

EXPANDED DRAFT MEETING SUMMARY
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 28, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 28, 2020 at 6:30 PM, via WebEx.

Members in attendance were as follows, via verbal Roll Call. All members stated that they are alone:

Mariellen MacKay, Chair
Steve Lionel, Vice Chair
Jack Currier, Clerk
Rob Shaw
JP Boucher
Nick Kanakis
Jay Minkarah

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

Mrs. MacKay explained the Board's procedures, stating that the Board is operating under the Governor's Executive Order via WebEx. Mrs. MacKay 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. Mrs. MacKay including the points of law required for applicants to address relative to variances and special exceptions. Mrs. MacKay 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.

1. **Juan R. Taveras & Miguelina Oriach (Owners) 4 Kanata Drive (Sheet E Lot 972) requesting special exception from Land Use Code Section 190-112 to work within the 40-foot critical wetland buffer of Lincoln Brook to construct a 10'x20' shed and modify fence locations. R9 Zone, Ward 1. [POSTPONED FROM 3-24-2020 MEETING]**

Voting on this case:

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

Juan Taveras, 4 Kanata Drive, Nashua, NH. Mr. Taveras said that the Board has their package, and they will follow the mitigation that the Conservation Commission has reviewed extensively. He said that all the improvements stated on the plans and drawing will be done.

Mr. Minkarah stated that this is very typical for a residential use, it is consistent with the neighborhood, and the Board has the Conservation Commission letter of support.

SPEAKING IN FAVOR:

Mrs. MacKay said that there is a letter of support from the Conservation Commission dated February 11, 2020, that on their February 4th meeting, they voted in support with seven (7) stipulations of approval. She stated that the applicant will adhere to the stipulations.

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. Boucher to approve the special exception request on behalf of the owner as advertised. He said that the use is listed in the Table of Uses, Section 190-112,

Mr. Boucher stated that the use will not create any undue traffic congestion or unduly impair pedestrian safety. He said that it will not overload public water, drainage, or sewer or other municipal systems.

Mr. Boucher stated that all special regulations are fulfilled, as the Conservation Commission recommended support at their

February 4th meeting, with seven stipulations of approval, in which the owner has agreed to satisfy.

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 residents.

Special Conditions:

1. Per the 2-4-2020 Conservation Commission recommendation for approval, with 7 stipulations.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0, per verbal roll call.

2. **SAT Jr. Limited Partnership (Owner) J & K Dolan, LLC (Applicant) 76 Northeastern Boulevard, Unit 28 (Sheet C Lot 2025) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#102) to allow an esthetician office in Unit #28. PI Zone, Ward 9. [POSTPONED FROM 3-24-2020 MEETING]**

Voting on this case:

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

Joel Dolan, 76 Northeastern Boulevard, Nashua, NH. Mr. Dolan said that he owns the unit in question. He said that the actual space that they would be renting to the esthetician would be less than 200 square feet, it's only a small portion of the unit. He said that the building is a mixed-use area, with Boston Billiards, a gym, day care, dentist offices.

Mr. Dolan said that they don't believe that adding this business would change the character of the neighborhood, it would fit right in. He said that for parking, it would be an appointment-based only use, and traffic would be minimal, also, there are plenty of parking spaces available. He said it will not be an impact to any of the City services either. He said that a similar application was presented in 1994 to the ZBA for a beauty salon. He said that his tenant will not be selling any

product out of the unit. He said that there are no public safety issues, access to the unit is wide open, and there is plenty of lighting at night. He said that by renting a small space to a local business owner will not impact the area, and will be a benefit to the area.

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 verbally expressed support for the application.

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.

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

Mr. Lionel stated that the use will not adversely affect the property values of surrounding parcels, and it is not contrary to the public interest.

Mr. Lionel stated that substantial justice is served to grant this request

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 BY VERBAL ROLL CALL.

3. Larry Kittle (Owner) 78 Amherst Street and "L" Putnam Street (Sheet 62 Lots 83 & 85) requesting the following variances:
(1) from Land Use Code Section 190-16, Table 16-3, for minimum lot area, proposed Lot 62-83: 24,782 sq.ft existing after

proposed lot line relocation - 37,337 sq.ft required, to construct three two-family buildings; and, 2) variance from Land Use Code Section 190-209 (C) to construct new driveway at 78 Amherst Street (facing Putnam Street) within 50 feet of the intersection of Amherst Street and Putnam Street, 41.8 feet proposed [approved by ZBA on 7-28-15 and 5-22-18 - permit never applied for]. RB Zone, Ward 4. [POSTPONED FROM 3-24-2020 MEETING].

Voting on this case:

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

Chad Branon, Fieldstone Land Consultants, Milford, NH. Mr. Branon said that he is representing Mr. Kittle. Mr. Branon identified the two lots in question and their square footage. He said that they want to develop parcel 62-83 with three residential duplex buildings with associated site improvements, and this area of the city is primarily developed with multi-family housing, so this development will be in harmony with the surroundings.

Mr. Branon said that the Ordinance requires 6,000 sq.ft per unit. He pointed out the density plan that they submitted, and it shows that the surrounding area is actually more dense than the proposed plan, so it will be in harmony.

Mr. Branon said that there will be a lot line adjustment with 78 Amherst Street, so that the existing driveway along Amherst Street will be relocated to Putnam Street, and the final area of that lot would be about 4,264 sq.ft in size, and the relocation of the existing driveway onto Putnam Street does require a variance due to its proximity to the intersection of Amherst Street and Putnam Street, but it would create a much safer situation as Putnam Street is far less busy, and two parking spaces would be provided.

Mr. Branon said that this property does have a fair amount of history before the Zoning Board, and briefly went over the previous requests. He said it will have the same six units that have been previously approved by the Board. He said that the

same asbestos issues are there. He said that the request tonight almost is reverting back to the original plan, where there will be three duplexes, but there will no longer be a subdivision into three lots, all the proposed units will be on one lot, which should adequately address the asbestos issues, as a good portion of it would be capped in the parking area, and there would be one central driveway for access.

Mr. Lionel asked what the status is relative to having the units sprinklered.

Mr. Branon said that the duplex units do not have to be sprinklered, but this request, if supported, would still have to go before the Planning Board, and that would entail a Fire Department review, and any concerns they have would be addressed. He said that triplexes must be sprinklered.

Mr. Currier asked what the difference is between this plan and the plan that was approved two plans ago.

Mr. Branon said that the last plan approved by the ZBA consisted of two triplex units, so it was still six units in total, and each triplex was on its own lot. He said that the only difference is the number of units are the same, the layout is the same, there's just three duplexes versus two triplexes.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR COMMENTS:

No one.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING

Board members verbally all stated that they are in support of the application.

MOTION by Mr. Boucher to support the application on behalf of the owner as advertised, with both requests considered collectively.

Mr. Boucher 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 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

Dan Richardson, 70 Berkeley Street, Nashua, NH. Mr. Richardson said that architect Robert Vorbach is with him in the room.

Mr. Richardson said that the garage is from about 1953, a 20'x12' garage in the corner of the lot, and the house was built about 1929, before zoning laws came into the City.

Mr. Richardson said that the intent is to replace the garage with a new garage, no change in use. He said that it is a one-car garage, and wants to make it a two-car garage, which is typical in the neighborhood, and there is only one other one-car garage at 36 Berkeley Street, all the others are two-car garages. He said that the garage will not be against the public interest, it will be completely in character with the existing house, and with all other garages in the area. He said that the site, in the corner of the lot, is remote from public view, and it is not adjacent to any other buildings. He said that there are no safety issues where it is proposed. He said that the garage is in bad condition, and is getting worse, the roof is falling apart, and the foundation is starting to push in, and it's becoming a problem. He said it is within the public interest to rebuild the garage with a safer structure.

Mr. Richardson said that the request will observe the spirit of the ordinance; it is enough room for vehicles and lawn equipment, and storage of household items. He said it will have no water or fuel service going to it. He said it will not be heated.

Mr. Richardson said that substantial justice would be done to the property owner by granting the variance, because the site of the existing garage is characteristic of the neighborhood, most all other detached garages in the area are fundamentally two-car. He said that many of the existing neighborhood garages are also non-conforming as this one is.

Mr. Richardson said that the proposed use will not diminish the property values of surrounding parcels. He said that he submitted a photo in the package of the existing garage, it is a mess, and a brand new garage would certainly enhance the view to the abutter's property.

Mr. Richardson said that the lot is four feet lower than the abutter to the west, the topography rolls off, about 15 feet, just to come off of that elevation. He said that most of the

yard is consumed by a rolling hill, so it's almost unusable. He said that there really isn't any other place to put the garage. He said that the driveway will stay as is, and there really isn't any other place to put the garage.

Robert Vorbach, Architect, 58 Manchester Street, Nashua, NH.

Mr. Vorbach said that the aesthetics of the garage will belong to the existing house, it is a stucco home with a slate roof, and it will be within the details and context of the existing house.

Mr. Minkarah said that seeing as though the existing garage would be demolished, can the garage just be shifted over four feet in other directions to meet the setbacks.

Mr. Richardson said the issue with that is that the garage would come so much closer to the house, you wouldn't be able to get the second car into left bay.

Mr. Currier asked if the topography challenge is due to a septic, or is it just the way the land is graded.

Mr. Richardson said that the entire back yard was a hill, and it helped cause the problems with the garage. He said that he even had an excavator come in and haul away soil so the kids would have a place to play.

Mr. Currier asked if the foundation of the existing garage could be used for the new one, or if the new garage would have a new foundation.

Mr. Vorbach said that the existing foundation is cracked and the blocks are shifting, it is problematic from a structural soundness, so it will all be new. He said that the northwest corner will be the datum for the new foundation, which will be 10 inches of poured concrete with a frost wall and footer, all new. He said that the excavation will be done with minimal, if any, damage to abutting properties.

Mr. Currier asked about the roof, he said that the drawing makes it look more like a two-story garage with a much shallower pitch.

Mr. Vorbach said that it's designed as a story and one-half, the pitch is in harmony with the house. He said that if the pitch is

lowered, it makes the usable space on the loft much less. He said that the 12-pitch at 45 degrees is the best match for the house.

SPEAKING IN FAVOR:

Mr. Falk said that he has an email from Francis Murphy of 72 Berkeley Street, who is in support. He read it into the record.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

E-mail submitted in opposition from Nancy Tropea, 2 Swart Terrace. Mrs. MacKay read the email into the record, and stated that they also own the vacant lot north of their house as well.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Richardson said that the basis for the opposition on both the west and north side makes two assertions. He said that they believe the property values will decrease, and hasn't found any data that new construction will decrease someone's property values. He said that the neighbor on the north has no issue. He said he cannot conceive how the new garage would impact the abutter's property values. He said that that the neighbor states that the size of the garage impacts their enjoyable view. He said he's never heard of something like this, as there is a huge maple tree that blocks the view, and it does with the old and the proposed new garage, as the tree is enormous. He said that he is surprised that the abutter would prefer the view of the existing garage, as it is falling apart, rotting, peeling paint, and the roof is collapsing, and cannot see how the abutter would be an enjoyable view. He said that the revised height of the garage would meet the ordinance. He said that the abutters view wouldn't change; it would be exactly the same.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS- REBUTTAL:

No one, as Mrs. Tropea sent an email and was not present.

Mr. Shaw asked what the height is to the peak of the elevation.

Mr. Vorbach said the new height would be 10 feet more than the existing garage, so it would be 17'-7".

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING.

Mr. Lionel said that he is in favor.

Mr. Minkarah said that he is in favor, a two car garage is consistent with the neighborhood, as are the setbacks, and a 24'x24' garage is certainly a very standard size.

Mr. Boucher said he supports the application as it stands.

Mr. Kanakis said he is in support of the application.

Mr. Currier said that the view from the western abutter is drastically different with the new two-story garage. He said that the direct abutter owns two lots, and is not in favor.

Mr. Shaw said he concurs with Mr. Currier, he said he has similar concerns, and this garage would be so close to the abutter. He said that the structure would be about ten or so feet width-wise closer, and it would be ten feet higher, it almost amounts to it being right on the property line, or one foot off. He said that the size of the garage is still pretty significant.

Mr. Lionel asked about Land Use Code Section 190-31, for accessory structures.

Mr. Falk said that the building height is measured at the midpoint between the eave and ridge. He said that staff has brought this issue up with the applicant and the architect, and believe that this code has been met. He said that a drawing was submitted that shows the midpoint between the eave and ridge, and how it meets the 10 foot setback.

Mrs. MacKay said that it looks as if they placed the garage in the location chosen because a car could not navigate and come into the garage, especially the bay on the left.

Mr. Minkarah said he recalled that testimony.

Mrs. MacKay said that utilization of the garage cannot be accommodated in the altered position. She said she understands the abutter's position, but the property owner has rights to utilize their property for both sides of the garage. She said she is in support.

MOTION by Mr. Boucher on behalf of the applicant to grant the variances as advertised.

Mr. Boucher said that the approvers of this variance find that the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, the Board discussed the topography issue, and some of the pre-existing issues, the condition of the current garage, and that this garage pre-dated zoning.

Mr. Boucher stated that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible, the applicant did describe the fact that if the garage was shifted over, it would be a challenge with cars coming in, and the applicant did look at other options coming in off of Swart Street but there were many other obstacles.

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

Mr. Boucher said that it will not affect property values; there was no testimony or evidence one way or another.

Mr. Boucher said it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Lionel.

Mr. Shaw said he is in support of one of the two variances, the second one, to the north property line. He said it is already a 20-foot run that is existing with the same kind of encroachment, and the abutter at 72 Berkeley is in support. He suggested taking each request separately.

Mr. Falk said that the Board should vote on each variance separately.

MOTION RETRACTED by Mr. Boucher.

MOTION by Mr. Boucher to grant variance #1 as advertised on behalf of the owner. Mr. Boucher said that the Board spoke about the topography and the garage pre-dating zoning and the location of the garage and the condition of the garage, and the Board finds that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the

applicant to pursue, the Board spoke about the other options that the applicant looked at off of Swart Terrace, and find that the method reasonably feasible to pursue, other than an area variance.

Mr. Boucher said that the Board finds that it is within the spirit and intent of the ordinance.

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

SECONDED by Mr. Lionel.

Roll Call for vote:

Mr. Shaw against.

Mr. Currier against.

Mr. Boucher in support.

Mr. Lionel against.

Mrs. MacKay in support.

MOTION FAILS 2-3.

MOTION by Mr. Boucher to grant variance #2 on behalf of the owner as advertised. Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board discussed the topography, the garage pre-dating zoning, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the applicant spoke about other options that there were on the property and challenges that exist on the property.

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 will not be contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Lionel.

ROLL CALL:

Mr. Shaw in support.
Mr. Currier in opposition.
Mr. Boucher in support.
Mr. Lionel in support.
Mrs. MacKay in support.

MOTION APPROVED 4-1.

*** 5-Minute Break ***

6. Brijesh Suhag (Owner) 60 Tennyson Avenue (Sheet B Lot 363) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to maintain an after-the-fact accessory (in-law) dwelling unit. R18 Zone, Ward 8.

Voting on this case:

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

Brijesh Suhag, 60 Tennyson Avenue, Nashua, NH. Mr. Suhag said that they are proposing an after-the-fact accessory dwelling unit. He said that the unit was there and designed. He said that the unit would be used for his parents when they visit, and they come for several months at a time. He said that when he went into City Hall to get the unit authorized, he learned that it was never fully permitted, and then applied for the special exception. He said that the parking is fine, it has a garage and enough room.

Mr. Boucher asked about the special conditions.

Mrs. MacKay went over the special conditions, and Mr. Suhag said he will be in compliance with all of them.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Letter from Richard Moushegian, 78 Tennyson Avenue, Nashua, NH.

Mrs. MacKay read the letter into the record from Mr. Moushegian. She asked if the letter is actually in objection.

Mr. Falk said people can speak either in favor or with questions or concerns. He said he'd classify this as that the neighbor is asking questions, as they say they have no real issues with it. He said they indicated that they had issues with vehicles parking there in the past, years ago, but it doesn't exist now. He said that the city doesn't regulate whether people pay to live in an ADU, and there is no familial relationship required any more. He said that ADU's are still assessed as a single family use.

SPEAKING IN FAVOR - REBUTTAL:

No one.

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. Lionel to approve the application on behalf of the owner as advertised. Mr. Lionel stated that the use is listed in the Table of Uses, Section 190-15, Table 15-1(#3).

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

Mr. Lionel stated that the use will not overload public water, drainage or sewer or other municipal systems.

Mr. Lionel said that all special regulations are fulfilled per testimony of the owner.

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

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

7. Mary Lee Allison (Owner) KASP Builders, LLC (Applicant) 26 Lovell Street (Sheet 100 Lot 63) requesting variance from Land Use Code 190-16, Table 16-3 to encroach 3.5 feet into the 20 foot required rear yard setback to remove an existing deck and construct an attached 20' x 50.5' one-story addition on right side of house. RC Zone, Ward 6.

Voting on this case:

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

Kathy Albee Phillips, KASP Builders, 27 Shattuck Lane, Hollis, NH. Ms. Phillips said that they're requesting a variance for a one-story addition off of the existing home, and will encroach into the 20 foot rear setback, by 3.5 feet. She asked what the Board feels what the problem is with this.

Mr. Lionel said it's not that the Board has a problem, the ordinance specifies setbacks in zoning districts, and the applicant must go over the five variance points of law for the Board.

Mrs. MacKay said that the laws, the regulations, specify a 20-foot setback, and this request would be 16.5 feet, so the applicant has to go over the points of law with the Board, so the Board can discuss the rationale why the applicant wants to deviate from the ordinance.

Ms. Phillips said that the owner is retired, and wants a first floor bedroom and bathroom, and an entrance from her detached garage. She said it's a one-story addition, and if it's moved forward, it would encroach into the kitchen space, and there would be no light in the kitchen.

Mr. Minkarah said it's a very large addition, and asked if a somewhat structure was contemplated to meet the setback.

Ms. Phillips said if it was shorter, the existing house would

get no natural light.

Mr. Minkarah said the addition seems quite large for a bedroom and bathroom.

Ms. Phillips said if it's shorter, the owner would not be able to access her garage.

Mr. Shaw said that the Board does not have a detailed floor plan or a layout. He said he didn't know why the addition couldn't be shortened a few feet to meet the setback, and wouldn't need the variance. He asked what is special about the property to grant the relief.

Ms. Phillips said it's only 3.5 feet, and if it's moved, there would be no light in the kitchen. She said it will not negatively impact any of the neighbors.

Mary Lee Allison, 26 Lovell Street, Nashua, NH. Ms. Allison said that the purpose of the request is to allow a first floor master bedroom, bathroom, laundry room and mudroom. She said that the house was built in 1922 and has no storage or closets on the first floor. She said that they've looked at a lot of designs.

Mr. Lionel said that the Board typically gets a drawing of what the addition would look like, the submittal only has a rectangle of the overall size. He said that it would be helpful to have a detailed drawing, and suggested it would be good to table this case so that the Board can see the layout of the space to better understand the request.

Mrs. MacKay agreed, it would be better if the Board had better information, and asked if they would be able to come to the next meeting.

Ms. Allison said that would be fine to table to the next meeting, and they already have the floor plan.

MOTION by Mrs. MacKay to Table this request to the 5-12-2020 meeting.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

8. George F. & Tara C. Kinsella (Owners) 7 Hadley Drive, (Sheet D Lot 485) requesting variance from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted, 55% proposed - to construct a detached 24' x 28' garage on right side of property. R40 Zone, Ward 5.

Voting on this case:

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

George Kinsella, 7 Hadley Drive, Nashua, NH. Mr. Kinsella said that they wish to construct a detached garage to the right side of their house, and the variance is for accessory use percent.

Mr. Kinsella said it is not contrary to the public interest, as there are many properties with detached garages and additions. He referred the Board to the drawing of what the garage would look like. He said that they have a swimming pool and two larger decks in the back yard that take up a lot of area.

Mr. Currier asked to clarify the height, and if it is a one or two story garage.

Mr. Kinsella said it will be a two-car garage with a storage area above. He said that the house is a gable-end house, so they want to keep the pitch of the house the same as the two-car garage, to keep it in line, it is a 9/12 pitch.

Mr. Currier said he's not sure if it's a one or two story, he said it's 23' x 11 $\frac{3}{4}$ wide, 28 feet long and 9 $\frac{3}{8}$ inches wall height, and asked what it is to the ridge board on the top.

Mr. Kinsella said he hasn't determined that number exactly, it's a 9 pitch, and the soffit is about 11 feet off the ground. He said it will meet the height requirements for an accessory structure.

Mr. Currier asked if Mr. Falk can go over the height issue.

Mr. Falk stated that there is a height limitation for accessory

structures, it's 20 feet, but the height is measured at the midpoint between the ridge and the eave, and said that this roof won't exceed 20 feet, as it is 9 feet 3/8 inches high to the eave. He said the only issue staff saw with this request was the accessory use percent, they meet all other dimensional issues, and the driveway won't exceed 24 feet in width as the house is set back pretty far from the street.

Mr. Minkarah said the Board is looking at the difference between 40% and 55%, and asked how many square feet that translates into.

Mr. Falk said that the swimming pool and deck is about 670 sq.ft. He said that the detached garage is 576 sq.ft, so 1,344 square feet would exist. He said that the house is 2,508 sq. ft., so 40% of that is 1,003 sq. ft., so they would be 1,342 sq.ft, so they're a little over 300 sq.ft over the limit. He said that they have an acre-size lot, and there are no issue with setbacks.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS.

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING.

After brief discussion, voting members all expressed support for the application

MOTION by Mr. Boucher to approve the variance on behalf of the owner as advertised. Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the other accessory uses are the large pool and deck, and this is a large acre-sized lot, and the Board doesn't believe that there is another reasonably feasible method to pursue other than a variance.

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

Mr. Boucher said that the Board believes it will not adversely affect the property values of surrounding parcels. Mr. Boucher 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.

9. Dionis Pena (Owner) 175 Concord Street (Sheet 135 Lot 1) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow an accessory (in-law) dwelling unit in basement. RA Zone, Ward 3.

Voting on this case:

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

Mr. Dionis Pena, 175 Concord Street, Nashua, NH. Mr. Pena said that he recently purchased the house, and there is living space in the basement of the house, with a bedroom and bathroom, the only thing that is missing is a kitchen. He said he is aware of the special conditions.

Mrs. MacKay read the nine special conditions, and Mr. Pena verbally stated that all of them would be satisfied.

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. Boucher to approve the special exception on behalf of the owner as advertised. He said that it is listed in the Table of Uses, Section 190-15, Table 15-1 (#3).

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

Mr. Boucher stated that the use will not overload public water, drainage, or sewer or other municipal systems.

Mr. Boucher stated that all special conditions are met per testimony of the owner.

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

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

10. Nashua 449 Realty Ventures LLC, c/o Charles River Realty Group (Owner) Stones #1 Social (Applicant) 449 Amherst Street (Sheet H Lot 35) requesting variance from Land Use Code Section 190-108 (C)(1) to exceed maximum wall sign area, 45.87 sq.ft permitted - one existing sign at 43.75 sq.ft - one additional 43.75 sq.ft wall sign proposed for a total of 87.5 sq.ft. GB Zone, Ward 2.

Voting on this case:

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

Robert Tuttle, Sign Company, 119 Herbert Street, Framingham MA.
Scott Plath, 52 Lawrence Drive, Lowell, MA.

Mr. Tuttle said that they want to put up additional signage on the side of the building, there were previous awnings on the side of the building with the business name, but they've been removed. He said the sign would help as drivers approach on the street.

Mr. Plath said that they have two frontages, as it is a corner location, and having the sign on the second exposure would help in identification. He said that the sign is tasteful, and they want to be successful when they open.

Mr. Falk said it's a corner lot, and the sign size is determined based upon what is off of Amherst Street, he said that they have 30 feet, 7 inches of frontage, so they are allowed 1.5 times the frontage, so they are allowed 45.87 sq.ft. He said that they already receive a sign permit for 43.75 square feet, and want another sign the same size, one facing Amherst Street, and one facing the side street.

Mr. Shaw asked about the previous awning sign size.

Mr. Falk said that the previous restaurant did not receive a variance for sign area, and perhaps their sign area met the ordinance. He said that perhaps their text was smaller.

Mr. Currier asked if there is a sign on the building now.

Mr. Tuttle said that there is no sign up there currently, although there is a sign ready to be put up which was already permitted before the virus. He said the building side is more visible to the road as you're coming up Amherst Street.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

END OF PUBLIC HEARING AND BEGINNING OF PUBLIC MEETING.

Mr. Shaw said that there was some signage on the side in the past, even if it wasn't permitted, it lends to credence for this request.

Mr. Currier said he's struggling with this, it's a predominant sign that's there now, and feels that they're getting a max size sign by right now, and asking for more. He said that the City's ordinance is good enough.

Mr. Minkarah said that he's struggling with this also, corner

buildings are not unusual. He said that often, especially on Amherst Street, by the time you see a business location, you've already passed it, so there is a safety factor.

Mr. Kanakis said that even though it's a large deviation from the code, there has been a lot of restaurant turnover there, so if a little extra sized sign would keep a business there, it should be granted.

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, it is a corner lot and a corner business, 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.

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

Mr. Lionel stated that the use will not adversely affect the property values of surrounding parcels, and it is not contrary to the public interest.

Mr. Lionel stated that substantial justice is served to grant this request.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1 (Mr. Currier) BY VERBAL ROLL CALL.

MISCELLANEOUS:

MINUTES:

3-10-2020:

Voting on Minutes:

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

MOTION by Mr. Shaw to approve the minutes, waive the reading, and place the minutes in the file.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

REGIONAL IMPACT:

Ms. Poirier put the next Agenda up on the screen.

The Board did not see any cases of Regional Impact, per verbal roll call.

ADJOURNMENT:

MOTION by Mr. Lionel to adjourn the meeting at 11:50 p.m.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing