

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 9, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 9, 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
Efsthathia Booras

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. Paul D. & Dusuba Koroma (Owners) 26 Canal Street (Sheet 42 Lot 74) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to maintain an existing dwelling unit on first floor - one commercial unit and three residential units already existing. LB Zone, Ward 3.

Voting on this case:

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

JP Boucher

Paul Koroma, 26 Canal Street, Nashua, NH. Mr. Koroma said that he currently lives in the unit, it is in existence and has been when bought the building in 2001. He said he has been awarded this property in his divorce settlement by the Court.

Mr. Koroma said that in 2012, he was asked to vacate a tenant who was living in the unit by the City, as the unit was illegal. He said he has been asked by the City Code Enforcement Department to enforce the laws of the City to vacate the unit until applying for a variance. He said he has a hardship condition, in that the unit in the building was not constructed by him, and he bought it this way. He said that he has financial hardships right now as well, with living expenses.

Mr. Koroma said that it is a one-bedroom unit, and does not infringe upon any neighbors land. He said that he rents parking said that it is unclear to him what the current parking situation is, and asked Mr. Koroma how many off-street parking spaces are with this property.

Mr. Koroma said that this property has no spaces, but rents parking spaces from a neighbor, and has 7 spaces available that he's had for the past several years. He said that they have sufficient parking spaces for the tenants and himself.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Email from Donald Buja, 24 Canal Street, Nashua, NH. Mrs. MacKay read the letter into the record.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Koroma said that Mr. Buja is his next door neighbor, and there is a bad history, he said he used to rent from him and went different ways. He said that his tenants have sufficient parking, but his property has an open space, and drivers come in and turn around, going to the gas station. He said his tenants may have done so occasionally, if they want to turn around, but they do not use his parking space. He said that the new unit

will not be bringing down property values in the neighborhood. He said that the objection is not for real, and said that his parking is satisfied.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

No one.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING:

Mr. Minkarah said that he is struggling with this one, it is a mixed neighborhood with a variety of different building types, densities, and many properties with little to no parking. He said that it is an existing unit and appears that it was not created by the applicant. He said that he would come down on supporting the applicant.

Mr. Shaw said he's somewhat struggling with this one, he said he can appreciate the financial issues the applicant may have, but that is not something that the Board can use in deliberations. He said that the unit has been in existence, and it is a single bedroom unit makes it more reasonable. He said that there is limited parking, and the applicant has secured some off-street parking for his tenants. He said he's leaning towards supporting it, but is struggling.

Mr. Lionel said he's struggling with the density, and the parking is at least secured. He said that he's inclined to support it, as it's a small apartment that has been there a long time, and was there when Mr. Koroma bought the property. He said he didn't think it would be any worse to legalize the apartment.

Mr. Kanakis said he agrees with what's been said so far, had it been a unit installed by the current owner he may have a different view of this, but it's been in existence for a while and the parking issue has been solved, so he is in favor.

Mr. Boucher said he is in support, and agrees with what has been said already. He said that he doesn't see any impact to the neighborhood, and the off-street parking is key.

Mr. Currier said that if it was a new request, he couldn't get behind it. He said that it is a large overage on the land use. He said he's struggling to find support on it, and doesn't feel

that it meets the spirit and intent of the ordinance.

Mrs. MacKay said that she's struggling with the parking, the density, but leans towards supporting the request.

MOTION by Mr. Boucher to approve the application on behalf of the applicant as advertised. Mr. Boucher stated that the use 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, the Board stated that it was a pre-existing condition when the owner bought the building, the owner has been there for many years, and the Board finds that the impact was going to be negligible at this point.

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

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

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

SECONDED BY Mr. Lionel.

Mrs. MacKay said that when the owner indicated that he was awarded the property from the Court, should the Motion be made for the owner or the owner and his wife.

Mr. Falk said that the city records indicate that they both own the lot. He said that if Mr. Koroma attests that he is the sole owner now, he said it should be fine for the Board to grant the request for him.

Mr. Koroma said that the Court did award him the property, and he is still going through the formalities of getting the deed.

AMENDED MOTION by Mr. Boucher said that he is fine with only Mr. Koroma being granted the application request.

SECONDED by Mr. Lionel.

MOTION CARRIED 4-1 BY VERBAL ROLL CALL OF THE VOTING MEMBERS,

with Mr. Currier not in support of the motion.

2. Wilmar, LLC (Owner) Colbea Enterprises, LLC (Applicant) 4 Blackstone Drive (Sheet H Lot 520) requesting the following variances: 1) from Land Use Code Section 190-108 (C)(1) to exceed maximum wall sign area, 150 sq.ft permitted - 155 sq.ft proposed; and, 2) from Land Use Code Section 190-108 (E)(2) to exceed maximum number of wall signs, 3 permitted - 5 proposed - for proposed gas station/convenience store. GB Zone, Ward 2.

Voting on this case:

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

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that the use will be a corner market, and the gas station is allowed. He said that the applicant is new to New Hampshire, although they have over one hundred stores in Massachusetts and Rhode Island, and just bought the station on Canal Street.

Atty. Prunier said that one variance is for wall signage, one sign says Seasons Market, it's on the left side, and the other two signs are on the gas station canopy. He said that there would be three separate signs on the building, but they're spread out, for a total of five signs. He said that the signs are really an indication of what the services are here.

Atty. Prunier said that the other variance is for the overall square footage, the signs are five square feet over the limit.

Mr. Currier asked how staff came up with the five wall signs.

Mr. Falk said that the Seasons sign is one, the Corner Market sign is the second one, even though it is two words, we'd put a box around that, the sign on the right, the MaryLou's would be the third, and the two pectin canopy Shells make a total of five.

Mr. Currier said that on the canopy, there is a long yellow band, and asked if that factored into the size.

Mr. Falk said it did not, staff just counted the two Shell boxes, otherwise, the yellow and red stripe would account for several hundred square feet of wall signage.

Mr. Minkarah asked if MaryLou's Best Coffee in town, if that is advertising that fact, or is MaryLou's Coffee a distinct business.

Atty. Prunier said it could be Dunkin Donuts, or something else, it's not advertising. He said that there will be a tenant in the building, but it may not be MaryLou's.

Mr. Falk said that the site plan does indicate a drive-through going around the back of the building, so there will be some sort of a drive-through use, we're not sure what it will be yet.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING:

Mr. Currier said he is struggling with the three signs, and is not convinced that all three are necessary for the success of the business. He said that maybe he could support four wall signs, but five are not needed.

Mr. Shaw said he is ok with the application. He said he would have a harder time if the overall area of the signage was much larger, but they're only over by five square feet, which is negligible. He said that the proposal is not overwhelming for the site, and the area is split up between the signs and it seems reasonable to him.

Mr. Lionel said he agrees with Mr. Shaw, and it is a reasonable use, and the overage on area is very minimal.

Ms. Booras said that she is in agreement with what Mr. Lionel said.

Mr. Boucher said that he is in support of the application, the area of the signage is ok, and the two Shell signs are symbols, not text, and they blend into the canopy.

Mr. Minkarah said he has no problem with the appearance of the signs, and the number of signs, and the additional overage on area is deminimis, as it's only five square feet. He said that perhaps the ordinance could be reviewed to look at uses such as this.

Mr. Kanakis said that he is in support, it is a minor dimensional request.

Mrs. MacKay said that the Shell signs blend in, and the overage in area is very small. She said that she is in support.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised, with both requests considered collectively.

Mr. Shaw stated 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 for the applicant to pursue, other than the variance, the Board stated that two of the signs are basically graphic in nature, and not text, also, the signs themselves are spread out through multiple areas on the building façade and the canopy, and while there is only minimal overage, it is a small percent over what is allowed, so the total number of signs do not significantly increase the area of signs that is normally permitted.

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

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

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

SECONDED by Mr. Boucher.

MOTION CARRIED 4-1 BY VERBAL ROLL CALL OF THE MEMBERS, WITH Mr. Currier in opposition to the motion.

3. Alla Mark Properties, LLC c/o John L. Randall, Mgr. (Owner) TMC CF New England, LLC c/o Shannon Netherton, Deal Management Director (Applicant) 452 Amherst Street (Sheet H Lot 143) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#93) to allow a convenience store/gas station where 75% of the building gross floor area is otherwise required to be reserved for uses in the "industrial and manufacturing" category. PI/MU Zone, Ward 2.

Voting on this case:

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

Mrs. MacKay said that Mr. Kanakis has recused from this case.

Attorney John Smolak, Smolak & Vaughan, 21 High Street, Andover MA. Atty. Smolak introduced the project team, Tracy Roll, Director of Real Estate with TM Crowley Associates, and TM Crowley is a preferred developer that works with Cumberland Farms, Chris Tymula, Project Manager with GPI, and Heather Monticup, Traffic Engineer with GPI.

Atty. Smolak said that they are requesting a use variance, since the ordinance requires at least 75% of the gross floor area is reserved for uses in the industrial and manufacturing category.

Atty. Smolak pointed out that the lot is approximately 1.15 acres in size, and is the site of the former Country Tavern Restaurant, which will be closing. He said that the existing restaurant is about 4,100 square feet in size, with 15 parking spaces. He said that they've operated there since 1982.

Atty. Smolak said that the lot is located entirely within the Park Industrial/Mixed Use Zone. He said that it was just recently rezoned, along with other nearby properties in the area from Park Industrial to Park Industrial/Mixed Use, which would allow additional flexibility in the area.

Atty. Smolak pointed out the proposed site plan. He said it would go to a Cumberland Farms retail convenience store with gas. He said it would be approximately 4,900 sq.ft colonial styled building. He said it would have a single row of fuel dispensers aligned to be parallel with Amherst Street to enhance on-site traffic circulation.

Atty. Smolak pointed out the proposed site improvements overlaid onto an aerial photo, and the building would be located much further back on the lot from Amherst Street, and it allows for better traffic circulation. He said that the color rendering showing parking on the site, shows 25 parking spaces, where 25 spaces are required, not including the spaces at the gas dispensers. He said that there will be an enhancement of landscaping as well. He said that the development will not have a car-wash, or any drive-through facilities as well.

Atty. Smolak pointed out four slides with before and after depiction of the site from certain vantage points, different directions. He said that the application is very thorough and is also aware that the Board has received several letters of concern from an abutter at 2 Townsend West.

Mr. Currier asked about the snow storage area, as it doesn't match the vegetation plan.

SPEAKING IN FAVOR:

Chris Tymula, Project Manager, GPI, 44 Styles Road, Salem NH. Mr. Tymula said he is in his office alone. He said the area in question near Townsend West does call out a snow storage area by the driveway entrance, and there is some landscaping there. He said that they would have snow storage out in front of the canopy by the landscaped area, and as well as the left-hand side of the site where the underground fuel tanks are. He said that they designed it so they would have the essential buffer along Townsend West with the ability to stockpile snow in that area. He said that if snow storage becomes a problem, Cumberland Farms will have the snow trucked off the site to make sure there are no issues with parking or customer conveniences.

Mr. Currier asked about the underground infiltration system, it looks like 100% of the stormwater would be infiltrated on site, and asked if that is the case.

Mr. Tymula said that since this is a gas station development, the underground stormwater system is a closed pipe drainage system, it's not an infiltration system. He said it will be a watertight system so there is no further infiltration from the seams of the joints. He said that all the site runoff is captured on site, detained and treated on site, and ultimately discharged out through an outlet control structure and then to the headwall located further down Townsend West.

Mr. Currier said that the application mentions a future widening project, and asked when it may happen, how wide it would be, and if it would impede on any of the site.

Heather Monticup, Traffic Engineer, GPI, 181 Ballardvale Street, Wilmington MA. Ms. Monticup said she is alone at home. She said that the NHDOT has two projects that they've merged into one for Amherst Street, projects 101-36A and 101-36B. She said that there isn't a specific date on when they'll be implemented, but they are on the draft 10-Year Improvement Plan. She said it includes adding another lane on each direction on Amherst Street, eastbound and westbound, along with bicycle shoulders and sidewalks, between Somerset Parkway and Celina Avenue. She said she's not sure how much land and how the widening would be, but they've had discussions with the applicant, and if there is a sliver widening that needs to take place, that Cumberland Farms would be amenable to that, and there is a very wide swath of right-of-way available, and they don't anticipate any takings on the site.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR COMMENTS:

Dwight Stevens, 2 Townsend West, Suite 7, Nashua, NH. Mrs. MacKay read Mr. Stevens letter into the record. He said in the letter, he does not want to allow the development, as the building is historical and should be treated as such, and that there are many gas stations on Amherst Street.

Suzette Stevens, 2 Townsend West, Suite 7, Nashua, NH. Mrs. MacKay read the letter into the record. The letter states that they are against the gas station convenience store, as the current building is a historical building and should not be torn down, there are plenty of stores and gas stations on Amherst Street.

Leslie Getto, 2 Townsend West, Suites 8-10, Nashua, NH. Mr. Lionel read this email into the record. Ms. Getto said that all have had issues getting up Townsend West in the winter. She asked if the gas station side entrance at a steep grade she asked what additional plowing and sanding will the gas station provide, as it is a hazard on icy days. She asked if the City feels like the distance between the gas station cutout and the 2 Townsend West entry is a sufficient distance with the increased traffic. She asked if there is sufficient turning radius for trucks entering or leaving the site without causing a hazard or jackknife with a sharp turn on an icy day. She asked what the plan is for additional drainage and runoff.

Jack Schroeder, 2 Townsend West, Suite 3, Nashua, NH. Mr. Lionel read the email into the record. He said that the letter indicates concern with traffic turning from Townsend West or from Amherst Street into the proposed Cumberland Farms, someone making a right turn could run into cars exiting and entering onto Amherst Street, to and from the proposed gas station. He said in winter it will be worse. He asked if there are any changes to the traffic lights or roadways planned to eliminate this problem. He asked if there will be snow storage on the site, as it seems small after the changes are made. He asked if the builder will need to access Townsend West during construction of the retaining wall abutting the lot and if the trees will be removed by the property line. He asked if there is any blasting proposed, and what safeguards will be used.

Brian Green, 2 Townsend West, Suite 1, Nashua, NH. Mr. Lionel read the email into the record. He said that he is concerned about fuel, snow and ice melt along with snow over the retaining wall into his property, and asked about drainage. He said that all of the large trees need to stay, separating the rear of Cumberland Farms retaining wall/fence with 2 Townsend West. He said that 2 Townsend West will be impacted more than any surrounding property, and the addition of the retaining wall and the building will affect the aesthetics and view, and will decrease property values.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Smolak said a lot of the issues raised are site plan issues.

Mr. Tymula said that they've addressed snow storage early on.

He said that there is room for snow storage on site. He said that the entire site would be curbed and graded so that all runoff and snow melt will be captured with hooded catch basins, treated with separators or oil-water separators, all to be collected in the stormwater drainage system, none would go over the retaining wall to 2 Townsend West.

Mr. Tymula said it would be large segmented block type wall, a redi-rock retaining wall with a decorative stone face, used in many commercial developments. He said it will be a beneficial design element.

Mr. Tymula said that for the trees on site, they will try to minimize the amount of tree disturbance. He said that there will be some tree clearing to tie into the drainage system.

Mr. Tymula said that ledge is essentially 14-16 feet below existing grade, if there is a shallower outcrop, they would do line drilling or hole ramming with blasting being the last resort.

Mr. Tymula said that the back of the building will look like the front of the building, a cream-colored clapboard siding, and the architectural design elements on the front would be on the back too.

Mr. Tymula said that for turning radius for trucks, they would come in along Townsend West, take a left at the light, go down Townsend West, take a left into the site, circulate around, drop off fuel on leftmost property line, and they will be out of the way of any vehicular traffic or pedestrians, and exit the site off Amherst Street, and there is a truck-turning plan as part of the site plan submittal.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Jack Schroeder, 2 Townsend West, Nashua, NH. He said that he is concerned with trucks coming off Amherst Street, he said he believes that there will be a big bottleneck there in the future.

Mrs. MacKay said it is ok for Ms. Monticup to respond to Mr. Schroeder's concern.

Ms. Monticup stated that they did prepare a full traffic impact

analysis study. She said that the site distance measurements meet all ASHTO and City regulations, and the minimum requirements are all exceeded, even with the grade on Townsend West, and the driveways are safe with respect to location.

Mr. Schroeder said he sees it as a traffic nightmare, and he's on the street every day going to work, there's a lot of cars here.

Mrs. MacKay said that if this request is supported tonight, it would go to the Planning Board, and many of the traffic and drainage issues would be addressed by them in much greater detail.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING

Mr. Minkarah said that often, the Board hears requests that are a significant deviation from what is allowed, and often the case is made that the character of the area has changed, and a number of things have happened that shows a disconnect. He said that in this case, this property was rezoned by the City to PI/MU about a year and a half ago. He said that in the package, there is a comment that on October 16, 2018, the Community Development Director said that by adding the Park Industrial and Mixed Use overlay, it allows for flexibility to actually reflect what is going on these lots. He said that not long ago, the City rezoned this area and looked at how the properties were used, and determined that the zoning that was put into place was the way to address it. He said that it is troubling that we have an application before the Board that says that somehow the City missed the mark, or didn't know what it was doing in the rezoning, and said that this is clearly a scenario where the City made a very deliberate choice on rezoning this property, and it is not something that the Board should overturn.

Mr. Boucher said he's struggling with this one. He said he doesn't have a problem with the gas station itself, but is more of where Mr. Minkarah is thinking.

Mr. Shaw said that Mr. Minkarah made a good point. He said that the restaurant was there about forty years. He said that the Board has had many cases with people asking for relief within just the AI zone, and this was an attempt to rectify that. He said that the proposal was very well done, and it may be a good usage of the property, but is struggling with the

recategorization of this when it was recently rezoned.

Mr. Lionel said that he agrees, and doesn't think it is within the spirit and intent of the ordinance. He said that there is nothing particularly special about this property that makes it uniquely suited to a convenience store/gas station. He said he can't support it in good conscience given the recent rezoning by the City.

Mr. Currier said that he appreciates Mr. Minkarah's take on this. He said that as soon as you get off Amherst Street going towards the airport, on all those streets, a lot of what was the AI zone is well-respected. He said that the site fronts on Amherst Street, with Harvest Bread and much more retail uses, not industrial or manufacturing uses. He said that the use would be fronting on Amherst Street. He said that there are retail uses like this all up and down Amherst Street, and is ok with them not meeting the 75%. He said that Mr. Tymula covered all the drainage issues, and did not think there would be more runoff. He said he is in support, as it fronts on Amherst Street and it is surrounded by retail.

Mrs. MacKay said that she is struggling with this, and sees both sides. She said that at this location, there is so much industry.

Mr. Boucher said that Mr. Currier's statements make sense, and at this point he said that it is fronting Amherst Street, and could support it for that reason.

Mr. Shaw said he still comes back to the idea that the opportunity was there to reflect in the rezoning that intent to allow for more of the commercial highway or general business type of use in this part of the AI zone. He said that it does have appeal fronting Amherst Street, it is very commercial. He said that he doesn't want to overstep in that the Board could be acting like they're rezoning the property. He said it is not appropriate for the Board to question the thought and decision-making that went along with the rezoning. He said that the rezoning was done because there were so many use variances from the AI zone. He said that he doesn't feel that the criteria is met on simply noting that the district across from Amherst Street is zoned differently, and would allow this, and this zone does not. He said he cannot support it.

MOTION by Mr. Currier to approve the application on behalf of the applicant as advertised.

Mr. Currier stated that the use variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, which is that there is heavy retail on other fronting neighboring properties on Amherst Street, and the long-standing restaurant has gone out of business and there is not another reasonably feasible method for the applicant to pursue.

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

Mr. Currier stated that the request will not adversely affect the property values of surrounding parcels, he said that the Board heard testimony counter to that, but a viable business here would help surrounding parcels.

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

SECONDED by Mr. Boucher.

MOTION CARRIED 3-2 PER VERBAL ROLL CALL OF THE MEMBERS, WITH Mr. Shaw and Mr. Lionel against Motion.

***** 5-Minute Break *****

4. B & A Construction, LLC, (Owner) Joshua & Caleb Becker (Applicants) 32 Groton Road (Sheet D Lot 265) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#90) to remove three non-conforming structures and construct a new barn/workshop/office for a carpentry shop with an accessory residential unit on second floor. R40 Zone, Ward 5.

Voting on this case:

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

Joshua Becker, 341 Silver Lake Road, Hollis, NH. Mr. Becker

said that he is in the room with his brother Caleb Becker. Mr. Becker said their friend Corey Holt was moving, and offered the opportunity to purchase this property. He said that they discussed this with Mrs. Holt, Corey's mother, and asked her if she would be willing to sell them her property as well.

Mr. Becker said that the lot is being used by a construction company and landscaping provider, Longo's Landscaping and Construction. He said it had been used for fifty years as a sawmill, and the past ten years, it has been leased out to Longo's, where he has heavy equipment, sells landscaping materials, has hardscapes earthwork. He said that he wants to take down the three existing buildings on site, as they are not suitable for his small carpentry business.

Mr. Becker said that the property is not zoned for commercial, it is zoned R40 residential. He said it is important for them to highlight the nature of the area around the site, as this property has been in the Terrell and Holt families for many generations, used for agricultural, and there was a barn on this property in the past, then the sawmill, and then later it was Longo's.

Mr. Becker said that they hired an architect to highlight the natural area that is around here, and bring out the spirit of the area. He said that they want it to look like it's still a farming community in the area, which is why the barn would look like it is from the proposed drawing.

Mr. Becker said that the property now has bobcats, excavators, heavy trucks in and out, and they're about ready to ask the tenant to leave to begin removing the buildings and renovate the property. He said that they will really be benefitting the neighborhood.

SPEAKING IN FAVOR:

Pat Holt, 18 Groton Road, Nashua, NH. Mrs. MacKay said that although they can see her, the Board cannot hear what she has to say, and she can hear the Board. She motioned that she is in favor with a thumbs-up.

Mr. Becker said that Mrs. Holt is a great person and cares deeply about the property. He said that he has worked hard with her to come up with a building façade as well as a use of the

property that she supports.

Mrs. Holt motioned that she is favorable to the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, AND BEGINNING OF PUBLIC MEETING.

Board members all expressed support for the application.

MOTION by Mr. Lionel to approve the use variance on behalf of the applicant as advertised. Mr. Lionel stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, it has been used for a landscaping business for many years, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the use variance.

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

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

Mr. Lionel stated that the request is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

5. Southland Corporation (Owner) 7-Eleven Inc. (Applicant) 367 Amherst Street (Sheet G Lot 652) requesting the following variances: 1) from Land Use Code Section 190-108 (C)(1) to exceed maximum wall sign area, 90 sq.ft permitted - 122.3 sq.ft proposed; and, 2) from Land Use Code Section 190-108 (E)(2) to exceed maximum number of wall signs, 3 permitted - 4 proposed - to remove and replace signage at existing convenience store/gas station, GB Zone, Ward 2.

Voting on this case:

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

Erick Todd, C&S Signs, 59 Sargent Road, Manchester, NH. Mr. Todd said that he is the sign installer, and is alone. He said it is an existing 7-Eleven location with has existing signage, and it had a variance before, and all they are doing is changing out the branding. He said that the signs will all be new, and the square footage that is there is what is being asked to maintain.

Mr. Todd said that they will not be adding any size to what is there now. He said that the package indicates the existing and proposed signs, just showing that it is a change in graphics.

Mr. Currier asked what the four wall signs are.

Mr. Todd said that they are proposing 112.3 square feet total, which is 22.3 square feet additional size. He said that they are allowed 90 square feet.

Mr. Falk said that the sign in the front is 85.3 square feet, the canopy signs are 9 square feet each, so that is 27 square feet, so 85.3 plus 27 is the 112.3 square feet, the building frontage is 60 feet, so they are allowed a total of 90 square feet. He said that they are asking for 22.3 square feet over the 90 square feet, so it should be the 112.3 square feet.

Mr. Todd said that the ground sign is going down from 119 square feet to 115 square feet, same height.

Mr. Currier asked what the current size for signs is at the site.

Mr. Falk said he is not sure, but believes that they would go to the same size as existing, but all the signs would be removed and replaced.

Mr. Todd said that because the signs that are there are larger than what is allowed, and they are removing all of them, that is why they are applying for the variance.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING - BEGINNING OF PUBLIC MEETING.

Board members all expressed support for the application.

MOTION by Mr. Boucher to approve the use variance on behalf of the applicant 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 use variance, the request is simply a sign replacement with no increase in size, and is an existing business that has been there for quite some 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 CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL OF THE MEMBERS.

REHEARING REQUESTS:

1. Daniel L. & Jane S. Richardson, Rev. Tr. (Owners) 70 Berkeley Street (Sheet 48 Lot 61) requesting the following variances from Land Use Code Section 190-31; 1) to encroach up to 5 feet into the 6 foot required side yard setback (western property line); and, 2) to encroach up to 5 feet into the 6 foot required side yard setback (northern

property line) - both requests to replace a nonconforming 12'x20' detached garage on a corner lot with a 24'x24' detached two-car garage with storage above. RA Zone, Ward 3.

Note: The Board denied Variance #1 and approved Variance #2, at the 4-28-2020 Regular Meeting, and the Rehearing Request is only for Variance #1.

Mrs. MacKay asked if there was any procedural error, which includes improper notice, denying someone the right to be heard, etc.

Mrs. MacKay said that in reading the documentation, the Board acknowledges that there was a procedural error, that when the Board had the motion to approve, and it failed, and immediately thereafter there should have been a second motion to deny, because the first motion did not pass.

Mr. Minkarah said that he does not see that a second motion was necessary, the motion failed, and there didn't need to be a second motion. He said the first motion failed, and that was that, and does not see it as a procedural error.

Mr. Kanakis agreed with Mr. Minkarah. He said that even if a second motion were to be required, it seems like maybe it would be a harmless error, as the only other avenue would be a motion for denial.

Mr. Currier said that he thought the case was rested after the motion did not pass. He said that there were two positives and three negatives, but did not think the Board had to do that. He said that he thought the matter was adjudicated properly.

Mr. Shaw agreed, he said that by the Board not passing, that the Board sufficiently addressed the variance request.

Mr. Boucher said he thought that there was a procedural error, he said he was the one that made the motion, and it was for a positive outcome and that didn't happen. He said he feels that it is incomplete in his mind because there wasn't a motion in majority made for the specific outcome. He said that he thinks a motion should have been made by a majority of the folks that were going to deny the motion. He said that the outcome would be the same, but that should have been done.

Mr. Lionel said that he does not think that there was a procedural error, and hasn't seen anything in the rules and regulations that says that we have to come up with a motion that passes, the rules are very clear that a motion either passes or fails and it has to pass with at least three members voting in favor for a variance. He said that the motion fails, and they didn't get the variance.

Mrs. MacKay said that she was under the impression that if a motion fails, you do a different motion in the opposite direction.

Mr. Lionel said that it is his experience that when we have an appeal of this nature, the attorneys always make several claims, many of which are not necessarily substantiated in the laws. He said he's never seen any language in his studies that indicate if a motion fails, you have to make another one to pass. He said that the decision was made clear and properly.

Mr. Shaw said that perhaps if the Board started with a motion for denial that failed, then it would be incumbent upon the Board to then consider a motion for approval. He said that he believes in the case where an approval was pursued first, and does not succeed, there is no need for a requirement for the reverse. He said that he doesn't see any real need for the second motion, it would remove any uncertainty, but all that is required for three members to vote in the affirmative for an approval motion, that is all that has to be dealt with, and if the threshold is not met, the variance is not approved.

Mr. Currier said that the training the Board has had indicates that three or more affirmative votes are necessary, and that is it, end of story. He said that in the past, when there were less than five members voting, four or three, some members felt at some time that the Board had to take that extra step, and does not recall if we ever got any expert opinion one way or another, but his recollection is that when there are less than five voting members, but typically there are five, with three affirmative, so either you get three or you don't. He said he didn't think that there was a procedural error here.

Mr. Falk said that he agrees with the majority of what the members have said, and the motion was made to support this, it was seconded, but there was no third vote, so automatically, the

motion fails. The decision was made to not approve it, which means that it is denied, and the other variance was approved at the other setback. He said that any other vote would result in the same outcome, which is a denial. He said that if the Board votes on this, it may be a 4-1 vote to deny item number one.

Mrs. MacKay asked if there was a procedural error.

Mr. Currier said no.

Mr. Lionel said no.

Mr. Shaw said no.

Mr. Boucher said yes.

Mrs. MacKay said no.

Mrs. MacKay asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law for the special exception or variance.

Mr. Minkarah said he does not.

Mr. Boucher said no.

Mr. Shaw said no.

Mr. Currier said no.

Mr. Kanakis said no.

Mr. Lionel said no.

Mrs. MacKay said no.

Mrs. MacKay asked if the request for rehearing contain any new information not presented or available to the Board at the original Public Hearing.

Mr. Lionel said nothing relevant.

Mr. Currier said he saw no new information. He said that there was discussion about the abutters view, and they stated that it was going to be a larger structure, close to the property line.

He said that he does not believe that there is any new information.

Mr. Boucher said no.

Mr. Shaw said no.

Mrs. MacKay said no.

Mr. Kanakis said that he sees no new information.

Mr. Minkarah said no.

Ms. Booras said no.

Mrs. MacKay asked the Board if there is anything that would/could cause the Board to make a different decision.

Mr. Lionel said no.

Mr. Shaw said no.

Mr. Boucher said no.

Mr. Currier said no.

Mrs. MacKay said no.

Mr. Minkarah said no.

Mr. Kanakis said no.

Ms. Booras said no.

MOTION by Mrs. MacKay to deny the rehearing request based upon point one, the Board finds no procedural error, and point two, the Board finds no is the answer to that point. She said point three, the Board does not contain any new information. She said that in point four, the Board does not find anything that would cause a different decision.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0 TO DENY THE REHEARING REQUEST PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

MINUTES:

4-28-2020:

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

SECONDED by Mr. Lionel.

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

5-26-2020:

Mr. Falk said that his connection was poor, and couldn't hear a lot of the testimony, that is why "poor connection" was indicated in the minutes. He said he will try to get a tape and fill in some of the gaps.

Board members all agreed to allow Mr. Falk to try to fill in the missing gaps in the minutes.

MOTION by Mrs. MacKay to Table the Minutes to the July 14, 2020 meeting.

SECONDED by Mr. Lionel.

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

REGIONAL IMPACT:

Ms. Poirier put the June 23, 2020 Agenda up on the screen.

The Board did not see any cases of Regional Impact.

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 9:52 p.m.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

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Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing