

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
July 28, 2020

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

Members in attendance were as follows, via verbal Roll Call from Mr. Falk.

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

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

Mrs. MacKay explained the Board's procedures, stating that the Board is operating under the Governor's Executive Order via WebEx. Mrs. MacKay explained how public access is available by telephone, and additional access means by video or other electronic access, as well as the meeting being streamed through the City's website on Nashua's Community Link and also on Channel 16 on Comcast. Mrs. MacKay including the points of law required for applicants to address relative to variances and special exceptions. Mrs. MacKay explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws.

Mr. Falk asked for a Roll Call. All members present, along with alternates Mr. Minkarah and Mr. Kanakis.

- 1. Andre L. Roy (Owner) 17 Orlando Street (Sheet 130 Lot 25) requesting variance from Land Use Code Section 190-192 (C) to repave and replace existing driveway, 24 feet permitted, two driveways at 9' and 24' existing - the 24' driveway proposed at 26' for a total width of 35 feet. RB Zone, Ward 4.**

Mr. Roy not in attendance yet, the Board decided to go to Case #2 until he arrives.

2. **Mark P. & Kelli G. Wholey (Owners) 9 Deerhaven Drive (Sheet G Lot 324) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) for an attached accessory (in-law) dwelling unit proposed above existing garage. R18 Zone, Ward 3.**

Voting on this case:

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

Mark Wholey, 9 Deerfield Drive, Nashua, NH. Mr. Wholey said that he is seeking approval for an attached accessory dwelling unit. He said that their house is approximately 2,200 sq.ft, with five bedrooms and an attached two-car garage. He said that they want to construct a single-bedroom living space, with an open concept living room and kitchen area, and a bath and closet.

Mr. Wholey said that the use will not be contrary to the public interest, as it will be 748 square feet in size. He said that Mr. Falk came up with 761 square feet, slightly above the 750 square feet that is allowed. He said that there will not be a front door facing the street, and the style will be consistent with a majority of the homes in the neighborhood. He said that there will also be no changes to the footprint or setback changes. He said that there will not be another curb-cut requested, and there will not be a need for additional parking. He said that they will provide the covenant for filing with the Hillsborough County Registry of Deeds. He said that there will not be a separation of ownership, and it will not be a manufactured home. He said that he and his wife will remain as the primary owners of the property. He said that there will be an interior door between the main house and the accessory dwelling unit.

Mr. Lionel said that the Board actually received a variance application for the ADU, and a variance for the slight overage for the square footage. He asked if the Board is good to proceed with this.

Mr. Falk said that the special exception for the use is ok.

At this point, Mr. Falk lost connection.

Mr. Lionel asked if there will be an interior door between the units.

Mr. Wholey said that the stairway on the back portion of the garage will be added, and is connected to their kitchen, and there will be a doorway at the top, and at the landing in the garage.

Mr. Minkarah said that the agenda does say special exception.

Mr. Wholey said that they believe its 748 square feet, and Mr. Falk came up with 761 square feet. He said that they understood to file for the special exception for the use, and he calculated the square footage at 761, and said that the minor difference of 11 square feet.

Mr. Falk said that his connection issues seem to be solved. He said that the special exception is fine. He said that he received an email from his designer, and it said 748 square feet, and staff said that they didn't need a variance for the size. He said that his calculation arrived at 761 square feet, but said that he is not a designer or architect, it was just a quick measurement. He said that staff believed that they'd meet the size, and the only thing needed was the special exception for the use. He said that even if they take off 3 inches from the closet, they'd meet the size.

Mr. Lionel asked if it is an issue that the special exception was filled out on a variance application.

Ms. Poirier said that the owner outlined all the points of law in both.

Mr. Falk said that he believed that staff had a special exception application. He said that it was advertised correctly as a special exception, and Mr. Wholey went over the nine special points, and the yard sign, advertisement and abutter notifications were all for a special exception, and he should be fine to go forward. He said that as far as the small square footage overage, it is very minor, and it will be all new construction, and staff is confident that they'd meet the size.

Mr. Wholey said that if they have to expand the walk-in closet by a few inches, it won't be a problem.

Mr. Falk said that staff believed that the size was so close, and with a very minor adjustment, the variance wouldn't be necessary. He said that paperwork can be adjusted later if necessary, and the big thing is that the advertisement was correct; there is no mystery with what is being asked for.

**SPEAKING IN FAVOR:**

Ben Kershaw, 7 Deerhaven Drive, Nashua, NH. Mrs. MacKay read Mr. Kershaw's email speaking in support for the request.

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

No one.

**END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:**

Mr. Boucher said that he is in favor of the request, and there are other homes in the neighborhood with accessory dwelling units, so it will conform, and is in support.

Mr. Lionel said that he is generally in support, but is unsure of the interior door and whether or not it qualifies, but will support the application.

Mr. Shaw said that he is in support, and all the criteria are met.

Mr. Currier said he is in support, and appreciates that they've submitted a professionally planned drawing.

Mr. Minkarah said he agrees, and is in support.

Mr. Kanakis said he is in support.

Mrs. MacKay said that she is in support.

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

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

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

Mr. Boucher said that all the nine special regulations are met per testimony of the owner.

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

**SECONDED** by Mr. Shaw.

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

2. Andre L. Roy (Owner) 17 Orlando Street (Sheet 130 Lot 25) requesting variance from Land Use Code Section 190-192 (C) to repave and replace existing driveway, 24 feet permitted, two driveways at 9' and 24' existing - the 24' driveway proposed at 26' for a total width of 35 feet. RB Zone, Ward 4.

Voting on this case:

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

Andre Roy, 17 Orlando Street, Nashua, NH. Mr. Roy said that he did a lot of repair, and had to cut cedar trees, and now he has 26 feet. He said that he thinks it will look ok for 26 feet. He said the walkway is 9 feet wide. He said that he removed some maple trees, and the old curved wall doesn't exist anymore, and that is why he gained two feet from the original pavement.

Ms. Poirier brought up the property on the screen.

Mr. Roy said he doesn't have any more trees that could fall, and cutting down the cedars gained two feet to the driveway. He said that the walkway is 9 feet wide now, and asked how wide it

can be.

Mrs. MacKay asked if the walkway is a walkway and not a driveway.

Mr. Falk said that staff was under the impression that the 9 foot wide walkway is actually a parking space, and there is a picture in the package that shows a vehicle parked in it. He said that people generally don't park in a walkway.

Mrs. MacKay asked if the intent is to use this as solely a walkway and no longer park a vehicle there.

Mr. Roy said yes, and was told it's too wide, it was built twenty years ago, and said he would reduce it and plant flowers or grass on the side.

Mr. Falk said that staff had it as a driveway.

Mr. Boucher asked to confirm if Mr. Roy wants the 26 foot wide driveway, and to have the 9 foot walkway reduced in size so it is only a walkway.

Mr. Roy agreed.

**SPEAKING IN FAVOR:**

No one.

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

No one.

**END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:**

Mr. Minkarah said that the request is pretty minor going from 24 to 26 feet, as long as the walkway is no longer used for parking.

Mr. Currier said that he is in support of the 26 foot wide driveway.

Mr. Boucher said that it is a minor incursion, and is in support.

Mr. Lionel said he is in support of the application, with the walkway reduced.

Mr. Shaw said he is in support.

Mr. Kanakis said that he is in support.

Mrs. MacKay said that she is in support.

Mr. Currier asked what a walkway width standard is.

Mr. Falk said that it wouldn't be a public walkway, it is all on private property, generally four or five feet is what people use, which is wide enough for a wheelchair, he said that a five foot walkway is generally fine.

**MOTION** by Mr. Boucher to approve the application 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, the applicant spoke about the removal of trees and work that he had done that had left a two-foot wide strip that he'd like to pave and find that 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. 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 to the owner will be served.

Mr. Boucher said that the Board is adding a special condition to the application that the 9-foot wide walkway will be reduced to a maximum of five feet in total width.

**SECONDED** by Mr. Shaw.

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

3. Oscar L. Annis & Charles R. Cobb (Owners) 58 Marie Avenue (Sheet 138 Lot 372) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 5 feet into the 10 foot required left side yard setback to construct a 12'x22' attached garage addition. R9 Zone, Ward 1.

Voting on this case:

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

Oscar Annis, 58 Marie Avenue, Nashua, NH. Mr. Annis said that they'd like to extend the one-stall garage to accommodate a second car. He said that the addition would come out 12 feet. He said that there would be a five foot variance requirement into the setback.

Mr. Annis said that it wouldn't change the driveway, or the grade, the extension would carry through with the same roofline. He said that the request is pretty straight-forward.

Steve Torla, 27 Roy Street, Nashua, Gate City Remodeling. Mr. Torla said that they'd like to protect both vehicles from the snow, as one of the cars was damaged last winter.

**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. 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, the Board spoke about the fact that the owner wants a two-car garage, which is

typical for the neighborhood, and there is no other place for them to put it, 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.

Mr. Lionel said that it is not contrary to the public interest, and substantial justice to the owner will be served.

**SECONDED** by Mr. Shaw.

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

4. Frank E. & Jane L. Andrews Rev. Tr. (Owners) 19 Legacy Drive (Sheet B Lot 3154) requesting the following variances from Land Use Code Section 190-31: 1) to encroach 2 feet into the 6 foot required right side yard setback; and, 2) to encroach 4 feet into the 6 foot required rear yard setback -to install a 12'x18' shed. R18 Zone, Ward 9.

Voting on this case:

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

Frank Andrews, 19 Legacy Drive, Nashua, NH. Mr. Andrews said that they're requesting approval to put up a Reeds Ferry shed, it is supposed to meet a 6-foot setback to the rear and side yard setback. He said that the request is for the shed to be four feet from the side property line, which abuts Lot 3153, owned by the Curtis family. He said that they are not opposed to the shed. He said that he is also requesting that the shed be 2 feet from the rear property line, which abuts Lot 3152 which is designated as open space.

Mr. Andrews said that the variance will not be contrary to the

public interest, as it does not alter the essential rights of any of the abutters or the neighborhood. He said it will not impact public safety, and in the six years he's lived there, has never seen anyone in the open space in the back. He said that with the variance, it will allow him better usage of the back yard. He said that it will not diminish anyone's property values, actually it should enhance property values and the enjoyment of the property, and it will match the color and shingles of the house, as well as the shutters.

**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. Shaw to approve the application on behalf of the applicant as advertised, with both requests considered collectively. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the lot is a fairly small lot, and it abuts a large open space in the back, so the impact of the placement of the shed will not impact the open space area, and the encroachment on the side is in support of the abutter, and will allow the owner to enjoy their rear yard, 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. 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, actually, it should show an improvement to the property values.

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

**SECONDED** by Mr. Boucher.

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

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

Mr. Shaw left the meeting at 8:00 p.m.

5. Eleanor M. Macdougall Family Trust (Owner) 1 Long Avenue (Sheet E Lot 82) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 22 feet existing, 24 feet permitted - 41 feet proposed. RA Zone, Ward 4.

Voting on this case:

Mariellen MacKay, Chair  
Steve Lionel, Vice Chair  
Jack Currier, Clerk  
JP Boucher  
Jay Minkarah

Eleanor Macdougall, 1 Long Avenue, Nashua, NH. Mrs. Macdougall said that they bought the house in 1984, and at that time, there were two cement driveway spaces, which was ok at that point, and a few years ago, they had a contractor work on the walkways, and they recommended a crushed asphalt driveway, which turned out to be a big mistake. She said that she would like to have a paved driveway but would like it a little bit wider to park all the cars in the driveway, and not in the street. She said that the driveway will not upset the neighborhood and it will cause no harm to anyone, and will be more convenient and will look nicer.

Mr. Lionel said that the application is for 43 feet, almost doubling the width of the driveway. He asked why she wants it so wide.

Mrs. Macdougall said that after all the broken up asphalt gravel was put down, it was enough for three cars, she said that they want it for four cars.

Mr. Currier said that the application is for 41 feet but the sketch is for 43 feet.

Mrs. Macdougall said that she thinks it may be a typo, because the application and sketch is for 43 feet.

Mr. Falk said it may be a typo, as the plan and drawing shows 43 feet, but it was advertised at 41 feet.

Mr. Currier asked if Long Avenue dead ends at her house.

Mrs. Macdougall said that it does, Gurney's Auto is at the end, and there is a gate in case the Fire Department needs to get through.

**SPEAKING IN FAVOR:**

No one.

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

No one.

**END OF PUBLIC HEARING, AND BEGINNING OF PUBLIC MEETING:**

Mr. Boucher asked the difference between the 43 feet and 41 feet advertisement.

Mr. Falk said it was advertised at 41 feet. He said their application had 43 feet, and for some reason it was miss-advertised, but they intended it to be 43 feet.

Mr. Boucher said he is in favor, there were always three spaces there, it's on a dead-end street, and the owners park on the street, and getting cars off the street would be a good thing. He said that the driveway cannot go two cars deep, so the driveway makes sense at this location.

Mr. Minkarah said that the exceedance over the 24 foot limit is so significant. He said he's only inclined to support the application due to the fact that it's abutting a railroad right-of-way and it's a dead end street. He said that there is no neighborhood objection, also, it is only deep enough for one car, and it's a triangular shaped lot.

Mr. Lionel said that the excessive width, compared to what the ordinance allows is a lot, but there are these extenuating

circumstances, and the house doesn't have a garage. He said that given the location and the shape of the lot, he said he would go along with it.

Mr. Currier said that since it's a dead-end street and a triangular shaped lot, that helps. He said he's stuck on the advertisement, 41 feet, and said it would be problematic to grant anything greater than that. He said that 41 can fit four cars, and wouldn't support 43 feet.

Mr. Kanakis said that it is a pretty unique property, for all the reasons previously mentioned.

Mrs. MacKay said that she would be uncomfortable at 43 feet, and all the previous comments resonate.

Mr. Boucher said he'd make a motion for 41 feet, but not for 43 feet.

**MOTION** by Mr. Boucher to approve the application 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, which are the odd shape of the lot, the proximity of the house to the street, and that it is on a dead-end street, and the direct neighbor across the street is a residence and the business has an access for emergency purposes only, 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. 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 to the owner will be served.

**SECONDED** by Mr. Minkarah.

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

6. Natalie & Marc Blattenberger (Owners) 105 Hills Ferry Road (Sheet 117 Lot 253) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, requesting to repave one 12 foot wide driveway on Hills Ferry Road and one 18 foot wide driveway on Hillside Drive for a total width of 30 feet. RA Zone, Ward 3.

Voting on this case:

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

Natalie Blattenberger, 105 Hills Ferry Road, Nashua, NH. Mrs. Blattenberger said that they'd like to repair and replace their retaining walls and driveways. She said that they bought the house in 2015 and at that time, they had two established driveways. She said that in 2005 the previous owner made an "L" shaped addition and added the other driveway towards the back of the house, and that is when driveway "B" was put in.

Mrs. Blattenberger said that for driveway "A", there are a lot of bumps and cracks, so that driveway would be removed and put a new one down, and there are two retaining walls which would be replaced, they're made of timber ties and are rotting. She said that the left wall is missing the top two layers, and the remaining ones are all hollow now, so they are not sturdy.

Mrs. Blattenberger said that driveway "B" is the larger one, and for that one, the plan is to just put a topcoat on it, and also to replace the retaining walls around that driveway too. She said that the timber ties there are leaning into the driveway, and on the right side there is no retaining wall, so the grass has eroded into the driveway. She said that it will be stronger, it will look better, to have the retaining walls fixed and the driveways as well.

**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 application 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, the Board stated that the driveways have pre-existed the current owner, and have been in place for quite some time, 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. 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 to the owner will be served.

**SECONDED** by Mr. Lionel.

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

7. Grace Lutheran Church (Owner) Signs Now (Applicant) 130 Spit Brook Road (Sheet B Lot 2428) requesting the following: 1) A determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the variance for an electronic changing message [EMC] sign that was denied by the ZBA on 4-28-2020; and, if so: 2) variance from Land Use Code Section 190-101, Table 101-7 (K) to allow manually changeable copy on ground sign. PI/R18 Zone, Ward 8.

Voting on this case:

Mariellen MacKay, Chair  
Steve Lionel, Vice Chair  
Jack Currier, Clerk  
JP Boucher  
Jay Minkarah

Mr. Falk stated that Grace Lutheran Church applied for an Electronic Message Center sign back in April, which was not supported by the Board. The current request is for manually changeable copy. He said that in staff's belief, the applicant should go through the Fisher v. Dover determination so that the Board can determine if the request is substantially similar or not.

Mrs. MacKay said that initially, the applicant is only to discuss the Fisher v. Dover portion first, not the variance.

Charles Raz, 24 Diamondback Avenue, Nashua, NH; and Kent Heubner, 16 Parkhurst Drive, Hudson, NH. Mr. Raz said that they believe the differences are in four separate areas between an electronic and manually changeable sign. He said that they have the same kind of appearance, but the manually changing one would appear in daylight, it would be non-illuminated, and is very different from an electronic message center, which is illuminated during the daytime, and has a different appearance from the rest of the portion of the ground sign.

Mr. Raz said that the second difference is that the frequency of message changes is quite different, as an electronic changing message center can be changed every few seconds, which cannot be done with a manually changing sign, as it takes several minutes just to change the message on one side, and it also takes the efforts of someone to go out and make the changes.

Mr. Raz said that the third difference is the daytime lighting. He said that an EMC is on during the daytime, where the manually changing sign has reflecting sunlight like the rest of the sign. He said that during the day, an EMC has the bright led lights in the message, where it would otherwise be black.

Mr. Raz said that the fourth difference is that the operational brightness and the look and feel of the electronic message center. He said that in contrast, the manually changing copy has more of a neighborhood look and feel because it goes along with the rest of the sign, it is much more subdued than an EMC. He

said that a manually changing copy sign is allowed in the PI Zone, but an EMC is not. He said that with these points, they believe that they've met the Fisher v. Dover criteria.

The Board members all stated that the manually changing sign is materially different from an EMC, as there are enough differences that the applicant went through to support hearing the variance request.

**MOTION** by Mr. Currier that as the applicant and Board discussed, the manually changing sign is materially different than an EMC, and since it is substantially different, the Board believes it meets the Fisher v. Dover determination and should hear the variance application.

**SECONDED** by Mr. Lionel.

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

Mrs. MacKay said that at this time, the Board will move on to the variance application on behalf of the owner and applicant.

Kent Heubner, 16 Parkhurst Drive, Hudson, NH. Mr. Heubner said that the variance is not contrary to the public interest, in that it provides individuals with an up-to-date message of things that are going on at the church, with the time and date of meetings and events, and for services that are free to the public such as the food pantry. He said that the variance meets the spirit and intent of the ordinance, and is in the public interest. He said that Spit Brook Road is a busy road, with other commercial businesses nearby.

Mr. Heubner said that a majority of their property is zoned PI, the sign would be in the R18 zone, which happens to be the access driveway into the lot. He said that if the sign were to be placed in the PI zoned portion of the property, the sign would have to be elevated quite high, as the roadway is significantly higher than the property at that point.

Mr. Heubner said that it would be an injustice done to them by not supporting the request, as the way the property is split between the two zones, where a majority of the property is in the PI zone, but the residential zoned portion is where the access driveway is located. He said that the proposed sign

would be consistent with the neighborhood appeal, as it is more commercial than residential.

Mr. Raz said that the property is split zoned, and a lot of the property is in the PI zone, and to have the sign in the residential zoned portion is not a hardship, but putting it somewhere else would be a hardship due to the split zone of the property and the sloping geography, also, the location of the driveway is safer where it is in the residential zone as opposed to the PI zone.

**SPEAKING IN FAVOR:**

John Norris, 349 Brook Village Road, Nashua, NH. Mrs. MacKay read Mr. Norris's recommendation for approval and support into the record.

Louise Desclos, 361 Main Dunstable Road, Nashua, NH. Mr. Lionel read Ms. Desclos's letter of support into the record. She said it will be safer and more readily readable than the previous sign.

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

No one.

**END OF PUBLIC HEARING AND BEGINNING OF PUBLIC MEETING:**

Mr. Minkarah said that he supports the application. He said that a manually changeable copy is very common for churches and other institutional uses such as schools, where there are multiple activities going on. He said that since the lot is split-zoned, and that a manually changeable sign is permitted in the PI portion, it just happens that the entrance to the property is located in the residentially zoned portion, so that is a special condition. He said that Spit Brook Road is heavily travelled as well.

Mr. Currier said he is in support for the same reasons. He said that right up the hill, the elementary school has a manually changing sign. He said that the Board has approved signs like this, such as for the church by the landfill on Rte. 111.

Mr. Lionel said that he is in favor, and a manually changing sign like this is typically what we see for churches, and it

would not have any of the detrimental issues that we would have seen for an EMC.

Mr. Boucher said that he is in favor.

Mr. Kanakis said that he is also in favor. He asked about the easement for the sign in the right-of-way.

Mr. Falk said that the applicant will have to finalize everything with the Department of Public Works to get any and all approvals for the sign in the right-of-way. He said that he believes that the applicant has already done this.

Mrs. MacKay said that she is in favor.

**MOTION** by Mr. Lionel to approve the application on behalf of the applicant as advertised. Mr. Lionel stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance, he said that the Board has discussed different types of signs, and initially they applied for an EMC which was denied, but a manually changeable sign, the Board believes is much more in line with the neighborhood, and typical for churches.

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.

Mr. Lionel said that it is not contrary to the public interest, and substantial justice to the owner will be served.

**SECONDED** by Mr. Minkarah.

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

8. Lawrence Berger (Owner) 5 Scotia Way (Sheet C Lot 1736) requesting the following variances: 1) from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted, 74% proposed, to construct a detached 35'x35'

one-story garage in rear yard; and, 2) from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, 19 feet existing - an additional 10 foot wide driveway proposed on right side of lot, for a total width of 29 feet. R9 Zone, Ward 5.

Voting on this case:

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

Lawrence Berger, 5 Scotia Way, Nashua, NH. Mr. Berger said that he is seeking approval for a garage in the back corner of his property, as he has a work van, a pick-up truck, a 30-foot camper all in the front driveway, as well as three cars. He said that he had a variance a few years ago for a small shed on the left side of the house which will be taken down if the variance is approved. He said that he's talked with a few surrounding neighbors, one of which is in favor, as it directly affects him because the driveway would be abutting his property line.

Mr. Berger said that the garage would have 16 feet off the back and 12 feet from the right side, so it would not encroach into any setbacks.

Mr. Lionel said that there is an existing two-car garage, and asked why a rather enormous building is proposed.

Mr. Berger said that he is a contractor with two large vehicles, one is a work van that is 12 feet tall, and has a 30-foot camper, and his niece stays with them. He said that his garage doesn't fit two cars, and said that he doesn't like things out front, and all the vehicles could fit in the back. He said that all the surrounding trees cover the back yard in the summer, and can't even see the neighbor's houses in the summer months. He said it will protect his investments with the work and personal vehicles.

Mr. Lionel said that he didn't see any drawings about the style or height of the garage.

Mr. Berger said it will be one-story, the walls will be 12 feet high, and is waiting on the truss design, which he believes will be 8-10 feet, it's just a standard truss. He said it won't look out of style, it will be a barn-style garage to match his colonial house.

Mr. Currier asked what the topography is in the back yard, flat, or sloping. He asked if the 12-foot height of the wall, with the roof trusses on top of that, what the height will be.

Mr. Berger said that the walls will be 12 feet, to fit the 11 foot tall work van, and the trusses haven't been approved yet. He said that the lot would be leveled a little bit, there is about a 3 foot difference from where the front yard is to the back, so some fill will need to be brought in.

Mr. Boucher asked what the height allowance is for a one-story garage.

Mr. Falk said that the maximum height for an accessory structure is 20 feet. He said that the building height is measured at the midpoint between the eave and the ridge, so if it is 12 feet to the top of the eave, he said he is not sure what the ridge line is, so it would be the midpoint between the eave and ridge.

Mr. Minkarah asked what the need is for the widening the driveway.

Mr. Berger said that the main driveway to the house is 19 feet, and a new 10 foot wide driveway is a normal driveway width. He said it would be an additional driveway on the other side of the lot.

Mr. Falk said that the regular driveway is 19 feet wide that goes to the garage. He said that the new driveway would be on the other side of the house, on the right side of the property, going past the house to the back yard where the garage would be, so it would be two separate driveways.

**SPEAKING IN FAVOR:**

Adam Varley, 3 Scotia Way, Nashua, NH. Mr. Varley said he would recap what was written in his email. He said that he's talked to the applicant a number of times over the years about this, he really has no width on the other side of the house, it's narrow.

He said that the new driveway that is proposed would directly abut his lot, and would run from the street to the back of his lot. He said that this proposal mostly affects his lot, and has no concerns and fully support the applicant's request for a variance, and understand the need and limitations.

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

Joe Tringali, 12 MacDonald Drive, Nashua, NH. Mr. Tringali said that Mr. Berger already has a two-car garage, and the proposed structure is 35'x35', which is rather excessive for a three-car garage. He said that he is concerned with the number of cars and commercial vehicles, this is a family residence and not a commercial zone. He said that the proposal is out of character with the neighborhood, and half of the green space in back of his lot has been wiped out for clearing the space for the garage. He said that the foundation wall is exposed, it is 10 feet high and 35 feet long, and the 74% accessory use area is nearly double the permitted level of 40%, and this is clearly not in the spirit and intent of the ordinance, and has concerns that this will negatively impact his property values.

Nick Bourgeois, 20 MacDonald Drive, Nashua, NH. Mr. Bourgeois said that in the chat box, he would let his email speak to his comments. Mrs. MacKay read his email into the record, stating that the Board should deny the request for variances, as the structure would be an eyesore in his backyard, the foundation has been poured and the backhoe is already tall. He asked how tall the garage would be, and how close would it be to his property line, if it will be used for business purposes, or personal use, as there is already an attached garage, and last, why was the foundation poured in June, but this is going for a variance now.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Berger said the structure is on the right side, about 10 feet tall, it steps down to 8, 6 and then 4, it will all be filled in and leveled, and there will be a fence surrounding the area. The garage would be 16 feet from the property line, and there will also be a retaining wall, backfilled and fenced, and it will be used for personal use, not commercial. He said he took down three trees in his own yard, one of which was fully rotten through. He said that the height requirement is 20 feet for the building itself.

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

Mr. Tringali said that he's looking at a very tall wall, he said he can't see it well now but will in the winter.

**END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:**

Mr. Boucher said he understands the applicant's proposal, and doesn't have a problem with its size. He said that the benefit may be that it adds value to the neighborhood, as it takes vehicles off the front of the property and puts them in the back. He said that it would be a one-story garage, its new construction. He said that the driveway request is an extra five feet from the 24 feet maximum, and has no problem with the overage.

Mr. Lionel said that the garage meets all the setbacks, but doesn't think it meets the character of the neighborhood. He said that the accessory use number is excessive, and the fact that applicants buy and have enormous vehicles is not a good reason to support variances. He said that 35'x35' is just too much to support.

Mr. Kanakis said that that he's leaning more towards being against this application for the reasons stated by Mr. Lionel. He said he doesn't think it meets the character of the neighborhood, and it would really stand out.

Mr. Minkarah said he is concerned about the size of the structure. He said that they already have a two-car garage, and a second garage at this size seems excessive and is not customary, and is not compatible in the neighborhood, and doesn't see the additional driveway as being compatible with the neighborhood.

Mr. Currier said that he's struggling with the application. He said that the pool is also there, and the request would be 55% if the pool wasn't there. He said that he's struggling to see how this would fit in the character of the back yards here. He said he's relying on what the neighbors say, and two say it is not in character.

Mrs. MacKay said that she understands the logic and reasoning for the garage, and the need for the garage with his vehicles.

She said that she also understands that with the Covid-19, he has an additional family member living there with a vehicle. She said that she is coming down more on the side of support.

**MOTION** by Mr. Lionel to deny the application on behalf of the applicant as advertised, with both requests considered collectively. Mr. Lionel stated that the variance is not needed to enable the applicant's proposed use of the property, there are no special conditions of the property that would require this much overage on accessory use, and extra driveway. He said that the applicant has essentially brought this on himself by obtaining multiple vehicles and storing possible work vehicles, and already has a perfectly good two-car garage and a driveway, so the Board does not believe this variance is needed.

Mr. Lionel said that the request is not within the spirit and intent of the Ordinance.

Mr. Lionel stated that the Board has testimony from neighbors that it will adversely affect the property values of surrounding parcels.

Mr. Lionel said that it is contrary to the public interest, as it is not in character with the neighborhood, and substantial justice would not be served.

**SECONDED** by Mr. Kanakis.

**MOTION CARRIED 3-2 BY VERBAL ROLL CALL OF THE VOTING MEMBERS (Mr. Boucher and Mrs. MacKay against Motion, and both vote not in favor of the denial).**

**MISCELLANEOUS:**

**MINUTES:**

None.

**REGIONAL IMPACT:**

Board members stated that they did not see any cases of Regional impact

**ADJOURNMENT:**

Zoning Board of Adjustment

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**MOTION** by Mr. Lionel to adjourn the meeting at 9:45 p.m.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.**

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing