

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
May 14, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 14, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Carter Falk, Deputy Planning Manager/Zoning

Mr. Boucher explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Boucher explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Boucher also explained procedures involving the timing light.

- 1. Libin Qiu & Yu Cheng (Owners) 12 Chelsea Court (Sheet B Lot 3079) requesting variance from Land Use Code Section 190-31A to encroach up to 2.25 feet into the 6 foot required rear yard setback to maintain an existing 12'x20' shed. R18 Zone, Ward 8.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Efstathia Booras

Mr. Qiu said that the shed was built by Reeds Ferry Sheds, professionally done. He said that at the time they bought it, they asked about the requirements to build the shed. He said that their property has 0.45 acres, a big back yard. He said that they were told that it has to be on their property, and that it has to have a solid foundation. He said that they verified the property lines to ensure the placement was on their yard. He said that the shed has been there for about three

years, and the neighbor closest to the shed at 16 Chelsea Court was fine with it, and that neighbor actually built a fence to help hide it. He said that the shed is 3.75 feet away from the property line, and it has to be 6 feet away.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Donna Cooper, 10 Chelsea Court, Nashua, NH. Mrs. Cooper said that she is not in favor, and is encroaching into her setback. She said that the shed is trespassing into her yard, and said that the shed is directly in back of her house and back yard. She said that their property is angled, and its tucked way back in the corner, and it would be an issue if they ever want to sell their house. She said that she is not in agreement with the variance, and the neighbor who was in favor of it at 16 Chelsea has moved away.

Mr. Boucher said that these properties have long, angular, odd shapes, and the shed is completely on Mr. Qiu's land, and the encroachment would only be impacting 16 Chelsea Court, and there is no setback incursion towards the Cooper's lot or property line. He said that the shed is completely on his lot, and actually, if the shed were to be moved out of the setback, it would even be closer to her property line, and he could move it three feet closer to her lot, and it would meet the ordinance, and they wouldn't even need the variance.

Mr. Currier said that due to the shapes of these lots, it does appear that the shed is in the Cooper's lot, but it's clearly in Mr. Qiu's property. He said that if they move the shed out of the setback, it would be even closer to the Cooper lot, and may look more imposing.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Qiu said that the only potential impact would be to 16 Chelsea Court, but that neighbor sold their house two years ago, but the new neighbor, Sanjay, has no issues with the shed. He said that there are no issues with property values, as 16 Chelsea Court was sold for over \$450,000.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

Mrs. Cooper said that the neighbor in back shouldn't really have a problem, as they have a fence so high that he can't see the shed. She said that they are not happy with the shed.

Mr. Currier said that the abutter is correct in saying that it looks like the shed is in her yard, but the shed is clearly on Mr. Qiu's property, and he has the right to put the shed where he wants, while meeting the setbacks. He said if the Board denies this, it may be a worse situation, as the shed would be pulled forward closer to the Cooper property. He said that he is supportive of leaving the shed where it is.

Mr. Boucher agreed, and the lot is sloped, and the shed is clearly on Mr. Qiu's property. He said he is in support.

Mr. Minkarah said he is in support of the application as well, it's an unusual shaped lot, and the purpose of the setback requirement is to minimize impact to abutters, and if the shed were to be moved to meet the setback, it would increase the impact to abutters. He said that the shed is reasonable, and is in support.

Mrs. MacKay said that she is also in support of the application.

**MOTION** by Mr. Currier to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, is that the properties go around the bend of Chelsea Court, and the lots are long and angled, and it's angled to the right side quite a bit, and goes well behind 10 Chelsea Court, and the Board finds that the applicant has the right to put the shed on his property, and the Board feels that it's fine to encroach 2.25 feet into the 6 foot rear yard setback.

Mr. Currier said that the Board feels that it is within the spirit and intent of the ordinance, and the 6 foot setback is in respect to the neighbors, but the neighbor that it's encroaching has no issue with it.

Mr. Currier said that it would not negatively impact surrounding property values, however, if it were to be pulled forward, it may impact the properties in the front.

Mr. Currier said that the request is within the public interest, and substantial justice is served to allow the shed to encroach into the setback.

**SECONDED** by Mr. Minkarah.

Mr. Boucher said that the neighbor at 16 Chelsea Court who supported the shed has since moved away.

Mr. Currier stated that it should be that the former neighbor at 16 Chelsea Court did not have an issue with the shed being closer to the property line.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**2. Whitman Family Revocable Trust (Owner) Patricia Whitman (Applicant) 460 Broad Street (Sheet F Lot 968) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to construct an attached garage with an accessory (in-law) dwelling unit above. R9 Zone, Ward 1.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Patricia Whitman, 460 Broad Street, Nashua, NH. Mrs. Whitman said that they are requesting to build an attached garage, with a second floor in-law apartment. She said that her 90-year old father will be moving into the unit this fall, and this would set him up in his own space, and she and her husband can help care for him.

Mr. Currier asked if staff felt that the new door met the ordinance.

Mr. Falk said that staff was ok with it, it doesn't look like a front door to the unit, as the door is the entryway to their mudroom, and after you enter this door, you can go left to the main house, or right to go into the in-law unit. He said that the door has the look and feel of a porch, or mudroom door.

Mr. Boucher read over the in-law apartment special conditions, and Mrs. Whitman agreed with all of them.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Mr. Minkarah said that he felt that this is really well done. He said that it will fit into the neighborhood well, and it looks as if it will be a natural addition to the property, and almost looks like it could be a natural addition to the property, such as an expansion to the home.

Mr. Currier said he feels the same way, the only issue that caught his attention is the breezeway door. He said that he is in support of the request, and it meets all the criteria.

Mrs. MacKay said that she is in support, and the breezeway door didn't affect her thinking that it wasn't allowed.

Mr. Boucher said that he supports the application.

**MOTION** by Mr. Currier to approve the special exception as advertised on behalf of the applicant. He stated that the use is listed in the Table of Uses, Section 190-15, Table 15-1 (#3).

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

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

Mr. Currier said that all special conditions are fulfilled by testimony.

Mr. Currier 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 the residents, the proposed addition will be in character with the neighborhood.

**SECONDED** by Mrs. MacKay.

Mr. Currier said that he appreciated the contractor being here with the owner.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**3. Monica Uch & Amanda Kong (Owners) Gibraltar Pools Corp. (Applicant) 103 Lund Road (Sheet B Lot 2753) requesting variance from Land Use Code Section 190-264 for accessory use area, 40% allowed - 51% proposed - to construct a 16'x24' above-ground swimming pool. R9 Zone, Ward 6.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Jay Henshall, Gibraltar Pools, Topsfield MA. Mr. Henshall said that the request is to build an above-ground pool, and exceed the allowed accessory area by 11%. He said that they comply with all other setbacks and codes for the pool. He said that they meet all the criteria for a variance. He said that the basement in the house is heated, but it's not finished at this time. He said that if the basement was finished, they would not need the variance.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Board members all expressed support for the application.

**MOTION** by Mr. Currier to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the lot is a bit smaller than the surrounding lots, and the house is also a bit smaller for this size property, and the request is a typical sized pool.

Mr. Currier said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Currier said that it would not negatively impact surrounding property values.

Mr. Currier said that the request is within the public interest, and substantial justice is served to allow the above-ground pool.

**SECONDED** by Mr. Minkarah.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**4. Fab-Braze Corp (Owner) U-Haul Company of Eastern Mass (Applicant) 476 Amherst Street (Sheet H Lot 116) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#81) to allow the use of 25% of the site for leasing/renting of trucks, where 75% of the site will be used for a permitted use of self-storage. PI/MU Zone, Ward 2.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Attorney Morgan Hollis, Gottesman & Hollis, P.A., 39 East Pearl Street, Nashua, NH. Atty. Hollis handed out some exhibits to the Board members. He said that there are two lots here, the rear lot is Lot 23, and the front lot is Lot 116, and they will be combined into one lot. He said that the proposed development is a U-Haul truck leasing operation. He said that the zoning district is Park Industrial with Mixed Use Overlay.

Atty. Hollis said that the self-storage use is permitted in the PI Zone. He said that the proposed use of the existing building is for a truck and van leasing U-Haul facility. He said that the use category is permitted by Conditional Use with a "superscript 1" which means its permitted only when the other 75% of the lot is in the "Industrial and Manufacturing" category. He said that the existing FabBraze building is a one-story building, 19,430 square feet in size, and it will stay on

site, and become the use of the U-Haul, and to the rear, will be a two-story building with self-storage units, which is permitted. He said that 75% of the use of the property would be for a permitted use, while 25% is the use of the truck rental.

Atty. Hollis said that the lot is very deep, and narrow. He said that Tab 1 of the exhibit indicates the locations for PI zone and light industry and industrial parks. He said the second page shows that uses with a superscript 1 are only permitted as part of a site plan in which at least 75% of the gross floor area is reserved for uses listed in the Industrial and Manufacturing category. He said that behind tab 2, automobile and truck rental use, listed as use #29, and #80, are both Conditional Use superscript #1 uses. He said that the superscript #1 use must be connected with a use in the Industrial and Manufacturing category. He said that in tab 3, it shows the list of industrial and manufacturing uses, however, on the third page, self-storage facilities are in the category called Warehousing and Storage uses.

Atty. Hollis said that the use is permitted with a Conditional Use, and the other 75% of the lot is permitted by right, and will not alter the character of the neighborhood.

Atty. Hollis said that the property is adjacent to a car dealership, which also is involved with the leasing of vehicles. He said that across the street is a tire repair facility, a Dunkin Donuts.

Atty. Hollis said that the proposed use will not threaten the public health, safety or welfare, as public water and sewer are available, it has adequate frontage to allow a turn-in and turn-out. He said that even the past use of the building had trucks and equipment and supplies going in and out.

Atty. Hollis said that it will observe the spirit and intent of the ordinance, it is a Park Industrial zone with a Mixed Use overlay, and the Master Plan recommends that this zone should allow the industrial uses, and a reasonable amount of space for heavy industrial users and to encourage attractive landscaping and sensitive sited industrial development that is compatible with surrounding land uses.

Atty. Hollis said that substantial justice would be done, and U-Haul sites are generally not commercial in nature, they're

bordering on the industrial with trucks coming and going, installation of trailer hitches, trailers in the front area, so it's closer to an industrial use. He said that the proposed uses seem to work together very well. He said that by denying this request would serve no benefit to the public.

Atty. Hollis said that the proposed use will not diminish the values of surrounding properties, and submitted a letter from Chet Rogers who stated that values will not be diminished.

Atty. Hollis stated that for hardship, the property is unique in that FabBraze was one of the few, if any, manufacturing sites on Amherst Street, but today times have changed, and the site is not large enough for a typical industrial or manufacturing park, and is not suitable for much else besides what is already out there. He said it's not the narrowest lot, but is the second narrowest lot, with the Acura dealership being the most narrow, and that site sells cars and leases cars. He said that 75% of the site is for a permitted use of warehouse and storage, and with 25% of the site being for leasing of trucks is compatible in the neighborhood.

**SPEAKING IN FAVOR:**

David Brasnick, Attorney, Cohen, Rasnick, Marsh & Plout, 1 State Street, Boston, MA. Atty. Brasnick said he represents FabBraze, who has been there for almost 70 years, and said he's had a long history with the property. He said that FabBraze has evolved and changed, and said that the location is not the best use for FabBraze now, and they are supportive of the proposed application.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Board members all expressed support for the request.

**MOTION** by Mr. Currier to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, which is a U-Haul facility, where the storage area is 75%, and the truck leasing portion is 25% of the site. He said that a special condition is that the 25% maximum use of the leasing or renting trucks is tied to the 75% use of the self-

storage units, and it is anticipated that the trucks could be used in connection with the self-storage units.

Mr. Currier said that the Board feels that it is within the spirit and intent of the ordinance to allow the renting of trucks on 25% of the site, as that use is in common with other commercial uses on this part of Amherst Street.

Mr. Currier said that it would not negatively impact surrounding property values, and may improve property values to have a viable business here with more customers.

Mr. Currier said that the request is within the public interest, and substantial justice is served.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**5. Anya E. Bent, Trustee, Anya E. Bent Revocable Trust (Owner) Fieldstone Land Consultants (Applicant) 24 Coburn Avenue (Sheet F Lot 71) requesting the following variances from Land Use Code Section 190-16, Table 16-3: 1) for existing lot - Sheet F Lot 71 - minimum lot width, 120 feet required, 100 feet proposed; and, 2) for proposed lot - Sheet F Lot 71-1 - minimum lot width, 120 feet required, 100 feet proposed - both requests to subdivide one lot into two lots. R18 Zone, Ward 1.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Carl Foley, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Foley said that the property has 39,458 square feet, or 0.91 acres. He said that he surveyed the property in February, and noted the improvements on the lot. He said it is zoned R18, which requires lot sizes of 18,000 square feet, frontage of 100 feet, and the setbacks are 20 in the front and side, and 40 feet in the rear. He said that the existing frontage is 200 feet, and the proposal is basically to divide the lot in half, and one lot would have 19,847 square feet for

the new lot, and the existing lot would have 19,611 square feet. He said that the relief being requested is for lot width for each lot, where 120 feet is required, and 100 feet is requested.

Mr. Foley said that granting the variance would not be contrary to the public interest because by granting, it would be similar to other lots in the area, and is close to the R9 zone a few houses down, and is within the character of the neighborhood.

Mr. Foley said that the spirit of the ordinance would be observed because the lot would be used for a permitted use, a productive use of a larger lot, as compared to some surrounding parcels along Coburn Avenue, Hampton Drive, Belfast Street, and Frost Drive. He said that the project will not alter the essential character of the neighborhood.

Mr. Foley said that substantial justice will be granted it will allow reasonable use of the property, it is a modest request for lot width, and the lot sizes will be consistent in the area.

Mr. Foley said that property values will not be diminished, as the use is consistent, and it will be new construction and will not negatively impact other nearby properties.

Mr. Foley stated that hardship will be granted, as the existing lot size of over 39,000 square feet is very large, and the proposed new lot sizes will still exceed the minimum requirements, and the proposal is consistent with other homes in the area. He said that should the Board support this request, they will have to appear before the Planning Board.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Board members all expressed support for the application.

**MOTION** by Mr. Boucher to approve the application on behalf of the owner as advertised, with both requests considered collectively. He said that the Board believes 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 an area variance, and stated that the special conditions of the property is that it is one of the larger properties on this section of Coburn Avenue, and there are properties in varying frontage widths, and the lot size is deep, and will exceed the minimum lot size, and meets all other criteria for the lot.

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

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**6. Shahid J. & Neelofar M. Haque (Owners) Neelofar Haque (Applicant) 6 Hibiscus Way (Sheet C Lot 2668) requesting special exception from Land Use Code Section 190-47B for a major home occupation for an in-home day-care for up to 9 children. R9/FUOD Zone, Ward 9.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Neelofar Haque, 6 Hibiscus Way, Nashua, NH. Mrs. Haque said that she is requesting the special exception for an in-home day care.

Shahid Haque, 6 Hibiscus Way, Nashua, NH. Mr. Haque said that they want the day care business in the home.

Mrs. Haque said that the State licensing office will allow 9 children, with one provider, and she said that she would be the

provider. She said if she exceeds 9 children, she'd have to have another provider.

Mr. Boucher asked if any of the children would be her children.

Mrs. Haque said other people's children, hers are older and in college.

Mr. Currier said that there are six criteria for a child care in the home.

Mr. Boucher said he'd go over them. He read them out, and Mrs. Haque agreed with all of them.

Mr. Minkarah asked if she has previously, or currently are operating a child care facility.

Mrs. Haque said no.

Mr. Minkarah asked about the age ranges.

Mrs. Haque said from infant to 7 year olds, or, second to third grade.

Mr. Boucher asked what the hours would be.

Mrs. Haque said from 7:00 am to 5:30 pm.

Mr. Boucher asked where people will park.

Mrs. Haque said that her driveway can fit four cars, and people can park on the street.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Andrew Brodeur, 8 Hibiscus Way, Nashua, NH. Mr. Brodeur said he is concerned with the additional car traffic, as it could be 18 vehicle trips per day. He said that the neighborhood is quiet, and there is a bus stop two houses down where kids get the bus. He said in the morning, there would be a lot more activity with kids getting to the bus. He said that on this side of the

street, everyone has retaining walls, and the applicant has two retaining walls at the driveway, which makes backing in and out of the driveway more challenging to see children or cars on the street.

Mr. Brodeur said lawn care services are busy in the morning in the neighborhood, and they park in the street, so it makes it more difficult with additional traffic in the street.

Mr. Brodeur said that there are not any other home-based businesses of this type that he is aware of around here, so the use is out of character. He said that there are covenants for the property that reference that the houses can only be used for residential purposes.

Mr. Boucher said that if they have three or less children, they wouldn't need to come before the Board.

Mr. Brodeur said he would not want to live next to a day care of any size.

Krismar Katel, 4 Hibiscus Way, Nashua, NH. Ms. Katel said that her concern is the traffic, and parents are rushing in and out of day cares, and with the retaining walls, the backing up of cars is concerning, and there are some cars that do not follow the posted speed limits.

Mr. Boucher read letters in the record from:

Dan Hunt, 10 Hibiscus Way, Nashua, NH.

Kapil Dabi, 11 Hibiscus Way, Nashua, NH.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Haque said that they are a family of four, and recently, both children have moved out, and they used to have four cars going in and out without any problems. He said that he would appreciate the Board's approval of the application.

Mr. Boucher said that there were some comments made about traffic in the neighborhood.

Mr. Haque said that the day care would be 7:00 am to 5:30 pm, depending on the parent's schedule. He said he didn't think that they would all come at the same time, they'd come at

different times, and didn't think they would impact the traffic. He said that they observe the speed limits.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

Mr. Brodeur said that an email was submitted in opposition from a neighbor at 7 Hibiscus Way, and handed it into the Board.

Mr. Boucher said that it was emailed after 5:00 today, after the office had already closed.

Mr. Brodeur said that his comments still stand about the traffic, the proposed use of the day care, the number of cars in and out of the driveway, and cars having to park on the street, and there is a covenant for Maplewood that the neighborhood is designed to be a residential neighborhood.

Mr. Currier asked Mr. Brodeur about his lot size.

Mr. Falk said the lot is just under 12,000 square feet. He said that all the lots in the neighborhood meet the minimum lot area.

Mr. Currier said he is struggling with the application. He said that Maplewood is generally a quiet neighborhood. He said his suspicion is that if a day care were operating, it would be very noticeable. He said that even with four or five children, there are car doors opening and closing, voices, conversations, and other activity, and it could be burdensome. He said that most all of the other day care businesses that the Board has heard, usually no abutters show up, where in this case, it seems as if it's universal concerns about the activity.

Mr. Minkarah said he is struggling as well. He said that for the special conditions, he feels that they meet them. He said he understands the abutter concerns. He said that a day care on Kinsley Street, or a major street, the amount of traffic that a day care would put out is minor compared to here. He said he couldn't support nine children, it's a lot more activity, even though this is a use that the ordinance has contemplated as a special exception and a reasonable use. He said it potentially would be out of character, it's not so much the use, it's the number of children. He said he'd be inclined to support a few number of children.

Mrs. MacKay said she agrees. She said she'd have an easier time with less children. She said that one of the letters mentions a day care down the street at 10 Hibiscus Way.

Mr. Currier took that as the larger commercial day care down by Captain's Corner, he didn't think that there was another day care on Hibiscus Way.

Mrs. MacKay said that she believes that nine children is too high, but would be inclined to support a lesser number.

Mr. Boucher said he is ok with the use, but is struggling with the number. He said that there have been some day care businesses that have been approved for a lower number, and have come back before the Board for more once they are more established. He said he would approve the application with less children.

Mrs. MacKay said that she would consider five children.

Mr. Currier said he's not sure if the Board should just pick a lower number and going with it. He said that the owner can have three children by right, and the Board is struggling with nine. He said perhaps this can be tabled so the owner can make a proposal for a lesser number that the Board can consider. He said he's struggling with just picking a lower number, and maybe it's better to have the applicant meet with the abutters and see if there is some sort of agreement.

Mr. Boucher said that there is a scale of numbers between three and nine, and would be comfortable with five or six. He said he'd be willing to make a motion in that direction.

Mr. Currier said he sees it somewhat different, he said he'd be more apt to deny the nine, and they can ask for a rehearing for a lower number, and the Board would see it as a significantly different request.

Mrs. MacKay stated that the Board should go ahead with a motion tonight, rather than tabling this and having them come back, she said she'd rather just limit it to five, and didn't think she'd be in agreement with six.

Mr. Currier said that just by approving the day care, is the biggest delta here.

**MOTION** by Mr. Boucher to approve the special exception request on behalf of the owner, with five children.

Mr. Boucher said that it is listed in the Table of Uses, Section 190-47.

Mr. Boucher said it will not create undue traffic congestion or unduly impair pedestrian safety, the supporters of this application feel that five children would be a lesser incursion and impact than nine.

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

Mr. Boucher said that all special regulations are fulfilled, from the child care special regulations for a facility located within a dwelling, per testimony of owner.

Mr. Boucher 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. Minkarah.

**MOTION CARRIED 3-1** (Mr. Currier).

**7.158 Amherst Street LLC (Owner) Ali Bird/Zoomies LLC (Applicant) 158 Amherst Street (Sheet 61B Lot 113) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#27) to allow a dog daycare and boarding business. RA Zone, Ward 4.**

Voting on this case:

JP Boucher, Chair  
Mariellen MacKay, Clerk  
Jack Currier  
Jay Minkarah

Ali Bird, Zoomies, 34 Franklin Street, Nashua, NH. Ms. Bird said that this business has been an initiative of hers for a number of years, and doesn't take the request lightly.

Ms. Bird said that she would be open during the business week only, while boarding would be available 7 days a week, but with drop-offs being by appointment only during the day. She said that accommodations for boarding would only be inside, with 24/7 on-site staff supervision. She said that to meet industry standards, they should have approximately 15 dogs, and there would be 1-2 staff members on site at any given time.

Ms. Bird said for parking, many facilities have more dogs than recommended for best management practices, between 70-100 square feet per dog, and many facilities are staffed by younger, less experienced employees, who are not really trained to keep dogs safe, happy and quiet. She said that they'll use several techniques to keep the dogs quiet, and a majority of the time, they'll be indoors, but they'll need 3-5 bathroom breaks during their stay. She said that they'll put up a solid fence so that the dogs won't see activity on the other side, and all dogs will be supervised at all times, and each dog will get two hours of rest time. She said that they have the option of installing sound-proofing panels inside, as well as windows, which will also help to block outside stimulus. She said that the dogs will not be left outside unattended to bark.

Ms. Bird said that they are looking to move the outdoor area to the corner of the lot, and will keep the seven parking spaces as they are. She said that the average duration of a dog care drop-off and pickup is under 60 seconds, sometimes under 20 seconds, as owners are on their way to/from work and don't have time to chat, and want a short stop. She said that drop-offs and pickups will be staggered, with dogs arriving anywhere from 8:00 am to the noon time frame, and said that the parking lot will never be full at any given time. She said that Granite State Dog Training on 101A has 50 dogs, and have 8 parking spaces.

Ms. Bird said for waste management, with the bags tied appropriately, and the can top on tightly, the odor cannot be detected from a few feet away. She said that the waste will be taken away immediately after it's made, and she will insure that the property will be clean. She said that for the urine, there will be artificial pet grass, with several layers underneath that break down urine and filter the odor, and it will be sprayed down regularly, and neighbors will not smell it.

Ms. Bird said that for fencing, they'll have a minimum of an 8-foot high fence, and will be solid, and underneath it, there will be netting and wiring so they cannot dig out.

Ms. Bird said that they will not be having dogs out on leashes outside the premises, the owners will bring dogs in and out, there will be no walking around the neighborhood. She said that they are not the noisy, unattended dog day care center.

Mr. Minkarah asked if she has looked at other properties.

Ms. Bird said that they've been looking for several months, and had another site in mind but it didn't work out. She said that there are not a lot of properties that would fit this type of use. She said that she's attracted to this site because it fits their needs, and doesn't need a lot of work to get up and operating, and it will be a smaller, more personal use, a more homey feel.

Mr. Currier asked about the astro-turf.

Ms. Bird said that there is a layer of artificial grass on top, and three or four layers underneath, followed by crushed gravel, or crushed stone, and it helps liquids wash away and get filtered, instead of sitting on the top, and there is an odor material that looks like ice-melt.

Mr. Boucher said that he heard of an 8-foot tall fence, and said that any fence over 6 feet in height would require a variance, and the Board cannot consider a fence over 6 feet tonight.

**SPEAKING IN FAVOR:**

Amy Weber, 16 Shady Lane, Nashua, NH. Ms. Weber said that her dog stays with Ali. She said that drop-off and pickup with her is very quick and easy, and has never experienced a long drop-off time.

George Stergion, 15 Cimmarron Drive, Nashua, NH. Mr. Stergion said that he is the Realtor for this transaction. He said that there is no data on whether or not this use would impact property values as compared to the use that is there now. He said that there is a need out there for dog care businesses. He said that Ali has really good control over her business.

Harold Brodell, 158 Amherst Street, Nashua, NH. Mr. Brodell said that most of the area around here is current businesses. He said that there is no current evidence that property values will go down. He said that the owner has addressed the odor from dog waste. He said that Ali is very well versed about the dog industry.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

James Hogan, 51 Pine Hill Avenue, Nashua, NH. Mr. Hogan passed out a letter to the Board members. Mr. Hogan said that he heard that six dogs barking is the equivalent of 87 decibels. He said that another report had it at 118 decibels, and a jackhammer has 110 decibels. He said that his wife and himself are highly opposed to the request. He said that in his opinion, the applicant has not satisfied any of the conditions for approval. He said that the current printing business is quiet all day. He said that the dog business does not meet any of the points of law.

Marilyn Hogan, 51 Pine Hill Avenue, Nashua, NH. Mrs. Hogan agreed with her husband's statements. She said that they can see the parking area and back of the property at 158 Amherst Street. She said that she has talked to several neighbors, on Norfolk Street and Milford Street, and they are not in favor of the application. She said that dogs will be barking, and neighbors will hear everything. She said that this is a quiet, small neighborhood, and that's what the homeowners want.

Steven Debona, 7 Bristol Street, Nashua, NH. Mr. Debona said that he emailed a letter to the Board. He said for property values, he believes that they will go down.

Mr. Currier said that occasionally, the Board gets conflicting letters about property values, some say that they'll go down, others say they will not go down.

Mr. Debona said that a lot of dog businesses are in commercial areas, or industrial zones, and this site is in a residential area. He said that when fire trucks go by, his dogs bark. He read his email letter into the record.

Thomas Hogan, 14 Orlando Street, Nashua, NH. Mr. Hogan said that when he is at his parents' house, and looks out the window, the proposed dog business is very close, and any noise made by

the dogs will be hears. He said that it appears as if the plan is changed for the outside area for the dogs, to be at the corner, but putting in soundproofing and the fence, and AstroTurf for the dogs, and the chemical substance in the AstroTurf, is quite a bit for change to the site. He said that 20 dogs worth of bathroom events is a lot, especially with dogs being held overnight. He said that this is not the place for this use.

Tim Hogan, 29 Sullivan Street, Nashua, NH. Mr. Hogan said that in his neighborhood, the dogs howl when the fire trucks go by, and if one dog starts barking, it'll set the other dogs off too. He said that Norfolk Street is a very narrow street, and said that he avoids it if he can, and putting any extra traffic on Norfolk Street is unacceptable. He said that he has a six foot high solid fence, and dogs still bark when he's in his back yard, through the fence.

Nancy Chabot, 5 Hooker Street, Nashua, NH. Ms. Chabot said that she owns NCC Business Solutions, at 154 Amherst Street. She said she submitted a letter to the Board. She said she is very concerned with this application. She said the fence at the property line is very close, about 15 feet away from the whole side of the building. She said that she runs a business here, and is on the phone most of the day, and the conference room is right in front, as well as an office, and said that even if they had three dogs, there would be no way for her to conduct business here, whether they're barking or not barking. She said that she was approved for a quiet office use by the Board, as the businesses on Amherst Street made a good buffer between Amherst Street and the residences, and said she's done everything she can to fit into the neighborhood. She said that the proposed use will be detrimental to her business and her property, and doesn't feel that this is the proper location for the dog care and boarding. She said that she came before the Board in 2011 and has taken great lengths to fit into the neighborhood.

Mr. Boucher read letters into the record in opposition from Andrea & Peter Wasluk, Attorney Jim Tamposi, and from Century 21.

**SPEAKING IN FAVOR - REBUTTAL:**

Ms. Bird said that this is Amherst Street, it's a main drag, and 24,000 vehicles travel on this road daily, there is a gas station right across the street, and it's not a quiet area. She said that if dogs are barking, they haven't been trained to not bark. She said that she trains dogs not to bark, and their behavior can change. She said that the curb appeal is for the outside appearance, and this property will be impeccable. She said her first degree is in Interior Design, and said that she cares how things look, and will have it clean. She said that the dogs will not be left alone if they are there overnight with the boarding dogs. She said that it will be a crate-free facility.

Mr. Boucher asked how many dogs will be there a day, including the overnight boarding.

Ms. Bird said that she wants a small enough operation that 1-2 people can manage it. She said she wants to leave it a little flexible, due to holidays. She said on an average basis 10-15 for daycare.

Mr. Boucher asked what the maximum number of dogs would be.

Ms. Bird said a total of 20 dogs.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

Mr. Tim Hogan said that there is a concern with the solid waste issues of storage and removal and odors. He said that there is a concern with the liquid waste and runoff. He said that there is still a concern with the fence height and at the intersection, it's a difficult turn from Amherst Street to begin with onto Norfolk Street, it's risky to put more traffic and activity there. He said that the neighbors just cannot support this application.

Mr. Minkarah said that he appreciated the applicant's presentation, it was very thorough and has no doubt it would be a competent business. He said that he doesn't believe that this is the right location for this use. He said that the previous variance granted for this site was reasonable, it was a quiet professional office, a printing establishment, low impact businesses buffering the residential uses. He said that it will be a real challenge to get the parking to work here.

Mr. Currier said he was also impressed by Ms. Bird's presentation, especially the passion she displayed. He said that a use variance runs with the land, and not the person. He said that he's struggling to find support, as the use will be noisy with more traffic.

Mrs. MacKay said that this area is busy, and understands why she was attracted to this site. She said that in spite of the applicant presenting an amazing plan, and she sounds completely qualified to run the business, she said she has major concerns with the waste products and there's no place for it to go. She said that she also has extreme reservations to having 20 dogs, the property is just too small, and cannot support this.

Mr. Boucher said that the applicant was very well prepared, and has every confidence that she would run a good business. He said that there are a lot of challenges here, and they would be to the detriment of the neighbors. He said that the variance runs with the land, and not the person. He said that he doesn't think that this property is so unique that some other more appropriate use could go there, and cannot support the request.

**MOTION** by Mr. Currier to deny the request on behalf of the applicant as advertised. Mr. Currier stated that the variance is not needed to enable the applicant's proposed use of the property, the Board finds that there are plenty of other businesses that could be supported in this RA Zoned piece of property, and the Board is very concerned with the overall level of activity that the proposed dog day care would bring, not necessarily by this applicant, but by the business in general.

Mr. Currier said that the Board finds that the dog day care and boarding business is not within the spirit and intent of the ordinance.

Mr. Currier said that the Board finds that it could devalue properties, and disturb the existing businesses next door, as well as the homeowners nearby.

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

**SECONDED** by Mr. Minkarah.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**MISCELLANEOUS:**

**REHEARING REQUESTS:**

None.

**MINUTES:**

4-9-19:

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

**SECONDED** by Mr. Minkarah.

**MOTION CARRIED UNANIMOUSLY 4-0.**

4-23-19:

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

**SECONDED** by Mr. Minkarah.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REGIONAL IMPACT:**

The Board did not find any cases of Regional Impact.

**ADJOURNMENT:**

Mr. Boucher called the meeting closed at 10:52 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing