

EXPANDED MEETING SUMMARY  
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
April 12, 2022

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 12, 2022 at 6:30 PM, both in person at City Hall and via Zoom.

Mariellen MacKay, Chair, asked for a Roll Call.

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

Carter Falk, Deputy Planning Manager/Zoning  
Kate Poirier, Zoning Coordinator  
Matt Sullivan (zoom)

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](mailto: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 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. Daniel & Nicole Campbell (Owners) 34 Whitford Road (Sheet C Lot 1642) requesting special exception from Land Use Code Section 190-16 (E)(3)(a) for a minor encroachment to encroach up to 5 feet into the 20 foot required right side yard setback to construct an attached 28' x 27.5' garage addition with rooms above. R30 Zone, Ward 5.**

Voting on this case:

Mariellen MacKay, Chair  
Jack Currier, Clerk

JP Boucher  
Rob Shaw  
Nick Kanakis

Dan Campbell, 34 Whitford Road, Nashua, NH. Mr. Campbell said that they have a little over a 1,500 sq.ft cape, and there is a need to expand the living space, as well as add a two-car garage. He said that the house was built off-center on the lot, towards the right, and that is the side where the driveway is located.

Mr. Campbell said the addition would be at the end of the driveway. He said it would be a special exception because it is a minor encroachment. He said that one letter of support from the neighbor to the right, the one most impacted, has been submitted. He said that their house is one of the smallest ones in the neighborhood, and also in the minority in that it does not have a garage. He said that their package is complete.

**SPEAKING IN FAVOR:**

Mrs. MacKay read a letter from Steven Sockel, 38 Whitford Road, Nashua, NH.

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

No one.

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

Mr. Kanakis said that it is a straightforward request, and they've met the conditions for approval.

Mr. Shaw said he is in favor, due to the way the house is situated, it is the best location for the garage and addition.

Mr. Boucher said that he is in favor.

Mr. Currier said that he is in support, and agrees that there are many larger homes with garages in the neighborhood, this is one of the smaller homes, also, the property has a bit of a topography challenge, which is why the house is situated where it is. He said that the house is downhill from the abutting property at 38, so that minimizes the impact.

Mr. Minkarah said he is in support.

Mrs. MacKay said that she is also in support of the application.

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

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

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

Mr. Boucher said that the special regulations have been fulfilled, the applicant submitted a monumented survey with the application.

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

**SECONDED** by Mr. Shaw.

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

2. Edward A. Brousseau (Owner) 141 West Hollis Street (Sheet 87 Lot 4) requesting variance from Land Use Code Section 190-44 to exceed maximum fence height, 6 feet permitted - 8 feet proposed, for the entire 163 foot length of west side of lot. RB Zone, Ward 4.

Voting on this case:

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

Ed Brousseau, 141 West Hollis Street, Nashua, NH. Mr. Brousseau said he's lived there for several decades. He said that he is requesting an 8 foot fence because at 143, Mr. Pombeiro lived

there, and he moved last November, and the new owner runs a halfway house, and there are about 15-18 males living there, and they hang around outside, smoke a lot, and they throw their snow on his bushes. He said it has become very uncomfortable. He said that he only now needs 125 feet of fencing instead of 163. He said that they can be loud, use foul language, squeal their tires, and they make a lot of noise.

Mr. Minkarah said that a 6-foot tall fence could be built by right, and asked why that would not be adequate.

Mr. Brousseau said that most of the guys next door are over 6 feet tall, and they would look over the fence, and, the home at 143 has windows, and they can look out into the yard. He said that the higher he can go the best.

**SPEAKING IN FAVOR:**

Doloria Gamache, 141 West Hollis Street, Nashua, NH. Ms. Gamache said that another reason for the 8-foot tall fence, is that there is a lot of trash that accumulates at the neighbor's house throughout the week, and it gets higher by the day, and a 6-foot high fence would allow the trash to still be seen.

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

No one.

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

Mr. Shaw said he is in support, things have changed with the property next door, and there is no opposition to this, and it will provide the Brousseau's a little bit of relief, it is a reasonable request.

Mr. Boucher said that he finds support as well, and understands the applicant's concerns, and it can be pretty congested around this part of the street. He said that he wouldn't want to reduce the footage that they're asking for, and would approve the application as it is for 163 feet.

Mr. Currier said that he is in support of the application also, it is a one-way street, and the 6-foot requirement is so that there are not tall fences blocking view or traffic, and this fence should not block any traffic.

Mr. Minkarah said that he does not support the application, the property is consistent with other properties in the area and the neighborhood, and the neighborhood has a mix of single-family and multi-family, and it's clear the neighbors use is more intensive, and appreciates the concern, but ultimately the 6-foot tall fence will be sufficient.

Mr. Kanakis said that he is in support of the application, it is reasonable for his issues about noise and privacy, and agrees that he should be allowed the full length of the fence.

Mrs. MacKay said that she is in support of the application, and agrees with the entire length, and it may be a safety issue with someone over 6-feet tall looking over or throwing something over.

**MOTION** by Mr. Boucher to approve the variance 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 stated that the fence is requested for purposes of shielding activities next door, and it's a benefit because the use of the neighbor's property is intense, and the approvers of this motion find it as warranting the fencing, also, the fencing will not inhibit any vehicle traffic or sight distances down West Hollis Street. He said that the approval is for the entire 163 feet.

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 will be served.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED 4-1 (Mr. Minkarah) BY VERBAL ROLL CALL VOTE OF THE MEMBERS.**

**3.45 Broad Street Properties (Owner) Jillian Arsenault (Applicant) 45 Broad Street (Sheet 61 Lot 169) requesting variance from Land Use Code Section 190-16, Table 16-3, for minimum open space, 50% required, 50% existing - 33% proposed, to add additional parking spaces to north and east side of existing garage. RA Zone, Ward 4.**

Voting on this case:

Mariellen MacKay, Chair

Jack Currier, Clerk

JP Boucher

Rob Shaw

Nick Kanakis

Jillian Arsenault, 45 Broad Street, Nashua, NH. (on zoom).

Mrs. Arsenault said that they recently purchased this property. She said that they don't have enough employee parking, and people are parking on the grass and on the snow in the winter, and there are many clients coming in who have no place to park.

Mrs. Arsenault said that they've had contractors come in to look at the parking and drainage and they don't want to impact their neighbors yards. She said that they do have a 6-foot fence there around the yard.

\*\*\* audio very difficult to understand \*\*\*

Mr. Currier asked about the concrete infiltration basin, and asked if it's an engineered piece, or if an engineer has looked at the runoff and believes that the runoff and grading is done properly, as it looks like a standard drawing for a basin.

Mr. Arsenault said that they've worked with the paving contractor and they suggested this drywell as the best unit to use based upon the land. He said that the land has a high sand concentration.

Mr. Currier asked staff if the design is acceptable in terms of what the City needs for runoff.

Mr. Falk said that he'd have to defer to the Engineering Department and/or Building Department, they are more qualified to answer that question. He said that staff is glad to see that they've gone to the extra step to do this.

Mr. Currier asked if this would get reviewed by Engineering.

Mr. Falk said that he believes that Engineering would in fact take a look at it.

Mr. Minkarah said that for the drywell, apparently the contractor said it was adequately sized, and asked if it is based upon stormwater calculations, or calculations on volume of additional stormwater that would be generated.

Mr. Arsenault said that nothing was given to them as far as those calculations, it was determined that it was sufficient as to the water leeching into the ground versus going back to the street or the neighbors, the grades are pitched towards the abutters at 23 and 25 and 41, and also having asphalt curbing on the back side of the paving to allow the water to go towards that drain.

Mr. Minkarah asked if it is a parking space on top of the drywell.

Mr. Arsenault said that it is.

Mr. Currier asked about maintaining the fence around the perimeter, and asked if perhaps the Board makes that a stipulation, would that be ok, such as in later years, if the fence falls down and people are parking there, the noise and headlights would be right in the back yards of the neighbors.

Mrs. Arsenault said that they have no problem with maintaining it at all.

**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 asked if the applicant was required to do any stormwater management.

Mr. Falk said that they weren't necessarily required to do this, it was their idea, they've had an issue with parking for staff and customers, and had some room there, and they came in with this plan.

Mr. Boucher said that he's in support of the application, and the applicant is trying to do something extra that is not required.

Mr. Currier said he is in support, it's a reasonable stipulation to maintain the fence, because without it, it would be a burden to the neighbors on the back side. He said he'd support it with that stipulation. He said that he's not sure if the infiltration basin is engineered, it looks like the property is pitched that way, and appreciates the applicant thinking of this, as the water would just sheet right to the back. He said that he finds uniqueness in the property in that if the parking lot is full, there is no other option for parking, as it's a busy street and people may have to go a long way on a very busy area of Rte. 130, so that is unique.

Mr. Kanakis said that he is in support as well, and they've taken the extra steps to minimize any impact that the additional paved area would have.

Mr. Shaw said that he is in support, and agrees with the stipulation about maintaining the fence. He said that for the stormwater, any time someone does things to their property, they must not create any additional runoff onto someone else's property, and appreciates the thought of working through this up front and sharing it with the Board.

Mr. Minkarah said that he is in favor, it does appear that additional parking is needed, and appreciates the extra steps that have been taken to accommodate the stormwater, and is assuming the contractor has sized it correctly to have it work. He said that this is an unusual shaped property, making more challenges for paving. He said that even though they would go from 50% to 33%, it abuts a significant amount of open space over by the railroad right-of-way, which helps to mitigate the open space.

Mr. Falk said that this property is used as a business, and if this were a GB or HB zone, the open space requirements are 10%

and 20%, and they wouldn't need to be here.

Mrs. MacKay said that she is also in support.

**MOTION** by Mr. Shaw to approve the variance 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, 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 noted that the property is uniquely shaped, and the business is thriving, and there is limited parking to accommodate the employees and patrons, and there are no other locations nearby for customer parking for overflow parking, further, 10% open space would be required if this were a GB zone, and it is functioning very much like that.

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

Mr. Shaw stated that the request will not adversely affect the property values of surrounding parcels.

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

Mr. Shaw said that for a stipulation, there will a solid fence maintained as currently done for a visual barrier to the adjoining properties.

**SECONDED** by Mr. Boucher.

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

4. Lawrence Berger (Owner) 5 Scotia Way (Sheet C Lot 1736) requesting the following: 1) A determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the variance for a driveway that was denied by the ZBA on 7-28-2020; and, if so: 2) variance from Land Use Code Section 190-17 (E)(1) to exceed maximum driveway width, 24 feet permitted, 19 feet existing - an additional 10 foot wide driveway proposed on right side of lot, for a total

**width of 29 feet. R9 Zone, ward 5.**

Voting on this case:

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

Larry Berger, 5 Scotia Way, Nashua, NH. Mr. Berger said that he went for a variance for the garage a couple years ago, as the accessory use percentage was over 40%, and in order to rectify that, he removed his pool, and finished the basement, all with City permits, which gave him 1,260 sq.ft of accessory use space, and it would be 1,200 square feet, so that variance is no longer needed, and the request is now for the access, the driveway to get back to it, it would add 10 feet on the right side of the lot to access the garage.

**SPEAKING IN FAVOR (OF ONLY THE FISHER V. DOVER DETERMINATION):**

Adam Varley, 3 Scotia Way, Nashua, NH. Mr. Varley said he is a direct abutter to the left of the subject lot. He said that he submitted a letter as well. Mr. Varley said that there have been a number of court cases that have interpreted the Fisher v. Dover standard since it was issued 42 years ago, and in particular, the case of relevance is the Hill Grant Living Trust v. Kearsarge Lighting Precinct, in that case, the Supreme Court indicated that the zoning laws changed significantly from the Dover decision, loosening the standards that are required to meet the test for a variance, and in discussing those changes, the Court indicated that the proceedings of the meeting itself and the discussion among the Board can create material changes of circumstances that justify a secondary hearing on the same variance request. He said that at the original hearing in 2020, there were concerns about the accessory use at that time, and Mr. Berger has taken significant steps by removing the swimming pool from the lot, and finishing the basement such that the variance for the accessory use is no longer needed. He said that he shouldn't be punished as to the second variance request, because he no longer needs the first variance request. He said that he's conveyed significant changes, material changes, that justify the Board now to consider the driveway request again tonight. He said that the essence of the Fisher v. Dover is to

consider the fairness to parties, and consideration to the finality of decisions, and at the first hearing, the Board did not give much consideration to the driveway request, because the accessory use variance request dominated the consideration, and those abutters that testified in opposition spoke only to the accessory use request related to the garage, and really didn't speak about the driveway at all, so, in fairness to Mr. Berger, he deserves to be heard for the driveway request tonight, it wasn't heard subsitively the first time around, and would be supportive of the Board hearing the driveway request tonight.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS (ONLY TO THE FISHER V. DOVER CONSIDERATION):**

Joe Tringali, 12 MacDonald Drive, Nashua, NH. Mr. Tringali said that each of the original cases were listened to, each were denied on separate votes, and the driveway was given enough consideration.

Patrick Trouve, 18 MacDonald Drive, Nashua, NH. Mr. Trouve's statement was unable to transcribe, poor audio.

**END OF PUBLIC HEARING FOR THE FISHER V. DOVER, BEGINNING OF THE PUBLIC MEETING FOR THE FISHER V. DOVER.**

Mr. Minkarah said that he's struggling somewhat with this. He said in the last case, it's arguable that there's been a material change in that they're no longer seeking a variance to construct the garage, however, it's the same application we saw, understanding that the pool is removed and the basement is finished, it's still the same application as before. He said that he had some concerns about the size of the garage and use of it, but it's not just the driveway width, but this is a second driveway, entirely to a different building on the property, to a new structure. He said that he's leaning on that this is not significantly different.

Mr. Currier said he sees it differently, and felt that the driveway and garage are tied together, and certainly, most of the discussion was about the garage, and it was a big ask for the garage, and that did dominate the discussion. He said that the request before was for the driveway and the garage, this is just for the driveway, and this is materially different and the Board should hear it.

Mr. Boucher said that he feels that there is a material change and believes that the Board should hear the case. He said that the driveway and the garage are tied together, and now that there is no variance needed for the garage, and there have been significant changes on the property, that is enough to hear it.

Mr. Shaw said he's in a similar spot as Mr. Minkarah. He said that just because there is just enough question about it. He said for the driveway, it's the same, but there are underlying conditions that have changed, and the fact that even that part of it comes up, and wonders if we should err on the side of caution and proceed with this, it's not a classic issue of Fisher v. Dover where someone keeps coming back with the same application. He said that enough things have changed with the property, and is inclined to say it meets Fisher v. Dover, but not strongly.

Mr. Kanakis said he feels the same way as Mr. Shaw, it clearly doesn't meet the second option of Fisher v. Dover, as it is the same use as before, but there's an argument that the change of circumstances affects the merits of the case, and he's made some substantial changes to the square footage of the home to avoid the need for the area variance for the garage, and all is all, is leaning in favor of meeting the Fisher v. Dover based upon the first criteria, as there is a change in circumstances that affects the merits of the application.

Mrs. MacKay said she's not so sure. She said that the material change goes to the garage, it doesn't go to the driveway. She said if the Board looks at just one, just the driveway, which is what he is here for, there is no material change whatsoever, and there was a separation of the voting and specifics were called out for just the driveway.

Mr. Minkarah asked if there was a new plan submitted.

Mr. Falk said that it is the same plan, same driveway as 2020.

Mr. Currier said that back in 2020, the maximum accessory use area was 40%, and 74% was proposed. He said that is a big ask, and in general, the Board focused on the garage, and the garage goes along with the driveway. He said that the current application has a rational thing that the property owner can do, as the original application got denied, and he asked himself

what can he do to move forward with an application that is in greater conformance, and made amends by removing a pool and creating more living space, so it's a rational and reasonable step, even though the driveway is the same as before, but the application in total has changed, and sees them both tied together.

Mrs. MacKay said that if the Board is asked to consider something that is materially different, everything about the driveway is exactly the same, nothing has changed. She said if the Board is now not to consider the garage, then why would the Board consider the material space that was accomplished to accommodate the garage.

Mr. Boucher said that the garage is off the table now. He said the size is ok, there is no overage. He asked if the applicant was not looking for an extra five feet of driveway, so if the applicant met the driveway width, which is 24 feet, would he need to be here.

Mr. Falk said no, the driveway maximum width is 24 feet, and if he meets it, it can be split up into a 14 foot and a 10 foot driveway, or two twelve foot driveways, it would meet the Code and it would not need Zoning Board approval. He would still need to get a street opening permit/curb-cut permit from the DPW.

Mr. Boucher said that right now, there is no more ties to the garage, it is just a Building Dept. permit. He said that this is now just a strictly overage on driveway width, it's not about what would be built in the back of the property. He said that if the applicant decides to re-arrange his driveways, because he is now ok with the accessory structure overages, so the garage could be built in the back once he gets his permit. He said that if he shortens the driveway that is existing down to 14 feet, and builds the 10 foot driveway on the right side, he doesn't need to come here.

Mr. Minkarah said that is his prerogative to do that, but when it comes to the Fisher v. Dover analysis, he said he's stuck in that he's seeing the exact same driveway proposed to access the garage.

Mrs. MacKay said that is her sticking point too, there were two original variances, one for the garage, and one for the driveway, now, the Board is just seeing the variance for the

driveway, and it is not different at all.

Mr. Shaw said that now is feeling more swayed towards not supporting the Fisher v. Dover, he said it's really hard because there is the garage and there's the driveway. He said that for the second criteria of the Fisher v. Dover, doesn't see how that can be met, it comes down to the first criteria. He said that he doesn't believe that there is anything material is different in nature and degree from the variance originally submitted, it's the exact same driveway. He said that he is not able to support the second thing, and the Board only has to agree that they meet one of the two. He said that whether or not it is a change of circumstances affecting the merits of the application, if that's occurred. He said that the proposed garage before was all to do about the fact it couldn't be placed without a variance because of the accessory use percentage. He said that the applicant found a way to take care of that, and to build a garage without any need for a variance. He said that part is changed, but the proposed garage is the same thing. He said that he believes that it is the same request. He said that the circumstances that have changed is the garage's need for an area variance or not, nothing to do with the driveway's need for a variance or not.

Mr. Currier said that for the original case, the discussion did focus on the garage, not on the merits of the driveway, but said that he thought the Board had those two elements tied together and there wasn't consideration of just the driveway, if the garage wasn't permitted, if the garage wasn't approved, the driveway wasn't looked at separately, and said that he interprets question one as the application before was tied together and this application is just the driveway.

Mr. Shaw said that this is something good for the Board, like for future guidelines for the Board, that the Board should be careful about how closely requests are, even when they seem very much mutually tied together. He said that he understands that the focus would primarily be on the structure and not the driveway, it makes sense.

Mrs. MacKay said that for her they were separate requests, and does not see the change in circumstances affecting the merits of the application. She said that nothing has changed in the application for the driveway, if the applicant wanted to put in a driveway, he could, he can shorten one and put the driveway

in, no need for the Board to weigh in at all. She said that what the Board has to look at is that number two is not met, and the change in circumstances affecting the merits of the application, has it occurred, and what change in circumstance has occurred to the driveway, and based on the application and the plans, nothing.

Mr. Currier reiterated that for number two, the use of the overall application, is materially different, as the variance for the accessory use coverage is no longer a consideration, it is not present, and that is materially different.

Mrs. MacKay said that she believes that the actual application is the same, as proposed.

**MOTION** by Mr. Currier that there is a change of circumstances, meeting the Fisher v. Dover analysis, in that the accessory use has been addressed, so that the driveway is now being requested to access an approved use by right at this point, and finds that as the changed circumstance from the last application, and therefore, it meets the Fisher v. Dover test.

**SECONDED** by Mr. Boucher.

**MOTION FAILS 2-3 (Mr. Shaw, Mr. Minkarah, Mrs. MacKay) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.**

**MOTION** by Mr. Minkarah that the application does not present material change of circumstances, and does not meet the Fisher v. Dover test.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED 3-2 (Mr. Currier and Mr. Boucher) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.**

5. Weverson Araujo (Owner) 65-67 Gilman Street (Sheet 94 Lot 74) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#102) to allow an esthetician's office in a portion of a first floor unit within a three-unit building. RB Zone, Ward 6.

Voting on this case:

Mariellen MacKay, Chair

Jack Currier, Clerk  
JP Boucher  
Rob Shaw  
Nick Kanakis

Weverson Araujo, 65-67 Gilman Street, Nashua, NH. Mr. Araujo said that he wants the business for his wife inside the home, they have three rooms where they can do it.

Mr. Currier asked how long this business has been in operation.

Mr. Araujo said she got her license three years ago, but never worked yet due to having a baby. He said that the business is by appointment only.

Mr. Currier said that he noticed two white lines for parking in front of the property, but there are no other lines on the street.

Mr. Araujo said that the city has to fix some of the pavement and sidewalk, but he hasn't painted the lines yet.

\*\*\* Audio difficult to pick up \*\*\*

Mr. Currier asked how many units are in the building.

Mr. Araujo said that it is three units and a business, they are 65, 67 and 65A. He said that they live in 65, the middle one.

Mr. Currier asked how long he has owned the property.

Mr. Araujo said three years.

Mr. Boucher asked what floor he lives on.

Mr. Araujo said he lives in the middle floor.

Mr. Currier asked if there is parking on street at night on Gilman Street.

Mr. Araujo said not on Gilman Street.

Mr. Currier asked how many off-street parking spaces are there.

Mr. Araujo said eight, plus the garage, but he doesn't use the garage.

Mr. Minkarah said that he noticed that someone parks on the lawn, at least some of the time, and asked if that is considered a parking space.

Mr. Araujo said it is not a parking space.

Mr. Boucher asked what the proposed hours of operation are, the application says Monday through Saturday, 9am to 6pm. He asked if there would be clients all the time or would there be some down time.

Mr. Araujo said he anticipates that's what the hours will be.

Mr. Kanakis asked if the two spots would be one for an employee and one for a customer.

Mr. Araujo said yes.

Mr. Minkarah asked why this would be a variance rather than a home occupation.

Mr. Falk said that the use is not permitted in this zoning district at all, so it's a use variance.

**SPEAKING IN FAVOR:**

No one.

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

Mrs. MacKay said that there are letters in opposition to the application. She said that they are from:

Paula Gauthier, 100 Gilman Street, Nashua, NH  
Margaret Zoccoli, 19 Sawyer Street, Nashua, NH  
Jean Dearborn, 122 Gilman Street, Nashua, NH  
Alice Leighton, Gilman Street, Nashua, NH  
Kimberly Silverman, 101½ Gilman Street, Nashua, NH.

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Araujo said that there was a question about a hot tub, it is

a tank in the corner for water for his jobs when he power washes houses, so it's not a hot tub.

Mr. Araujo said that there is a couch in the yard, but he said he can't return it because he's waiting for Bobs Stores to take it out.

Mr. Araujo said that he has a lot of parking spaces, and pretty much it's mostly empty, if anyone passes by during the day, there are a lot of spaces.

Mr. Boucher said that in the photos he's seen, some of the cars are blocking the sidewalk, the back of the cars are hanging off over the sidewalk.

Mr. Araujo said that he removed parts of broken parking areas, and put new asphalt there.

Mr. Minkarah asked if the space couldn't be used for a business, what could it be used for.

Mr. Araujo said it's a room. He said that the business is on the second floor, in the apartment that they live in. He said it's part of their apartment. He said that there is no basement, just first, second and third floor.

Mr. Minkarah asked if the room for the business is connected with the apartment.

Mr. Araujo said yes.

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

Mr. Currier said that the applicant makes the case that it is a low key business and it won't have any impact on the neighborhood, and will fit right in. He said that there is an awful lot of testimony from abutters that say that it's a stressed neighborhood, not much parking, and the property has heavy use and this is over the top. He said he's stuck in the middle, and would like to take another look. He said that the abutters say things that do not support the use variance.

Mr. Kanakis said that he is ultimately leaning in favor of the application, based upon there is sufficient parking there if utilized property, and one customer at a time is a fairly low

impact.

Mr. Shaw said he's in favor, and echoes what Mr. Kanakis just said.

Mr. Boucher said that he's struggling with this one. He said he drove by the property several times, and is not comfortable with the parking situation, it's not really what is acceptable. He said that he's struggling with the property itself, the property is compact, there are already three units there.

Mr. Minkarah said he's definitely struggling with this one, but is leaning in favor. He said if he were voting on it, he'd make a stipulation of no parking on the grass. He said that the proposal is not converting one of the units into a business use, it's a business that would be conducted within a residence of the owner of the property, and is attached to their dwelling. He said that the scope of it is really limited.

Mrs. MacKay said that she is inclined to support it, Gilman Street and the whole area there have small lots, and the use is within the home, it's not a noisy business, and will not create odors, it's just a small individualized process that takes place inside someone's home. She said that she's in favor, and shouldn't be a great impact.

**MOTION** by Mr. Shaw to approve the use variance application on behalf of the applicant as advertised, although, the Board learned it's on the second floor and not the first floor. 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, 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 usage will be within one of the existing units, the owners occupied unit, with testimony that it will be a very limited, minor home business use, and the owner has testified that there is sufficient parking for the business.

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

Mr. Shaw stated that the request will not adversely affect the property values of surrounding parcels.

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

Mr. Shaw said that for a special condition, there will be no parking allowed on the grass, there should be sufficient parking already, by definition, on paved areas.

**SECONDED** by Mr. Kanakis.

**MOTION CARRIED 3-2 (Mr. Currier and Mr. Boucher) BY VERBAL ROLL CALL VOTE OF THE MEMBERS.**

**MISCELLANEOUS:**

**REHEARING REQUESTS:**

None.

**REGIONAL IMPACT:**

The Board stated that the case for 40 Groton Road abuts Dunstable Mass. Staff will notify the Town of Dunstable. Otherwise, the Board did not see any case for regional impact.

**MINUTES:**

3-22-22:

**MOTION** by Mrs. MacKay to approve the minutes as amended, with the date of the meeting already changed on the top of page 1, 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 Mrs. MacKay to adjourn the meeting at 8:38 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing