

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 12, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 12, 2020 at 6:30 PM, via WebEx.

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

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

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. **Mary Lee Allison (Owner) KASP Builders, LLC (Applicant) 26 Lovell Street (Sheet 100 Lot 63) requesting variance from Land Use Code Section 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. [TABLED FROM 4-28-2020 MEETING]**

WITHDRAWN BY APPLICANT.

2. **Neil G. Schmidt (Owner) 21 Countryside Drive (Sheet D Lot 171) requesting the following variances from Land Use Code**

Section 190-16, Table 16-3: 1) to encroach 3.4 feet into the 30 foot required front yard setback (on Colonial Avenue); and 2) to encroach 4.1 feet into the 30 foot required front yard setback (on Countryside Drive) - both requests to construct an attached 24'x26' two-car garage with rooms above. R30 Zone, Ward 5.

Voting on this case:

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

Neil Schmidt, 21 Countryside Drive, Nashua, NH. Mr. Schmidt said he is present with his wife Kristen. Mr. Schmidt said that they are looking to expand, and on one side of the structure will have an extension beyond the existing length of the house. He pointed out where it would be, to the right, in an elevation drawing. He said that the front of the house is inside the 30 foot front setback, which is the Code requirement. He said that the addition would come straight off the wall on the Countryside Drive side, so it would look continuous.

Mr. Schmidt said that they are off the setback by about 3½ feet. He said that on the other direction, towards Colonial Avenue, the extension would be minor, approximately 3.4 feet. He said that the reason for this is that this 3.4 foot encroachment onto Colonial Avenue, and the 4 foot encroachment onto Countryside Drive, actually 4.1 feet, is for the two-car two-story structure, the bottom would be the garage, and the second floor would be an extension of the living space, including a bedroom, bathroom, closet, and master suite. He said that the reason is that to go out any shorter would make it difficult to house the larger vehicles in today's world, so that is why it is 24 feet. He said that the sight lines are fine at the intersection.

Mr. Schmidt said that they fully understand the setbacks and the encroachment. He said it would look peculiar to revise it, and it would make a jog in the house. He said it is a reasonable size.

Mr. Currier asked what the 21'-6" over-frame figure means. He said it is on Page 3.

Ms. Poirier displayed the diagram for the Board.

Mrs. Schmidt said that it is an architectural term that describes the roof line, how it marries the two roof lines, for the existing house and the addition, how it's an extension of the roof line.

Mr. Shaw said that on the bottom part of the drawing, it does indicate the 24-foot addition.

SPEAKING IN FAVOR:

Mrs. MacKay read a letter of support into the record from Eric Christian of 23 Countryside Drive, Nashua NH.

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 owner as advertised, with both requests considered collectively. He said that the variances are 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. He said that the house is already encroaching into Countryside Drive, and the applicant would be extending the house line with the addition. He said that the need for the incursion into the Colonial Drive side is necessary, as the Board feels that it is a reasonable and normal 24 foot depth for the garage, and there is no other reasonable location for the garage to be placed.

Mr. Shaw stated that it is within the spirit and intent of the ordinance.

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

SECONDED by Mr. Boucher.

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

2. Jack Whitman & Whitman Family Revocable Trust (Owner) Patricia Whitman (Applicant) 460 Broad Street (Sheet F Lot 968) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum 24-foot wide driveway curb-cut - 30 feet proposed. R9 Zone, Ward 1.

Voting on this case:

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

Patty Whitman, 460 Broad Street, Nashua, NH. Mrs. Whitman said that she is with her husband Jack Whitman. Mrs. Whitman said that they came before the Board in late Spring 2019, and received a variance for an addition built on the right side, for a garage and an in-law apartment above. She said that this request will be for the driveway, which is the last step in finalizing the addition process. She said that the driveway would be 30 feet wide, greater than the 24 feet that is allowed.

Mrs. Whitman said that they own a camper, and she has a business truck, and want to park those vehicles on the side of the house, and keeping them off of the street.

Mr. Lionel asked if their intention is to widen the whole curb-cut to the street 30 feet.

Mrs. Whitman said no, they are not altering the opening to the driveway, as the vehicles can get in, it's just as it goes back to the house.

Mr. Shaw said that the measurement of the driveway is not at the street itself.

Mr. Falk said that the Zoning District here is R9, which has a 20 foot front yard setback, so 20 feet from the front property line, that first 20 feet cannot be wider than 24 feet for the driveway, after the 20 foot distance, the driveway can fan out wider than 24 feet.

Mr. Currier asked what the current width of the driveway opening is now, it appears as if it is a lot less than 24 feet, and asked if the owner knew.

Mr. Whitman said he's not sure, but it's significantly less than 24 feet, it's wide enough for one car width-wise.

Mrs. MacKay asked if they plan on altering the wall in the front.

Mr. Whitman said no, the opening as it exists will stay the same.

Mr. Falk said that the GIS System shows the driveway width at the property line is about 10 feet.

Mrs. Whitman said that the original driveway was a straight shot right from the street into the property, but the garage was built over the end of the driveway.

Mr. Currier stated that he would like to see a drawing showing what the opening is, with a number.

Mr. Falk said that by right, they could do up to a 24-foot wide driveway curb-cut. He said if the owner indicates a number from one side to the other of the little stone wall, as that looks like the location of the property line, and then at 20 feet back the driveway can get wider.

Mrs. MacKay said that they are not going to touch the front little wall, it stays, so they are not widening the opening.

Mr. Lionel said that variances run with the land, and if the Board wants to make sure that the curb-cut stays no more than 24 feet, the Board would have to put that into the motion for the variance.

Ms. Poirier showed an aerial view of the property.

Mr. Whitman said he just went out and measured, and it was 11'-3". He said that one thing to consider is that when you move into the driveway on the right side, it becomes green space, and picks up a great deal of open space, so the driveway, when done, will look like a "V", it tapers off to the right pretty quickly.

Further discussion ensued.

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 on the busy street, 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.

Special Conditions:

1. The driveway can go to 30 feet wide, the curb-cut at the street is limited to the 24 feet in the City Ordinance.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 BY VERBAL ROLL CALL.

3. J. & P. Ferreira Family Trust (Owners) 3 Birchwood Drive (Sheet 54 Lot 20) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow a 24'x28' attached addition for an accessory (in-law) dwelling unit. RA Zone, Ward 3.

[POSTPONED TO THE MAY 26, 2020 MEETING.]

4. Rivier University (Owner) John Parker, Rivier University (Applicant) 413 South Main Street (Sheet 110 Lot 28) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#97) to convert an existing residential use into an administrative office use. RA Zone, Ward 6.

Voting on this case:

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

John Parker, Rivier University, Nashua, NH. Mr. Parker said that the University intends to sell this property to the current State Farm agents just across the street at 6 Daniel Webster Highway, and that sale is contingent upon this variance, as the University is interested in purchasing their property, so it will be somewhat of a land swap.

Mr. Parker said that there will be some interior changes, and they will have them for the Planning Board should this request be supported. He said that there is ample parking both in the front and rear. He said that State Farm currently has about ten visitors a week, so it will not impede the traffic flow. He said that initially they would have three employees, but it could be up to five.

Mr. Parker said that the use would observe the spirit of the ordinance, as the exterior of the structure would not change, in fact, there would be enhancements that the University would initially be responsible for, with landscaping and painting.

Mr. Lionel asked if anyone is living in the house now.

Mr. Parker said that they have two employees living there. He

said that they have 10-12 properties owned by the University, and rent them to employees, and this is one of them.

Mr. Lionel asked if those employees have another place to live.

Mr. Parker said that this was asked of the current resident back in January, and at that time, there was not another available property for them. He said that they did not offer to assist them in finding anything else. He said that they were on a one-year lease that expired in January, and now it's month-to-month, and they were informed in January.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR COMMENTS:

Nancy Symonds, 413 South Main Street, Nashua, NH. Ms. Symonds said that she and her family reside here. She said that she and her husband are currently under quarantine for the coronavirus. She said she doesn't feel that they can find another place of residence.

Mr. Falk said that Ms. Symonds also wrote a letter in opposition. He said that she basically read her letter.

Melbourne Moran, 36 Dickerman Street, Nashua, NH. Mr. Moran said that there is a family there that has coronavirus, and is a public health risk if this switches to commercial property. He suggested that this be tabled until the Governor's State of Emergency is rescinded, especially as this amounts to an eviction, and evictions are stayed right now. He said he has concerns about the traffic flow around the rotary as well.

Mary Dulski, 36 Eastman Street, Nashua, NH. Mrs. MacKay read an email dated May 11th from her.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Parker said that he has an email dated January 10th from Mr. Symonds, and he asked if there is any additional Rivier housing that he could move into should 413 South Main Street be sold. He said that this transaction to obtain the property will consummate in September, and will take a month or two to wrap

up. He said that Mr. Moran said that this would amount to an eviction, which is a misrepresentation, as the University will be honoring and enforcing the current lease agreement, which is currently month-to-month, and the University would provide proper notice of terminating the lease. He said that there is also no plan for additional parking, as the amount of cars there will be about the same, and traffic will be minimal for clients coming to the office, as most of it is done virtually. He said that there is HIPAA and confidentiality issues with people's health that he will not address. He said that the care of the property and the grounds has been consistent with the University's care of their properties in both academic and residential settings.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Moran said no one knows how long the residents health issues will be there for, but the City should know that this could negatively impact the City.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING

Mr. Boucher said he fully supports Rivier. He said the Board usually sees more details with the structure, or would see State Farm representatives here.

Mr. Kanakis said he is in support of the application, he said it is consistent with the neighborhood, and State Farm is right across the street, so it's not like it's out of character with the area.

Mr. Shaw said that he is in support, this is a low density commercial use with very little traffic, and there would be no changes to the exterior of the property.

Mr. Lionel said that the Board cannot discuss financial issues, and it seems like a pretty straightforward change along the lines of many cases previously approved by the Board. He said he's sorry to hear about the Symonds family, but it is out of the Board's hands.

Mr. Currier said the plight of the Symonds family is not part of the Board's criteria. He said he doesn't see much action going on at the State Farm office across the street, it's not an intense business. He said that the request is to convert it

into an administrative office use, and that is low intensity. He said that Hayward's Ice Cream is very busy, and to change this to an administrative office use is not an unreasonable request. He said that Rivier is a growing entity, and they have made their campus look nice.

Mrs. MacKay said that the application seems pretty straightforward. She said that since there is an Executive Order that has to do with Covid-19, is there anything that the Board needs to legally address in the Motion based upon the fact that the Governor has said all evictions are stayed. She asked what the Board should do based upon that.

Mr. Falk said that as Mr. Parker mentioned, the lease was up in January, and the tenants are on a month-to-month living arrangement, and as long as they provide a 30-day notice, the lease can legally be terminated, and it is not considered an eviction. He said that he is not an attorney with real estate or tenant law, but believes that this is fine. He said that the Covid-19 issue is above his rights to explain anything with that, it should come from a much higher authority than him. He said that he has had that exact same situation with an expired lease, and it's not an eviction.

Mr. Lionel said that Mr. Falk is right, this would not be an eviction, and this situation would not be prohibited by the Governor's Executive Orders. He said that this is something that the University and the Symonds will have to work out and deal with. He said that the Board is here to deal with the use variance and the points of law it covers.

Mr. Falk reiterated that he believes that this is not an eviction, it is more of an issue with Rivier and the occupant. He said that the Zoning Board is not evicting anyone here, the request here before the Board is to go from a residential use to an administrative office use.

MOTION by Mr. Lionel to support the application on behalf of the owner as advertised.

Mr. Lionel stated that the use variance is needed to enable the applicant's proposed use of the property, they are intending to swap properties with an insurance office down the street, and 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 said that the request is within the spirit and intent of the ordinance.

Mr. Lionel stated that the request will not adversely affect the property values of surrounding parcels, there was testimony that the University intends to make improvements to the property. He said that 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.

***** 6 minute recess *****

5. Colinbrooke Homes (Owner) 133 Amherst Street (Sheet 60 Lot 65) requesting variance from Land Use Code Section 190-17 (B) to allow four principal structures on one lot - one existing - three additional single-family detached homes proposed for a total of four single-family detached units. RA Zone, Ward 2.

Voting on this case:

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

NOTE: the next case taken - to allow the applicant to fix some audio, connection and distortion issues.

6. Kathy L. Cyr & Maureen F. Heffern (Owners) 39 Scott Avenue (Sheet B Lot 1515) requesting variance from Land Use Code Section 190-192 (C) to repave existing driveway - three individual driveway sections totaling 42'-9" in width. R18 Zone, Ward 8.

Voting on this case:

Mariellen MacKay, Chair
Steve Lionel, Vice Chair

Jack Currier, Clerk
Rob Shaw
JP Boucher

Maureen Heffern, 39 Scott Avenue, Nashua, NH. Ms. Heffern said that they just moved into the house last July, and are trying to gain approval to repave the existing driveway that goes off of Scott and Marlowe. She said that they are not changing the footprint, or adding any space to it, it's still 12'-9" and that was done in 1992, so it was an existing driveway when they purchased the house, and there is also a moon-shaped driveway that has two 15-foot openings, so that brings the total width to 42'-9". She said that the driveway leads to the two-car garage.

Mr. Lionel asked Mr. Falk if there is any record of a variance for the excess driveway usage.

Mr. Falk said he did not see any record of it.

Mr. Currier asked if Mr. Falk could check the GIS map of the driveway.

Mr. Falk said he can see it back in 2013, and it does show it as the owner has stated. He said it looked pretty worn back in 2013, and it looks pretty obvious that the driveway has been there for quite some time.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one on WebEx in attendance to speak in opposition.

END OF PUBLIC HEARING, AND BEGINNING OF PUBLIC MEETING.

Board 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, 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, and the Board discussed that it is an existing driveway that has been there for a long time.

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.

5. Colinbrooke Homes (Owner) 133 Amherst Street (Sheet 60 Lot 65) requesting variance from Land Use Code Section 190-17 (B) to allow four principal structures on one lot - one existing - three additional single-family detached homes proposed for a total of four single-family detached units. RA Zone, Ward 2.

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 the property consists of approximately .7 acres of land, and has a single-family residence that is situated at the corner of the intersection of Jewell Lane and Amherst Street. He said that the property has an expansive driveway area off of Jewell Lane, that is about 90 feet in length, with a large parking area. He said that there is a concrete patio with a poolhouse and pool, and these improvements are outdated and will be removed so the property can be re-developed with a common area style development, as shown with a private roadway 20 feet in width, and the existing curb-cut area off of Jewell Lane would be significantly reduced in width.

Mr. Branon said that there would be three new homes, situated that they would comply with all zoning requirements. He said

that the property is in the RA Zone, which has a minimum lot area of 7,500 square feet per unit, with setbacks of 25 feet in the front 10 feet on the side. He said that the setbacks are all in compliance. He said that even though this is going to be all on one lot, the structures would comply with all yard setbacks if it were subdivided.

Mr. Branon said that the lot is irregularly shaped, and the development has been laid out to contemplate saving the existing house. He said that the Fire Department has looked at the layout and it meets their requirements.

Mr. Branon said that the request would not be contrary to the public interest because the area surrounding the subject lot consists of residential properties, and the proposed use and setbacks will be consistent with the surroundings. He said it will be in a nice residential setting with adequate buffering, and will allow for significant improvements along Jewell Lane with removal of existing pavement and landscaping.

Mr. Branon said it will not have a negative impact on the neighborhood, or on the public health, safety or welfare.

Mr. Branon said it will observe the spirit and intent of the ordinance because it will rejuvenate the existing property, as much of it is outdated, and will create elements that are consistent with the surroundings, and will meet the density requirements of the RA Zone.

Mr. Branon said that substantial justice would be done to the property owner by granting the variance, because it would allow a reasonable use of the property, and it will conform with all the underlying zoning requirements, it has an irregular shaped lot, and the request is reasonable, and will not cause any negative impacts on the surrounding properties.

Mr. Branon said that the request will not diminish the property values of surrounding parcels because it will be consistent and compatible with the surrounding uses, and will not diminish values as it will be new construction and should show positive impacts. He said that they have a letter from an appraisal company showing that the development will show positive impacts.

Mr. Branon said that hardship will be granted, as the proposed use is reasonable, as the property is .7 acres in size, and is

irregularly shaped, and has two street frontages, and the layout of the development contemplates the geometry of the site in a fashion that is successful for this project. He said that the only relief that is being requested is for the number of principal structures on the lot. He said that the lot would have a private road, privately maintained, in a condominium form of ownership, which is an allowed form of ownership, and the use is compatible with the surrounding area, and this Board has approved a similar form of development many times in the past.

Mr. Currier asked if they had considered making two lots out of this, and having a 200 foot depth lot, so it would be similar to 6 Jewell Lane. He said that may be the most analogous to Jewell Lane.

Mr. Branon said that they didn't contemplate doing any kind of formal subdivision here, because the objective was to keep this as a condominium style development with a private road and shared access and shared improvements with a common area. He said that the setback conformance, orientation of the development is really where the focus was here, so that the way people use their property is similar to front, side and rear yards with proper setbacks.

SPEAKING IN FAVOR:

Mrs. MacKay read a letter into the record in support from AA Appraisals, 46 Technology Way, Nashua, NH.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Susan Cobb, 3 Jewell Lane, Nashua, NH. Mrs. Cobb said that she sent an email as well. She said that the application says that the use will not diminish the values, and disagrees. She said that there are four single-family residences on the street, and this would double the amount of residences and doubling the traffic and noise. She said that typically, the price of condominiums is lower than the cost of single-family homes, and that the condominiums might be rental properties, and condo living cannot be equated to single-family residential living. She said that a developer with no ties to the community is proposing a development that would negatively impact the single-family development.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Branon said that for value to the property, they have submitted a letter from a professional specifically to address condominium style projects and how they will have a positive impact. He said that this will overwhelmingly rejuvenate the property. He said that no one can discriminate whether the property will be for sale as a condominium. He said that they are honoring all the setback requirements, the density, and will be improving the physical characteristics on Jewell Lane, and will remove a significant amount of parking along the street, and it will be re-vegetated. He said that they have done several successful projects such as this that will generate a nice sense of community and will respect their neighbors. He said they have addressed all the concerns. He said that the landowner has requested to speak.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTAL:

Mrs. Cobb said that the letter read from the appraisal company said that the property had been a boardinghouse. She said she's lived there for 30 years, and it was always owned by the same family until they sold it, and it's never been a boardinghouse. She said that the traffic will double, the street will go from four homes to eight homes. She said it is not in harmony, there are single-family homes on the street now, versus condominiums, they are not equitable. She said that there will be an association there, it is different.

Mrs. MacKay asked if the Board wanted to consider additional testimony.

Mr. Currier said he'd prefer to go right into the public meeting.

Mr. Lionel said he'd prefer to move into the public meeting.

Mr. Shaw said he'd prefer to move into the public meeting, but suggested that perhaps the owner has some additional information that would be germane to the deliberations, it could come back in a rehearing request, so it may be worth re-opening the public hearing.

Mr. Kanakis said it would be good to hear any new information that the owner has.

Mr. Boucher said he has no objection to hearing what the owner has to say.

Mrs. MacKay said she has no opposition to hearing what the owner has to say.

MOTION by Mr. Shaw to re-open the public hearing to hear from the owner of the property and Mr. Cobb as well.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY TO RE-OPEN PUBLIC MEETING, VIA VERBAL ROLL CALL OF THE BOARD MEMBERS.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Jason Langaleise, 11 McIntosh Lane, Bedford, NH. Mr. Langaleise said that the house has been in serious disarray for some time. He said that they had to remove some tenants that stopped paying as soon as he bought the property, they had snowmobiles, junk cars, multiple sheds, trash everywhere. He said that they are in the process of cleaning up now. He said that the development will make for a very favorable look and add value to the road, instead of anything negative. He said it will be nicely landscaped, and the existing house will be fixed up that is falling apart.

Mrs. MacKay asked if the property had ever been a boardinghouse.

Mr. Langaleise said that there were books in the basement that it was a boardinghouse, and the person who owns Lillian's Motel had people in and out of there. He said it may be hearsay at this point, but does have the books of showing who paid rent.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Jim Cobb, 3 Jewell Lane, Nashua, NH. Mr. Cobb said he is Mrs. Cobb's husband. He said that the applicant spoke a lot of harmony and the character of Jewell Lane. He said that the street has a good character, and hearing about the changes will bring three more homes on the street, certainly increasing the traffic, the light and pollution and noise. He said of greater concern is that it will be a condominium project, which will be totally different, and many kids have grown up on the street. He said that no project that puts three more homes on a small

lot will maintain the harmony. He said that associations indicate how landscaping will be done, how things are maintained, paint schemes. He said that is not anything that the other properties on Jewell Lane will be part of. He said that the previous owner was a good neighbor. He said that the harmony will be greatly disturbed if this is approved.

Mr. Falk said that Section 190-7 of the Land Use Code deals with condominiums, and it basically states that condominium ownership is not treated any differently where it permits a physically identical project or development under a different form of ownership. He said that all it is a form of ownership.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Branon said that there seems to be a negative connotation to the condominium form of ownership. He said that he has been part of many condominium style projects all over the City, and have been before this Board for several. He said that they meet the setbacks, density, and all other underlying zoning items, and therefore meet the spirit and intent of the ordinance and will be in harmony with the neighborhood. He said that Jewell Lane can certainly accept a little more traffic, as can Amherst Street. He said the lot is the largest lot on Jewell Lane, which is why a larger development can be proposed. He said that an association will set aside mechanisms so that the property can be maintained properly, and will have a lot of positives associated with it.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Cobb said that there seems to be a misconception. He said that he has been a condominium association president for many years and understands them. He said that by having a condo association on a lot in a residential neighborhood is the issue. He said that Jewell Lane has a unique character, it is a small street, it abuts a park, it has a character of its own, and the difficulty is to have a condo association and moving it onto a lot in this neighborhood, it will break the harmony. He said that associations make all kinds of decisions, and their decisions will not take into account the neighbors and abutters. He said that they will be a microcosm, they will have their own concerns and schedules, and fees, dues. He said that what will be asked of the three homeowners will be a lot. He said that the rights of a developer should not be greater than the rights

of the people who already live there.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING.

Mr. Kanakis said he is in support of the application, it will be putting residences in a residential area, it meets the requirements for individual homes, they've met with the Fire Department, and the lot is an odd shape. He said that they could fit four residences on the lot if they split it up. He said he is in support.

Mr. Lionel said the condominium part is not relevant here, as the City allows them. He said that the Board is being asked to grant a variance to exceed more than one primary structure on one lot, that is all it is. He said that Jewell Lane is all single-family, but the other lots are all much smaller than the subject lot. He said that the proposal is reasonable, and it may change the character of Jewell Lane, and the condo owners will be in their own little network, but the notion that condo association rules about painting and won't take into account what the neighbors want, that isn't available with single-family homes privately owned either. He said it is a reasonable use of the property, being a large lot, and it is a change, and isn't greatly in favor, but is leaning in favor.

Mr. Shaw said he is in favor, and one of the most compelling items is that the density of this development is what would be allowed by right, and they are not going beyond what the approved density would allow. He said it is a large lot, irregularly shaped, and they need no other variances for this development.

Mr. Currier said he sees it differently. He said that the lots on West Hollis Street, they have long narrow lots, and the lots on the left and right have houses all down them, and they are exactly in-kind with the abutting lots, and this case is distinctly different. He said he discounts the condo form of ownership, and sees it as no different, and it doesn't sway him negatively towards this, but the multiple principal structures on one lot, that is a big deal. He said that it is similar to a spot zoning lot and there's plenty of development opportunity available without four structures on the lot, and it doesn't prohibit the landowner from a significant and reasonable development, and this is too aggressive.

Mr. Boucher said he support the application, it fits within the spirit and intent of the ordinance, and they did a great job in consideration of nearby properties. He said it will change the neighborhood, but that doesn't mean it is a negative thing. He said that Mr. Branon has been before us before, and he has represented this project with a lot of credence.

Mrs. MacKay said that it meets the density and the setbacks, it's only the number of buildings per lot. She said she agrees with Mr. Lionel's statement about condominiums, as it will change the complexion of the neighborhood because four homes coming in will change it, but that happens in every neighborhood. She said it's not perfect, but it's not wrong.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised. Mr. Shaw stated that the use variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the property is of sufficient size by normal right for density for four single-family homes if it were to be subdivided, but in this case, the land is also an irregular shape and there is an existing single-family home which the intent is to keep it, so there are limitations in terms of how to utilize this property, but the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance. He said that the Board had a lot of discussion about condo ownership, and in one regard, condo ownership almost forces the multiple number of principal structures, the only other option would be to develop it into some sort of multi-family that is contiguous and that may not have been satisfactory.

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

Mr. Shaw stated that the request will not adversely affect the property values of surrounding parcels, there did not seem to be a significant concern in this case, and there was a letter in support.

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

SECONDED by Mr. Boucher.

MOTION CARRIED 4-1 (Mr. Currier)

Mr. Lionel said he is in favor.
Mr. Shaw said he is in favor.
Mr. Currier said he is in opposition.
Mr. Boucher said he is in favor.
Mrs. MacKay said she is in favor.

MISCELLANEOUS:

MINUTES:

None.

REGIONAL IMPACT:

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

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

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 9:40 p.m.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing