

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
August 11, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 11, 2020 at 6:30 PM, via WebEx.

Mrs. MacKay asked Mr. Falk for a Roll Call. All members present, along with alternates Ms. Booras and Mr. Kanakis. All members stated that they are alone:

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

Mrs. MacKay asked if there are any changes to the Agenda.

Mr. Falk said that Maria Fassina, 4 Laurel Court, Case #7, has been withdrawn. He said that Case #11, Hannaford Bros. Co, has been tabled to the August 25, 2020 meeting. He said that neither of these cases will be discussed this evening.

Mrs. MacKay stated that any tabled cases cannot be discussed, nor with the Board be able to answer any questions on those cases.

- 1. Energy North Natural Gas, Inc., c/o Liberty Utilities (Owner)  
25 Van Buren Street & 38 Bridge Street (Sheet 41 & 39 Lots 11  
& 26) requesting special exception from Land Use Code Section  
190-112 to work within the 75-ft prime wetland buffer of the  
Nashua River to install an impermeable cap as required by the  
NHDES remedial action plan, including regrading, repaving and  
expanding the site's existing parking lot, and improve the  
stormwater management system. GI Zone, Ward 7. [TABLED FROM  
7-14-2020 MEETING]**

Voting on this case:

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

Steve D'Ambrosio, GZA, 22 Primrose Lane, Agawam, MA. Mr. D'Ambrosio said he is with Doug Dorn from Liberty Utilities, Joe Higgins from IESI, and Lindsey White from GZA on behalf of Liberty Utilities.

Mr. D'Ambrosio said that this is to install an impermeable cap, with regrading, repaving and improving the stormwater management at the site. He pointed out the property on the aerial photo, and described the site location. He said that the developed portion of the site is approximately 4.75 acres, and is separated from the Nashua River by a vegetated buffer strip. He said that the site was formally used by a manufactured gas plant from 1850's to the 1950's, and is used by Liberty Utilities for storage and distribution of natural gas and propane. He said it is zoned General Industrial, and includes an office building, warehouse, parking and numerous above-ground storage tanks, storage bays, pipes and infrastructure.

Mr. D'Ambrosio said that the work will take place in the northwest quadrant of the site as required by NHDES. He said that they'd like to do this in a phased approach, so the first phase would be the installation of the impermeable cap, phase two would be expansion of the existing parking, and repaving and regrading, and the third phase is a slight expansion of the parking, and more regrading and repaving. He said that the impermeable cap is heavy-duty asphalt pavement, required by DES as part of an approved remedial action to cover gas holders #1

and #2, as these are two sub-surface gas holders, and the cap will go over those. He said it is to address contamination and groundwater and surface water and potential human exposure to surface soils that may contain asbestos-containing materials and the old gas plant residuals. He said that they are also planning on improving the site's stormwater management, so there will be paving and there will be a new direction of stormwater runoff to a catch basin, which will drain through a series of pipes and drain manholes to a new subsurface infiltration system. He said that they will have three additional catch basins, to take the runoff from the proposed improvements, and run it into the subsurface infiltration system, and it will infiltrate stormwater up to the 50-year storm, and the 50-year storm water will bubble out of this catch basin, it's an at-grade detention basin. He said that the water would be captured, infiltrated and the larger storm events, it would fill this at-grade detention basin and flow over land over this rip-rap spillway, down to the wetland and Nashua River.

Lindsey White, GZA, 41 McKay Drive, Exeter, NH. Ms. White said that the wetland delineation on site was completed in 2018, although there were no wetlands located within the work area on site, the Nashua River is a prime wetland, and it's indicated by a silver-white line on the plan. She said that a portion of the work proposed is within the wetland buffer, as shown by the orange and green hash markings on the plan. She said that the area is already developed, and is comprised of compacted sand and gravel, and the proposed work will not expand the developed area of the site, and there is no vegetation removal or tree clearing required. She said that the orange hashed area is where the impermeable cap will be installed, where the compacted sand and gravel would be paved over with asphalt. She said where the green hashed area is where stormwater management improvements would be installed, such as storm drains, manholes and catch basins. She said that there will be no direct impact to the Nashua River, actually it will be beneficial to the function and value of the river.

Mr. D'Ambrosio said that on August 4<sup>th</sup>, they received a positive recommendation from the Conservation Commission.

Joe Higgins, Innovative Engineering Solutions, 37 Pearl Street, Braintree, MA. Mr. Higgins said that his firm is the environmental consultant for Liberty Utilities on the remediation for the manufactured gas plant. He said that for

the residuals, it is mostly cold tar, and cold tar related compounds, like PAH's and some VOC's like benzene. He said that there were two former gas holders that are below grade, and it is not possible to remove the contents because of high-pressure natural gas lines that cross right to the middle of both those holders. He said that the gas lines feed Nashua and other surrounding communities with natural gas supply.

Mr. Currier asked if the applicant can go over the wetland special conditions.

Mrs. MacKay read over the nine special wetland conditions, and Mr. D'Ambrosio said that they are in agreement with all of them.

Douglas Dorn, Liberty Utilities, 8 Prezak Lane, Northwood NH.  
Mr. Dorn said that he is the facilities manager for Liberty Utilities. He said that the Conservation Commission requested an easement for a walkway, and in order for Liberty Utilities to consider it, they will need something tangible from the City, such as an engineered drawing depicting what is being proposed. He said that they are certainly going to look at it, but they need to see what the City is proposing before they can commit to it.

**SPEAKING IN FAVOR:**

Mrs. MacKay read the letter of support from the Conservation Commission into the record.

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

No one.

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

Mr. Currier said that he is in full support. He said that he appreciates Liberty considering the idea of the path. He said he is good with it as presented.

Mr. Boucher said he supports the application as well, and said that it is necessary, and the application was very complete.

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

Mr. Kanakis said that he is in support of the application,

they've met all the requirements for a special exception and fulfilled the special regulations.

Mr. Shaw agrees, and they've met all the requirements of the special exception.

Mr. Lionel said that he supports the application.

Mrs. MacKay said that she agrees as well, the application was very well presented.

**MOTION** by Mr. Shaw to approve the application on behalf of the applicant as advertised. Mr. Shaw stated that the use is listed in the Table of Uses, Section 190-112.

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

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

Mr. Shaw said that all the nine special regulations are met per testimony of the applicant.

Mr. Shaw 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, if anything, it will be a net positive impact environmentally and be an improvement.

**SECONDED** by Mr. Boucher.

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

**2. Pennichuck Water Works & Pennichuck Water Works, Inc. (Owners) GSSG New Hampshire, LLC (Applicant) "L" Ferry Road, "L" Westland Avenue, "L" Stanwood Drive, "L" Appledore Street, "L" Marlboro Street, "L" Independence Avenue, "L" Claredon Street, and 206 Concord Street (Sheet 52 Lots 1, 7, 14, 23, 24, 28, 39, 49, 61, 65, 81, 82, 85, 96, 97, 104 and 118) requesting special exception from Land Use Code Section 190-24 (F)(3) to allow underground electric utility construction, relocate existing fencing, improve surface of existing gravel drive along Old Harris Road, and tree clearing within a portion of the Conservation Zone to allow for a proposed solar array**

**project (allowed use). R18 Zone, Ward 3. [TABLED FROM 7-14-2020 MEETING]**

Voting on this case:

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

Tom Zajac, Hayner Swanson, Inc, 3 Congress Street, Nashua, NH.  
Mr. Zajac said that they appeared before the Board on July 14<sup>th</sup>, and a detailed presentation was given related to the special exception application. He said at the meeting, they provided a detailed site history, land features, and information related to the proposed solar array project, and their approach to stormwater management, forest management and how they've incorporated a wildlife-friendly design and habitat improvements, as well as the special exception criteria. He said he'd like to have all the previous discussion on the record, and would be happy to revisit these items if asked.

Mrs. MacKay asked if Mr. Zajac would agree to the special exception conditions for the record.

Mr. Zajac said yes.

Mr. Zajac said to update the Board, since the last ZBA meeting, they appeared before the Conservation Commission at their July 7<sup>th</sup> meeting, as a courtesy and to introduce the project and obtain feedback, as they felt that they didn't have formal jurisdiction over the application, and staff also agreed. He said that at the July 14<sup>th</sup> ZBA meeting, some Conservation Commission members requested to table the application to provide an opportunity for the Conservation Commission to hold a site walk to attend an additional meeting with them to have them provide a formal recommendation to the Zoning Board. He said that the site walk occurred on July 30<sup>th</sup>, in which Hayner Swanson's survey team marked the area, so the Commission members could see the limits of the tree clearing and the Conservation Zone. He said that they further met on August 4<sup>th</sup> at which the Conservation Commission gave a unanimous favorable recommendation with some conditions that the stumps are to remain, Best Management Practices are to be used for invasives,

and steps taken to improve wildlife, fauna and flora. He said that they are amenable to all these stipulations.

Mr. Zajac said that they've submitted a letter of support from Don Ware, President, Pennichuck, as well as a memo from GSSG providing a framework for the Forest Management update.

Mr. Zajac said that there is a current Forest Management Plan that was approved by the Conservation Commission back in 2013, that covers all of Pennichuck's watershed properties, and this plan is a 10-year plan that is valid through 2024.

Mr. Zajac said that the use is listed in the Table of Uses, Section 190-24.

Mr. Zajac said that the proposed work in the Conservation Zone is not located along an active road, so there will be no impact to traffic.

Mr. Zajac said that the proposed use will not overload any public water, drainage or sewer or any other municipal system, as the temporary impact will not overload or adversely impact any municipal system.

Mr. Zajac said that there are no special regulations to be fulfilled for this use, and the proposed use will not be out of character or the immediate neighborhood, as it is an underground utility improvement, and the proposed construction conditions will be similar to that of the pre-construction conditions.

**SPEAKING IN FAVOR:**

No one.

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

No one.

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

Mr. Lionel said that he is glad that this went back to the Conservation Commission, and if they are satisfied, he is as well.

Mr. Kanakis said that he is in favor, and is satisfied that they

went back to the Conservation Commission.

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

Mr. Currier said that he is in favor, and it is good to do the solar project.

Mr. Shaw said that he's in favor and said that all the criteria has been met.

Mr. Boucher said that he is in favor.

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 use is listed in the Table of Uses, Section 190-24 F (3).

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

Mr. Lionel said that the use will not overload public water, drainage or sewer or other municipal systems, actually, it should improve drainage and reduce power consumption by Pennichuck Water Works.

Mr. Lionel said that all the special regulations are met per testimony of the applicant, as the Conservation Commission has offered their support, with three stipulations of approval.

Mr. Lionel 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.**

**3. Rivier University (Owner) John Parker (Applicant) 436 South Main Street (Sheet 1 Lot 1) requesting variance from Land Use Code Section 190-102 to exceed maximum wall identification sign area, 12-sqft permitted - 58-sqft proposed for the Science and Innovation Center building. R9 Zone, Ward 7. [TABLED FROM 7-14-2020 MEETING]**

Voting on this case:

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

John Parker, Rivier University, 436 South Main Street, Nashua, NH. Mr. Parker said that the University is requesting building lettering for the new 36,000 sq.ft Science and Innovation Center, and the building has just reached substantial completion and recently got a temporary Certificate of Occupancy, which expires on September 9<sup>th</sup>. He said that the plan indicates 58 square feet of signage, affixed to the front of the building facing South Main Street. He said that the signage is individual lettering, and will not have any backlighting or up lighting. He said that the lettering is consistent with the University's architecture and building lettering scheme. He said that the signage will enhance the aesthetics of the building as well as the campus.

**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. 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 Board spoke about the fact that the structure is relatively large, as it is a University building, and the square footage for the sign is in keeping with the scale of the structure, and is a reasonable use, and with the 12 square foot size limit, it would make a sign that would not be beneficial if it met the ordinance.

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 will be served.

**SECONDED** by Mr. Boucher.

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

**4. Cynthia M. Doyle (Owner) 50 Westgate Crossing (Sheet C Lot 1417) requesting variance from Land Use Code Section 190-264 to exceed maximum accessory use area, 40% permitted, 46% proposed - to erect an 18-foot round above-ground swimming pool. R9 Zone, Ward 5.**

Voting on this case:

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

Cynthia Doyle, 50 Westgate Crossing, Nashua, NH. Ms. Doyle said that her lot has conservation common land towards the rear and on the side, so there will not be any imposition on the neighbors, and the pool will not encroach into any setbacks.

Mrs. MacKay asked if there are any zoning-wise dimensional items that the Board needs to go over.

Mr. Falk said that they meet all setbacks and open space, and they are here because the house is modest in size, and there is a 440 square foot detached garage that takes up a lot of the accessory use area, and with the pool, it is slightly over the 40%

**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 that a special condition to this property is the large conservation area to the back and side.

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 lot is mostly surrounded by conservation land, and the only reason why the applicant is here is because if the garage was attached, they would not need the variance, 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. Shaw.

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

**5. Wilmar, LLC (Owner) Colbea Enterprises, LLC (Applicant) 4 Blackstone Drive (Sheet H Lot 520) requesting variance from Land Use Code Section 190-41 (B)(5) for minimum distance to drive-thru exit, minimum of 60 feet required - 8 feet proposed. GB Zone, Ward 2.**

Voting on this case:

Mariellen MacKay, Chair

Steve Lionel, Vice Chair

Jack Currier, Clerk

JP Boucher

Rob Shaw

Attorney Gerald Prunier, Prunier & Prolman P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that Chris Rice from TF Moran is available. Atty. Prunier said that the request is about the drive-through window that is on the westerly side. He said that the Code section is somewhat confusing. He said that they were initially told that it could be a waiver from the Planning Board, but were later told that this requires a variance. He said that this project has already received Planning Board approval.

Atty. Prunier said that the pick-up window has tremendous area for stacking before you get to it. He said that after the window, you would have to make a slight left-hand turn into another drive-through lane that has no other traffic except the traffic from the drive-through lane.

Atty. Prunier said that the code section for drive-through lanes seems difficult. He said that it states that where no turns are expected in the drive-through lane, and this one has one, the minimum distance should be 60 feet. He said that they have 100 feet, but there is the turn that is 8 feet in length before the turn has to be made.

Chris Rice, TF Moran, Portsmouth, NH. Mr. Rice said that the ordinance is confusing the way it is written, and they coordinated with Staff, and felt that to be on the safe side, the variance should be applied for. He said that the stacking lane from the window to where the turn off of Blackstone Drive is over 150 feet, and the distance from the centerline of the pickup window until you meet the access aisle near the fuel pumps is over 90 feet, and there is no other traffic in this area other than what comes out of the drive-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 said that it is a unique situation, there is that distance between the turn and where the pumps are, even to the parking, there is a lot of room, and is comfortable with approving the application. He said there isn't any reason to not support it.

Mr. Shaw said he is a little perplexed by this rule in this situation, but agrees that everything about this seems to be reasonable and there are no concerns with it, and functionally, it will work out.

Mr. Currier said that often times, you want that 60 foot distance because people may be walking up by a sidewalk. He said that in this location, there is just a dumpster nearby, and pedestrians won't be back there.

Mr. Lionel said that he is in support.

Ms. Booras said that she is in support.

Mr. Kanakis said that he is in support.

**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 configuration of the drive-through lane actually provides plenty of room, it's just the fact that there is a turn that causes the measured distance to seem low, 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. Boucher.

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

**6. Colleen & John Lyons DuPre (Owners) 7 Fairway Street (Sheet 1 Lot 102) requesting variance from Land Use Code Section 190-223 for minimum lot area, 40,000 sq.ft required for a proposed lot to be serviced by an individual sewage disposal system - 33,497 sq.ft proposed. R9 Zone, Ward 7.**

Voting on this case:

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

Mr. Kanakis stated that he has recused from this case.

Attorney Morgan Hollis, Gottesman & Hollis, 39 East Pearl Street, Nashua, NH. Atty. Hollis said that the property is located in an R9 zone, which has a 9,000 sq.ft minimum lot size requirement, and the request is to take one existing large lot and subdivide it into two lots. He said that the existing sewer line feeds from the current house in an easterly direction, parallel to Fairway Street, in looking at the plan, it is running out of the right-hand side of the house, and goes in a private easement over the abutting property, Sheet 1 Lot 106, owned by Peter Lyons, and it goes down to the bottom of Taylor Road where it connects to the public sewer. He said that there is no sewer line out on Fairway Street.

Atty. Hollis said that the plan presented to the Planning Board, and approved, was to have a sewer line from the new house on the new lot, approximately 33,500 sq.ft, proposed Lot 109, the new sewer line would connect from the house to be built on that property, down and tie in to the existing sewer line. He said that everything seemed to go along well, looked good, was approved and two parties sharing one sewer line is not uncommon. He said that the subdivision was approved, and then the plans fell apart.

Atty. Hollis said that after further investigation of the sewer line, and of the proposed tie-in, and the soil conditions, which

happen to be ledge, it was determined that there would be numerous problems in having it tie in to the existing sewer line, depth issues of the lines, having a proper connection, blasting issues, and ledge, led the owner to the possibility of putting in a septic system in the site, and avoiding all the issues of having to have a shared septic system.

Atty. Hollis said that they did a lot of work to see if the property was acceptable for a septic system, and designed with the existing soils out there. He said that the City engineering staff looked at it, it went through DES, and it was determined that a septic system can be built on the site without a problem. He said that the ordinance has a section that states that if you want to have an individual septic system on a lot, a 40,000 sq.ft lot is required, where 33,497 sq.ft is existing.

Atty. Hollis said that by putting a septic on a less-than allowed size is not contrary to the public interest, and it will not alter the essential character of the neighborhood, as sewer and septic are both underground, and will be non-detectable to any abutter.

Atty. Hollis stated that the proposal has been vetted with the City, the soil samples, and it still needs to be signed off with a lot with a septic system by the Health Department.

Atty. Hollis said that the proposed use will observe the spirit and intent of the ordinance. He said that the 40,000 square foot size was estimated by all the professionals to say that if you are going to have water and sewer in the more distant areas of the City, you'll need 40,000 sq. ft. of land, and R40 zone sized lots. He said that many municipalities go by soil types and not lot size. He said that 40,000 square feet is somewhat of an arbitrary number. He said that in the absence of the 6,500 sq.ft that the lot is short, they are not against the spirit of the ordinance, as the septic system can fit on the lot with good soils.

Atty. Hollis said that substantial justice would be met, as it is a reasonable alternative to the risks associated with having to blast, drill, and repair, dig up and share a sewer pipe.

Atty. Hollis said that the proposed use will not diminish the property values of surrounding parcels, they have met with all

the neighbors and none have raised any issues, and one letter was submitted by a neighbor in support.

Atty. Hollis said that for hardship, the lot is unique as far as its size and location and surrounding neighbors, as well as there is no associated city sewer line in the street. He said that if they did connect to the sewer in the street, it would have to be towards Taylor Street, which is a significant distance. He said that it is clear that there is no fair and substantial relationship with enforcing the ordinance, as the proposed septic system is reasonable with no adverse impacts to anyone, as there is enough space, and the lot size is still substantial in size over the minimum 9,000 sq.ft size.

**SPEAKING IN FAVOR:**

Peter & Gwen Lyons, 171 Taylor Street. Mr. Lionel read a letter of support into the record from the Lyons family.

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

No one.

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

Mr. Shaw stated that there should be no concern with the reduced area, and the septic system should be viable, and the applicant did try to connect, and their solution is reasonable.

Mr. Currier said that he is in agreement with Atty. Hollis, this request was thoroughly thought out, and it is as fair request, and the applicant has exhausted all means first.

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 there was a plan in place to tie into an existing sewer line that had a private easement, and it was not possible, other issues that were found, with special conditions were that there was ledge and other construction issues that would make it difficult to tie into the existing sewer line, 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. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0 BY VERBAL ROLL CALL OF THE VOTING MEMBERS.** *[Note - although he was not voting, Mr. Kanakis recused from this case]*

Mrs. MacKay said that as a reminder, Case #7 for 4 Laurel Court has been withdrawn, and Case #11 for 8 Merritt Parkway has been rescheduled to the August 25, 2020 meeting.

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

**7. Maria R. Fassina (Owner) 4 Laurel Court (Sheet E Lot 2111) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow an accessory (in-law) dwelling unit in basement of existing house. R9/PRD Zone, Ward 5.**

**CASE WITHDRAWN BY OWNER**

**8. Tige W. & Heidi A. McNulty (Owners) Golden Home Services, LLC (Applicant) 62 Nagle Street (Sheet 102 Lot 68) requesting variance from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted - 54% proposed - to construct a deck for existing 21-foot round above-ground swimming pool. RB Zone, Ward.**

Voting on this case:

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

Chris Golden, 21 Pingree Hill Road, Derry, NH. Mr. Golden said that they are requesting to build a deck for the existing pool. He said that the overall size is 9'x16', and consists of two 8'x9' decks at two different levels, the lower section is just 24" off the ground, the next level is 54" off the ground to be flush with the coping edge of the pool. He said that the purpose of the deck is to eliminate the ladder access into the pool, and to give the owners a small area to lounge by the pool. He said that the deck does not have any bearing on general public use. He said that the owners have a much larger yard than many others in the area, it appears to be a double-sized lot, so the deck does not take away from anything in the yard, there is plenty of space and it will allow the owner safer access into the pool, as they wouldn't need to climb a ladder to get in.

Tige McNulty, 62 Nagle Street, Nashua, NH. Mr. McNulty said that the deck will be a lot easier for them to gain entry into the pool, and there is plenty of room in the yard.

Heidi McNulty, 62 Nagle Street, Nashua, NH. Mrs. McNulty said that they were unaware of the Code requirement, many of their neighbors have much smaller lots with pools and decks.

**SPEAKING IN FAVOR:**

No one.

**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. 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, as discussed, one of the special conditions of the property is that it is one of the largest lots on Nagle Street, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance.

Mr. 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. 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.**

9. Jack LoBrutto (Owner) 61 Almont Street (Sheet 103 Lot 33) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 22 feet existing, 24 feet permitted - an extra 8'x21' driveway proposed on right side of existing driveway for a total width of 30 feet. RB Zone, Ward 6.

Voting on this case:

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

Jack LoBrutto, 61 Almont Street, Nashua, NH. Mr. LoBrutto said that he is requesting eight additional feet of driveway. He said that his kids moved back home and they have two cars, and he has two vehicles and there is no overnight parking on the street, so he needs the extra space. He said that it is safe, it's right in front of the deck.

**SPEAKING IN FAVOR:**

No one.

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

No one.

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

Mr. Boucher said that the house is on a narrow lot, about 70 feet, and the house is close to the property line. He said that the depth of the driveway is for one car deep, and is inclined to be in favor. He said that there are some other similar driveways nearby, and it's a reasonable request.

Mr. Shaw said that the main thing is that the driveway is not deep, so there really isn't anywhere else to go to gain even a reasonable amount of additional parking, and there hasn't been any opposition, and is inclined to support.

Mr. Kanakis said that he is in support of the application.

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

Mr. Lionel said that he will vote in favor.

Mr. Currier stated that he is struggling with this, and certainly sees the need with some children moving back home, but is inclined to not support the application.

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 variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the property itself does not really have any other place to go for additional parking, and the depth of the driveway is only one car length, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible other than an area variance.

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

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

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

**SECONDED** by Mr. Shaw.

**MOTION CARRIED 4-1 BY VERBAL ROLL CALL OF THE VOTING MEMBERS  
(Mr. Currier against Motion).**

**10. Palms Edge, LLC & Theresa Corriveau Rev. Trust (Owner) 137 Palm Street, "L" Pine Street and "L" Palm Street (Sheet 99 Lots 31, 35 and 69) requesting variance from Land Use Code Section 190-16, Table 16-3 for minimum lot area, 49,547 square feet existing - 62,712 square feet required, to allow 18 multi-family units in two buildings - one building with 6 units and one building with 12 units. RC Zone, Ward 6.**

Voting on this case:

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

Mr. Kanakis - recused from this case

Richard Maynard, Maynard & Paquette Engineering Associates, 31 Quincy Street, Nashua, NH. Mr. Maynard said that there are three vacant properties involved at the end of Palm Street, and this variance specifically involves only a density variance for two proposed multi-family buildings of 6 and 12 units on a consolidated lots totaling 49,547 square feet. He said that it also involves a discontinuance of a small portion of the end section of Palm Street, which was approved by the Board of Alderman on July 14<sup>th</sup>. He said that this project also involves parking spaces for the neighborhood.

Mr. Maynard said that this project allows for the construction for a public and emergency access way from the dead end of Palm Street to Ash Street for emergency vehicles, various Public Works vehicles and the general public. He said that the project is indicated on the preliminary site plan that has been unanimously approved by the Aldermen and the Planning Board and the City Engineer's Office.

Mr. Maynard said that the project will enhance surrounding property values, they will be new buildings, with surplus parking and it will eliminate much of the on-street parking, and the elimination of the dead-end and providing for snow storage.

Mr. Maynard said that the public would be greatly benefitted by many ways, there will be badly needed affordable downtown residential apartments are proposed, more off-street parking, snow storage, emergency and thru-access will be added.

Mr. Maynard stated that substantial justice would be done, since it will allow a multi-family project, a permitted use, which is very much in conformity with the neighborhood, some 45 properties in the neighborhood exceed the density of this project.

Mr. Maynard said that this project is very much meeting the spirit and intent of the ordinance because it eliminates an unnecessary hardship on the property owners, as trespassing and property damage by City vehicles would be eliminated, and the dangerous and difficult dead-end street is eliminated. He said that the proposed use is reasonable and in character with the downtown neighborhood. He said that the project will provide many substantial benefits to the general public and many private parties.

Mr. Currier asked if it will be a public access at the end of Palm Street, and that City trucks will drive into the old railroad bed and make a left, and go over to Ash Street.

Mr. Maynard said it will be a two-way, 24-foot access.

Mr. Currier asked about the parking on the old rail bed, if that will be for residents only.

Mr. Maynard said it's supposed to be for the residents, but there is a surplus, so some spaces could be available for the people on Palm Street, as most of those projects do not have on-site parking, so it can be for the neighborhood.

Mr. Shaw asked to confirm if 14 units would be allowed by right that would meet the density, and asked what is driving the need to go from 14 to 18, and what justification there is for that.

Mr. Maynard said that 14 units are allowed by right. He said that to make it economically feasible, there are a lot of off-site improvements beyond the normal ones, especially the access way out to Ash Street. He said that 18 versus 14 is not an excessive amount of units, it is a very odd shaped lot, and

there are 45 properties in the neighborhood that have densities that exceed the proposed project. He said that if they can't get the 18 units, it is unlikely to have the access way out to Ash Street.

**SPEAKING IN FAVOR:**

No one.

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

Steve & Cynthia Hull, 160 Pine Street, Nashua, NH. Mrs. MacKay read an email from the Hulls in opposition to the request, stating that they have concerns about the lack of land area, parking and snow removal along with Palm Street being the only egress.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Maynard said that most of what was brought up is incorrect, there is much improved access for all vehicles at the end of Palm Street, and right now, there is no place to store snow, and it's pushed onto private property, and in this project, there will be a couple designated snow storage areas, and right now there is no place. He said that the buildings look attractive, and will enhance property values in this area.

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

No one.

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

Mr. Shaw said he has some concerns about this, as the stated primary justification for this to go beyond the allowed 14 units is financial, and the Board cannot use financial hardship as a reason to support a request.

Mr. Boucher said that he doesn't necessarily have any issues with the project, the housing is important, and said that it is a net benefit to the City, it has support from the Board of Aldermen, and it brings benefit to the neighborhood, as there will be additional parking, there will be a new access, which is good for safety.

Mr. Lionel said he is generally skeptical of over-density claims, but said that it looks like this project will benefit the neighborhood and the excess of units is not severe.

Mr. Booras said that she is in support of the application.

Mr. Currier said that part of their rationale was economic, but part was also the overall density of the neighborhood, and with this proposal opening up the street and having the extra parking and the snow storage is a value to the area and it is not out of character with the neighborhood, and believes it meets the criteria.

Mrs. MacKay said that she is in support of this, as the access, the snow removal and storage, the parking, the benefit to the City, overall, it weighs more in favor than out of favor, and is in support.

Mr. Shaw said that the comments raised by other members has allowed him further reasons to support the application, as the overall net benefit will help.

**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 recognizes that the property is an odd shape, it was at an end of a dead-end street, and the Board believes that there is going to be a net benefit to approving this application, with concerns to access and parking as per testimony, and find that the benefit sought cannot be achieved by some other method reasonably feasible other than an area variance.

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

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

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

**SECONDED** by Mr. Lionel.

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

**MEMBERS** (*Mr. Kanakis not voting, as he recused*).

11. Hannaford Bros. Co (Owner) Merritt Place, LLC (Applicant) 8 Merritt Parkway (Sheet C Lot 2544-8) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to allow up to 160 multi-family dwelling units in one building. R30/FUOD Zone, Ward 9.

**THIS CASE RESCHEDULED TO THE AUGUST 25, 2020 MEETING.**

**MISCELLANEOUS:**

**REGIONAL IMPACT:**

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

**MINUTES:**

7-14-2020:

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

**SECONDED** by Mr. Boucher.

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

7-28-2020:

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

**SECONDED** by Mr. Lionel.

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

**ADJOURNMENT:**

**MOTION** by Mr. Shaw to adjourn the meeting at 9:25 p.m.

**SECONDED** by Mr. Currie.

Zoning Board of Adjustment

August 11, 2020

Page 26

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

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing