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

A public hearing of the Zoning Board of Adjustment was held on **Wednesday**, September 9, 2020 at 6:30 PM, via Zoom.

Mrs. MacKay asked Mr. Falk for a Roll Call. All members present, along with alternates Mr. Minkarah, Mr. Kanakis and Ms. Booras. 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
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 Zoom. 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 stated that she would like to make a Motion to Table Case #4 to the September 22, 2020 meeting, as the first case on the agenda. She said that it has been brought to her attention that there is some additional information concerning this case that was inadvertently left out for the Board, and in order for the Board to make a thorough decision, and for the Board to really look into the case, it seems that this information is pertinent to the Board, and is not something that can be perused and a decision made today, there may be more questions.

MOTION by Mrs. MacKay to Table Case #4 as the first case of the

September 22, 2020 meeting.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0 VIA VERBAL ROLL CALL OF ZBA MEMBERS.

1. **525 Amherst Street, LLC (Owner) 525 Amherst Street (Sheet H Lot 150) requesting variance from Land Use Code Section 190-16, Table 16-3 for minimum lot area, 470,448 sq.ft required, 369,126 sq.ft provided, in which 135 multi-family dwelling units exist, 105 would be permitted after proposed lot subdivision. RC/HB Zones, 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, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that the property abuts the NH Vocational School on the easterly side, and lots of condominiums on the west. He said that the lot is split-zoned, RC and HB. He said that the total lot size is 10.217 acres, and there are 135 multi-family units on site.

Atty. Prunier said that the proposal is to subdivide the front piece, which is 1.743 acres, leaving 8.474 acres with the multi-family in the rear part of the lot. He said that there are no other requirements other than the density that need to be requested. He said that there would be no changes to the multi-family area, it will all stay the same, the purpose is to subdivide the property so the lot in the front abutting Amherst Street is separate.

Atty. Prunier said that there is no construction planned at this time, on either lot. He said that the front portion is vacant now, and is really acting as an excess piece of property that could be used for the benefit of the applicant and the City with new construction and tax revenue.

Atty. Prunier said that substantial justice would be done by

granting the variance, because it will allow them to fully use their property, as the front part is vacant.

Atty. Prunier said that there will be no diminution of property values, as there are no changes proposed at this time.

Atty. Prunier said that the use will be the same within the zones, the multi-family stays within the RC, and the HB lot will be used for a use allowed within the HB district.

Mr. Currier asked if the future use would be a highway business use on the front part.

Atty. Prunier said that would be correct.

Mr. Minkarah asked when this project was originally approved, if there was any particular use for this portion of the property.

Atty. Prunier said that there was nothing he is aware of.

Mr. Shaw asked how many units are allowed before the lot is subdivided, and the 105 units would be allowed should the reduction be supported.

Atty. Prunier said that 135 units exist, and the proposal is to leave the 135 units. He said it is a nice, clean well-maintained site.

Mr. Shaw asked what the actual density that would be allowed if the subdivision is not before the Board, perhaps 120 or so, and this would add another use to the lot, and is concerned that this would be more non-conforming.

Mr. Falk said that about 127 units. He said that it is 10 acres, or slightly above that, and the RC zone allows 12.5 units per acre, would result in about 127 units for the entire property.

Mr. Boucher asked if anything with the density has changed since the property was originally developed, such as a different density allowance.

Mr. Falk said that the RC zone has allowed 12.5 units per acre for many years, and believed it was the same when the property was built.

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 he has some concerns with the density, and said that he always recognized that the apartments were pushed back, with the open lot in the front, but never thought about it until this proposal. He said that the density question that was raised is a concern, and a highway business use on the front wouldn't really be inconsistent with what is on Amherst Street, and there are several multi-family projects that are behind businesses.

Mr. Kanakis said that he is leaning towards support, but has concerns for the lack of plans for future development towards the front, and would want it to be used for a permitted use.

Mr. Minkarah said on one hand, it does appear as though this front portion would be a natural for commercial development, its zoned appropriately and almost seems set aside for that purpose, on the other hand, there doesn't seem to be any conditions in the land, the hardship seems to be self-imposed, it's something that is desired, and is concerned with what the proposed use is. He said that the open space associated with the development would be taken and used for commercial purposes, and we don't know how it would coincide with the residential use, whether it would access the driveway that leads to the apartments, or if it would have its own curb-cut, so there is some uncertainty.

Mr. Currier said that he is struggling to find support for this. He said he's travelled through the other apartment complexes along Amherst Street to check them out. He said that they're nice, with play fields and ample parking for the units. He said he's not seeing a hardship, the front area seems to be a big front lawn, and it was probably designed to set all the units away from the street, which makes sense. He said that he thinks that the property is appropriately used now, and the current owner chooses to keep a cut lawn there, which may not be

conducive to residential use, but it could be manicured many other ways. He said he's struggling to find support for it, and it would be an overage of about 22%.

Mr. Shaw said that he is not in support and doesn't see the justification and that the hardship is not satisfied. He said that it looks like a natural front lot that could be separated, but all that does is take something that is relatively close to meeting the requirements for density, and makes it less so, and makes the overall usage of the parcel more intense, and is more non-conforming, and the only thing for justification is that the lot is somewhat naturally at this point divided to look like it could support that, but the developer didn't take advantage to put housing in the front area because it may not be nearly as desirable, and doesn't see sufficient enough information to support this variance.

Mr. Lionel said he feels similarly to Mr. Shaw and Mr. Currier and Mr. Minkarah, as while on paper it looks like it's a lot that could be put to some different use, and it doesn't make any material effect on the apartment complex, but there is no hardship here other than a self-created one. He said that for special conditions of the property, he doesn't see one.

Ms. Booras said that she is struggling with this, and she agrees with the concerns that have been raised so far.

Mrs. MacKay said that she too struggles with this one, and does not see the merits in this one.

MOTION by Mr. Lionel to deny the application on behalf of the applicant as advertised. Mr. Lionel said that the variance might be needed to enable the applicant's proposed use of the property, but there are no special conditions of the property, and the benefit sought by the applicant to develop this additional property is not appropriate.

Mr. Lionel said that the Board believes that this request is not within the spirit and intent of the ordinance.

Mr. Lionel said that the Board has no opinion about this adversely affecting the property values of surrounding parcels.

Mr. Lionel said the Board believes that this request is contrary to the public interest, and substantial justice would be served,

but not all of the points of law are met, and therefore, the motion is to deny.

SECONDED by Mr. Shaw.

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

Mrs. MacKay said that as a reminder, Case #4 for 4 Bates Drive has been Tabled to the September 22,2020 meeting.

2. Victoria M. Horan Rev. Tr. (Owner) Victoria Horan & George Filippides (Applicants) 4 Holly Drive (Sheet 138 Lot 261) requesting variance from Land Use Code Section 190-31 to encroach 4 feet into the 6 foot required rear yard setback to construct a detached 11′x24′ shed. R9 Zone, Ward 1.

Voting on this case:

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

George Filippides, 4 Holly Drive, Nashua, NH. Mr. Filippides said that they are looking to remove their old shed and add an 11′x24′ shed, detached, next to the pool area. He said it will allow for greater open space on the left side of the house, and have more usable space and use the shed as part of an enclosement for the pool, to limit liability and access to the pool.

Mr. Filippides said that they were initially unaware that they needed permitting and zoning for the shed, as they hired a contractor to do it and it was assured to them that there would not be any issues. He said that he submitted three letters of support from the direct abutters who have no objections.

Mr. Shaw asked what the dimensions are of the old shed to be removed.

Mr. Filippides said it was 8′x10′.

SPEAKING IN FAVOR:

Mr. Falk said that there were three emails in support that he sent to the Board.

Mr. Lionel said that they were in a pdf. He read the letters in support from Martha Corriveau, 2 Holly Drive, Patricia Arnheim, 6 Holly Drive and Gregory Dake at 3 Briand Drive into the record. He said the letters all have the same wording.

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 spoke about the location of the pool, and the fact that the shed will house some pool equipment, and there is a benefit there for the neighbors also, as there was testimony that the direct abutters to the property have no issues with the shed encroaching in the setback, 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, and per testimony of the applicant, the existing shed in the left rear corner will be removed.

SECONDED by Mr. Shaw.

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

3. KatieJo & Jamaal Forman (Owners) Kieran Rice, Ulster Property Services (Applicant) 17 Northwood Drive (Sheet E Lot 1216) requesting variance from Land Use Code Section 190-44 to exceed maximum fence height, 6 feet permitted - 9 feet proposed for 3 foot tall retaining wall with 6 foot tall fence on top for 9 foot total height along 45 linear feet along rear property line; and up to 11 feet proposed on right side yard property line with 2′-4′ foot tall retaining wall with up to 6 foot tall fence on top for 102 linear feet. R9 Zone, Ward 1.

Voting on this case:

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

KatieJo Forman, 17 Northwood Drive, Nashua, NH. Mrs. Forman said that her contractor is also available. She showed a copy of the plot plan, and it shows that last year they got approval to install a swimming pool. She said that the pool goes along the side and rear property line area, it’s an oval pool, and is above-ground, but it can be back-filled. She said that their neighborhood is very hilly, and there isn’t a lot of available space in the back yard, with a huge slope left to right.

Mrs. Forman said that all their neighbors are in agreement, and along the right property line, there is a total combined height of 11 feet at the highest point, it does slope gradually from front to back. She said that in the rear of the yard, there is a total combined height of 9 feet; it slopes from left to right.

Mrs. Forman said that this does a couple things; it makes it a safety feature for the pool, and also provides their young children some usable space in the yard. She said that there was a wood fence on the property but was in complete disrepair, and the yard needed a nice fence. She said that the fence is in line with what some other neighbors have done nearby, and the house across the street has a similar retaining wall and fence setup.

SPEAKING IN FAVOR:

Kieran Rice, Ulster Property Services, Bedford, NH. Mr. Rice said that the fence would be from 9 feet to 11 feet, and would gradually go down to 7 feet, so it's really more of a safety issue for the kids and others using the pool, and gives some privacy.

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, he said that primarily there is steep topography in play in this neighborhood, and on this lot specifically, and to get usable space in the rear yard, it requires the retaining walls and the fence on top for safety purposes around the pool, and ends up making the effective fence height with the combined height of the retaining walls such that it does exceed the normally allowed 6 foot fence height, 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.

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.

4. Jeanette Dupont (Owner) Catherine E. Laliberte (Applicant) 4 Bates Drive (Sheet 48 Lot 216) requesting variance from Land

Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, 32 feet existing – 32 feet requested, to replace existing driveway. RA Zone, Ward 3.

CASE TABLED TO THE 09-22-2020 MEETING AS PREVIOUSLY STATED.

5. Timothy A. Jensen (Owner) 24 Lincoln Street (Sheet 8 Lot 19) requesting variance from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, 47 feet existing – 47 feet requested, to replace existing driveway. RB Zone, Ward 7.

Voting on this case:

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

Tim Jensen, 24 Lincoln Street, Nashua, NH. Mr. Jensen said that he is just looking to replace his existing driveway that is 47 feet wide with the same footprint, same dimensions, it will be an asphalt driveway, the one that is there has been there for a long time. He said he's owned the home over 20 years, and it is beyond repair. He said that the building is as duplex, and the Code requires two spaces per unit.

Mr. Jensen said that he doesn't have the option to make the driveway any other way, and cannot fit a car in the garage, and cannot go deeper in the yard. He said that off-street parking is not an option. He said that there are other houses in the neighborhood that have similar sized driveways, over 24 feet wide, with similar configurations. He said that he's talked to his neighbors about it and they have no issues with it.

Mr. Kanakis asked when the property was bought in 2002, if the driveway was the current size.

Mr. Jensen said it was that size. He said it was a single-family home that was converted into a two-family home. He said that all he wants to do is to accommodate four vehicles for the building.

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, 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 said that the main topic is that the driveway has been there at this size for many years, and it fits within the neighborhood.

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.

MISCELLANEOUS:

REGIONAL IMPACT:

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

MINUTES:

8-11-2020:

MOTION by Mr. Shaw 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 VOTING MEMBERS.

8-25-2020:

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

SECONDED by Mr. Shaw.

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

ADJOURNMENT:

MOTION by Mr. Lionel to adjourn the meeting at 7:52 p.m.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing