

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

May 9, 2023

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 9, 2023 at 6:30 PM, both in person at City Hall and via Zoom.

Mariellen MacKay, Chair, asked for a Roll Call:

Mariellen MacKay, Chair
Rob Shaw, Vice Chair
JP Boucher, Clerk
Jack Currier (on Zoom)
Jay Minkarah
Josh Nehiley
Efsthathia Booras (on Zoom)

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

Mrs. MacKay explained the Board's procedures, saying that real-time public comment can be addressed using Zoom, or by telephone, or in person. Mrs. MacKay said that real-time comments via audio will be addressed at the conclusion of the public hearing, and the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is Planningdepartment@nashuanh.gov, or by mail, at P.O. Box 2019, Nashua, NH, 03061. Mrs. MacKay identified the points of law required for applicants to address relative to variances and special exceptions. Mrs. MacKay explained how testimony we 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. Frank K. Minasian & Xiangli Wu (Owners) 23 Dickerman Street (Sheet 119 Lot 89) requesting the following variances from Land Use Code Section 190-16, Table 16-3: 1) to encroach 1.2 feet into the 25 foot required rear yard setback; and, 2) to encroach 3.5 feet into the 10 foot required right side yard setback - both requests to construct an attached 36'x20' one-story garage addition. RA Zone, Ward 7.**

Voting on this case:

Mariellen MacKay
Rob Shaw
JP Boucher
Jack Currier
Josh Nehiley

Frank Minasian, 23 Dickerman Street, Nashua, NH. Mr. Minasian said that he's had the house since the year 2000. He said that the present garage is very small, and cannot physically open the doors of a car inside it. He said that he is an airplane mechanic and needs space to tinker and fix things in the garage. He said that he's spoken to his neighbors about the proposed garage at length, and all of them are fine with it. He said it will look very nice, and it will not be out of character with the neighborhood.

Mr. Shaw asked if he will have two driveways.

Mr. Minasian said he will, and is aware that the maximum width is 24 feet. He said that the existing driveway is about 12 feet wide, and the new one will also be about 12 feet wide. He said that he will meet the requirements.

Mr. Shaw asked if he will be keeping the original garage.

Mr. Minasian said he will, he said his wife will be using it mainly for her gardening tools.

Mr. Shaw asked if he has thought of any other designs that would entail even less encroachment into the setbacks.

Mr. Minasian talked to many of his friends with garage, and most all are two car. He said that to really have an effective, safe, well-lit garage, he didn't want to go any smaller, and the dimensions are important, and to also give enough land for a good yard space.

Mr. Shaw said that the existing garage is already pretty much at the property line on the other side, and there is nowhere to go on that side.

Mr. Currier asked if the existing garage would remain as is, and what doors it would have.

Mr. Minasian said that they are planning on having a double door

on it, he said that in the winter he stores a Ford Mustang.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Nehiley said that he is generally in favor of the request, the applicant did a good job explaining what he is trying to do, and the existing garage will become the attached shed, and the design of the garage will be safe, and it barely goes into the back area, and made a great case for it, and took into account that the driveway width is a maximum of 24 feet.

Mr. Boucher said that he is in favor, there is a unique shape to the property, and the existing narrow garage is pretty much right on the property line, and so there isn't any feasible, reasonable method for him to expand it.

Mr. Minkarah said that he is in favor, the applicant did a really good job in explaining the rationale for it, and appreciates the fact that the existing garage is borderline not functional, and the desire to have a two-car garage is reasonable, and the other side of the property has a jog on the side, and but for that jog, the applicant may not even be here for that side line.

Mr. Shaw said that he is in support, the jog in the side property line is a special condition, and the applicant has done a good job in pushing the garage pretty far back, and they have made reasonable efforts to accomplish their plans for the garage.

Mr. Currier said that he shares the same thoughts, and this garage isn't a side-by-side garage, it's a back and front garage, and so that was a design concession, as they've minimized the variance request and it's a two-car deep and one car wide.

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

all the reasons stated already.

Mrs. MacKay said that she is in support for all the reasons stated as well.

MOTION by Mr. Shaw to approve the variance application on behalf of the owner as advertised, with both requests taken together. 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, it has been noted that the existing very limited sized garage is right at the property line on the left side, and there is an extra angle on the right side, a jog, on the right side of the property, such that the placement of the garage to minimize setback encroachment is placed where it is, and there is a little encroachment into the rear yard setback, so it seems to be placed about as least impactful as possible.

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

Mr. Shaw stated that the Board does not believe the request will negatively impact property values.

Mr. Shaw stated that the request is not contrary to the public interest, and substantial justice will be served to the applicant.

SECONDED by Mr. Nehiley.

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

2. East Dunstable Properties, LLC (Owner) John Forcier (Applicant) 7 East Dunstable Road (Sheet 109 Lot 76) requesting the following variances: 1) from Land Use Code Section 190-17 (E)(1) to exceed maximum driveway width, 24 feet permitted, 36 feet requested for two driveways on Burnett Street, one at 24 feet wide, the other at 12 feet wide; and, 2) from Land Use Code Section 190-209 (C) to permit the construction of a driveway within 50 feet of the intersection of East Dunstable Road and Burnett Street, 27 feet proposed. RA Zone, Ward 6.

Voting on this case:

Mariellen MacKay

Rob Shaw

JP Boucher

Jack Currier

Jay Minkarah

Jessica Forcier, 24 Merrimack Street, Nashua, NH. Mrs. Forcier said that they own the lot with Lisa and Craig Adams. She said that due to several health concerns, the Adams have requested a single-story home, with a total curb-cut of 36 feet, allowing each one of them to enter each of their garage bays directly.

Mrs. Forcier said that this driveway positioning would accommodate their needs of their family best, as a hardship exists on this lot due to it being situated on the corner of Burnett and East Dunstable Road, where the lot is narrow.

Mrs. Forcier said that the home would face Burnett Street, and that would be a front yard setback with a 25-foot setback, the lot being a corner lot has two front yard setbacks, both on Burnett and East Dunstable, and the other lot lines are 10-foot side yards. She said it would be impossible for the driveway to fan out after the curb-cut, as it can't start to fan until it reaches the setback, which is where the house would sit on.

Mrs. Forcier said that at the last hearing, a neighbor said that he and several other neighbors expressed that they took issue with the driveway being proposed on East Dunstable Road, and said that it was a safety concern, and the revised plan has removed that driveway on East Dunstable Road, and both driveways are proposed on Burnett instead. She said that granting this variance would not alter the character of the neighborhood, nor diminish the values of the surrounding properties in any way, also, the style of home and driveways would fit in with this street and abutting streets.

Mrs. Forcier said that there are at least nine other homes on this, and abutting streets, many have multiple driveways, most are corner lots, and with curb-cuts over 24 feet wide. She mentioned 393 Main Street, actually has 3 curb-cuts, two on East Dunstable, one on Main Street, for 50 feet of curb-cut. She said 27 East Dunstable is a corner lot, and has a driveway on East Dunstable and Roy Street, totaling over 40 feet. She mentioned 24 East Dunstable, has a driveway on both East

Dunstable and Dane Street, and 30 East Dunstable has a driveway on East Dunstable and Herrick Street totaling over 30 feet of curb-cut, and 32 East Dunstable, on the other corner, has two driveways and one is less than 25 feet from the intersection. She mentioned 2 Roby Drive is on the corner, and only 25 feet from the intersection. She said that there are others, so granting these variances would be in the character of the area.

Mr. Shaw said that it's been established that this would be a single-family home, with two garages, and asked if it is set up in some fashion that their Aunt would have some sort of an ensuite space.

Mrs. Forcier said it will all be combined on one floor.

Mr. Shaw asked why they don't propose a three-car garage on one end of the property, one of the concerns from an aesthetic point of view is that it appears a lot like a multi-unit, and asked if there would be an exterior door as well as well as the single bay garage on the right side.

Mrs. Forcier said corner lots generally have driveways on separate streets, and it made more sense the way the initial plan was done for the character of the corner lots on this street, and also for the homeowners. She said it somewhat looks like a two-family now, but it was done to just create a little bit of a divider for privacy, the Aunt is older, and it seems like the neighbors had a problem with the driveway on East Dunstable at the last hearing, so it was redrawn to accommodate those concerns.

Mr. Shaw said that there looks like there's something like a kitchenette in there.

Mrs. Forcier said it will have no stove, no oven, it's like a bar area.

Mr. Shaw said it looks a lot like an accessory dwelling unit.

Mrs. Forcier said that it is not, there is no wall separating them.

Mr. Minkarah said that it appears that if the building is moved all the way over to the opposite setback line, it appears as if there is enough room for the second driveway, and it would be at

least 50 feet from the intersection. He said that it shows 26.1 feet on the East Dunstable side, and the distance from the house to the opposite side line is 36.3, with a 10 foot setback, so there is 26.3 feet right there, and 26.1 on the other, so if the house was pushed over, it could accommodate a second driveway and it wouldn't be the variance for the 50 foot distance to the intersection.

Mrs. Forcier said that she'd have to check into that.

SPEAKING IN FAVOR:

Lisa Adams, 1465 Hooksett Road, Hooksett, NH. Mrs. Adams said that they are buying this house to take care of her Aunt, who has no other family, and she wants to stay in Nashua. She said that she can't cook, and they will be helping her out quite a bit, and she had two siblings with Alzheimer's, and they are trying to be proactive instead of reactive with health matters for her, and the reason why the garage is separated is that she insisted on giving herself a little bit of privacy, and it was her request that the garages are opposite ends of the house. She said that the proposed house is a very nice design, and will bring value to the neighborhood. She said that they made a nice compromise by putting the other driveway on Burnett Street and addressing the safety concerns.

SPEAKING IN OPPOSITION OR WITH QUESTIONS, COMMENTS OR CONCERNS:

John Koutsos, 3 East Dunstable Road, Nashua, NH. Mr. Koutsos said that this request is for a single-family home, and does not see the hardship for a brand new single-family home to have two driveways, especially when it is exceeding the maximum of 24 feet wide to begin with. He said that he is not sure if Ms. Adams will be the owner or a tenant. He said that this request is not within the public interest at all, a second driveway too close to the corner will only compound the confusion and hazard that already exists at this intersection. He said that his wife's car was totaled at this intersection.

Mr. Koutsos said that the proposed use does not observe the spirit and intent of the ordinance, in fact, it alters the character of the neighborhood, it's a single-family neighborhood, there are no duplexes or multi-family units.

Mr. Koutsos said a lot of the previously mentioned driveways are

legally approved driveways, and in this neighborhood, this general area where this lot is, they're all beautiful single-family homes, and all have fairly narrow driveways, so placing a second driveway so close to the intersection of Burnett and East Dunstable is a threat to public safety and exacerbating a hazardous intersection.

Mr. Koutsos said that substantial justice would not be done, as there is no hardship demonstrated for this request, as presented, it is a single-family home request, and single-family homes do not need two driveways and especially exceeding the maximum of 24 feet.

Mr. Koutsos said that property values will be impacted, as all the homes around here are single-family, with one legal driveway, and to allow two driveways, for one single-family home, will give it a look like it's out of character with the neighborhood. He said that single-family homes do not need 36 feet of driveway width, and certainly not with two driveways.

Mr. Koutsos said that there are no special conditions that exist, to allow hardship, this is strictly a wish list request, it has nothing to do with hardship, and hardship should be a key consideration in granting a variance, and this request blatantly fails to meet that requirement, and it is not in the public interest.

Mr. Nehiley asked where Mr. Koutsos said that this will negatively impact property values, and asked if he has any documentation from a realtor.

Mr. Koutsos said that when you put in two driveways, one at 24 feet and one at 12 feet, it's commercializing the neighborhood, it's far out of character with the homes around here, and it ends up diminishing property values.

Mr. Nehiley said that the applicant is taking an elderly family member, and are trying to create a one-story house so that she can stay in Nashua, and they have the ability to do this. He asked how that is not a special condition.

Mr. Koutsos said that per the law, that is irrelevant. He said that the request should run with the land, as everyone would be coming in with a story wanting something. He said that this is a new home, that looks like a two-family, and it's just starting

from scratch, and there's no need to do that.

Mr. Nehiley said that the applicant brought forward nine other addresses in the neighborhood with two driveways, so it's hard to say that this in out of character with the neighborhood.

Mr. Koutsos said that there are homes nearby that have two driveways, but is willing to say that they are not all legal, they were just put in. He said that the neighborhood needs to be protected, and the city should stick to them, this is a vacant lot and it's a very bad precedent.

David Campbell, 10 East Dunstable Road, Nashua, NH. Atty. Campbell said that he is speaking in behalf for some of his neighbors. He passed out a drawing to the Board members. He pointed out #7, the lot in question, it is a regular shaped lot, flat, and a blank slate, a corner lot, and that in itself doesn't make any kind of hardship, and within 100 feet of this, there are four other corner lots, 10 East Dunstable Road, 1 Eastman, the Pratt's house, 9 East Dunstable and there is 4 Burnett, a three year old house with a 24 foot wide driveway. He said that the submitted drawing shows all the driveways and their widths. He said that what is being proposed here, as far as the character of the neighborhood, he said that they are here for two variances. He said that an unnecessary hardship exists, owing to special conditions of the property that distinguish it from other properties in the area. He said that he doesn't see any special conditions of this property as it's a blank piece of paper.

Atty. Campbell said that there is not a hardship, and an inconvenience to the builder is not a hardship. He said that the spirit and intent of the ordinance is pretty clear, 50 feet is the minimum distance to an intersection for a driveway, it is for protection of people driving around, and this is not a normal intersection, there have been a lot of bad accidents here, and there was a pedestrian crossing that was just installed, as there are kids coming across from one neighborhood to another to go to Haywards Ice Cream. He said that it's a very congested intersection, and there is also a bus stop right in front of his house. He said that with all this going on, the request is to put a driveway too close to the intersection, within the 50 feet. He said that there is no justification for it.

Atty. Campbell said that for substantial justice, it doesn't mean to the end user, it means more for the neighborhood, and public interest is not met.

Mr. Nehiley said that the last meeting, Atty. Campbell's push was that they did not want another driveway on East Dunstable Road, and the applicant could have a 12 foot entrance on East Dunstable Road and a 12 foot entrance on Burnett. He asked if he really wants that extra 12 foot wide driveway on Burnett removed.

Atty. Campbell said that by bringing the 12 foot driveway around the corner, and being too close to the intersection within 50 feet does not improve the situation, the hazard, the safety.

SPEAKING IN FAVOR - REBUTTAL:

Mrs. Forcier said the Adams will be the owners. She said that it seems like a lot of the talk is about two driveways. She said that they're not here for two driveways, she said that they're allowed to have two driveways. She said that there is correspondence from the first person to speak in opposition was fine with two houses going here before, but now he's not ok with two driveways going here. She said that they're here for the actual variances that they've applied for.

Mrs. Forcier said that there was opposition to the driveway being on East Dunstable, when they are legally fine to put a driveway on East Dunstable Road, they can do 12 and 12. She said that they're trying to work with people.

Mrs. Forcier said that she believes that there was a misunderstanding, because it's a corner lot, by the architect, thinking that the house had to be at least 25 feet off that side setback, and if they can be 10 feet, then they would be fine with moving the house to the left, and that would avoid that one variance. She said that the extra 26 feet would be added to the other 26 feet and the driveway would be more than 50 feet from the intersection, and it would avoid that variance and take it off the table completely.

Mr. Falk said that the proposed 12 foot driveway is 26.1 feet from the intersection, and it needs to be 50 feet. He said that the other side of the house shows from the property line to the proposed house at 36.3 feet, and that setback only needs to be

10 feet, so there is 26.3 feet that the house can move over, so if it moves over a little over 23 feet, the house would meet all the setbacks, front and sides, and the driveway variance for 50 feet to the intersection would not be needed.

Mrs. MacKay asked if the applicant would need to come back to the Board if they shift the house over.

Mr. Falk said that they wouldn't, as by doing that, it would remove that variance, they'd still need the variance for the overall width, but not the variance for the driveway within 50 feet to the intersection. He said that the house would meet all the setbacks and dimensions, it would just shift to the north.

Mrs. Forcier said that being that this is a corner lot, they can't fan the driveway out at all, and feels that this is a hardship. She said that many houses around here have driveways that fan out, and they have 50 feet of width or more, and that option is not available at this lot. She said that the hardship issue goes to personal beliefs, being a corner lot makes it a hardship, and sizes of houses were different when houses were built many years ago in this area. She said that two driveways are not illegal. She said she doesn't believe it's unreasonable what they're requesting, and it's not going against the spirit and intent of the ordinance.

Mrs. MacKay asked if they had the option for the building to move, to shift the house, and remove that one variance, and asked if that has any bearing to the proposed placement of the house, as one variance would go away.

Mrs. Forcier said that she believes someone on her end did not understand that the house could be as close as ten feet to that side property line, and based on that, it's perfect for this, the whole house can be shifted over.

Mrs. MacKay said that now that the ability to shift the house over can be done, would they do this.

Mrs. Forcier said that is correct.

Mr. Shaw said that he's looking at a further compromise, and it's quite possible that the Board may not approve the variance. He said that due to the nature of the "U-shape" design of the house, he wondered about a 12-foot driveway, having where the

two-car garage is, have that not set as close to the front setback, realizing that they cannot accomplish a fan out of the driveway, since fanning out can only be done at 25 feet back, and asked if they would be open to, see something like a 12-foot driveway, and it least goes 10 feet back, and then fans out, so it would still need approval for a 24-foot driveway, so it's less of a curb-cut opening.

Mrs. Forcier said that she is not sure at what point something is comfortable driveway, and isn't sure how that would work.

Mr. Minkarah asked if the variance to be within 50 feet is being withdrawn, and the Board doesn't have to consider it.

Mr. Falk said that if the applicant agrees to withdraw that variance, then it's not required.

Mrs. Forcier said that they are trying to make this work, so, yes, if that will help them get to a solution, absolutely.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Campbell asked if two driveway cuts are allowed.

Mr. Falk said yes, as long as they are under 24 feet in width. He said that there are hundreds, if not thousands of lots that have more than one curb cut.

Mr. Campbell said that the character of the neighborhood would be altered, it would look like a two-family dwelling. He said that the Accessory Dwelling Unit regulations do not allow a second curb cut, so maybe this is being back-doored.

Mr. Falk said that the applicant is not applying for an accessory dwelling unit.

Mr. Campbell said that a lot of the existing lots with two curb cuts most likely pre-date zoning, and certainly there is no need for any single-family unit to have more than 24 feet of driveway cuts.

Mr. Shaw said that he appreciates the concern, but any potential future use of an ADU would need to be addressed if they request one, it may be close to it, but the Board cannot consider what the future intent might be, or that they're trying to back-door

this.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC HEARING:

Mr. Boucher said that the design of the house is in front of us, and the Board understands what is being intended. He said that the lot itself is not extremely large, and the driveway width is normal at 24 feet and 12 feet, and this house does not have the ability to have the driveway fan out, or be long. He said that with the variance removed for the distance to the intersection, is in favor of the request, and can see the need for it in conjunction with the need of the owners.

Mr. Minkarah said that he's struggling with it, and is pleased with the one variance gone. He said that in looking at what is proposed, which is three garage bays, and doesn't think that a three bay garage itself is unreasonable. He said that it may be possible that the house could be re-designed, but the house is a one-story house, and not unusually sized. He said that given the setbacks and layout of the house proposed, the flare out of a driveway is not possible, so some level of relief would be necessary to have a three-car garage, regardless. He said that he can find support for the application.

Mr. Shaw said that he is struggling with this one. He said that the homeowner is trying to do two separated garages, but perhaps a three-bay garage at the back corner of the property, with a 24-foot wide driveway, flaring out in a way that would accommodate the garage, perhaps is a reasonable, feasible means to do this. He said that it is a short driveway to the house because of the setbacks, and with it being a corner lot, and the extra burden of two frontages, the Board has urged from a safety perspective to not have the driveway on East Dunstable. He said that some 24 foot wide driveways have two cars parked in them, and a garage with two cars, so that's four cars, and that's pretty reasonable, yet some single-family houses have more than four cars. He said he's struggling with it, and is glad they don't need the other variance.

Mr. Currier said that he's also struggling with this, and is pleased that the 50-foot intersection variance is off the table. He said that the testimony the Board heard tonight is a little stronger than the testimony heard before. He said that he's struggling with the hardship, and it may be problematic with the folks who live close by, it catches his attention, and Mr.

Koutsos's testimony is both timely and gets traction. He said that he feels like the house was designed for them, and now what, variances are needed. He said that he wondered if the land use needs were taken into consideration with the design, could there be a garage with three bays that meets all the criteria, and it could. He said that he's struggling with the application at this point.

Ms. Booras said that she's struggling with the application, and understands the opposition. She said that she's more in favor than not, but is still struggling with it.

Mr. Nehiley said that the applicant has been before the Board two meetings in a row. He said that the last meeting mentioned the perceived danger on East Dunstable Road. He said that the applicant has agreed to move the house over, that says a lot to their commitment to get this built, and to address the Boards safety concerns. He said that he first thought it was an ADU, but it is not. He said that it is a corner lot, and you need some room to move coming out of garages. He said that it will be a single-family house, which is in character of the neighborhood. He said that he believes that there are extenuating factors here, and applauds the applicant taking care of a family member, and is in favor of the application.

Mrs. MacKay said that the applicant has come back, and has listened to the Boards concerns about safety on East Dunstable Road, and they've stated that they can move the house, eliminating the variance that was causing the most consternation, and made concessions. She said that one of the opposition stated at the last meeting that if the driveway was shifted from East Dunstable Road to Burnett Street, that there would be no opposition, but we did. She said that she understands both sides of this, but what she hears the loudest is that these people have made numerous concessions, and they're trying to support a family member who is aging in place and needs support. She said that she is in support of this application.

MOTION by Mr. Minkarah to approve the variance application on behalf of the owner for the first variance, the second one is withdrawn. Mr. Minkarah stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the special conditions are primarily the narrow width of the property and the difficulty in

building a proposed home within that setback, and the reasonable desire to have three garage bays as a reasonable use, and it's not possible to achieve that without the variance requested.

Mr. Minkarah said that the request is within the spirit and intent of the Ordinance to allow a reasonable use on the property.

Mr. Minkarah stated that the Board does not believe the request will negatively impact property values, there is no submitted evidence that it will, and there are several properties in the area that do in fact have two driveways.

Mr. Minkarah stated that the request is not contrary to the public interest to allow a reasonable use of the property, and substantial justice will be served to the applicant.

SECONDED by Mr. Boucher.

MOTION CARRIED 3-2 (Mr. Shaw and Mr. Currier not in favor) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact on the next agenda.

MINUTES:

4-25-2023:

Mr. Shaw said that on the bottom of page 1, there is a letter "3" in the middle of the word "height".

MOTION by Mrs. MacKay to approve the minutes with the minor amendment on the bottom of page 1, waive the reading, and place the minutes in the file.

SECONDED by Mr. Nehiley.

Zoning Board of Adjustment

May 9, 2023

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

ADJOURNMENT:

MOTION by Mrs. MacKay to adjourn the meeting at 8:06 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing