

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 25, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 25, 2020 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Mariellen MacKay, Chair  
Jack Currier, Clerk  
Rob Shaw  
JP Boucher  
Efstathia Booras  
Jay Minkarah

Carter Falk, Deputy Planning Manager/Zoning

Mrs. MacKay explained the Board's procedures, 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 also explained procedures involving the timing light, as well as the projector in front of the stage for plans to show the audience.

1. Suzanne R. Sullivan (Owner) Equivise, LLC (Applicant) 17 Curtis Drive (Sheet C Lot 793) requesting the following: 1) special exception from Land Use Code Section 190-112 to work within the 75-foot prime wetland buffer of Salmon Brook; and 2) variance from Land Use Code Section 190-16, Table 16-3, to encroach 15 feet into the 40 foot required front yard setback - both requests to construct a new single-family home. R40 Zone, Ward 9.

[POSTPONED FROM THE 2-12-2020 MEETING]

Voting on this case:

Mariellen MacKay, Chair  
Jack Currier, Clerk  
Rob Shaw  
JP Boucher

Jay Minkarah

Attorney Gerald Prunier, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier passed out a package to the Board members. Atty. Prolman said that they had a case about a year ago right down the street, with the same facts.

Atty. Prunier said that in Tab A, it shows a subdivision that was approved in January, 1965, and it showed lots 29 and 30. He said that Tab B is a deed printed out to the person that owned this, it was in April, 1976. He said that Tab C is the same plan, with a few changes, where the lots were consolidated and a cul-de-sac was in, it didn't affect the particular lots. He said that tab D is a lot consolidation, where lots 29 and 30 were consolidated in 1988. He said that tab E is a copy of the lots as they're consolidated, with the buffers shown. He said that tab F is the lot shown with the proposed residence on it.

Atty. Prunier said that they submitted a paper of the special requirements with the application.

Mrs. MacKay said that the Board members all have it in their package, it's accepted.

Atty. Prunier said that the Wetland Ordinance was passed in 1991, and it greatly affected these lots. He said that a special exception is needed to work in the wetland buffer. He said that the Board heard previous cases, for 13 Kathy Drive and 13 Curtis Drive. He said that both of those cases were approved by the Board, and they are similar to this case. He said that the lots were approved in 1965, and the Wetlands Ordinance was passed in 1991, 26 years later. He said that it is their position that this property is vested and grandfathered from zoning changes. He said that they can do nothing else to this lot except for a single-family residence. He said that if this is not allowed, all economic benefit and productive use of the land would be taken, which is unconstitutional. He said that the location of the house has been carefully considered to minimize the impacts, and the special exception standards are included in the use matrix.

Atty. Prunier said that the use will not create undue traffic congestion or unduly impair pedestrian safety. He said that the use will not overflow public water, sewer, drainage or any other municipal systems. He said that the proposed use will not be

out of character or impair the integrity with the neighborhood, as it is all single family homes.

Atty. Prunier said that the variance request will not be contrary to the public interest because it will be a single-family house, and it will not impair the character of the district. He said that the request is consistent with the spirit of the ordinance; he said that they are requesting to encroach into the setback, and similar to the other one on the street, the Conservation Commission requested that they try to get a variance to keep the house closer to the road, like at 13 Curtis Drive. He said that the new house will not diminish the property values of abutting parcels; it will be a single-family residence. He said that substantial justice will be done, because the lot existed prior to the Wetland Ordinance being passed, and the special conditions of the wetlands in the area have greatly affected the lot, and substantial justice would be done by allowing this.

Mr. Minkarah said that it appears as if there is a buildable window on the lot, out of the buffer.

Atty. Prunier said that the lot is all within the 75-foot buffer.

Mr. Minkarah asked if there is any portion of the lot that is not encumbered by the buffer.

Mr. Minkarah said that he sees a 75-foot buffer, a 50-foot buffer, and asked for additional understanding.

Mr. Shaw pointed out the 75-foot buffer, and the Shoreland buffer.

Atty. Prunier suggested the engineer explain the plan.

**SPEAKING IN FAVOR:**

Nathan Chamberlain, Engineer, Fieldstone Land Consultants, Milford, NH. Mr. Chamberlain said that the green line is the edge of jurisdictional wetland, which is the City's setback is applied to. He pointed out the edge of Salmon Brook, shown in blue, and that is what the State Shoreline setback is applied to. He said that the purple line is the Shoreline, called the Waterfront buffer, and the other purple line is the Woodland

buffer, which are all State setbacks. He said that the green line is the edge of wet, and the orange line is the 75-foot setback in which relief is being sought. He said that they've tucked the house in the best they could with the jurisdictional wetland.

Mr. Currier asked about the Conservation Commission recommendation.

Atty. Prunier said that they didn't make any recommendation, no recommendation.

Mr. Currier said that for Kathy Drive and the other Curtis Drive lots, the Conservation Commission recommended favorably for them.

Atty. Prunier agreed, and with the Curtis Drive lot, they also recommended that the house encroach 15 feet into the front yard, which was approved.

Mrs. MacKay asked what the difference is between wetlands and wet soil.

Atty. Prunier said that wetlands are water, and wet soil has a high quantity of wetlands to it.

Mr. Chamberlain said that wetlands include the soil type and the vegetation. He said that it doesn't necessarily mean wet soil. He said that this area is a wet forest. He said it's not muck or peat. He said that they will not be disturbing the wetland at all, the work will be in the wetland buffer. He said it would be on the upland, not on wet soil, and outside the wetland.

Mr. Currier asked to clarify the green line on the plan.

Mr. Chamberlain said that it is the edge of the jurisdictional wetland.

Mr. Boucher asked if the house was built, if the property would be in any worse condition than it is now.

Mr. Chamberlain said that the engineering design, they are mitigating runoff, and the Conservation Commissions concern was on the removal of existing mature trees on the lot, but the

trees need to be removed to put the house on the lot. He said that there will not be any detriment to the wetland.

Mr. Shaw said that the Conservation Commission's letter states that it is an unfavorable recommendation.

Atty. Prunier said that they can give a recommendation or not give a recommendation.

Mr. Minkarah asked what the dimensions are of the proposed house.

Atty. Prunier said that it is a three bedroom house.

Mr. Chamberlain said it is 24'x64' with a 24'x24' garage, so the house would be 24'x40'.

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

Sherry Dutzy, 18 Swart Terrace, Nashua, NH. Ms. Dutzy said that she is the Chair of the Conservation Commission. She said that it is rare that the Commission gives unfavorable recommendations, but in this case, they did. She said that five of the Commissioners met out there for a site walk. She said it is a heavily wooded lot, so between ten and fourteen very mature trees as well as their stumps would be removed, therefore, the soil will be disturbed and it would be replaced with a house with a foundation. She said they were very careful to see where the house would be on the lot in relation to Salmon Brook.

Ms. Dutzy said that the Commission received another application for a property on Kanata Drive, which abuts Lincoln Brook, and you can see what has happened to those properties over the past fifty years in terms of erosion, where sheds are now almost in the brook, and over the years, the brook eroded the adjacent land. She said that the same thing is happening at Thoreau's Landing, where some of the units are literally ten feet away from the cliff due to erosion.

Mr. Shaw said that there are nine special wetland conditions that the Board needs to review. He read them and asked if any of them may not meet the criteria.

Ms. Dutzy said that the last one, about erosion not being impaired. She said that when an applicant comes to them and

they need to take down trees in the buffer, the recommendation is that they always leave the stumps, mainly for the hydrology. She said that in this case, they would remove ten to fourteen very large trees, with stumps, and the hydrology would change.

Andrea Pearce, 14 Curtis Drive, and John Withum, New Ipswich, NH. Mr. Withum said he is Ms. Pearce's father, and the family has resided there for the past twenty-five years. He said that the applicant mentioned the recently constructed house on the street, which was supposed to be in character with the other houses. He passed out some information to the Board. Ms. Pearce said that a lot of the information submitted was cut and pasted from the 13 Curtis Drive submittal, and they haven't followed more than half of the stipulations, as the house is nothing like any of the other neighborhood houses, the outdoor siding is plastic paneling, it has no garage, and it looks like a tin barn. She said that the house does not conform to the neighborhood. She said that this house does not add value, and the house looks like nothing in the neighborhood.

Mr. Withum said that in the past twenty-five years, he's seen the water come up to the road. He said the house at 13 Curtis Drive would be a couple feet under water.

Mr. Shaw said that the City has defined this area as a wetland with the buffer. He said that the wetland itself has perhaps changed, because it's shown as coming close to Curtis Drive, but not to Curtis Drive, so it seems that the wetlands themselves are then reaching Curtis Drive.

Mr. Withum said that there is another runoff that comes down along the other edge of the property, and the lot is wet on all sides. He said that the brook itself is below the area, the proposed house is elevated some, but said he has seen the water come above that.

Mr. Shaw asked if the wetland or the area has changed over the past twenty-five years, as there has been a lot more development that has occurred in the southwest quadrant, and wondered if any of that has changed the course of the brook somewhat.

Mr. Withum said it has expanded some, there is more wet area down at the bottom, and as years go by, it's going out more. He said that the Conservation Commission did an exceptional job, as they actually did a site visit, it was very valuable. He said

that the driveway they propose would also cross the access path to the walking trails that go back behind that area as well.

Mr. Currier said it is his recollection that the trail to Cherrywood Drive is a deeded trail. He said he saw a sign that said private property, do not trespass, and wasn't sure if it was blocking it, or off to the left.

Ms. Pearce said that the sign is on the left side of the trails, to keep people off of her property. She said it gets a lot of activity with kids, people walking dogs, and if it's not posted, she's responsible from an insurance standpoint. She said that she has been maintaining the property on the right side of the path, and so has her family, even though it's not theirs, they do it so that the neighborhood can access the trails, otherwise, it would be all overgrown.

Gene Porter, 77 Concord Street, Nashua, NH. Mr. Porter said he is a member of the Conservation Commission. He said he feels strongly against this case. He said that the wetlands are a very valuable attribute to the City. He said that there are a lot of trees on the lot.

Mrs. MacKay stated that the Conservation Commission issued this as an unfavorable recommendation.

Mr. Porter agreed.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Prunier said that the owners purchased this property long before the property was burdened by the City. He said that he could get a timber permit and remove the trees if he wants. He said that the proposal is a single-family house. He said that everyone is entitled to their own ideas about the architecture. He said that they're trying to work within the regulations, and encroaching 15 feet into the setback, even further from the wetland buffer. He said that the hardship has been put on his client by the City. He said that this would be a taking of the land.

Mr. Shaw said it is his understanding that they cannot cut these trees down, as they are in the buffer, and it would still require Conservation Commission approval as well as a Special Exception by the Zoning Board.

Mr. Boucher asked what the next steps would be should this request not be approved.

Atty. Prunier said he'd like to avoid going to Court, by applying for the permits required by the various Boards to use this property what it is zoned for. He said that people have rights, both for and against, and the Conservation Commission has rights, and his client has rights, they have a piece of property on an approved lot, which were two lots and they were joined to make this more buildable. He said if this is denied, it would amount to a taking by the City of Nashua.

Mr. Currier said that the lot could be used for other things. He said that in the public arena, the lot could be used for other things.

Atty. Prunier said that you couldn't use it for anything else, it's all single-family.

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

Ms. Dutzy said that the Conservation Commission tried very hard during the site visit to figure out a way to relocate the house, and they looked at a number of different angles to make it work. She said that the lot could be used for a wildlife habitat, and it would add a lot of value to the area and the neighborhood. She said that most undeveloped land, most people buy it to build on it at the time of purchase, or it's speculative. She said that the owner has had this property for a number of years, so it probably was purchased in speculation, and whether it's the law that changes or the market that changes, stuff happens. She said that they cannot just cut the trees down, they'd have to come before the Conservation Commission first.

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

Mr. Minkarah said he sympathizes with the property owner to use his property with a reasonable, realistic viable way possible, and in this zone, is a single-family home. He said that there is a point in which a lot isn't a buildable lot, which is his concern in this case. He said that when he looked at the building envelope for a house, there isn't one, there is no building envelope on the property. He said if it were a relatively minor incursion into the buffer to allow an otherwise

a portion of the property outside of the buffer to be developed, he may feel differently. He said that the proposed house footprint is fairly modest for a house, the area that is shown is totally within the 75-foot buffer is small, it doesn't allow an adequate room for a yard, there is virtually no back yard to the property whatsoever or side yard, no room for a shed, no room for the customary kinds of things we so commonly see on a yard.

Mr. Shaw said he shares a lot of Mr. Minkarah's sentiments. He said he doesn't like to be in the position where we might need to do something that doesn't allow someone reasonable use of the property. He said that the incursion is pretty significant, and knows that the Board was asked to consider those other cases, and they are similar, but at the same time, there is a significant difference here in terms of existing vegetation and function potentially of the wetland buffer.

Mr. Currier said his thoughts are very similar to Mr. Minkarah's. He said he feels that this case doesn't meet the criteria in #4 of the special conditions, which states that the overall impact of encroaching into wetland or buffer is necessary for the productive use of adjoining buildable land and as such, non-encroachment is outweighed by the benefits thereby derived. He said that the criteria of the overall project a benefit, where it outweighs the building or the disturbance of the wetland or buffer. He said that he doesn't feel that this rises to that level. He said that he believes that this is a bit of speculation, whenever you buy a property. He said that if this case is denied by the Board, it's beyond this Board to make a decision with this much wetland on it, and this was platted and approved, and now 50 or 60 years later, here we are with regulations that have been placed on the lot. He said he doesn't think it meets criteria #4. He said if he lived next to this lot, he would love to own it. He said that there is some value in having a lot just for open space, it doesn't necessarily have to be used for a single-family home, and is inclined to not approve this.

Mr. Boucher said it is a unique lot as far as its constraints. He said he's torn both ways. He said he appreciates where the Conservation Commission is coming from, and all their hard work. He said that the engineer has been before the Board before, they are reputable. He said that for what is proposed, a lot of care

would be taken on this lot. He said that a lot of thought has gone into developing this lot.

Ms. Booras said that she is in agreement with her colleagues, and is torn between what is presented.

Mr. Minkarah stated that he agreed that the applicant has made an effort to provide the Board with a proposal that has the least possible impact, which is the reason for the variance request is to push the house closer to the street. He said that for criteria #4, he said that there is no adjoining buildable land, it's entirely in the buffer. He said that this isn't just that there's a buildable area, and they need to encroach in the buffer, the lot is consumed by the buffer. He said that criteria #7, in that the proposed activity shall not significantly impair wetland capacity for wildlife and fishery functions, and criteria #9, that wetland and buffer function of absorption capacity and storage shall not be impaired. He said that the Board did have specific testimony from the Chair of the Conservation Commission that both of these areas would be impaired, that the wetland functions would be impaired, particularly with the removal of entire trees and their root systems.

Mrs. MacKay said that generally, when the Board looks at a request that has wetlands, we always look at the Conservation Commission's recommendations, they weigh heavily on our thought processes, as they are the experts on the wetlands. She said it absolutely was a determination made by the Conservation Commission that this was unfavorable. She said that she empathizes with the owner in wanting to utilize their property, but the wetlands and the erosion of the soil, the damage that could be done to this area, the cons outweigh the pros. She said that this case just doesn't meet all the criteria, therefore, the Board would be remiss and accept them. She said that she is not in favor of this request.

**MOTION** by Mr. Currier to deny the special exception on behalf of the applicant as advertised. He said that the request is listed in the Table of Uses, Section 190-112.

Mr. Currier said the motion to deny is based upon a couple points, with #4, the special regulations. He said that per the Boards discussion, point #2 and #4, point #2 the least damaging route and methodology and #4, the overall impact of encroaching

into the wetland or buffer area, the Board finds that those two criteria are not met by this application, also, point #7 and #9, the Board is relying on the Conservation Commission testimony that the proposed activity shall not significantly impair wetland capacity, that's #7, and #9 that the hydrologic absorption capacity and storage overall shall not be impaired. He said that these four points are not met in this application, and based upon that, the motion is to deny the special exception.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED 4-1** (Mr. Boucher).

**MOTION** by Mr. Currier to deny the variance on behalf of the owner and applicant as advertised. He said that the variance is not needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board discussed the special conditions of the wetlands in the back, but with the home being proposed to be fifteen feet forward, the Board finds that this encroachment is not within the spirit and intent of the ordinance, and doesn't match the homes immediately in the area.

Mr. Currier said that the Board states no value on whether there is an adverse effect to property values of the surrounding parcels, but the Board finds that it is contrary to the public interest to have a fifteen foot encroachment, so, with points #2 and #4 not being met, the motion is to deny.

**SECONDED** by Mr. Shaw.

Mr. Minkarah said that part of his reasoning is given the fact that the special exception was denied, he doesn't believe that this criteria can be met.

**AMENDED MOTION** by Mr. Currier to include Mr. Minkarah's statement into the Motion.

**MOTION CARRIED 4-1** (Mr. Boucher).

**2. Kre-Bsl Huskey Nashua, LLC & Joseph Glenn Strigle, Jr., and Kimberly Beskalo Stewart (Owners) Benchmark Assisted Living (Applicant) 672-674 West Hollis Street (Sheet E Lots 2151 & 2150) requesting special exception from Land Use Code Section**

**190-119 (A)(4) to expand a non-conforming use by constructing an attached addition - adding 14 assisted living units to the existing 84 unit assisted living facility. R9 Zone, Ward 5.**

Voting on this case:

Mariellen MacKay, Chair  
Jack Currier, Clerk  
Rob Shaw  
JP Boucher  
Efsthathia Booras

William Cook, Director, Benchmark Assisted Living, Oxford, CT.  
Mr. Cook said that they are requesting to add fourteen assisted living units to an existing 84-unit assisted living facility. He said it is a nonconforming use, wishing to expand outside of the existing structure.

Mr. Cook said that the addition is the same use as the existing use, the addition would be at the center of the site, in which a single-family home will be replaced with the addition. He said that the original facility was constructed in 1999, and was expanded in 2014. He said that when it was originally constructed, assisted living was an allowed use with the approval of a conditional use permit, and that was the case when they put on the expansion. He said that since then, that has changed. He said that the proposed use is identical to the existing use, it will all be consistent. He said that the addition will have a minimal effect to the neighborhood, as the site is surrounded by other multi-family uses, and elderly housing units.

Mr. Cook said that very few of the residents drive, and they provide transportation services and minimal staff will be provided as a result of this addition. He said that the addition is a natural expansion of the existing use as well. He said that the single-family house to be removed was part of a deal in which there was a right of first refusal to the applicant whenever it came up for sale, so it was always the intention to purchase this property. He said that this property is in the R9 zone, and adjoining uses are Westgate Village, elderly housing across the street, and condominiums.

Mr. Cook said that the lot they intend to purchase is 14,200 square feet in size, with a house that will be removed. He said

that the lots will be merged into one lot, which would be 162,435 square feet in size. He said that the design would be consistent with the existing structure, and all setbacks would be satisfied. He said a total of 12 new parking spaces will be added, however, 3 spaces would be removed, the ones that are parallel spaces, so there would be a net gain of 9 spaces. He said that they are a 24/7 operation. He said that they get approximately 156 visits per week. He briefly mentioned the daily activities and site operations. He said that they are operating at 100% occupancy, and have for the past two years, and there is a waiting list. He said that only six of the residents have automobiles.

Mrs. MacKay asked about the accessible parking spaces, whether they'll need more.

Mr. Cook said no.

**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 special exception on behalf of the owner as advertised. He said that it is listed in the table of uses, Section 190-119 (A)(4).

Mr. Shaw said it will not create undue traffic congestion, or unduly impair pedestrian safety, per testimony of the applicant.

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

Mr. Shaw said that all special regulations are fulfilled.

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

needed service, and it will be consistent with the neighborhood in terms with many of the other uses nearby.

**SECONDED** by Mr. Boucher.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**3. Jamie L. & Luke R. Tannariello (Owners) 218 Manchester Street (Sheet G Lot 132) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to construct an attached accessory (in-law) dwelling unit on the south side of existing garage. R18 Zone, Ward 2.**

Voting on this case:

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

Efstathia Booras - recused (sat in audience).

Attorney Brad Westgate, Winer and Bennett, 111 Concord Street, Nashua, NH. Atty. Westgate passed out a handout to the Board members. He said the first sheet is a conceptual elevation, of how it may look and the layout. He said there is a floor plan layout of the existing house, garage, ADU and some setback dimensions. He said there is an aerial picture as well. He said that it has frontage on both Manchester Street and Ferry Road. He said that there is a layout of where the ADU would be placed, including a driveway turnaround, and the last set of plans is a document of the history of the additions put on the house in the past.

Atty. Westgate said that the lot is 1.18 acres in size. He said that the neighborhood has a mixture of housing types, age, and style, and a large piece of property owned by Pennichuck is behind the Middle School. He said that this is probably the oldest house in the area, and gave a brief history of the property.

Atty. Westgate said that the ADU would be just under the maximum 750 square feet area, and would be on the southerly side of the property, positioned that it would meet all the setbacks. He

said that the location of the ADU is the optimal location on the property to construct it, and the most logical place. He said that the driveway can accommodate two cars, it's a straight driveway in and out, but the new turnaround will allow two cars, and will allow drivers to drive straight out onto Manchester Street instead of backing out.

Atty. Westgate went over all the nine ADU special regulations to the satisfaction of the Board.

Atty. Westgate said that the use is listed in the Table of Uses, Section 190-15, Table 15-1 (#3). He said that the ADU will not create undue traffic congestion or unduly impair pedestrian safety, it will not have a material change to traffic, in fact, the turnaround at the end of the driveway will enhance the safety of drivers going out of the driveway. He said that the use will not overload public water, drainage or sewer or other municipal systems, as it will use existing systems.

Atty. Westgate said that all the nine special regulations will be met, per testimony. He said that the use will not impair the integrity or be out of character with the neighborhood, nor be detrimental to health, morals or welfare of residents by providing an affordable dwelling unit onto an existing house, also, the house will be undergoing a renovation and it will retain the historical character of the property. He handed out some letters of support from some of the neighbors.

**SPEAKING IN FAVOR:**

Mrs. MacKay said that there are four letters of support, from 206 Manchester Street, 80 Ferry Road, 81 Ferry Road and 83 Ferry Road.

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

No one.

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

Mr. Boucher said that the application was very clear and all his questions were answered.

Mr. Minkarah said he is in support, and it is a nicely done plan.

Mr. Shaw said he is in support.

Mr. Currier said he is in support, and said that the addition is in keeping with the farmhouse look of the property, and it looks like the addition will maintain that look. He said that they have met the criteria, and have done so in a tasteful way.

Mrs. MacKay said that the proposal is in keeping with the style of the house, and with it being a single level addition, it is a good safety situation, as anyone with disabilities won't have to go up any stairs.

**MOTION** by Mr. Boucher to approve the special exception on behalf of the owner as advertised. He said that it is listed in the table of uses, Section 190-15, Table 15-1 (#3).

Mr. Boucher said it will not create undue traffic congestion, or unduly impair pedestrian safety, per testimony of the applicant.

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

Mr. Boucher said that all special regulations are fulfilled.

Mr. Boucher said that the request will not impair the integrity or be out of character with the neighborhood, or be detrimental to health, morals or welfare of residents, it is a significantly large piece of property, with a farm style-type house, and that the ADU will fit in with the style of the house.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

4. John A. & GERALYN J. RICHARD (Owners) 107 Flintlocke Drive (Sheet C Lot 1099) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach 8 feet into the 10 foot required right side yard setback to construct an attached 8'x19' breezeway and a 26'x30' two-car garage. R9 Zone, Ward 9.

Voting on this case:

Mariellen MacKay, Chair

Jack Currier, Clerk

Rob Shaw

JP Boucher

Efstathia Booras

John Richard, 107 Flintlocke Drive, Nashua, NH. Mr. Richard said that his wife just retired and they have decided to expand the home to make it a little easier to get around. He said that he has medical issues with his leg, and has a hard time walking on uneven surfaces. He said that if he has the garage and breezeway, it will eliminate the need for the sheds that are currently in the yard. He said that his driveway faces north, and it slopes down to the street, so it creates a lot of black ice situations in the winter, and they have fallen down a few times. He said that the addition will be in character with the neighborhood, and it will not decrease any property values, as a lot of his neighbors have garages and breezeways.

Mr. Minkarah asked why the breezeway is important.

Mr. Richard said that there are two windows on that side of the house and a door, so if it was just a garage addition, it would lose those two windows. He said it would also look better aesthetically. He said that the garage wouldn't block anyone's view.

Mr. Minkarah asked what the second floor would be used for.

Mr. Richard said it would be used for storage, it wouldn't be finished with a room or anything.

Mr. Boucher asked what would the challenge be to push the garage back, and if there is any ledge there.

Mr. Richard said that the back yard starts to go up, and it's all rock and ledge.

Mr. Currier asked if the proposed breezeway is higher than the door on the front of the house.

Mr. Richard said it's all one level.

Mr. Currier asked about the sheds.

Mr. Richard said up the driveway, there are two sheds on the right side. He said that if this is approved, the sheds would

be taken away, as the items in them would be in the garage. He said that the whole house would be re-sided so everything would match and look the same.

**SPEAKING IN FAVOR:**

Michael Breen, 105 Flintlocke Drive, Nashua, NH. Mr. Breen said he lives right next door and is in favor of the request. He said he doesn't have any windows on that side, and said that the garage would look better than the sheds.

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

No one.

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

Mr. Currier said he understands the topography of the lot, but is struggling with the request, and perhaps reasonable accommodations could meet the side yard setback.

Mr. Minkarah said that he could readily add a two-car garage to this but has an issue with the breezeway. He said that this is a two-story structure, and it would be two feet from the property line. He said it's quite a significant request.

Mr. Shaw said that it's not a full second floor, it's more of an attic space. He said he'd like to see less incursion, and it's easier to support from the neighbors testimony. He said he'd like to see perhaps a smaller garage and not have that full incursion, but said he can support the application based upon the direct abutters support of it.

Mr. Boucher said he agrees with Mr. Shaw, and said that it is challenging in the back, as the property slopes upward, and is putting a lot of weight upon the testimony of the neighbor.

Ms. Booras said that she agrees with her colleagues, and is in support of the application.

Mrs. MacKay said that she is in support of the application. She said that no abutter is here to dispute the application, and there is the most direct abutter who has taken the time to come here to support the request.

**MOTION** by Mr. Boucher to approve the variance request on behalf of the owner as advertised. He said 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 there was testimony about the topography of the property and the current driveway situation, and the issues surrounding that.

Mr. Boucher said that the request is within the spirit and intent of the ordinance, and it will not adversely affect the property values of surrounding parcels.

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

Mr. Boucher said that for a special condition, the second story of the garage will only be used for storage purposes, no living arrangements or recreation purposes. He said that the direction of the roof line is as presented in the plans.

**SECONDED** by Mrs. Booras.

**MOTION CARRIED 4-1** (Mr. Currier).

**MISCELLANEOUS:**

**MINUTES:**

2-12-2020:

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

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**REGIONAL IMPACT:**

The Board did not see any cases of Regional Impact.

**ADJOURNMENT:**

Zoning Board of Adjustment

February 25, 2020

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Mrs. MacKay called the meeting closed at 9:24 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing