimmerman, 33 Fairmount Street, Nashua, NH. Mr. Zimmerman said that these parcels that are owned by the State were approved for single-family homes only, that was part of the agreement when the land was split up. He said that the two duplexes would be four driveways, and there may not be enough room for these driveways. He said that they're fine with two single-family houses there, but doesn't think it's appropriate for two duplexes.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Prunier said that one of the lots would be legally and would be conforming for a duplex. He said that the other lot is an opportunity because of the open space that the State has on that area, to put another unit on it, it should not interfere. He said that they are not aware of any specific agreement that the houses must be single-family units.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Zimmerman said that he doesn't have any specific documentation, but when the realignment project happened, the parcels were owned by the State, and at some time, they were sold. He said that all the abutters were told that they would be three single-family homes. He said that his concern is

safety with regards to the fact that it a main thoroughfare to come off a main street onto Baldwin, it's the main in and out for traffic, and now, it's four driveways being added instead of two driveways. He said that he is concerned about public safety.

Mr. Boucher asked Atty. Prunier if the driveways would exceed the maximum 24-foot width.

Atty. Prunier said that they will not, he said that the site engineer is here to answer questions.

Sam Ingram, Meridian Land Services, 31 Old Nashua Rd, Milford, NH. Mr. Ingram said that they haven't done any design work with respect to the driveways or their placement. He said that any driveways they do will meet the Ordinance.

Atty. Prunier said that the driveways will meet the Ordinance.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Ms. Booras said that she is in support of the application as submitted.

Mr. Currier said that he is struggling with the application, and appreciates the need for housing, but doesn't see it as a criteria that the Board should be considering for a variance. He said that there isn't anything special on the lot that prohibits or warrants a duplex on Lot 228. He said that they'd get a legal two-family on the one lot but not on Lot 228. He said he doesn't see it meeting the criteria for a variance for the single lot, and a single-family house would serve it just fine.

Mr. Shaw said he is in a similar position as Mr. Currier, and appreciates the desire and the idea of the extra unit from a housing perspective, but doesn't see the variance criteria being met, as a single-family home is still quite doable on that lot, and can't find support for the application.

Mr. Boucher said he can see some reasoning to vote for the variance, a special condition with the open space with the lot next door from the State. He said he appreciates the neighbors concern about traffic. He said he's not concerned with driveways or cars here. He said he's really on the fence.

Mr. Lionel said he doesn't see any special conditions of the property that makes it appropriate for a variance for a duplex, when a single-family house would be perfectly reasonable there. He said that just because the applicant wants to build a duplex, that doesn't matter with the Board's decision.

Mr. Currier said that the proposed square footage of the lot is about 68% of the minimum amount. He said that is a third off, it's pretty far away from what is needed.

MOTION by Mr. Shaw to deny the application on behalf of the applicant as advertised. Mr. Shaw 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 warrant or support a two-family dwelling unit when a single-family dwelling unit can be on this property, so the applicant has a reasonable and feasible use of the property.

Mr. Shaw said that it is not within the spirit and intent of the ordinance.

Mr. Shaw said that there is no clear indication one way or another with regards to property values of surrounding parcels.

Mr. Shaw said that it would be contrary to the public interest and substantial justice would not be served.

SECONDED by Mr. Currier.

Mr. Boucher votes in favor.

Ms. Booras said she votes not in favor.

Mr. Currier votes in favor of the denial.

Mr. Shaw votes in favor.

Mr. Lionel votes in favor of the denial.

MOTION CARRIED 4-1 (Ms. Booras) per verbal vote of the members in favor of denying the request.

6. Rocky B. Hanson (Owner) 52 West Glenwood Street (Sheet 127 Lot 97) requesting the following variances from Land Use Code

Section 190-16, Table 16-3: 1) to encroach up to 4 feet into the 25 foot required rear yard setback; and, 2) to encroach 3.5 feet into the 10 foot required left side yard setback - both requests to construct an attached 14'x18' one-story garage addition in back of existing garage. RA Zone, Ward 7.

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Efstathia Booras

Rocky Hanson, 52 West Glenwood Street, Nashua, NH. Mr. Hanson said that he is looking to extend his garage out the back, to add to the depth. He said that the position of the home on the lot did not allow a two-car garage on the lot side-by-side, as the house is located in the middle of the lot.

Mr. Hanson said that his only option is to go back into the rear yard as shown on the plot plan. He said that there are two left property lines and one of them would give the 10-foot side yard setback, but there's another line that's about 6.5 feet, so there's somewhat of a discrepancy of what line to work with. He said that the house is nonconforming, as the house is within the 25-foot rear yard setback. He said that the garage extension will not go farther than the house, it's only half that depth, and it is a one-story extension. He said that he sent in several photos of the property, and described them. He said that the back yard is all fenced in.

Mr. Boucher asked about the two side lot lines.

Mr. Falk said that the City shows the proper lot line as the one that is parallel to the side of the garage, the closer lot line. He said that the owner asked for the variance 10 years ago based upon that lot line. He said that if you look at the GIS drawing showing the lot, it shows the lot line as being parallel to the garage. He said that Staff believes that they applied correctly for the variance.

Mr. Boucher asked about the other lot line.

Mr. Falk said that the plan the City has is based upon Deed

references for dimensional data. He said it's possible it comes from a portion of the access to where Hartwell Brook is.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Board members all expressed support for the application.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, those are that the house is already highly situated to the left side of the property, and the garage is on the leftmost side of the house, and the addition to the garage is about the only reasonable place to do that, and there will be no additional side yard encroachment, and the encroachment to the back will be less than the existing dwelling.

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

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

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

SECONDED by Ms. Booras.

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

MISCELLANEOUS:

MINUTES:

1-12-2021:

MOTION by Mr. Boucher to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Shaw.

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

1-26-2021:

MOTION by Mr. Boucher to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Shaw.

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

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact.

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 8:55 p.m.

SECONDED by Mr. Currier.

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

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing