

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 11, 2023

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 11, 2023 at 6:30 PM, both in person at City Hall and via Zoom.

Mariellen MacKay, Chair, asked for a Roll Call:

Mariellen MacKay, Chair
JP Boucher, Clerk
Steve Lionel
Jack Currier
Josh Nehiley

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

Mrs. MacKay explained the Board's procedures, saying that real-time public comment can be addressed using Zoom, or by telephone, or in person. Mrs. MacKay said that real-time comments via audio will be addressed at the conclusion of the public hearing, and the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is Planningdepartment@nashuanh.gov, or by mail, at P.O. Box 2019, Nashua, NH, 03061. Mrs. MacKay identified the points of law required for applicants to address relative to variances and special exceptions. Mrs. MacKay explained how testimony we will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws.

- 1. Ronald P. & Estelle G. Hudon (Owners) Lefavor Folio, LLC (Applicant) 115 Lock Street (Sheet 41 Lot 21) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to remove existing building and construct one 8-unit multi-family building, along with associated site improvements. GI Zone, Ward 3. [POSTPONED FROM THE MARCH 28, 2023 MEETING].**

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher
Josh Nehiley

MOTION by Mr. Lionel to remove the case from the Table.

SECONDED by Mr. Currier.

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

Andrew Prolman, Prunier and Prolman, PLLC, 20 Trafalgar Square, Nashua, NH. Atty. Prolman said that the concerns from the last time were the following, the buffer impacts from the Nashua River, the density, the dumpster location and partly about meeting the criteria of the RC district with the variance in the GI Zone.

Atty. Prolman said that there is a new plan, with 7 units, and have minimized the buffer impacts to the river. He said that the layout for the fire truck turnaround is a worst-case scenario, it is just in case.

Atty. Prolman said that if they do have to work in the buffer, it is covered under the Urban Shoreland Exemption, in which any relief in the buffer goes to the Conservation Commission and Planning Board, but not the Zoning Board.

Atty. Prolman said that the density concern was heard loud and clear, and now seven units are proposed, along with their associated parking spaces. He said that the dumpster has been removed, and there will be condominium documents that will allow for private curb-cut recycling. He said that with the RC standards, it doesn't really apply, but this plan meets the minimum 35% open space, at 37%, and also meets the RC zone setbacks.

Atty. Prolman said that the Board has heard their rationale for having multi-family in the GI zone, and there is residential all around this site.

Mr. Currier asked about the 2' jog in the building footprint.

Tom Zajac, Hayner Swanson, 3 Congress Street, Nashua, NH. Mr. Zajac said that the jog was done on the project next door, and is proposed just as an architectural element to break up the façade. He said that the setbacks would all be met if this were in the RC zone.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Attorney Brian Major, 19 Technology Way, Nashua, NH. Atty. Major said that he'd like to incorporate his comments from the previous meeting into this one. Atty. Major said that the plan is a step in the right direction, it does address some of the problems, but his client owns 119 Lock Street, and has a 42,000 sq.ft lot, with 41% green space. He said that there is RC Zoned property to the north of Lock Street, and suggests that they incorporate the requirements of the RC zone if the property is going to be rezoned, and the density requirements should be used as well. He said that the RC Zone allows a maximum density of 3,484.84 square feet of land per unit, and the applicants plan has 19,978 square feet of land, and this will allow 5.7 dwelling units, and said that six units would be acceptable rather than seven. He said that there are four extra spaces, and stated that people just don't use their garages any more, and don't park in them, and it will force cars to park out on Lock Street.

Atty. Major said that the density is a problem, it is cumulative. He said it will add to the problem on Lock Street in this area, it will force parking out on the street. He said it is reasonable to allow six units here, there would be more parking on the premises, and would be compliant with the RC zone across the street. He said that they have an issue with the second story decks overhanging. He said that the project would be perfectly viable with six units on about a 20,000 square foot lot.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Prolman said that they don't propose balconies, they are patios. He said that the garages are a great amenity, and with seven units, it is compatible with the character of the neighborhood, and it's right in line with other properties in the area, and the plan meets the minimum parking requirements of 1.5 spaces per unit. He said that his client wants to price these units to the neighborhood, and won't be able to sell \$600,000-\$700,000 condo units on this site.

Mr. Nehiley asked if an SUV would fit in the garages.

Mr. Zajac said that the units would fit an SUV, and the garages are a great amenity to the site.

Mr. Nehiley said that most folks have two vehicles, and asked where the second vehicle would park.

Mr. Zajac said that the project next door had enough lot width to have a car park in the garage, and one car to park in a driveway space, but that doesn't exist here, so each unit would get one garage space, and there are four parking spaces in the back, so it is compliant with the parking ordinance of 1.5 minimum and 1.9 maximum parking spaces per unit. He said that they have to balance the parking need with open space, impervious cover, and buffers, but the plan meets parking.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Atty. Major said that he has nothing to add.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Lionel said that the garages are a great amenity, and believes that they will be used. He said that it is in the GI Zone, and this development is compatible with adjacent developments, and doesn't consider the density to be an issue on the whole, and is in support of the application.

Mr. Currier said that he appreciates the changes to the plan, and was hung up on the dumpster in the buffer. He said that they will use patios on the ground, not decks, and that makes a big difference to the adjacent property owners privacy, which is another good thing. He said that for parking, perhaps there will be some parking on Lock Street, but this 7-unit design is consistent with what is on either side of it, and the abutting property is significantly more dense than this one. He said that it meets the criteria and will support it.

Mr. Nehiley said that he is in favor of the application, and appreciates that they've made changes with the dumpster in the wetland area, and they've added open space, they've addressed the tree issue, and it really fits within the character of the area, and housing will be added.

Mr. Boucher said that he is in support of the application, and the criteria has been met.

Mrs. MacKay said that she is also in favor.

MOTION by Mr. Lionel to approve the variance application on behalf of the owner as advertised, however, this will be seven units, not eight. 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 size of the property and its location, and the benefit cannot be achieved by some other method reasonably feasible for the applicant to achieve, other than the variance.

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

Mr. Lionel stated that the Board does not believe the request will negatively impact property values.

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

SECONDED by Mr. Currier.

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

2. Ijeoma C. & Charles Okorie (Owners) 46 Cox Street (Sheet 137A Lot 3) requesting special exception from Land Use Code Section 190-16 (E)(3)(a) for a minor encroachment to encroach a maximum of 4 feet into the 10 foot required left side yard setback to construct an attached 21'x22' attached two-car garage. RA Zone, Ward 2 [POSTPONED FROM THE MARCH 28, 2023 MEETING]

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
Josh Nehiley
JP Boucher

Charles Okorie, 46 Cox Street, Nashua, NH. Mr. Okorie said that they have a small ranch, and have four kids, two of which are in college. He said that they want to add a second story, and an attached two-car garage to the left. He said that they did receive a building permit from the City last year, and it was determined that it encroached into the side setback. He said that the proposed garage encroaches 3'-7", leaving it over 6 feet from the property line. He said that it meets the criteria for a minor encroachment.

Mr. Currier asked when the design was being conceived, and the permit was given by the City, how was it determined that the proposed garage was beyond the setback.

Mr. Okorie said that he based it off of the GIS map, and it was not accurate, and he noticed it after the permit was given. He said that no construction was done, but it was staked out.

Mr. Currier said that the proposed design of the house looks nice, and asked why the garage is changing from the right hand side to the left side, and the house is set a little bit to the left, and asked if they considered having the garage on the other side.

Mr. Okorie said that he just didn't have enough room on the right hand side. He said that the proposed design works best for the kids bedrooms upstairs, as there is room taken up by the stairwell, and this is the best design with minimal construction on the inside of the house.

Mr. Currier asked if it is a whole new framed house, or is it just taking off the roof and putting on a second level.

Mr. Okorie said he will take off the roof and put on a second story.

Mr. Currier asked if there was any consideration for having an extra deep garage, one that meets the side yard setback but has room for two cars, going deeper in the lot.

Mr. Okorie said that his top priority was cost, and the current basement has windows on the side, so that is why they didn't go deeper.

Mr. Nehiley said that he wouldn't be here if the garage wasn't

in the setback, and asked if this isn't passed tonight, would it be an option to go ahead with a different design to stay within the setbacks.

Mr. Okorie said that this is the only option he has come up with. He said that he's gone through several iterations of the design, and had to consider the costs and this is the design that will make the house comfortable for the kids, it's the best option overall.

Mr. Lionel said that he understands that cost is important, but it's not something that the Board takes into account.

Mr. Okorie said that he came to this country with nothing, and his kids go to Cornell. He said that he's looked for another house, but this market makes it difficult, and the best option is to make these changes for this house, so the family can stay here, and the kids can come home from and with their friends.

SPEAKING IN FAVOR:

Jacob Duvet, 36 Cox Street, Nashua, NH. Mr. Duvet said that the Okorie family are wonderful neighbors, and just wanted to be here in support.

Melissa Dejardin, 30 Burgess Street, Nashua, NH. Ms. Dejardin said that they Okorie family has been great neighbors, and are in full support of their application. She said that their plan would help the property values in the neighborhood.

Adam Kerrin, 30 Burgess Street, Nashua, NH. Mr. Kerrin said that he believes that similar encroachments have been granted in the neighborhood, and believes that the addition and the garage would increase property values, and is in support.

SPEAKING IN OPPOSITION OR WITH QUESTIONS, COMMENTS OR CONCERNS:

Sharon St. Onge, 44 Cox Street, Nashua, NH. Mrs. St. Onge said that they live next door, and the two car garage has a large driveway, only six feet from their property. She said that they would have 4-6 vehicles on the lot. She said that the Okorie's took down some trees, that took away some of their privacy. She said that the Okories have tried to circumvent the rules here to their advantage. She said that they should be required to redesign their plan with a smaller garage that meets the

setbacks.

Ed St. Onge, 44 Cox Street, Nashua, NH. Mr. St. Onge said that if they had a survey done, a lot of this would be eliminated. He said that they wrote over a survey with different dimensions. He said that they wrote on his survey, which wasn't allowed. He also took trees down and said that the fence was over the property line. He said he can move the fence once the ground is ready.

Ellen Stromsold, 48 Cox Street, Nashua, NH. Ms. Stromsold said that most all the homes were built by the same builder, and said that the new design of the house doesn't fit in the neighborhood, and would be too big for the lot.

Mr. Currier said that the two-story addition is being done by right, the only reason that the applicant is here is for the side yard setback encroachment.

Mrs. MacKay said that there is a long letter from Attorney Israel Peidra from Welts, White & Fontaine, P.C. Mrs. MacKay said that many of the points raised in the letter have been discussed, such as the trees, the fence, and the neighbors opposition.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Okorie said that he is within the encroachment distances for a minor encroachment, it is less than 4 feet, that is all that he's here for. He said that he's always been peaceful and does not want to fight. He said that he doesn't see the privacy issue, whether the house is one or two stories.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mrs. St. Onge said that Mr. Okorie's actions made this hard, especially after he took down the trees, and that's why they called the police. She said that she had no choice but to call the police. She said that the garage would be only 6 feet from their property, and there is no privacy there now with the trees down.

Mrs. MacKay said that the Board also has a letter from Elizabeth Delardis, in opposition, at 42 Cox Street.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC HEARING:

Mr. Currier said that the Okorie's have the right to build their second story by right, this case is only for the encroachment into the side yard setback for the garage. He said that they did get their lot surveyed, and believes that the plan is accurate. He said that the Board cannot consider the financial impact aspect of this, and talk only about the hardship on the property, and indicated that he is struggling with it. He said that the street has a lot of similar properties, and questioned the uniqueness of this proposal, as it may be out of character with the neighborhood, and feels that the encroachment is out of character with the neighborhood, and is inclined to not support this.

Mr. Nehiley said the testimony was heartbreaking, and there was a lot of conflicting testimony, and everyone feels that they are in the right. He said that the proposed house plan is beautiful, and will bring a lot to the neighborhood. He said that this all comes down to the encroachment to the St. Onge's house, and there was quite a bit of vociferous pushback on this, and is looking at the rights of the St. Onge's as well, they've lost their privacy of trees, and is struggling with this one, and a garage is not critical to the nature of what the Okorie's are trying to do, they need more room for the kids, that's great, but the garage, if it infringes on the St. Onge's, cannot support that.

Mr. Boucher said that he is sensitive to the abutters who spoke. He said that he's looking at this purely as a minor encroachment, it is not a variance, it's a special exception for the garage. He said that with this case, this application, that the other issues such as the fence and trees, that is a separate civil issue, he said that he's looking at this as strictly a request for a minor encroachment for a two-car garage. He said that he will fully support the application as it stands.

Mr. Lionel said that he may be inclined to support it, but what bothers him is what happened over the past several months with the antagonism that was created by the Okories against their neighbor, and all of the different measurements and different surveys are annoying, but we now do have a monumented survey with the correct dimensions. He said that the St. Onge's have a two-car garage and that the Okorie's proposed garage and driveway would be adjacent to theirs, and is disturbed that the

Okorie's took down those trees along the border. He said that he hasn't decided one way or another at this point.

Mrs. MacKay said that she is also on the fence, but has to look at what we have to look at, the Board cannot look at the civil issues that have occurred with the neighbors or the trees taken down. She said that in looking at this as a minor encroachment to allow the two-car garage, it is not out of line, it's not out of character, and the second floor can be done by right, and the privacy issue of the second floor is lost, regardless of the decision that is made here tonight. She said in looking at this just for the facts that the Board must look at, she said that she's looking at a minor encroachment to build a two-car garage and three feet is a minor encroachment, and is in support of this application.

Mr. Currier said that he wants to emphasize that the plan before the Board indicates that the Okorie's can accomplish everything they want as far as living space. He said that something he's still struggling with about the garage is that they can get a two-car garage, but it could be a longer garage and still accomplish that. He said that he's still not in support of the application.

Mr. Lionel stated that he agrees with Mr. Currier in that there are other solutions, but this is not an area variance application where that is one of the criteria. He said that there could be other solutions, but that is not before the Board. He said that other reasonable methods is part of a hardship criteria, and that is not before the Board here.

Mr. Boucher stated that there are other two-car garages in the neighborhood, it is a customary thing to have. He said that this is not a personal thing, but the trees and fence is part of a civil matter, and is looking at this case as only the minor encroachment, not any of the civil matters. He said he remains in support of this application.

Mrs. MacKay said that there were also abutters that came to speak in support as well. She said that the Board has to pull the emotions out of this request, and is only looking at it for the minor encroachment, and does it meet the five points of law.

MOTION by Mr. Boucher to approve the special exception application as advertised on behalf of the applicant as

submitted. He said that it is listed in the Table of Uses, Section 190-16 (E)(3)(a).

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

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

SECONDED by Mrs. MacKay.

MOTION DENIED 2-3 (Mr. Currier, Mr. Nehiley and Mr. Lionel against Motion) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

MOTION by Mr. Currier to deny the special exception application as advertised on behalf of the applicant as submitted. He said that it is listed in the Table of Uses, Section 190-16 (E)(3)(a).

Mr. Currier said that it will not create undue traffic congestion or unduly impair pedestrian safety.

Mr. Currier said that it will not overload public water, drainage or sewer or other municipal systems.

Mr. Currier said that no special regulations apply.

Mr. Currier said that it will impair integrity or be out of character with the neighborhood, or be detrimental to health, morals or welfare of residents, the request will be out of character with the neighborhood.

SECONDED by Mr. Lionel.

MOTION APPROVED 3-2 (Mrs. MacKay and Mr. Boucher against Motion) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

*** 5 minute break***

3. Alyssa A. & Michael A. St. Aubin (Owners) 18 Bedford Street (Sheet E Lot 308) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach 19 feet into the 30 foot rear yard setback to construct an attached 15'x26' one-story addition to rear of existing house. R9 Zone, Ward 1.

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher
Josh Nehiley

Michael St. Aubin, 18 Bedford Street, Nashua, NH. Mr. St. Aubin stated that they've been in the house for ten years, have two kids, and are outgrowing the house, and need the addition to allow more size in the house for the growing family, and will allow a second bathroom as well.

Mr. Currier asked if they thought about building onto the side of the house, and what was the rationale for building in the back, versus the side.

Mr. St. Aubin said that the layout of the house has a carport on the side, which leads to the yard, and the land is pitched rapidly, and if it goes off the back, it's the most cost effective option with how the property is laid out.

Mr. Currier said he understands that it's a one-story addition, and said it's his guess that it wouldn't impede any of the neighbors.

Mr. St. Aubin said that Bedford Street is just off of Broad Street, and the house directly behind his, his house is about 50 feet away from the direct rear abutter. He said that the addition will be far away from the nearest houses. He said that they built the house front to back instead of side to side. He said if they build on the side, it would take away a lot of the yard.

Mr. Nehiley asked if this request is not supported, could he in fact build off to the side.

Mr. St. Aubin said that he's not sure if he could build on the

slab where the carport is, as he was told it is not thick enough, and it would need to be excavated and removed. He said that it is possible to have the plans re-engineered, but the proposed plan would be their best option.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Nehiley said that the house sits north south, instead of side to side like many of his neighbors houses, and said that he's in support, they're adding much needed space, and 265 Broad Street is pretty far away, and situated more towards the front, there really isn't any adverse impact here, and it will increase property values in the neighborhood.

Mr. Boucher said that he is in support of the application, because of the unique position of the home and its orientation on the lot. He said that the encroachment will not impact the rear abutter, and they are not here in opposition.

Mr. Lionel said when initially looking at this, it appears to be a big ask into the setback, but in looking at this house and where the house is at 265 Broad Street, there won't be any impingement, and there is no opposition from any of the neighbors, and is inclined to support it.

Mr. Currier said that it is a unique property, and finds relief in the one-story addition, and there is no abutter concerns. He said that if there was opposition, that would be different, but there is none. He said that he finds support.

Mrs. MacKay said that she finds support for the application as well, they did their due diligence, and there is a nice distance between the nearby house to the rear and side.

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised. Mr. Currier stated that the variance is needed to enable the applicant's proposed use of the

property, given the special conditions of the property, the home is situated sideways to the street, so it's reasonable to add on to the side of the house, and the Board finds the depth of the property is unique, and the abutting backyard property is large, with the house set towards the front, and overall it's a reasonable request.

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

Mr. Currier stated that the Board does not believe the request will negatively impact property values.

Mr. Currier stated that the request is not contrary to the public interest, and substantial justice will be served to the applicant.

SECONDED by Mr. Lionel.

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

4. East Dunstable Properties, LLC (Owner) John Forcier (Applicant) 7 East Dunstable Road (Sheet 109 Lot 76) requesting variance from Land Use Code Section 190-17, (E)(1) to exceed maximum driveway width, 24 feet permitted, 36 feet proposed, to construct one 24-foot wide driveway on Burnett Street, and one 12-foot wide driveway on East Dunstable Road. RA Zone, Ward 6.

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher
Josh Nehiley

Jess Forcier, 24 Merrimack Street, Nashua, NH. Mrs. Forcier said that they own the lot, and will be building the house for Lisa and Craig Adams. She said that they would live at the house with their Aunt. She said that the request is to exceed the maximum curb-cut width by 12 feet. She said that due to health issues, the proposed house would be a one-story ranch, with a separate driveway and garage, so each unit can enter

their part of the home directly. She said that this style of home would accommodate the needs of this family best, the hardship exists in this lot due to it being situated on the corner of Burnett Street and East Dunstable Road, where it is required to have two front setbacks and two side setbacks, also, it is a very narrow lot, and due to the fact that the house has to face Burnett Street, the front setbacks at 25 feet, it is impossible to have the driveway fan out after the curb cut, which is what could happen on a regular lot as opposed to this narrow lot.

Mrs. Forcier said that granting this variance will not alter the neighborhood, nor alter the value of the surrounding properties in any way, actually it should increase values with a new home there. She said that the style of the home and the look of the driveway on both Burnett Street and East Dunstable would fit in on what currently exists on both of these streets, and the extra 12 feet of curb cut will not affect the public health, safety or welfare, as substantial justice would be done by granting this variance to these new homeowners.

Mr. Nehiley asked to confirm if both of the driveways will lead to garages.

Mrs. Forcier agreed. She said that their original plan had the garage closer to Burnett, but it would have required two variances, so the floor plan was changed to make the driveway farther away from 50 feet from the intersection to make it safer.

Mr. Currier asked if it will be a single family home.

Mrs. Forcier said a single family house, not an in-law or two-family. She said that a building permit was submitted to the Building Department.

Mr. Boucher asked if there was any other considerations or designs to have three garages lined up together on Burnett Street. He said that East Dunstable Road can be a race-track, and with the position of the home on this lot it is so close to the Main Street intersection, with cars coming down the hill there, and it is a concern. He said that Burnett Street is not as busy of a street, it serves just that area.

Mrs. Forcier said that when the homeowner was designing the

house, they wanted to do it to afford a little more privacy, since the homeowners aunt will be with them, so that's why they came up with the design for the driveways separated. She said that they cannot fan the driveway out, because the lot is not wide enough to do that, so the plan is to try to get them their desired outcome. She said that she frequently travels East Dunstable Road, and doesn't see it as busy, and the driveway is actually supposed to be on East Dunstable Road anyways, technically.

SPEAKING IN FAVOR:

Lisa Adams, 1465 Hooksett Road, Hooksett, NH. Mrs. Adams said that they're looking to move back to Nashua to provide some care to her aunt, who has never been married and is a lifelong resident of Nashua. She said that they would be taking care of her, and she has had some health issues, and a ranch would be the best option for privacy and also independence for the family.

Mr. Nehiley said that the Board is really concerned with the safety issue of East Dunstable Road, and doesn't want to set them up for traffic problems with the East Dunstable driveway. He asked what she thought of her Aunt pulling in and out of East Dunstable Road.

Mrs. Adams said that she is a good driver, and hasn't had accidents, and is mentally competent to make correct decisions and take caution. She said that the proposed driveway and garage location was not an issue when this land was bought.

Mr. Boucher asked if there are any specific plans for the left side of the home on Burnett Street, if there is an opportunity to move the footprint down further away from East Dunstable Road.

John Forcier, 24 Merrimack Street, Nashua, NH. Mr. Forcier said that they could move the house down, but in doing that, could put a 24-foot wide driveway on East Dunstable Road, and there would possibly be enough room to fan it and have a three car garage, but it just puts a three car garage on East Dunstable Road, instead of a one car, and didn't know if that would necessarily help.

Mr. Falk said that it is a corner lot, with two front yards,

East Dunstable Road and Burnett Street, and the other two lot lines are side yards, there is no rear yard. He said it could shift up, and the driveway on East Dunstable would only just get longer.

Mr. Forcier said that they've looked at it numerous different ways.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

David Campbell, 10 East Dunstable Road, Nashua, NH. Mr. Campbell said that he is representing himself, and a couple neighbors as well. He said that himself and his neighbors are all opposed to this variance. He said that the number one reason is safety. He said that congestion is another issue. He said that East Dunstable Road has become a racetrack, and has lived there for the past 35 years, and has watched it happen, and this intersection is widely used, and the neighbors have worked with the City to get a flashing pedestrian light there, it helps a little bit. He said that Haywards is at the end, and Burnett Road is the feeder, and people go down to Haywards and back, but this area is very congested. He said that there is a bus stop right in front of his house, and that also comes into play, it's a very congested intersection and there are safety and traffic problems there. He said that he's personally witnessed four traffic accidents in the past two years that were terrible crashes. He said it's safety and congestion. He said that safety is within the public interest, and it is contrary to that. He said that owing to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship, and there is no hardship here, as Burnett is a much safer street to have a driveway on, and an additional 12 feet is not a hardship. He said that the spirit of the ordinance will not be observed here either, and substantial justice will not be done. He said that the neighbors feel that this will be a detriment to the abutting property values as well.

Mr. Currier asked where the traffic backs up to from the Main Street light, such as at 5:00p.m.

Mr. Campbell said it backs up quite a bit, and it's become a problem. He said that this is not the place to introduce another traffic problem.

SPEAKING IN FAVOR - REBUTTAL:

Mrs. Forcier said it doesn't sound like the opposition is against the variance, it sounds like they're against what is allowed there in the first place. She said that she totally appreciates that East Dunstable Road can be a racetrack, and the congestion there, as she travels the road many times a day. She said that she doesn't believe that the people who live there in this neighborhood are the ones that are causing the accidents, the racetrack issue is not from the residents who live in these houses. She said that they can put a driveway on East Dunstable Road and not even be here, they could put a 2½ story house with a longer driveway and have 3-4 cars coming out of it, and not be here. She said that she is concerned about safety here, and helped it by moving the driveway further away from the intersection, as it is important not to congest that intersection. She said that it is a corner lot, and the setbacks are different for a corner lot, and the need for this house to be a ranch. She said it seems like the opposition is for the curb cut on East Dunstable Road, which is not what this variance is for.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Campbell said that they were showed a plan showing 24 feet of driveway on Burnett, and 12 feet on East Dunstable Road. He said that they don't think it's a good plan. He said that they're going to have the prime driveway on Burnett, as it's hundreds of less cars a day. He said it seems like a luxury to have the other driveway on East Dunstable, as it adds to the congestion and pedestrian crossing hazards there and it doesn't meet the hardship.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Boucher said he doesn't have an issue with the overage for the width of the driveways, and doesn't have a direct issue with having a driveway on East Dunstable. He said that they're asking for an extra 12 feet, and it's a viable argument in his mind to have an extra driveway for their aunt. He said that he would have been very comfortable with extra width on Burnett Street. He said that the need for the extra driveway is clear. He said that the traffic speed on East Dunstable Road is an enforcement issue. He said that overall, he's in favor of the overage, but just wants to see how it can be achieved.

Mr. Lionel said that one of the points of law is that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible to pursue, other than the variance. He said that the Board has heard that the applicants customer doesn't want their aunt to go through the other part of the house to get to her area, and understands that, but is looking at the request for two driveways, and the Board does take safety into consideration. He said that the Board had a long discussion about a variance in front of Bicentennial School in which there was an issue about a driveway, and safety there. He said that accommodating their aunt and her car can be done with a three car garage on Burnett Street, and is having trouble seeing how this request meets the first point of law.

Mr. Currier said that he appreciates the fact that the applicant and the builder have exhaustively thought about this design, and have come up with a design that works for them. He said that one of the criteria which the Board must stick with is in the property itself, and not with the needs of the owner. He said as much as he appreciates them taking care of their aunt, the request is about the health considerations of the proposed owner, and not at all with the land. He said that this screams of an in-law in the future, and said that he's struggling with a variance for a driveway that is not a criteria for an in-law. He said that he's struggling with the need in the land for the overage of the 12 feet. He mentioned perhaps tabling this, for perhaps some rationale for an extra driveway, but not in this configuration. He said that perhaps there is some overage warranted for a driveway, but is struggling with this configuration.

Mr. Nehiley said that he also has some concerns about the safety, as already discussed, and he also thought of a table. He said that he is not opposed to a larger driveway, he said that he is not favorable to adding a driveway to East Dunstable, it's already a raceway. He said that he's having a tough time with this, but would entertain a tabling of this case.

Mrs. MacKay said that she likes the idea of tabling this, and is amenable to asking the applicant about it. She said that she understands the need to try to help a family member, but down the road, this will be an individual with a disability, as we move further down, and perhaps we look at what the Disabilities Act would require, which may ease the driveway issues, and have them tweak this to think how they can make it accessible,

because it seems to be the biggest thing that the Board is stumbling on now.

Mr. Boucher asked about the wording of the application, if it would have to be re-advertised.

Mr. Falk said probably so, since the advertisement was for a 24-foot driveway on Burnett Street and a 12-foot driveway on East Dunstable Road. He said if it goes to 32 or 36 feet on Burnett, staff would have to re-advertise it, as it's a different ad.

Mr. Boucher asked if the applicant would have to incur additional cost.

Mr. Falk said he's not sure, he'd have to look at administratively how it would work so that they'd not have to pay again. He said he'll have to look into it more.

Mr. Boucher said that he would be interested in tabling this case.

Mrs. MacKay said that she believes that if the Board asks for a redesigned plan, and it has to be re-advertised, that the applicant shouldn't incur the additional costs. She said that point one in the variance, there was talk of other ways to redesign or reconfigure this.

MOTION by Mr. Currier to close the Public Meeting, and re-open the Public Hearing to ask the applicant a question.

SECONDED by Mrs. MacKay.

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

Mr. Forcier said he doesn't have an issue with tabling it, but asked how long it will be, as the future owner has already sold their house.

Mr. Falk said that if Staff has to re-advertise, it would have to go on the May 9, 2023 meeting. He said if staff does not have to readvertise, it can go to the next meeting. He said that if additional curb cut is proposed on Burnett, above, or over 24 feet, it would have to be re-advertised, as the ad is only for 24 feet on Burnett.

Mr. Falk said that it can be tabled to the next meeting, and that will allow time for staff and the applicant to look into this. He said it only can be heard at the next meeting if the driveway on Burnett is still no wider than 24 feet.

Mr. Forcier said that they wanted to come to the Board with the least amount of variances, but this may cause another variance.

Mr. Boucher said that he wanted to make it clear that the Board is not forcing them into anything, and it is possible for the Board to vote on the application submitted and advertised for tonight.

MOTION by Mrs. MacKay to table this case to the April 25, 2023 meeting.

Mr. Campbell said that his opposition was not to the widening of the driveway from 24 to 36 feet, it was doing it on East Dunstable Road, he said that if they wanted to put variances on Burnett, he didn't think there would be any opposition by the neighbors, he said if this is solved on Burnett, there wouldn't be any opposition.

Mrs. MacKay said that they're trying to find a solution for everyone concerned.

SECONDED by Mr. Currier.

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

*** 5-minute break ***

5. Maria C. Amarin & Juscali DeCales (Owners) 30 East Dunstable Road (Sheet 111 Lot 42) requesting the following: 1) special exception from Land Use Code Section 190-15, Table 15-1 (#6) to convert a single-family home into a two-family home, and, 2) variance from Land Use Code Section 190-16, Table 16-3 for minimum land area, 9,824 sq.ft existing, 14,520 sq.ft required. RA Zone, Ward 6.

Voting on this case:

Mariellen MacKay

Steve Lionel

Jack Currier

JP Boucher

Josh Nehiley

Clayton Amarin, 18 Juniper Lane, Merrimack, NH (On Zoom). Mr. Amarin said he is speaking for his parents. He said that his family has owned this property since 2003, it's a corner lot with Herrick Street, and is a single-family home. He said that his parents lived there since 2006, and his grandmother lived in the basement, there was one bedroom and a bathroom. He said that they still own the property but rent it out.

Mr. Amarin said that they want to turn it into a two-family, with a three bedroom unit on the main floor, and a one bedroom unit below. He said that there will be no alterations on the lot, and no change outside, just inside.

Mrs. MacKay asked what the changes would be inside.

Mr. Amarin said that he contacted the City, and someone met him at the house, they'd need to change one exit door on the side of the house to be a second means of exit, so there would be one exit outside, and one inside. He said that the variance is for the lot area, they have 9,824 sq. ft, and need 14,520 square feet of land.

Mrs. MacKay said that she is looking at an inspection report from the Code Enforcement Department, it was from May 2022, and asked why he is just presenting this now.

Mr. Amarin said that he had a tenant living there, and they had to bring him to court, and it took a long time, as he wasn't paying rent, and they wanted to go to court to get him removed, they were waiting for the process to be complete.

Mrs. MacKay asked if the property is vacant.

Mr. Amarin said that they just rented it to someone, a new tenant just moved in, they live on the main floor, and the basement is empty.

Mr. Currier asked how an occupant gets in the basement, if there a door to the outside.

Mr. Amorin said that there is a separate entrance from the main house to the front, they can go directly to the basement from the outside door.

Mr. Currier asked when there was a person living in the basement, if they normally went downstairs from the back yard.

Mr. Amorin said that is correct.

Mr. Currier asked where everyone parks, and where is the driveway for the proposed basement unit.

Mr. Amorin said that there is an entrance back there from when his grandmother lived there, there were already stairs there, and a covered door, and there is an area with four parking spaces from the side street entrance, off Herrick Street, there is a driveway there.

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 they created an illegal basement apartment, and they're looking to legitimize it. He said that there is insufficient land area as well for two units. He said he's trying to find the real need for this request, and is not convinced that it meets the points of law.

Mr. Currier said that he's struggling with the variance, as its 67% of the square footage needed for land area. He said that he's also not seeing any uniqueness that sets this property apart, an illegal unit was put in some years ago and it was serving as an illegal unit. He said it cannot be used as an in-law, as the owner must live there. He said that he fails to find the criteria for a two-family for the variance.

Mr. Nehiley said that regulation number five, whether it is out of character in the neighborhood, and is not aware of any other multi-family houses in that small area. He said in looking at

this house, he would have never known it was two units. He said that he has some concerns on this one.

Mr. Boucher said that he's struggling with this one, the basement apartment is 460 square feet in size, it's really small, but they're asking for a two-family. He said that he's having a hard time finding hardship for this one. He said it may make perfect sense as an in-law, but the owner has to live there. He said that he doesn't believe it would be in the character of the neighborhood.

Mrs. MacKay said that it is a logical setup for an in-law apartment, but the owner has to live there. She said that they're almost 6,000 square feet short of what it needs to be a two-family, and that is a lot, as there are homes by themselves that have that much land. She said that she is leaning more in opposition than in favor of this application.

MOTION by Mr. Currier to deny the variance application on behalf of the owner as advertised. Mr. Currier stated 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 finds that there are no special conditions that warrant a two-family home, and that the property serves as a single-family home just fine as it has for many years.

Mr. Currier said that the request is not within the spirit and intent of the Ordinance to allow this much usage on the lot where 14,520 square feet are required.

Mr. Currier stated that the Board does not have an opinion on the effect of property values.

Mr. Currier stated that the request is contrary to the public interest, and substantial justice will not be served by approving this variance.

SECONDED by Mr. Lionel.

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

MOTION by Mr. Currier to deny the special exception application as advertised on behalf of the applicant as submitted. He said that it is listed in the Table of Uses, Section 190-15, Table

15-1 (#6).

Mr. Currier said that it will not create undue traffic congestion or unduly impair pedestrian safety.

Mr. Currier said that it will not overload public water, drainage or sewer or other municipal systems.

Mr. Currier said that no special regulations apply.

Mr. Currier said that the majority of the Board feels that it will be out of character with the neighborhood, as the neighborhood is primarily single-family homes.

SECONDED by Mr. Lionel.

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

MISCELLANEOUS:

REHEARING REQUESTS:

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the April 25, 2023 meeting.

MINUTES:

None.

ADJOURNMENT:

MOTION by Mrs. MacKay to adjourn the meeting at 9:55 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing